



Floating Structure Report



On Maine's Inland and Coastal Waters

Maine Department of Agriculture, Conservation and Forestry, Department of Environmental Protection, Department of Inland Fisheries and Wildlife, and Department of Marine Resources

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Executive Summary

The use of non-water-dependent floating structures (NWFS) on Maine’s inland and coastal waters has been on a steady increase. These structures, including but not limited to floating camps, restaurants, hotels, and billboards pose legal and philosophical use issues for Maine’s waterfront communities and State regulatory authorities. These structures infringe upon or usurp the Public Trust Rights of fishing, fowling, and navigation, cause increased congestion on the water and at public water access points, potentially impact waterfront property values, cause navigation issues, and are a potential source of pollution. This report was written in response to Legislative [Resolve 2022 Chapter 147](#) (LD 626) which directed State Agencies to work together to define the problem, the current regulatory structures, propose potential statutory and regulation changes that are needed to clarify if or when NWFS should be permitted on Maine’s public waters.

When it comes to a floating structure that a person wouldn’t commonly think of as a watercraft or a motorboat, the Working Group was challenged to clearly define what isn’t a “watercraft,” an “NWFS,” or what shouldn’t be registered as a “motorboat.” Both “watercraft” and “functionally water-dependent uses” are defined in statute. The Working Group, through much discussion and research, realized that these structures are mainly unregulated at this time and agreed that they should either be prohibited and/or regulated, at least in some instances.

Great Ponds and coastal waters in the State of Maine are held in public trust for all people to use, with the primary focus of use being fishing, fowling, navigation, and, to some degree, recreation. Several agencies have the responsibility to uphold the public trust, and the stakeholder members kept this at the forefront of their discussions.

The amount of time this topic has taken in attempts to address complaints and informational requests at the municipal level, within all the state agencies involved in this Working Group, and the attorney general’s office is significant. For example, the Shoreland Zoning Program within DEP has only 3 positions when fully staffed that manage the program statewide, and the warden service who enforces watercraft law in Maine is taxed with many of these complaints. Because agencies are short-staffed and there isn’t a clear way this issue should be handled, the complaints about NWFS are not being addressed effectively.

The following is a breakdown of state agencies, their bureaus, municipalities, and their authorities and responsibilities necessary to understand where the lack of regulation occurs.

The current mechanisms that can be used to regulate floating structures in some ways, are spread out between several agencies and laws and are somewhat ambiguous. The list below provides a basic understanding of current agencies’ involvement and authority related to NWFS.

- **The Natural Resource Protection Act (NRPA) Laws** are administered by DEP within organized towns and administered by DACF’s Land Use Planning Commission (LUPC) within unorganized territories. The law only regulates permanent structures which are defined in statute and in part means: “a structure with a fixed location or that is attached to a structure with a fixed location for a period exceeding 7 months within any 12-month period”. After the 7 months, an evaluation for permitting would be required. Therefore, an NWFS in the water for less than 7 months would not be regulated under NRPA, but conversely, if it were in the water for more than 7 months, an NRPA permit would be required. See more details on page [11](#).
- **The Mandatory Shoreland Zoning Act** is administered by the DEP and requires municipalities to adopt a Shoreland Zoning ordinance that meets the DEP’s Ch. 1000 minimum guidelines. The “Shoreland zone” is

defined in statute and is the area located immediately adjacent to or over the water and within 250' from the normal high-water line of a water body. Uses that are not "functionally water-dependent use" must meet applicable setbacks. "Functionally water-dependent use" means in part, those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that cannot be located away from these waters. There is no definition of a non-water-dependent floating structure in the Act or the DEP's Ch. 1000 guidelines, so there is currently some gray area in the way in which these structures are treated under Shoreland Zoning. See more details on page [10](#).

- **Submerged Lands Program (SLP)** is administered by DACF and regulates [submerged lands](#) by providing limited use leases and easements to establish Right, Title, or Interest which allows privately owned piers, docks, and other structures to be built on or over publicly owned submerged lands. All proposed structures, to qualify for a lease or easement, must not impede access to or over state waters or have adverse impacts on the public trust rights of fishing, fowling, or navigation. SLP does not permit NWFS. See more details on page [15](#). The SLP's authority is limited in that they use administrative enforcement to gain compliance.
- **Land Use Planning Commission (LUPC)** is a State agency within DACF and is the planning, zoning, and permitting authority for all the unorganized territories (UT) in Maine which comprises nearly half of the State, including the waterbodies within the UT. The zoning in the UT does not allow residential uses in water bodies or zoned wetlands. LUPC's authority is limited in that they use an administrative enforcement, multi-step approach to gain compliance. DACF 01-672 Chapter 10, section 10.23 (N) (3) See more detail on page [14](#).
- **The Boating Facilities Division (BFD) of the Bureau of Parks and Lands, under the jurisdiction of DACF, manages many state-owned boat launch sites** and oversees the placement of aids to navigation on certain Great Ponds throughout Maine. BFD rules prohibit the placement of any object that may be considered a hazard to navigation beyond the Water Safety Zone (200 feet from any shore). Whenever an object must be anchored or moored beyond the Water Safety Zone, BFD may require special lighting. Swim area buoys and other temporary buoys may also be limited by BFD's permitting requirements. BFD does not regulate the surface use of Maine's waters and relies on the Warden Service, along with state and local law enforcement, to enforce existing BFD rules.
- **Inland Fisheries and Wildlife (DIFW)** and the Department of Marine Resources DMR regulate watercraft operations on the water. DIFW administers the registration of motorboats. A smaller piece of this puzzle is that DIFW has always registered floating structures when a motor is attached even if they don't appear to be a typical watercraft. Considering this Working Group's work, IFW is working to modify its process/policy for the registration of motorboats by triggering an investigation and possible prohibition of registration of NWFS. However, because an NWFS isn't defined and with a lack of clarity to identify these structures, it is challenging to determine and enforce this policy. A larger concern is floating structures that do not have a motor and, therefore, wouldn't need a registration anyway. See more details on page [16](#).
- **Municipalities** have the option to create a mooring ordinance regulating moorings on lakes within their jurisdiction. An unresolved question is whether a municipality can regulate types of floating structures such as NWFS through mooring placements. See more details on page [18](#).

The Work Group quickly came to realize that at this time:

- NWFS, float homes, other floating structures, and their uses are neither defined nor clearly regulated in Maine;
- Currently there is no singular agency with clear regulatory authority to prevent use of these structures; and
- There isn't one statute or rule that covers all the scenarios in question given the respective agencies' authority.

There are other floating structures, uses, or businesses on Maine waters that require evaluation of their impact and are regulated in some fashion but are not considered part of public trust rights.

The preferred approach by the Working Group is to create a NWFS prohibition, including floating homes with a primary use for habitation and not for navigation. Additionally, several sections of law, rules, and policies within multiple agencies' jurisdictions would need to be modified to avoid loopholes. This proposal will allow for "true houseboats," not to be confused with floating homes or camps. Legal use of a houseboat would need to meet prescriptive requirements for structure, size, ability to navigate, pollution control, and more. This change in requirements will subsequently change what will and will not be registered as a motorboat. These requirements will need thoughtful crafting.

1.0 Key Recommendations

Create a prohibition on non-water-dependent floating structures “NWFS” (not to be confused with true houseboats and other water-dependent structures) and modify existing statutes and create new rules to close loopholes. The new rules would provide standards to meet a new definition of a houseboat and guidance on determining if the structure is a houseboat vs. a NWFS. The following proposals would help bring this to fruition. The Working Group believes this option to be the most efficient and effective when protecting the public trust rights of fishing, fowling, and navigation.

