

# Report Back Provided to the Joint Standing Committee on Inland Fisheries & Wildlife



## **REPORT BACK ON: RESOLVE CHAPTER 45 - (LD 349) Resolve, Directing an Examination of Issues Related to Operation of Watercraft on Waters of the State**

**Provided By:** The Department of Inland Fisheries & Wildlife

**Presented On:** January 24, 2022

### **Table of Contents:**

- Introduction - Pg. 1
- Legislative Resolve Report Back
- Authority and Jurisdiction -Pg. 2
- Department of Inland Fisheries and Wildlife
- Department of Marine Resources
- Municipalities – Pg. 3
- Regulating Personal Watercraft
- Maine Warden Service Boating Enforcement – Pg. 4
- Keyes Pond & the Town of Sweden– Pg. 5
- Summary

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## **INTRODUCTION:**

Good morning Senator Dill, Representative Landry and honorable members of the Inland Fisheries and Wildlife Committee. I am Tim Peabody, Deputy Commissioner of the Department of Inland Fisheries and Wildlife (MDIFW). I am here to report back on the Department's recommendations on how best to educate the public on current laws related to safe boating in Maine and update this Committee in terms of a possible ban on personal watercraft (PWC) on Keyes Pond in the Town of Sweden.

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## **Legislative Directive for Report Back on Resolve Chapter 45:**

### **RESOLVE CHAPTER 45 - (LD 349) Resolve, Directing an Examination of Issues Related to Operation of Watercraft on Waters of the State**

**Study.** Resolved: IFW shall examine issues related to the operation of watercraft, including personal watercraft, on the waters of the State including how best to educate the public about current laws governing the safe and appropriate operation of watercraft. The department shall also monitor whether the Town of Sweden votes to support prohibiting personal watercraft on Keyes Pond. The department shall report the department's findings

# Report Back Provided to the Joint Standing Committee on Inland Fisheries & Wildlife



and recommendations to the Joint Standing Committee on IFW prior to March 31, 2022. The committee may report out a bill related to the subject matter of the report, including relating to the operation of personal watercraft on Keyes Pond, to the 130th Legislature.

## Authority and Jurisdiction

In Maine there are multiple state agencies that have authority/jurisdiction over watercraft related use of our inland and coastal waters. The following is a brief overview of the agency and municipal responsibilities:

### Department of Inland Fisheries and Wildlife

Maine law establishes authorities and responsibilities for the MDIFW in 12 M.R.S. Part 13. Specific provisions of law related to the registration and operation of watercraft can be found in Chapters 933 and 935. Within Chapter 935 the Commissioners of MDIFW and the Maine Department of Marine Resources (MDMR) have joint authority to regulate watercraft by rule under specific provisions within ([12 M.R.S. § 13051](#)). The specific provisions are related to administrative procedure, appointment of registration agents, safe use and operation of watercraft, safety equipment, horsepower, and areas off limits to watercraft for wildlife protection. These authorities are all within the purview of the Joint Standing Committee on Inland Fisheries and Wildlife.

The Bureau of Warden Service is responsible for enforcement of all laws and department rules pertaining to the registration and operation of watercraft and are provided statewide enforcement authority. Other enforcement officers have the full powers of game wardens as specified in ([12 M.R.S. § 10401](#)). Enforcement of watercraft laws specifically by officers other than game wardens are provided for in (12 M.R.S. §§ [10402](#) and [10403](#)). Essentially any municipal, county or state enforcement officers, and harbormasters have enforcement authority over watercraft laws within their jurisdictions. For inland waters, game wardens provide the first line of enforcement along with a few inland harbormasters. Due to resource constraints the focus of watercraft enforcement by other full-time officers is very limited.

### Department of Marine Resources

The Commissioners of MDIFW and MDMR have joint authority to regulate watercraft by rule under specific provision in ([12 M.R.S. § 13051](#)) as previously described. Maine Marine Patrol officers have enforcement authority over watercraft and all state law as outlined in ([12 M.R.S. § 6025](#)), and ([12 M.R.S. § 10401](#)). Their focus for recreational boating is coastal waters and tidal rivers.

# Report Back Provided to the Joint Standing Committee on Inland Fisheries & Wildlife



## Municipalities

Municipalities are limited on authority to regulate watercraft. Except as provided in [Title 12, §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 Title 12 M.R.S. Part 13.

If a municipality borders or contains inland waters and does not border or contain territorial waters they may appoint a harbormaster for inland waters as provided for in [12 MRSA § 13072](#). The inland harbor master statute provides for a person hired by a municipality or jointly shared by municipalities to enforce watercraft laws and mooring privileges within their municipal jurisdiction. This provision of law has been present for more than 30 years and has never been utilized to its fullest extent in most cases due to scarce municipal resources.

## Regulating Personal Watercraft

Personal watercraft as defined in [12 M.R.S. §13001 \(23\)](#) means any motorized watercraft that is 14 feet or less in hull length as manufactured, has as its primary source of propulsion an inboard motor powering a jet pump and is capable of carrying one or more persons in a sitting, standing or kneeling position. Personal watercraft were a topic of great concern and debate during the Great Ponds Task Force as stated in their Final Report in 1999: “*The issue of personal watercraft was raised with the greatest frequency and intensity*” at eight public meetings held across Maine. The result of the Task Force recommendations to the 118<sup>th</sup> Legislature continue to be the current laws related to the use of personal watercraft that we live by today. Some examples are: imprudent operation of a watercraft by engaging in prolonged circling, informal racing, wake jumping or other types of continued and repeated activities that harass another person” [12 M.R.S. §13068 \(8\)](#) , the 16 years of age requirement to operate, enhanced safety, and areas of prohibited operation [12 M.R.S. §13071-A](#).

