

MAINE STATE LEGISLATURE

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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, create navigational 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, identify the current regulatory structures, and 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," a "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 NWFS should be prohibited.

Maine's coastal waters and Great Ponds are held in public trust for all people to use, with the primary focus being to fish, fowl, navigate, and, to some degree, recreate. Several agencies carry 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 the Department of Environmental Protection (DEP) has only three positions when fully staffed to manage the program statewide, and the Maine Warden Service, which enforces watercraft law in Maine, is taxed with many of these complaints. Complaints about NWFS are not adequately addressed because state agencies are short-staffed, and there is no clear way to handle the situation.

The following outlines the authority of state agencies and municipalities, which is necessary to understand how 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 by the Department of Agriculture, Conservation and Forestry's (DACF) Land Use Planning Commission (LUPC) within unorganized territories (UT). The law only regulates permanent structures 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 seven months, an evaluation for permitting would be required. Therefore, a NWFS

in the water for less than seven months would not be regulated under NRPA, but conversely, if it were in the water for more than seven months, a NRPA permit would be required.

- **The Mandatory Shoreland Zoning Act** is administered by DEP and requires municipalities to adopt a Shoreland Zoning ordinance that meets DEP's Ch. 1000 minimum guidelines. The "Shoreland zone" is defined in statute as 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 non-water-dependent floating structure in the Act or DEP's Ch. 1000 guidelines, so there is currently some gray area in the way in which these structures are treated under Shoreland Zoning.
- **The Submerged Lands Program (SLP)** is administered by DACF's Bureau of Parks and Lands (BPL) 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 water-dependent 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 state waters or have adverse impacts to the public trust rights of fishing, fowling, or navigation. SLP does not permit NWFS. The SLP's authority is limited in that they use administrative enforcement to gain compliance.
- **The Land Use Planning Commission (LUPC)** is an agency within DACF's Bureau of Resource Information and Land Use Planning (BRILUP) and is the planning, zoning, and permitting authority for all of the UT in Maine. LUPC jurisdiction 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.
- **The Boating Facilities Division (BFD)** within DACF's BPL 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, the BFD may require special lighting. Swim area buoys and other temporary buoys may also be limited by the BFD's permitting requirements. The 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.
- **The Inland Fisheries and Wildlife (DIFW)** and 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 effort, DIFW 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 a NWFS is not defined, identifying these structures lacks clarity, making it 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.
- **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.

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

- NWFS, float homes, and 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 the 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 Recommendation

Create a prohibition on NWFS (not to be confused with true houseboats and other water-dependent structures), modify existing statutes, and create new rules to stop loopholes. These new rules would provide standards to meet a new definition of a houseboat and guidance on how to determine if the structure is a houseboat vs. a NWFS. The following proposals would help bring this option 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 a 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 within the definition of a functionally water-dependent use and are prohibited from being registered as a motorboat. Additional rulemaking would likely be needed to clarify what these floating structures are.
- **Statutory Change:** to amend authority for law enforcement to have the ability to conduct inspection on and inside NWFS and houseboats.
- **Rule Change:** within DIFW rule, clarify what is considered a watercraft as well as establish clarity on what should and should not be registered as a motorboat.
- **Rule Change:** within 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.
- **Rule Change:** amend the submerged lands rules to add language that more explicitly describes NWFS as a use not permitted to occur on submerged lands.
- **Add Positions:** Ask for a new position or positions (FTE) within the Shoreland Zoning Program at DEP to provide support to municipalities to administer and enforce this prohibition and/or new position(s) at DACF for similar work.

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

Advertisement as posted on Craigslist: 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 lakefront 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 Camp, 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