- **Statutory Change:** to define NWFS (which will include a “floating home”) and define a true “houseboat”. Within the definition of a water-dependent structure, exclude NWFS. When defining an “NWFS,” the focus will most likely be on the primary use being for habitation, not for navigation. By creating a definition for a houseboat and establishing standards to be a legal houseboat the motorboat registration process will also be modified to restrict NWFS that cannot meet the standards to be a true houseboat. This helps stop structures from being registered whose owner may use the registration process to avoid Shoreland Zoning requirements.
- **Statutory Change:** To clarify that NWFS are prohibited on great ponds, coastal waters, and intertidal waters of this state, are not included as a functionally water-dependent use and are prohibited from being registered as motorboats. Additional rulemaking would likely be needed to clarify what these floating structures are.
- **Statutory Change:** This amendment amends the authority for law enforcement to conduct inspections on and inside NWFS and houseboats.
- **Rule Change:** Clarify what is considered a watercraft and establish what should and should not be registered as a motorboat within the DIFW rule.
- **Rule Change:** In DIFW rule Ch. 13, provide a list of photos and descriptions of what a person would commonly believe to be a watercraft that would meet a functionally water-dependent use. This may also provide examples of what a watercraft is not.
- **Rule Change:** – Within DIFW rules, possibly prohibit the launching of any structure over a certain weight or width at a water access site. This would effectively limit some of the larger floating structures that end up being used on some water bodies.
- **Add Positions:** Ask for a new position or positions (FTE) within the Shoreland Zoning Program at the DEP to support municipalities in administering and enforcing this prohibition and/or a new position(s) at DACF for similar work.

2.0 Legislative Resolve 2022 Chapter 147

To Direct DACF To Develop Recommendations Regarding Non-Water-Dependent Floating Structures on Maine Waters

Sec. 1. Department of Agriculture, Conservation and Forestry to develop recommendations regarding non-water-dependent floating structures on Maine's waters. The Department of Agriculture, Conservation and Forestry shall establish an interagency Working Group to develop recommendations, including suggested legislation, to define and regulate non-water-dependent floating structures on coastal and inland waters. The department shall consult with the Department of Inland, Fisheries and Wildlife, and other state and federal agencies as needed and seek input from the Maine Municipal Association and the Maine Harbor Masters Association. The Working Group shall submit a report with findings and recommendations to the joint standing committee of the Legislature having jurisdiction over Agriculture, Forestry, and Conservation matters no later than January 1, 2024. The joint standing committee of the Legislature having jurisdiction over Agriculture, Conservation and Forestry may submit a bill to the Second Regular Session of the 131st Legislature based on the subject matter of the report.

3.0 Background

Public Trust Rights Impacted by Float Homes & Other Structures

The rights of the public to use Maine’s public waters and its submerged lands are known today as Public Trust Rights. These publicly owned waters include:

- Coastal and tidal waters
- Great Ponds
 - If in its natural state any pond 10 acres or more
 - If impounded any pond 30 acres or more
- Non-tidal rivers
- All water over publicly owned submerged lands.

Temporary or permanent housing such as floating camps and homes (not to be confused with true houseboats), hotels, restaurants, and other residential and non-water-dependent floating structures (NWFS), and non-water-dependent uses are not public trust rights regardless of whether they are floating, constructed over a fixed pier, or registered as a motorboat because they are not capable of safe and practicable navigation. NWFS draw on scarce state and local resources; compete with commercial fishing, recreational boating, and working waterfront users for limited space in Maine harbors and Great Ponds; potentially cause environmental impacts, place an undue burden on public boat landings and pose significant challenges to effective harbor management and safe navigation on Maine waters.

Some of the concerns associated with this issue are solid waste disposal, littering (which Maine has laws to address), and occupying areas of our Great Ponds, coastal waters, submerged lands, and intertidal areas with a use that is “non-water-dependent.” Non-water-dependent uses such as housing or restaurants are not Public Trust Rights.

2021 LD 626 Introduced

Concerns over this increased type of use on Maine’s waters led to LD 626, “An Act to Clarify Temporary Mooring Privileges for Inland Waters,” being introduced by former Representative Paul Stearns during the First Session of the 130th Legislature in 2021. Representative Stearns stated, “Maine’s waterways are an invaluable resource shared by all. But what happens when one person’s actions impede upon the ability of another person to reasonably enjoy and utilize the same resource”. The concerns in LD 626 were focused on persons putting “floating camps/structures” on our Maine waters, with numerous questions associated with these temporary structures.

The Joint Standing Committee on Inland Fisheries and Wildlife carried LD 626 over to the next session and tasked the Department of Inland Fisheries and Wildlife (DIFW), the Department of Agriculture Conservation and Forestry, Bureau of Parks and Lands (DACF/BPL) to compile relevant laws, rules, and municipal ordinances that would possibly have regulatory standing on this matter and present the information in an orderly manner to be considered by the Committee during the Second Session of the 130th Legislature (2022).

DIFW had numerous meetings with DACF/BPL and included Maine Municipal Association (MMA) staff to better understand the scope of concerns brought forth within LD 626. One meeting included members of the State of Maine Harbormasters' Association (SMHA). The report from DIFW provided during the Second Regular Session of the 130th Legislature in February of 2022 expanded upon the following concerns and questions:

- Are floating camps legal in Maine?
- Do floating camps meet the definition of a motorboat or watercraft?
- Are floating camps only a mooring placement problem?
- Who regulates them: the state, a municipality, or no one?
- If regulated, should it happen at the state or municipal level?
- Does existing law address problems associated with floating camps/structures?
- Are these floating structures watercraft, a dock, or a floating swim platform?
- Do they need to be registered?

2022 Report Back to the Legislature by DIFW

The 2022 report outlined the jurisdiction and responsibilities of the state and municipalities over the regulated public use of our state waters and the lands beneath them. Additionally, it expanded on the problems raised during the hearing on LD 626, specific to the placement of “floating camps/structures” and some suggestions for the Committee to consider for future discussions. Some of that information is included in this report to provide background to readers on the progression of this discussion. After the DIFW Legislative Committee heard the report, they decided that more time was needed to navigate the complexities and allow the agencies to come forward with proposals on the best approach for the state and municipalities to regulate NWFS, and the topic was better suited within the DACF to present back to the DACF Legislative Committee. In the spring of 2022, the following resolve was passed: RESOLVE 2022 CHAPTER 147 – (LD 626) Resolve, To Direct the Department of Agriculture, Conservation and Forestry To Develop Recommendations Regarding Non-Water-Dependent Floating Structures on Maine’s Waters.

This resolve directed the DACF to establish an interagency Working Group to develop recommendations, including suggested legislation, to define and regulate non-water-dependent floating structures on coastal and inland waters. DACF was required to consult with DIFW, and other state and federal agencies as needed and seek input from a statewide municipal association and a statewide harbor masters’ association that represents Maine harbor masters. DACF was also required to submit a report to the DACF Legislative Committee no later than January 1, 2024, and the committee is authorized to submit a bill to the Second Regular Session of the 131st Legislature based on the subject matter of the report.

Concerns over this increased type of use of Maine’s waters is what led to [RESOLVE 2022 CHAPTER 147](#) and the Legislature directing the Department of Agriculture, Conservation and Forestry (DACF) in 2021 to establish an interagency Working Group, hereinafter referred to as the Working Group, to bring proposals back to the Legislature in 2024. The Working Group felt that issues surrounding NWFS on Maine’s publicly owned waters come down to an issue of priorities:

Shall the state of Maine continue to allow seasonal or year-round housing and other non-water-dependent uses to displace the traditional public trust rights of fishing, fowling, and navigation? For every floating camp or home located on Maine’s coastal waters and Great Ponds, a commercial fishing vessel or recreational boat must move aside.

This report is a result of the Working Group’s discussions and provides recommendations, including suggested legislation, to define and regulate NWFS on coastal and inland waters and provides one suggestion for municipalities to further regulate moorings for NWFS if that is an avenue the Legislature is interested in pursuing. The Working Group also agrees that houseboats, which are different from NWFS, and other traditional floating structures such as lobster trap and bait floats, ice fishing shacks, and aquaculture processing floats are water dependent and should remain exempt from any proposed regulation of NWFS.