Many of the current prohibitions for operating a personal watercraft on certain waters resulted from a process enacted through unallocated language in Section 17 of Public Law 1997 c. 739 (An Act to Implement the Recommendations of the Great Pond Task Force) [Public Law 1997 c. 739](#). The process allowed municipalities to “*make recommendations for regulating the use, operation and type of watercraft for great ponds within the organized areas of the state*”, the process is summarized below.

- A municipality, with the approval of its legislative body, may submit recommendations to the Commissioner of Inland Fisheries and Wildlife for regulating the use, operation and type of watercraft on great ponds within the jurisdiction of that municipality.

# Report Back Provided to the Joint Standing Committee on Inland Fisheries & Wildlife



- For great ponds that border more than one municipality, recommendations may be submitted only after approval by the legislative bodies of all municipalities in which those waters are located.
- For great ponds that border lands within the jurisdiction of the Maine Land Use Regulation Commission (now called Maine Land Use Planning Commissioner (MLUPC)), the approval of the commission is also required.
- If a municipality chooses to prepare recommendations for such waters, it shall take into consideration the use to which those waters are put, the depth of the water, the amount of water-borne traffic on the waters, wildlife and environmental values, noise, traditional uses of the water body and the safety of persons and property.
- These recommendations may be submitted only after a municipal public hearing and must include a description of the resources the municipality or municipalities will use to enforce those recommendations if enacted.

The Commissioner was directed to submit a report to the 119<sup>th</sup> Legislature on the recommendations received from municipalities by a certain deadline. *Each report must be accompanied by legislation implementing the recommendations supported by MDIFW.* The Department also had the option of suggesting legislation using the same criteria that the municipalities used.

The Department forwarded to the 119<sup>th</sup> Legislature recommendations from any municipality that followed the process outlined above as there was no measure outlined in the process/criteria (the depth of the water, the amount of water-borne traffic on the waters, wildlife and environmental values, noise, traditional uses of the water body and the safety of persons and property) to allow the Department to review the merit of requested bans. The Department felt that without those measures they were unable to “say no”. In most instances the lack of complaint data to the Warden Service neither justified a ban on personal watercraft nor a change to any law on the waters being discussed because there were already adequate laws in place.

In addition to this process, Public Law 1997 c. 739 enacted a provision of law under the currently named Land Use Planning Commission (MLUPC) that prohibits operating personal watercraft on certain categories of waters under the Commission’s jurisdiction [12 M.R.S. § 685-C \(10\)](#), upon implementation of the law over 200 waters fell into the category of prohibiting the use of personal watercraft. These waters are currently listed in MDIFW’s boating lawbook [Maine Boating Laws](#).

## **Maine Warden Service Boating Enforcement**

Maine wardens on average spend more than 9,000 hours a year on the water doing recreational boating enforcement. They do compliance checks on between 15,000 and 20,000 boaters each year. The majority of the violations detected by wardens are inadequate personal floatation devices, operating unregistered watercraft, and water safety zone (headway speed violations). Such violations have historically shown a consistent pattern.

# Report Back Provided to the Joint Standing Committee on Inland Fisheries & Wildlife



The headway speed violations often cause public complaint as they occur close to shore and are visible to persons along the shorelines involved in other activities. Many boat operators are either inexperienced or not always aware of what “headway speed” means. Other more egregious operational violations such as operating to endanger, and reckless operation consistently produce five or less prosecutions per year statewide.

## Keyes Pond

The Chapter 45 Resolve directed the Department to follow-up with the Town of Sweden on the status of municipal action regarding banning personal watercraft on Keyes Pond. The Department contacted the Sweden town office on January 11, 2022 regarding this issue. The Department received notification from a Mr. Andrew Black on January 17<sup>th</sup> that the town voted on January 11<sup>th</sup> to put the issue of banning personal watercraft on Keyes Pond, on the annual town meeting warrant. It was indicated that the town meeting would be sometime in March and it is anticipated that a public hearing on the matter would take place sometime in February.

A check on the Warden Service records management system back to 2018 shows no watercraft related complaints regarding Keyes Pond.

## Summary

The Department believes the municipal process that was used previously and presented in this report was challenging on several fronts. One, it lacked metrics for measuring these considerations, *“it shall take into consideration the use to which those waters are put, the depth of the water, the amount of water-borne traffic on the waters, wildlife and environmental values, noise, traditional uses of the water body and the safety of persons and property”*. Lacking these measures made it challenging for the Department to have meaningful discussions regarding the municipal recommendations. Additionally, there were challenges within the municipal process as to who were allowed to speak at town meetings i.e. property owner that did not reside in the town. If the previous process is reinstated having the municipalities commit to providing an inland harbormaster for enforcement should be part of the process as it was previously.

The Department’s preferred method would be to leave the current processes “the legislature” in place as we feel it’s a well-founded process which allows for full participation by both the public and the agency(s) regulating and enforcing the activity.

In closing, the Information and Education Division of MDIFW is actively messaging those that enjoy our state waters with messages for safe and courteous boating. MDIFW will continue to develop that approach and look for creating more aware and educated users of our waters.