

**TESTIMONY OF THE
DEPARTMENT OF INLAND FISHERIES AND WILDLIFE**

**BEFORE THE JOINT STANDING COMMITTEE ON INLAND FISHERIES AND
WILDLIFE**

In support of L.D. 1763

“An Act to Regulate Nonwater-dependent Floating Structures on Maine's Waters”

Presented by Representative HEPLER of Woolwich.
Cosponsored by Senator GUERIN of Penobscot and Representatives: DILL of Old Town,
MASON of Lisbon, PERKINS of Dover-Foxcroft.

DATE OF HEARING: Wednesday, April 30, 2025

Good afternoon, Senator Baldacci, Representative Roberts and members of the Inland Fisheries and Wildlife Committee. I am Christl Theriault, Assistant to the Commissioner at the Department of Inland Fisheries and Wildlife, speaking on behalf of the Department, in support of L.D. 1763, An Act to Regulate Nonwater-dependent Floating Structures on Maine's Waters.

On Monday I provided a brief overview of how this bill came to fruition as there have been several twists and turns. This began in 2021 with LD 626 which was proposed by former Rep. Paul Stearns to address a floating camp for sale on Moosehead Lake. He wanted to determine if this was regulated. LD 626 was amended into a Resolve titled, “Resolve to Study Inland Moorings, Floating Houses and Related Matters. The resolve directed IFW and ACF to compile laws, rules and municipal ordinances that may regulate this matter, study the issues and provide a report back to the IFW Committee which was presented by Deputy Commissioner Tim Peabody in 2022. After the report came back, this Committee voted to have it referred to the ACF Committee thinking that ACF was a more relevant agency, and their portion of Title 12 seemed to fit better. The Resolve allowed the Legislature to report out a bill, so the ACF Committee passed a resolve titled: Resolve To Direct the Department of Agriculture, Conservation and Forestry To Develop Recommendations Regarding Nonwater-dependent Floating Structures on Maine's Waters. The details of the resolve directed ACF to establish a working group that would develop recommendations including suggested legislation, to define and regulate non-water-dependent floating structures (NWFS).

The working group was comprised of 18 members representing ACF including their Submerged Lands Program, Land Use Planning Commission, and Bureau of Parks and Lands Boating Facilities Division, DEP, DMR, IFW, Maine Harbor Master’s Association and Maine Municipal Association. The working group quickly realized that NWFS and their uses are neither defined nor clearly regulated in Maine; there is no single agency with clear authority to regulate use of these structures and there isn’t one statute or rule that covers all the scenarios in question given the respective agencies’ authority.

After the Working Group met bi-weekly for better than a year, the preferred proposal was to create a prohibition on non-water-dependent structures, NOT create an avenue to regulate their use on Maine waters.

As I mentioned during the overview of the working group’s report, the topic of allowing NWFS such as floating homes, camps, gazebos or any other structure on the water that doesn’t have a water-dependent use is a philosophical discussion about how we manage the use of waters that are for all people to enjoy. The Public Trust Doctrine focuses on fishing, fowling and navigation

as the primary uses for of our waters. As stated during my presentation, managing the use of our waters is a complex topic because current laws that can be used to regulate floating structures in some ways, are spread out between several agencies and the laws are ambiguous.

The working group crafted a large report that was first provided to the ACF Committee too late during the last session (2024) to put forth a bill. ACF, DMR, IFW and DEP committed to drafting legislation, during fall of 2024, which is the language within the bill before you, LD 1763. The report was provided to this Committee, and I summarized that for you on Monday.

The proposals the Working Group agreed to and put forth within the report back are captured in this bill. In general the bill does the following:

- It defines a "nonwater-dependent floating structure" as a waterborne structure that is supported wholly or partially by the structure's own buoyancy and that supports a nonwater-dependent use.
- It defines "Nonwater-dependent uses" as those uses that can function in a location other than the surface waters of the State and that do not require, for their primary purpose, location on submerged lands or direct access to inland waters or coastal waters.
- It implements a prohibition and penalties for the placement or use of a nonwater-dependent floating structure in, on or over inland or coastal waters.
- The prohibition includes exceptions for functionally water-dependent uses, such as swimming structures, water toys, ice fishing shacks and aquaculture facilities.
- The bill also clarifies the regulation of "true" houseboats and homemade watercraft under the laws regulating watercraft.