The Working Group convened in November 2022 and met bi-weekly or more frequently through the end of 2023 with the following people and their associated agencies and organizations being represented:

4.0 Working Group Members

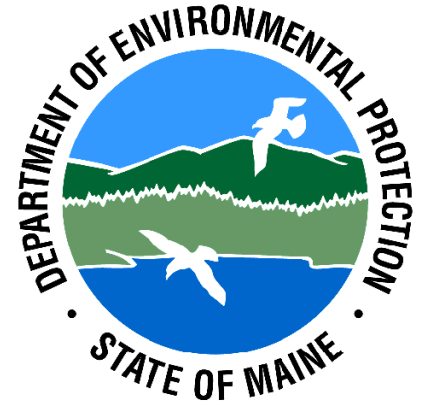
John Noll: Submerged Lands Program Director – Bureau Parks and Lands, DACF
Karen Foust: Submerged Lands Coordinator – Bureau Parks and Lands, DACF
Anja Parlin: Submerged Lands Technician – Bureau Parks and Lands, DACF
Tim Thurston: Navigational Aid Supervisor – Bureau Parks and Lands, DACF
Thomas Linscott: Boating Facilities Program Director – Bureau Parks and Lands, DACF
Stacie Beyer: LUPC Executive Director – Land Use Planning Commission, DACF
Heather Seiders: Boating Facilities Outdoor Rec Planner – Bureau Parks and Lands, DACF
Robert Wood: Director, Bureau of Land Resources, DEP
Colin Clark: Shoreland Zoning Coordinator, Bureau of Land Resources, DEP
Pam Parker: Environmental Specialist – Water Quality, DEP
Deirdre Gilbert: Director, State Marine Policy– DMR
Christl Theriault: Assistant to the Commissioner – DIFW
Diano Circo: Chief Planner – DIFW
Jason Luce: Game Warden Lieutenant – DIFW
Dave Chabot: Game Warden, Retired – DIFW
Daryen Granata: Vice President & Training Coordinator – State of Maine Harbor Masters Association
Shawn Hebert: Treasurer – State of Maine Harbor Masters Association
Rebecca Graham: Senior Legislative Advocate – Maine Municipal Association

Working Group meetings continued through 2023, and this report was drafted and finalized for presentation to the 131st Second Regular Session of the DACF Legislative Committee.

5.0 State Regulatory Jurisdiction and Authority

Protection of Maine’s waters and submerged lands is governed by several areas of law and regulation administered by multiple state agencies. This section of the report will provide a brief synopsis of the primary role of the respective agencies related to regulating watercraft, docks and floats, waterway markers, and submerged lands under our state-owned waters. It will also describe each agency’s bureau structure along with their limitations in authority and any recommendations the Working Group provided.

5.1 Maine Department of Environmental Protection (DEP)



Mandatory Shoreland Zoning Act

Many municipalities regulate floating structures under their local Shoreland Zoning Ordinances. Municipalities are required to adopt Shoreland Zoning Ordinances pursuant to the Mandatory Shoreland Zoning Act, MRS §§ 435-448. The DEP's Ch. 1000 rules establish minimum Guidelines for Municipal Shoreland Zoning Ordinances.

A structure located immediately adjacent to or over a resource must be a functionally water-dependent use to be consistent with the Ch. 1000 Guidelines and the Mandatory Shoreland Zoning Act. An NWFS that is not registered as a watercraft by IFW would not be considered a functionally water-dependent use, which is defined as follows in MRS 38 §436-A (6):

Functionally water-dependent uses. "Functionally water-dependent uses" means those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that cannot be located away from these waters. These uses include but are not limited to, commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish-related storage and retail and wholesale marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, shoreline structures necessary for erosion control purposes, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that cannot reasonably be located or operated at an inland site and uses that primarily provide general public access to coastal or inland waters. Recreational boat storage buildings are not considered to be functionally water-dependent use.

Additionally, the DEP's [Chapter 1000 rules](#), in Section 15(C), prohibit new structures from being built on a dock or other structure extending beyond the normal high-water line of a water body or within a wetland without being an operational necessity and prohibit existing structures from being converted to dwellings.

Limitations of Shoreland Zoning Authority and Enforcement

- NWFS are not explicitly defined in the Mandatory Shoreland Zoning Act.
- Shoreland zoning is administered at the local level. The DEP has limited capacity to support municipal implementation of Shoreland Zoning Ordinances.
- SLZ ordinances only extend 250' in either direction from the normal high-water line of a water body, potentially placing some NWFS beyond the Shoreland Zone.

Recommendations for Shoreland Zoning and Enforcement

- Amend the Mandatory Shoreland Zoning Act to explicitly prohibit NWFS by:
 - Defining NWFS in MRS 38 §436-A. The Working Group recommends the following definition: "any waterborne structure designed and intended primarily as a permanent or temporary dwelling or place of business and not for use as a recreational or commercial watercraft or boat."

- Clarifying in MRS 38 §436-A (6) that an NFDS is not a functionally water-dependent use. Specifically, amend MRS 38 §436-A (6) as follows:
- **“6. Functionally water-dependent uses.** "Functionally water-dependent uses" means those uses that require.... Recreational boat storage buildings **and non-water-dependent floating structures (NWFS)** are not considered to be functionally water-dependent uses.”
- Implementing the prohibition immediately by amending MRS 38 §438-A (7) to read:
- **“7. Exclusion of recreational boat storage buildings and non-water-dependent floating structures (NWFS).** Notwithstanding subsection 3, the exclusion of recreational boat storage buildings **and non-water-dependent floating structures (NWFS)** from the definition of "functionally water-dependent uses" is deemed to be incorporated into each municipal shoreland zoning ordinance on the effective date of this subsection, regardless of any prior approval of the ordinance by the commissioner.”
- Create a new FTE within the Shoreland Zoning Program at the DEP to support municipalities in administering and enforcing this prohibition.

Natural Resource Protection Act

Certain activities taking place in, on, over, and adjacent to protected natural resources, including but not limited to great ponds and coastal wetlands, are regulated under the Natural Resources Protection Act (NRPA), MRS 38 §§480-A through 480-JJ. The NRPA is administered by the DEP in organized municipalities and by the Land Use Planning Commission (LUPC) in unorganized territories. Activities requiring a permit under the NRPA include construction, repair, or alteration of any permanent structure (MRS 38 §480-C(2)(D)). A permanent structure is defined as any structure that is designed to remain at or that is constructed or erected with a fixed location or that is attached to a structure with a fixed location for a period exceeding 7 months within any 12-month period, including, but not limited to, causeways, piers, docks, concrete slabs, piles, marinas, retaining walls and buildings (MRS 38 §480-B(7)).

A proposed permanent NWFS would, therefore, require a permit pursuant to the NRPA. To be permitted, it would need to meet the requirements of the DEP’s Ch. 310 Wetlands and Waterbodies Protection rules or LUPC’s Chapter 10 Land Use Districts and Standards. Section 5(A) of the Ch. 310 rules states “For an activity proposed in, on or over wetlands of special significance [including great ponds and coastal wetlands], a practicable alternative less damaging to the environment is considered to exist and the impact is unreasonable,” unless the activity meets certain criteria, such as being a water-dependent use. It is unlikely that a new NWFS would meet the criteria in this section, and therefore it is unlikely that such a structure could be permitted under the Ch. 310 rules. The LUPC has similar language in Chapter 10, Section 10.25(P)(2)(b)(1).

Limitations to NRPA Authority and Enforcement

The NRPA only regulates permanent structures. An NWFS in the water for less than seven months would not be regulated under the NRPA. In addition, although the Natural Resources Protection Act delegates permit-granting authority to the Land Use Planning Commission, the LUPC does not have enforcement authority under the NRPA.

Recommendations for NRPA Authority and Enforcement

The Working Group recommends that the LUPC be provided with enforcement authority pursuant to its delegated permitting authority under NRPA.

Wastewater Discharge Law

New wastewater discharges from dwellings are prohibited by 38 MRS §464(4)(A).

Wastewater discharges from NWFS are prohibited on inland water by 38 MRS §423, “houseboats” being specifically included in the definition of watercraft. Wastewater includes both toilet waste and the discharge from sinks and showers.

Limitations to DEP’s Wastewater Discharge Authority and Enforcement

- DEP staff, because they are not law enforcement officers, do not have the authority to board vessels and so must rely on other law enforcement personnel to enforce this provision of law.
- Wastewater discharge (sewage/toilet waste) on estuarine and marine waters below head of tide (navigable waters) are within the jurisdiction of the Environmental Protection Agency (EPA) and the United States Coast Guard (USCG) by 33 USC §1322.
- Although the State has broad authority to regulate pollutant discharges to the water of the State via 38 MRS §413(1), the State is specifically preempted from the regulation and enforcement of State law by 33 USC §1322(f)(1)(A) except that subsection (B) states the following:
 - “A [State](#) may adopt and enforce a statute or regulation with respect to the design, manufacturer, or installation or use of any [marine sanitation device](#) on a if such statute or regulation is more stringent than the [standards](#) and regulations promulgated under this section. For purposes of this paragraph, the term “[houseboat](#)” means a vessel which, for a period of time determined by the [State](#) in which the vessel is located, is used primarily as a residence and is not used primarily as a means of transportation.”
The term houseboat should not be confused with NWFS.
- Because of the above-noted vessel preemption, the fact that DEP staff do not have the delegated authority from the USCG to board vessels, and the regional commandant of USCG specifically stating that the DEP does not have authority to enforce the federal law, the DEP cannot regulate discharges on navigable waters subject to the marine sanitation device standards in 33 USC § 1322.

Recommendations for Wastewater Discharge Authority and Enforcement

- No recommendations currently.

5.2 Department of Agriculture, Conservation and Forestry (DACF)

Maine law establishes authorities and responsibilities for the DACF Bureau of Parks and Lands (BPL) in [12 MRS §1803](#). Specific powers and duties related to the topics of concern can be found in submerged and intertidal lands [12 MRS §§1861-1868](#), The Public Trust in Intertidal Lands [12 MRS Chapter 202-A](#), Public Boat Facilities [12 MRS §§1894-1899](#) and regulation of swim areas on inland waters [12 MRS §1900](#). [The Bureau of Parks and Lands has limited enforcement authority over matters within the jurisdiction of the Bureau as provided in 12 MRS § 1806.](#)



Submerged Lands Program

The Maine Legislature created the Submerged Lands Program (SLP), in 1975 to manage the state’s submerged lands and to obtain fair market rent on behalf of the public when privately owned structures are placed on publicly owned submerged lands ([12 MRS §1861-§1868](#)). The SLP is under the Bureau of Parks and Lands within DACF.

The State of Maine serves as trustee of its submerged lands and is tasked with protecting the public’s right to use these submerged lands and to obtain fair market rental value on behalf of the public in exchange for granting exclusive use of public trust resources to private entities. Any occupation of submerged lands and the publicly owned waters of the State of Maine by a privately owned structure affects the public’s ability to freely exercise at least some of its public trust rights. For this reason, the Legislature has developed processes by which these lands may be leased for certain purposes such as docks, piers, and aquaculture. These processes are designed to evaluate the impact of these activities on fishing, fowling, and navigation.

The SLP provides limited-use leases and easements to establish Right, Title, or Interest, which allow privately owned piers, docks, and other water-dependent structures to be built on or over publicly owned submerged lands. To qualify for a lease or easement, a proposed structure must not impede access to or over state waters or adversely impact the public trust rights of fishing, fowling, navigation, or recreation.

The SLP’s Chapter 53 Rules generally do not permit non-water-dependent, or upland uses on publicly owned submerged lands. The Rules define upland uses as “...uses that can operate in a location other than on Submerged Lands. Such facilities shall include, but are not limited to, residences, offices, restaurants, and parking lots.” Since NWFS are not water-dependent, the SLP will not issue a lease or easement for NFDS.

Limitations of Submerged Lands Program’s Authority and Enforcement

- SLP has a limited ability to address the concerns relating to NWFS’ on Great Ponds because most NWFS’ are in the shallow, flowed areas of these waterbodies which are not submerged lands and thus fall outside of the SLP’s authority. SLP’s rules, however, would still apply to any NWFS in coastal waters unless it is located on intertidal lands or floating in former intertidal areas that have been dredged such as tidal portions of the Kennebunkport River.

Recommendations

- The Submerged Lands Program rules do not permit non-water-dependent uses, which are defined as uses that can occur on land. The Working Group recommends amending the submerged lands rules to add language that more explicitly describes NWFS as a use not permitted to occur on submerged lands.

Land Use Planning Commission

The Land Use Planning Commission (LUPC) is the planning, zoning, and permitting authority for all the unorganized territories in Maine, which comprise nearly half of the State. LUPC is under the Bureau of Resource Information and Land Use Planning (BRILUP) within DACF. The LUPC has zoned all its service area into land use subdistricts which determines what uses are allowed in any location. LUPC zoning includes wetlands and waterbodies. That practice is different than most municipalities, which typically do not zone the water. All wetlands and water bodies below normal high water are zoned as wetland protection subdistricts (P-WL). In the P-WL subdistrict, boating is an allowed use without a permit. However, residential uses are not allowed as stated in [01-672 Chapter 10, § 10.23\(N\)\(3\)](#).

The LUPC does not have a definition for boating or floating homes but considers several factors in deciding whether a use is a boating or residential use. The factors include, among others, the primary intent of the use, the length of stay at a site or location, frequency of use, and structural design. The weight of the evidence determines the primary use. LUPC interprets the use of “boating” as one that primarily involves navigation and recreation. For example, sailboat cruising is a boating use where navigation is primary and human habitation is secondary, shorter-term, and less frequent. A residential dwelling unit is a residential use that involves primarily human habitation. For example, a floating home is a residential use where navigation is secondary and human habitation is primary, longer-term, and more frequent. As stated above, if the agency determines the use would be primarily residential, it is not allowed in the P-WL subdistrict for a wetland or water body.

Limitations to Land Use Planning Commission Authority and Enforcement

- The State law, Use Regulation, in MRS 12 §685(C)(8), states that “[n]o development may be undertaken, except in conformance with this chapter, the standards, rules, and orders enacted or issued pursuant to this chapter, and any real estate or personal property existing in violation of such is a nuisance.” That section further provides that “[a]ny person who violates any provision of this chapter, or the terms or conditions of any standards, rules, permits or orders adopted or issued pursuant to this chapter, is subject to a civil penalty, payable to the State, of not more than \$10,000 for each day of the violation.” Commission staff, as well as Maine forest rangers, are authorized to ensure compliance under the Use Regulation statute. The Commission employs a multi-step process to encourage compliance with the Commission’s rules, including the following administrative enforcement mechanisms to respond to noncompliance: 1) Immediate On-site Resolution, 2) Letter of Warning, 3) Notice of Violation, 4) Administrative Settlement Agreement, and 5) Referral to the Office of the Attorney General. Most matters of noncompliance are resolved through voluntary on-site resolution.

Recommendations

See page [11](#) related to NRPA law and LUPC authority.