I will summarize the bill content; within Title 12 Part 13 which does the following:

- It focuses on changes to the law that will prevent a person from registering a floating structure as a motorboat which has allowed people to circumvent other laws in place that prohibit floating structures from being on the water.
- Section 10001 lists and cross references Title 38's proposed definition of non-water-dependent floating structures.
- Section 10403 allows certain law enforcement entities to enforce laws related to non-water-dependent floating structures in Title 38.
- It creates a definition of "dock".
- Creates a definition of homemade watercraft in section 13001;
- Creates a definition of houseboat in section 13001;
- Lists and cross references Title 38's newly proposed definitions of mooring, and vessel;
- Creates a new definition of navigation;
- Moving to page 2, the definition of watercraft was amended to include the term "houseboat", and the watercraft must meet all applicable laws relating to navigation and safety equipment;
- Within section 13051 criteria have been proposed for regulating houseboats;
- Within section 13056 criteria have been proposed for regulating homemade watercraft. It lists detailed requirements on how the boat must be built to meet safety standards for homemade boats according to the Code of Federal Regulations Title 33 law. If the owner wants to obtain a (HIN) which allows it to be registered, it must also pass inspection by a marine surveyor. The owners of homemade watercraft or NWFS have sometimes registered them as motorboats to avoid shoreland zoning laws that would otherwise prohibit their use on the water or on the shoreline.

Within Title 38 the bill does the following:

- It creates a new chapter in Title 38 (Chapter 37) that will hold most of the new language related to this topic, mainly because Title 38 is so focused on water we agreed this seemed like an appropriate statute to place this in. However, this does not mean the responsibility or enforcement of prohibitions will fall on DEP. Depending on the scenario and where the violation is located, the enforcement may be the responsibility of warden service, a harbor master, a local law enforcement officer, submerged lands or DEP (for wastewater discharge violations only).
- Within section 423, the prohibition for discharge of waste has a definition of watercraft which has language being repealed because a houseboat will now be included within the definition of a watercraft.
- It creates newly proposed definitions of an abandoned non-water-dependent floating structure, floating home, non-water-dependent structure, and non-water-dependent uses.
- It lists and cross references the current definitions of “coastal waters”, “functionally water-dependent uses”, and “mooring” as provided within Title 38.
- It lists and cross references the current definition of “dock in Title 33.
- It lists and cross references the current definitions of “inland waters”, “houseboat”, and watercraft as defined within Title 12.
- It creates a civil prohibition of a person placing or using a non-water-dependent floating structure in, on or over inland or coastal waters of the State, and that person is subject to fines and restitution that may be adjudged to be paid to the state agency, municipality or other enforcement entity. There is a requirement for the structure to be removed by the owner or they will be forced to pay for the removal. If the structure isn’t moved there is a penalty that includes a daily fine of not more than \$500 for each day it remains in violation.
- There is also an allowance for the state, municipality or other enforcement entities to deal with an abandoned non-water-dependent floating structure by legally being able to remove, possess, sell, destroy or otherwise dispose of the property.
- It creates exemptions for a non-water-dependent floating structure and allows rules to be promulgated to clarify what is and is not a watercraft, houseboat, non-water-dependent structure, and a non-water-dependent use or expand the scope of the exceptions to the prohibition. (see list on pg 4 of the bill) The rules must be proposed by the Commissioner of IFW in consultation with Commissioners of ACF and DMR.

If the Committee is agreeable to a couple of small, suggested amendments we would ask that DEP be added as a Department to be consulted with if rulemaking is to be conducted within Section 3306 in Chapter 37, this is in the last paragraph of the bill. Another suggested amendment is in Sec. 12 of the bill. We would ask that within the 2nd sentence, the following language be added: “In the case of a homemade watercraft as described by the United States Coast Guard that is a houseboat, cabin motorboat or other”

Sec. 12. 12 MRSA §13056, sub-§3-A

3-A. Homemade watercraft; hull identification number. The owner of a homemade watercraft must obtain a hull identification number prior to applying for a certificate of number from the commissioner. In the case of a homemade watercraft as described by the United States Coast Guard that is a houseboat, cabin motorboat or other or that is a nonwater-dependent floating structure....

If you have questions I will do my best to answer them but there are several staff from other agencies here today and they will also be available during the work session.

MORE INFO FOR THE COMMITTEE'S REFERENCE, RELATED TO AGENCY JURISDICTION:

• **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.

• **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. 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, multistep approach to gain compliance. DACF 01-672 Chapter 10, section 10.23 (N) (3). As required by statute, the LUPC has zoned its service area into land-use subdistricts. The zoning schema does not allow new residential uses in zoned wetlands and waterbodies. LUPC's challenges with floating homes and other non-water-dependent floating structures in its service area relate to enforcement. LUPC staff do not have direct access to motorboats. Contacting the owner of a floating home on the water is complicated, generally requiring coordination with another agency that has a boat, such as the Maine Warden Service. Also, in the agency's experience, after making contact and explaining its regulations, the owner of one floating home moved the structure into the jurisdiction of a municipality, only to return after the municipality objected. The proposed bill clarifies that floating homes are not allowed statewide and provides statewide enforcement authority to the Maine Warden Service and other enforcement. This would address the significant challenges that LUPC has faced with these uses.

• **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. Thank you for your time and I would be happy to answer questions at this time or during the work session.