Boating Facilities Division (Bureau of Parks and Lands)

The Boating Facilities Division (BFD), including the Navigational Aids Program, is under BPL within the DACF. BFD manages many state-owned boating launch sites and oversees the placement of aids to navigation on certain Great Ponds throughout Maine. The Navigational Aids Program is authorized by [12 MRS §1894](#) and directs the DACF to adopt rules concerning the placement of navigational aids and regulatory markers on bodies of water not otherwise regulated. Current navigational aid rules were adopted in 2001. The program works to place and maintain navigational aid buoys on Great Ponds across the state on 40 “high use” water bodies and on another 28 water bodies that are marked locally by lake associations, municipalities, or other similar entities after obtaining a permit from the DACF.

The following Navigational Aids rules are related to issues in [RESOLVE 2022 CHAPTER 147](#).

- In the interest of safety and uniformity, anyone placing any of the following types of waterway marking devices or waterborne structures in or on state waters must comply with state regulations. In addition, no object may be placed in state waters in a marked channel or a fairway or in a manner that would impede access to a public boat launch facility or deny the right of free navigation. These include mooring buoys, organized swim areas, swim/diving floats, ski slalom courses, water ski jumps, regatta/waterway parade/race/exhibition markers, divers’ flags, divers’ signs, bridge clearance lights, organized camp perimeter markers, and special purpose markers.
- Special Lighting Requirements: Whenever a structure (anchored or stationary) is erected in a position on or adjacent to the edges of navigable channels or fairways or beyond the “Water Safety Zone” (200 feet from any shore), the Bureau may require lights to mark such structures when, in its judgment, lights are necessary for the safety of the boating public.

The Bureau adopted the rules and regulations governing boating facilities in 2000. The following rules relate to issues associated with [RESOLVE 2022 CHAPTER 147](#) and apply to any person using State boat launching facilities or waters immediately surrounding the facilities.

- No person shall tie up or leave any boat in the area around any launching ramps, floats, or docks except when loading or unloading cargo and/or passengers or where otherwise allowed by posted official notice.
- Storage of boats, trailers, vehicles, equipment, ice shacks, and other property at the launching facility is prohibited.
- Other uses of the launch facility and parking areas, including, but not limited to, commercial use, non-boating related use, and fishing tournament use of the facilities, are allowed only by special activity permit from the bureau director.
- It is prohibited to use boat launching facilities and parking areas between sunset and sunrise for purposes other than fishing or the launching and retrieving of boats.

Limitations to the Boating Facilities Division’s Authority and Enforcement

BFD does not regulate watercraft operation or the surface use of Maine waters. Rather, the program’s navigational aid markers provide guidance for all types of vessels on 40 Great Ponds throughout the state. BFD does not have enforcement authority and relies on the Warden Service, along with state and local law enforcement to enforce BFD rules.

Recommendations

No recommended changes to the Boating Facilities Division

5.3 Department of Inland Fisheries and Wildlife (DIFW)

Maine law establishes authorities and responsibilities for the Department of Inland Fisheries and Wildlife (DIFW) in 12 MRS Part 13. Specific provisions of law with a nexus to watercraft registration and operation can be found within [12 MRS Part 13 Chapters 933](#) and 935. Within [12 MRS Chapter 935](#), the Commissioners of DIFW and the Department of Marine Resources have joint authority to regulate watercraft by rule under a specific provision in [12 MRS §13051](#). Motorboats and watercraft are defined within these chapters of law relating to registration and operation. DIFW regulates and enforces activity within and outside of the 200-foot water safety zone on inland waters. [DIFW Rule Chapter 13](#) has specific rules related to the operation of watercraft. [12 MRS Chapter 922701-5](#) establishes the DIFW public boat launch access program. [DIFW Rule Chapter 5](#) contains rules specific to boat launch facilities owned and maintained by DIFW.



Water Access Program

[12 MRS Chapter 925 §12708-2](#) establishes the Public Boat Launch Access Program (now referred to as the Water Access Program) to provide anglers, boaters, and other persons fair and equitable public access to public waters. The program currently owns and manages more than 170 sites across the state. Warden service provides the enforcement of DIFW's rules and laws. **Rule Chapter 5: State Owned Wildlife Management Areas, Shooting Ranges and Boat Launch Facilities provides** rules related to DIFW's owned boat launches and when enforcement is necessary, the Warden Service addresses the issues.

Bureau of Warden Service

The Bureau of Warden Service within DIFW is responsible for the enforcement of laws and department rules pertaining to the registration and operation of watercraft and provide statewide enforcement authority over all laws of Maine in [12 MRS §10353](#). Other enforcement officers have the full powers of game wardens as specified in [12 MRS §10401](#). Enforcement of watercraft laws by people other than game wardens is provided for in [12 MRS §10403](#) i.e. municipal, county, or state law enforcement officers and harbor masters.

Limitations to Inland Fisheries and Wildlife Authority

Registering NWFS that wouldn't commonly be regarded as a motorboat but is not clearly defined in law or rule, creates challenges for staff who register motorboats and wardens who investigate complaints.

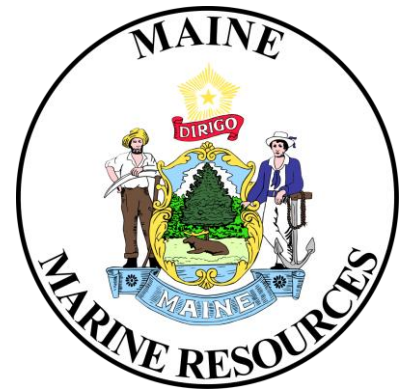
Recommendations

- As stated above, the following will be explored within the DIFW realm: Explore rule modifications to clearly describe what is and is not an NWFS versus a houseboat or motorboat.

- Possibly include the definition of houseboat in Title 12 Part 13 and include houseboat in the definition of watercraft.
- **Statutory Change:** to define “NWFS” and a true “houseboat”. Within the definition of a water-dependent structure exclude “floating homes” and “NWFS”. When defining a NWFS the focus will be on whether its primary function is a non-water-dependent use such as human habitation and not for navigation. The DIFW motorboat registration process will create a definition and standards that will define a legal houseboat. This helps prevent NWFS from being registered as a motorboat whose owner may use the registration process to avoid the shoreland zoning laws.
- **Rule Change:** DIFW may seek rulemaking to clarify what is considered a watercraft and establish clarity on what should and should not be registered as a motorboat.
- **Rule Change:** In DIFW, rule Ch. 13 provides a list of photos and descriptions of what a person would commonly believe to be a watercraft that would meet a functionally water-dependent use. This may also provide examples of what a watercraft is not.
- **Rule Change:** Study possible weight and size restrictions for boat access sites for rule modification.

5.4 Department of Marine Resources (DMR)

The Commissioner of Inland Fisheries and Wildlife, acting jointly with the Commissioner of Marine Resources, may adopt and amend rules governing the use and operation of watercraft in the state's waters to ensure the safety of persons and property. Regulations may also govern required safety equipment for watercraft, horsepower, and areas off limits to watercraft during time periods critical to wildlife protection.



Marine Patrol

Maine Marine Patrol officers are authorized to enforce all laws relating to marine resources. In addition to their specified powers and duties, marine patrol officers are vested with the authority to enforce all laws of the State, including rules related to the operation of watercraft.

Limitations to Authority and Enforcement

Under existing law and regulation, a challenge across agencies has been the lack of a clear violation of law or regulation for the unauthorized placement of a NWFS under which enforcement action may be taken. If there is agreement that NWFS should not be allowed, a clear prohibition in statute would allow for enforcement of this prohibition.

Recommendations

As noted elsewhere in this report, DMR is seeking clarity in any statutory changes that are enacted so that water-dependent commercial uses (such as lobster floats, cars, bait facilities, and aquaculture work floats) can continue to support Maine's marine resources-based economy.

6.0 Municipal Authority

Municipalities are limited in their authority to regulate watercraft. Except as provided in 12 MRS §13201, they may not enact any ordinance, law, or rule regulating or charging a fee for the operation, registration, or numbering of watercraft or any other subject matter relating to watercraft regulated under Chapter 12 MRS Part 13. Municipalities with law enforcement officers have enforcement authority over watercraft as provided for in [12 MRS §10401](#), [12 MRS §10402](#), and [12 MRS § 10403](#) (fish and wildlife enforcement authority).

For a municipality that borders or contains inland waters and does not border or contain coastal waters, there is a provision in statute for the municipality to appoint a harbor master for inland waters [12 MRS §13072](#). This statute references the authority of inland harbor masters over mooring regulations in [38 MRS §3](#). Several coastal municipalities, within their harbor master program and harbor use ordinances, have already established definitions of “floating structures” and “houseboats.”

Municipalities have additional authorities on our coastal waters and Great Ponds under Maine shoreland zoning statute 38 MRS §438-A. Challenges include a lack of capacity to address issues, lack of consistency from town to town, multiple towns around one Great Pond, and some optional shoreland zoning ordinance adoption rules.

The Maine Municipal Association (MMA) expressed concerns received from member communities that the lack of clear authority to address registered vessels used as floating short-term rentals (STRs) on inland waterways. The lack of capacity statewide to adopt and enforce ordinances for this use is compounded by mixed municipal boundaries on many inland waters, including those shared with the unorganized territories. While ordinances can be an effective tool in dynamic and somewhat linear coastal waterways, or inland waterways without shared municipal boundaries, ordinance enforcement authority can only be provided to an individual by each municipality. Law enforcement with statewide or county-wide authority do not generally enforce municipal ordinances, though municipal law enforcement may. An example of this is when a registered vessel launches in one municipality but anchors in another to avoid local STR or overnight restrictions.

State of Maine Harbor Masters Association

Harbor masters throughout the State of Maine act as ambassadors of Maine’s waterways. They are often the first point of contact for many harbors and waterways, whether on the vast coastline or the thousands of acres of inland waters.

Harbor Masters throughout the State of Maine obtain enforcement authority through their local municipality. Based on training and certification under 38 MRS § (1)(1) and 12 MRS 12 §13072, law enforcement authority for harbor masters may also be granted under Title 12 Chapter 3 Subsection 441 if they are so certified.

All regulated non-sworn law enforcement authority given to harbor masters, or their deputies must be granted by the local municipalities drafted and approved ordinance. Exceptions for enforcement for law enforcement officers based on 25 MRS §2804.

Appendices

Appendix A: Examples of Non-Water-Dependent Floating Structures on Maine Waters

Floating Camp, Hermon Pond, Hermon

March 2021



**Floating Camp, Hadley Lake, East Machias
February 2017**



May 2017

June 2018



Cobbosseecontee Lake, Litchfield

March 2019



Craigslist advertisement for Floating Home (former cabin cruiser)

length overall (LOA): 38
propulsion type: human

38 ft houseboat on Cobbossee lake. Houseboat is on a slip used as a floating home. There is no motor. It is at the Birch's lake front resort. It has power and all the amenities that the campground offers. The slip is \$1600 for the season and is stored there for the winter. The boat has a large fiberglass hull. It has a Full bathroom with shower a kitchenette, a bar and two twin beds. The top part is a roof top deck, just needs to have a railing put up and ladder. The top deck has rolled rubber roofing with carpet over it. This is a great opportunity to stay on the lake in Maine and have no maintenance or taxes. I'm asking \$24,000.00 OBRO

Floating Home, Litchfield



Floating Camp on Androscoggin River, Topsham



Floating Camp, Green Lake, Ellsworth

Summer 2022



Floating Camp, North Haven

2018

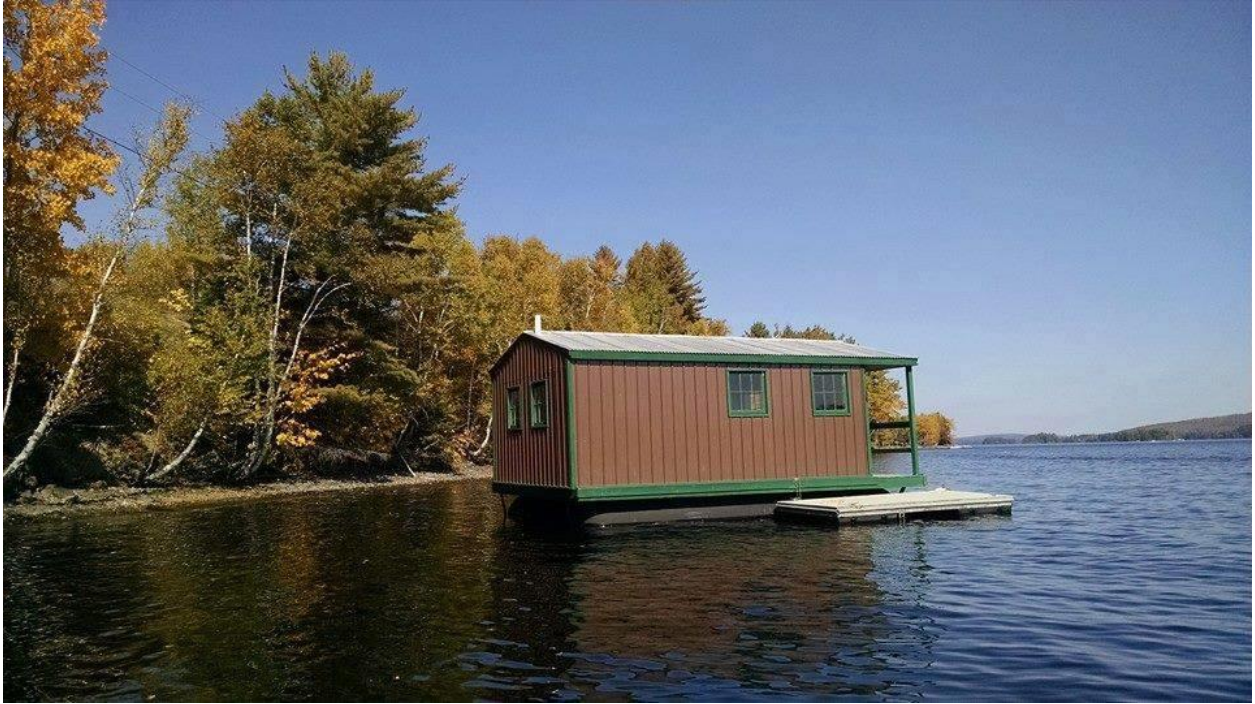


Floating Rental Camps, Robin Hood Cove, Georgetown



Year-Round Floating Rental Camp, Moosehead Lake

2016



Winter 2017



Floating Home, Belfast Harbor, Belfast

Summer 2022



Floating Home, Camden Harbor

Fall 2022



Floating Rental Camp, Annabessacook Lake, Monmouth

Summer 2023



Floating Camp, Bucks Harbor, Brooksville

Summer 2019



Appendix B: Regulatory Complexity with Maps to Illustrate Agency Jurisdiction and Authority

The following 6 maps illustrate the different geospatial scenarios illustrating the complexity of agency jurisdictions and authority in regulating NWFS'.

Navigable River – Non-Tidal

A= NWFS located on Shore,

B= NWFS located in middle of non-tidal river,

C=NWFS located on shoreline, in trees, aground on flood plain



DACF/ Submerged Lands Program: Due to the non-tidal water body, neither A, B, nor C are within SLP authority. The river bottom is owned by adjacent landowners.

DIFW: Has jurisdiction if registered as a boat. Can enforce another program's authority.

DEP Shoreland Zoning: Municipalities, under Shoreland Zoning rules, have authority over **A** and **C**. **C** in the trees; dwellings are not allowed within a 75-ft setback from the resource. A shore or shoreland is zoned if the town has a pier, wharves, and docks as part of its SLZ ordinance or as a stand-alone ordinance.

MDEP/NRPA: NWFS **C**: MDEP does not act on behalf of the town, but town has jurisdiction **IF** the municipality wants to regulate piers, wharves, and docks. Adherence to rules is optional for the municipality, as well as their own enforcement. Maybe 95% of municipalities adhere to these regulations.

LUPC: Has authority over **A**, **B**, and **C** if in an unorganized area.

Army Corps of Engineers/ US Coast Guard: none, since non-tidal or inland.

DACF/ Boating Facilities Division: Declare NWFS **B** a navigational hazard if it is outside the 200-foot safety zone or more than 1/3 of the distance across the river, whichever is less (Warden Service enforces). No object may be placed in State waters in a marked channel or Fairway or in a manner that would impede navigation or access to a public boat launch facility.

Takeaway:

- The DEP Piers, Wharves, and Docks SLZ ordinance is an optional ordinance that towns can adopt. Out of 465 organized towns, about 95% chose to adopt it. Towns through SLZ have authority, but they must enforce it. DEP typically doesn't go to AG for enforcement. Robert: If the statute is amended for DEP and it is no longer an optional ordinance for towns, we need to get rid of the 6' wide old rule about "meandering path" docks internally.
- Helpful link for DEP jurisdiction PowerPoint: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.mboia.org/documents/2022/Shoreland%20Zoning%20Guidelines%20-%20Jeff%20Kalinich%20Code%20Conf.%202022.pdf

	SubLands	Shoreland	DIFW	DEP/NRPA	LUPC*	Boating**	ACOE/USCG
A		x		x	x		
B					x	x	
C		x		x	x		

*If in LUPC's service area

**can designate as navigational hazard

Coastal Waters/ Tidal River

- A= NWFS attached to private dock above MLW
- B= NWFS middle of tidal river (mooring)
- C=NWFS on mudflat, above MLW, floats at high tide



DACF/ Submerged Lands: B is within SLP authority. A and C are not on submerged lands.

DIFW: Only jurisdiction if registered as a boat. Can enforce another program’s authority.

Shoreland Zoning has authority over A. If attached to a dock, it must be approved as part of the application; rules prohibit dwelling on a dock. B. If within 250’ of shore, yes. C. Yes, if within 250.’

DEP/NRPA has authority over A if it is part of the dock structure and C if it is bottomed out and touching the mud flats.

DACF/ LUPC: Has authority over A, B, and C if in an unorganized area.

DACF/ Boating Facilities Division: The division may declare B or C a navigational hazard if it is outside the 200-ft water safety zone or 1/3 distance across the river or cove, whichever is less. However, this issue would be deferred to the DMR Marine Patrol.

Army Corps of Engineers/ US Coast Guard: doubtful of any authority if not in dredged or federal channel.

Takeaway:

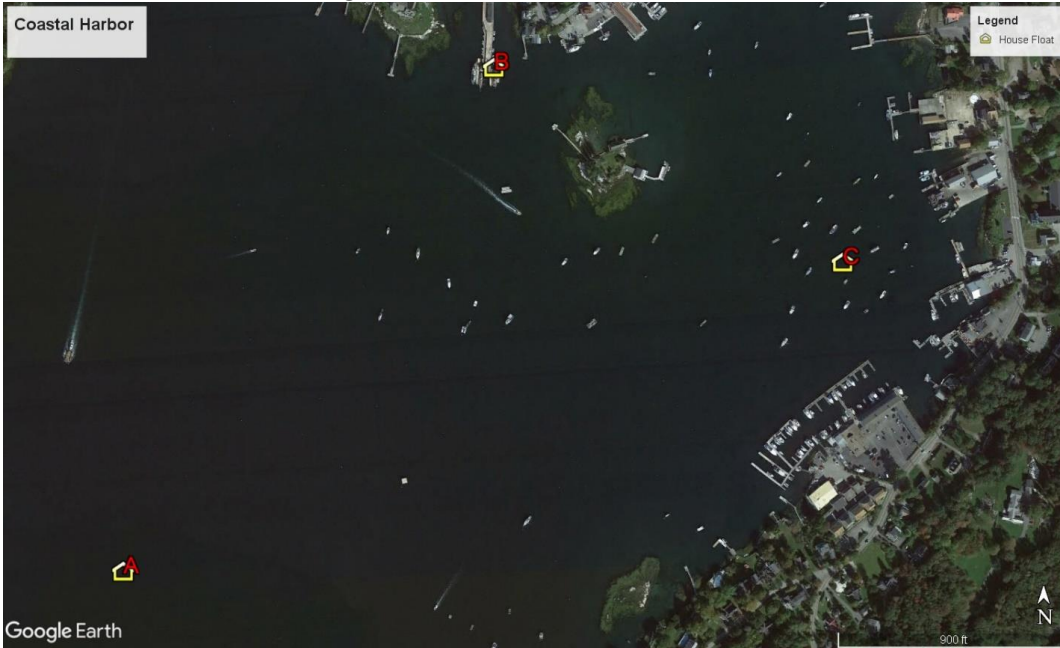
	SubLands	Shoreland	DIFW	DEP/NRPA	LUPC*	Boating**	ACOE/USCG
A		x		x	x		
B	x	x			x	x	
C		x		x	x	x	

*If in LUPC’s service area

**can designate as a navigational hazard

Coastal Waters/ Harbor

- A= NWFS in middle of harbor, beyond 250' from shore
- B= NWFS attached to private pier
- C=NWFS attached to mooring



DACF/ Submerged Lands: A, B, C within authority if not in intertidal.

DIFW: Only jurisdiction if registered as a boat. Can enforce another program’s authority.

Municipal Shoreland Zoning: The municipality has authority over B if it is within 250 feet of the shore and has adopted Piers, Docks, and Wharves SLZ regulations.

MDEP/NRPA: Yes, over B, if it is permanent.

DACF/ LUPC: if in unorganized territory, would have authority on A, B, and C.

DACF/ Boating Facilities Division: The division may declare A or C a navigational hazard if it is more than 200ft from shore or more than 1/3 distance across the river or cove, whichever is less. However, this issue would be deferred to the DMR Marine Patrol.

Army Corps/Coast Guard: doubtful of any authority if not in dredged or federal channel.

Takeaway:

	SubLands	Shoreland	DIFW	DEP/NRPA	LUPC*	Boating**	ACOE/USCG
A	x			x	x	x	
B	x	x			x		
C	x			x	x	x	

*If in LUPC’s service area

**can designate as a navigational hazard

Coastal Waters

- A= NWFS on a sandbar, covered at high tide
- B= NWFS in low water, channel
- C= NWFS in on top of small ledge/rock



DACF/ Submerged Lands: A is not within the authority, B is within the authority, and C is not within the authority.

DIFW: Only jurisdiction if registered as a boat. Can enforce another program’s authority.

Shoreland Zoning has authority over A. C If it is within 250’ from shore and does not get wet, it is considered upland and is regulated. If it adds permanent impact to resources, yes, jurisdiction.

MDEP/NRPA: Yes, for A if permanent.

DACF/ LUPC: if in unorganized territory, would have authority on A, B, and C.

DACF/ Boating Facilities Division: May declare B as a navigational hazard if more than 200ft from shore or more than 1/3 distance across river or cove, whichever is less. However, this issue would be deferred to the DMR Marine Patrol.

Army Corps of Engineers/ US Coast Guard: doubtful of any authority if not in dredged or federal channel.

	SubLands	Shoreland	DIFW	DEP/NRPA	LUPC*	Boating**	ACOE/USCG
A		X		X	X		
B	X				X	X	
C	X				X		

*If in LUPC’s service area, **can designate as a navigational hazard

Great Pond

- A= NWFS in middle of pond 10+ Acres, white is flowed line (bathtub ring)
- B= NWFS on upland, at high water on person’s dock structure
- C=NWFS over area flooded by dam, floating



DACF/ Submerged Lands: A is in its jurisdiction; B and C are above the original lake level prior to the dam.

DIFW: Only jurisdiction if registered as a boat. Can enforce another program’s authority.

Shoreland Zoning: has authority over A, B, and C if within 250’ of shore.

MDEP/NRPA: authority over A, B, and C if permanent.

DACF/ LUPC: if in unorganized territory, would have authority over A, B, and C.

DACF/ Boating Facilities Division: If over 200 ft from shore, then A and C could be called a navigational hazard.

Army Corp of Engineers/ US Coast Guard: no authority in Great Pond.

Takeaway:

Concerns if, for instance, it’s an artificial lake like Flagstaff or Wyman. Lands underneath are privately owned (dam/electric companies).

	SubLands	Shoreland	DIFW	DEP/NRPA		LUPC*	Boating**	ACOE/USCG
A	x					x	x	
B		x				x		
C		x		x		x	x	

*If in LUPC’s service area,

**can designate as a navigational hazard

River - Impounded (Dammed)

- A= NWFS in the middle of the river (the bottom land of the river is deeded to the landowner)
- B= NWFS in Wetlands/upland (underwater deeded to landowner)
- C= NWFS on shore (underwater deeded to landowner)
- D= NWFS in stream/wetland
- E=NWFS attached to ledge
- F= NWFS next to road



DACF. Submerged Lands: None are within authority if they are located on a non-tidal river.

DIFW: Only jurisdiction if registered as a boat. Can enforce another program’s authority.

Shoreland Zoning: Yes, for all if within 250’ of shore.

MDEP/NRPA: Yes, for all.

DACF/ LUPC: if in unorganized territory, would have authority.

DACF/ Boating Facilities Division: If it is over 200 ft from shore or more than 1/3 distance across the river, whichever is less, it could be deemed a navigational hazard.

Army Corps of Engineers/ US Coast Guard: no authority.

Takeaway:

	SubLands	Shoreland	DIFW	DEP/NRPA	LUPC*	Boating**	ACOE/USCG
A		x		x	x	x	
B		x		x	x		
C		x		x	x		
D		x		x	x		
E		x		x	x		
F		x		x	x		

*If in LUPC’s service area.

**can designate as a navigational hazard

Appendix C: Relevant Statutes and Rules

RELEVANT STATUTE:

[Statute Title 38 Waters and Navigation \(Harbor Masters, Moorings\)](#)

[Statute Title 12 Conservation](#)

RELEVANT RULES:

[DACF BPL Chapter 3 Maine State Aids to Navigation System](#)

[DACF BPL Chapter 53 Submerged Lands Rules](#)

[DIFW Chapter 13 Watercraft Rules](#)

[DIFW Chapter 5 State Owned Boat Launch Facilities](#)

Appendix D: Acronyms

NWFS	Non-Water-Dependent Floating Structure
DACF	Maine Depart of Agriculture, Conservation and Forestry
BPL	Bureau of Parks and Lands
SLP	Submerged Lands Program
LUPC	Land Use Planning Commission
DIFW	Maine Department of Inland Fisheries and Wildlife
DMR	Maine Department of Marine Resources
MDEP	Maine Department of Environmental Protection
MRS	Maine Revised Statutes
SLZ	Shoreland Zoning
FTE	Full Time Equivalent
BFD	Boating Facilities Division
SMHA	State of Maine Harbor Masters Association
MMA	Maine Municipal Association
NRPA	Natural Resource Protection Act
USCG	United States Coast Guard

Appendix E: Public Trust Doctrine and Federal Authority over Submerged Lands

The Public Trust Doctrine and Public Trust Rights in Maine

The Public Trust Doctrine (PTD) is a legal principle derived from English common law Maine retained the PTD and its associated rights when it separated from Massachusetts to become a state in 1820. The essence of the doctrine is that the waters of the sovereign state and the submerged lands below them are publicly owned and available to all citizens equally for the purposes of navigation, fishing, fowling, and recreation.

The states' right to its submerged lands was reaffirmed when Congress passed the 1953 Submerged Lands Act. The Act was a result of ongoing disputes between the state of California and the federal government over rights to royalties from offshore oil and gas drilling. The Act granted coastal states title to submerged lands within their historic boundaries, generally up to three miles from the shore, as well as the rights to the natural resources on or within those lands. The federal government relinquished its claims to the submerged lands but maintained the right to regulate activities beyond the three-mile boundary for national defense, international affairs, navigation, and commerce. Congress declared that it is in the public's interest that title to, and ownership of, the submerged lands within the boundaries of the respective states be assigned to the respective states and that the states also be empowered to manage, lease, and develop those lands.

The rights of the public to use Maine's waters and its submerged lands are known today as Public Trust Rights. The state of Maine serves as trustee of its submerged lands and is tasked with protecting the public's right to use these lands and to obtain fair market rental value on behalf of the public in exchange for granting exclusive use of public trust resources to private entities. Any occupation of submerged lands by a privately owned structure affects the public's ability to freely exercise at least some of its public trust rights. Piers, marinas, and other water-dependent structures may facilitate public trust rights for some but are not public trust uses in and of themselves. The common law right of shorefront owners to directly access the water and construct a wharf is subordinate to the public trust and is regulated by the state.

Whereas water-dependent structures such as docks and piers serve the public trust rights of fishing, fowling and navigation, temporary or permanent housing, hotels, restaurants, and other residential and commercial upland uses are not a public trust right regardless of whether they are floating or constructed over a fixed pier. These non-water-dependent uses, if allowed to continue or over publicly owned submerged lands, have direct impacts on trust rights of fishing, fowling, and navigation.

Publicly owned submerged lands in Maine include:

- Coastal region (including islands): All land from the mean low water mark out to the State's three-mile territorial limit. Where intertidal flats are extensive, the shoreward boundary begins 1,650 feet seaward from the mean high-water mark.
- Tidal Rivers: All land below the mean low-water mark of tidal rivers upstream to the farthest natural reaches of the tides.
- Great Ponds: All land below the natural low-water mark of ponds that are 10 or more acres in size in their natural state.
- Boundary Rivers: Land lying between the banks of rivers that form Maine's border with Canada.

Publicly Owned Submerged Lands in Maine Do Not Include:

- Beaches or other shoreland that is covered by water only at high tide.
- Land that has been flooded by dams.
- Land beneath ponds that are less than 10 acres in size, or
- Land beneath non-tidal rivers that do not border Canada.

Federal Authority and Submerged Lands

Submerged Lands Act (SLA) of 1953 Submerged Lands Act (SLA) of 1953, 43 U.S.C. § 1301 et seq., is a U.S. federal law that recognized the title of the states to submerged navigable lands within their boundaries at the time they entered the Union. They include navigable waterways, such as rivers, as well as marine waters within the state's boundaries, generally three geographical miles (almost exactly 3 nautical miles or 5.6 kilometers) from the coastline.

In passing the Submerged Lands Act, Congress sought to return the title to submerged lands to the states and promote the exploration and development of petroleum deposits in coastal waters.

The Submerged Lands Act was enacted in response to litigation that effectively transferred ownership of the first 3 miles of a state's coastal submerged lands to the federal government. In the case *United States v. California* (1947), the United States successfully argued that the three nautical miles seaward of California belonged to the federal government, primarily finding that the federal government's responsibility for the defense of the marginal seas and the conduction of foreign relations outweighed the interests of the individual states.

In response, Congress adopted the SLA in 1953, granting title to the natural resources located within three miles of their coastline (three marine leagues for Texas and the Gulf coast of Florida). For purposes of the SLA, the term "natural resources" includes oil, gas, and all other minerals.

The SLA was upheld in 1954 by the U.S. Supreme Court (*Alabama v. Texas*) emphasizing that Congress could relinquish to the states the federal government's property rights over the submerged lands without interfering with U.S. national sovereign interests.