

A Report to the Joint Standing Committees
on
Agriculture, Conservation and Forestry
and
Inland Fisheries and Wildlife



L.D. 561 – Resolve, To Direct State Agencies to Develop Policies to Guide Employees When Accessing Private Woodland, Farmland, or Coastal Lands

**Submitted By:
Roland D. Martin, Commissioner
January, 2010**



INTRODUCTION AND BACKGROUND

Fish and wildlife play an important role in the lives of Maine people. Maine ranks second nationally when comparing the percentage of residents who participate in hunting, fishing, trapping, and wildlife related outdoor recreation [USFWS 2006]. However, fish and wildlife provide more than a source of enjoyment and recreation. The *2006 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation* [USFWS 2006] estimated that state residents and nonresidents spent nearly \$1.8 billion on wildlife related recreation in Maine. Revenue generated from whitewater rafting [\$32 million, MDIFW data] and use of snowmobiles [\$300 million, Maine Snowmobile Association data], all-terrain vehicles [\$200 million, ATV Study data] and watercraft [\$153 million, MDIFW data] contribute an additional \$685 million to Maine's economy. At over 2.4 billion dollars annually, clearly Maine's quality of life and its economy are strongly influenced by the diversity and abundance of fish and wildlife that inhabit our state.

The Maine Legislature, acting on behalf of the people of the State, established the Maine Department of Inland Fisheries and Wildlife [MDIFW or Department] to preserve, protect and enhance the inland fisheries and wildlife resources of the State; to encourage the wise use of these resources; to ensure coordinated planning for the future use and preservation of these resources; and to provide for effective management of these resources [Title 12 § 7011]. This mandate is extended to *all* the state's wildlife – moose to mayflies, charismatic and unpopular, predators and pollinators, species at the edge of their range, or species naturally dispersing into the state.

The Maine Legislature, acting on behalf of the people of the State, also established the Maine Endangered Species Act [12 MRSA Part 13, Subchapter 3], the Natural Resources Protection Act [38 MRSA §§ 480-A to 480-BB], the Comprehensive Planning and Land Use Regulation Act [Title 30-A Chapter 187], as well as other laws for the protection of the state's wildlife populations and their habitats.

The vast majority of the state [90%] is privately owned, thus private landowners are integral to the conservation of our wildlife heritage and natural resources. The public has established that private landowners have a "responsibility" for the stewardship of wildlife and its habitat. The public may restrict ownership rights to achieve this stewardship when deemed necessary, consistent with law. Such is provided for in the Maine Endangered Species Act, the Natural Resources Protection Act, as well as other laws for the protection of the state's wildlife populations and their habitats.

Likewise, ownership of private property conveys certain rights, and these rights are granted and protected by the public through the democratic rule of law. The public may choose to grant rights or to restrict rights, consistent with law.

The time-tested *North American Model of Wildlife Conservation* is the only one of its kind in the world. No other continent retains as close to a complete compliment of native wildlife species. While other countries struggle to conserve the little they have left, we enjoy great abundance and diversity of native wildlife. This is due, in large part, to forward-thinking early conservationists who saw the need to preserve wildlife and their habitats. Their efforts were the source of the *North American Model of Wildlife Conservation*, which strives to sustain wildlife species and habitats through sound science and active management. The model's two basic principles – that our fish and wildlife belong to all citizens and are to be managed in such a way

that their populations will be sustained forever – are explained through a set of 7 principles, 3 of which are highlighted below.

Wildlife is a public trust resource – Wildlife is not owned by individuals; instead wildlife belongs to everyone. State and federal governments are responsible for managing all wildlife as well as their habitat. The public trust gives everyone the opportunity to view, hunt, fish, and otherwise enjoy these natural resources.

The U.S. Supreme Court affirmed in 1842 the American ideal that wildlife is not owned by individuals, but rather was held in common ownership by the state for the benefit of all people.

The democratic rule of law determines the allocation and use of wildlife - The democratic rule of law directs the allocation and use of wildlife, rather than do market pressures, land ownership, or special privilege; and therefore, the public has the right to create laws to conserve and manage wildlife and habitats.

Scientific research and management are essential for conserving and sustaining North America's wildlife and habitats – scientific research, and applying that research, is essential to managing and sustaining North America's wildlife and habitats.

The challenge becomes managing a public resource on predominately privately-owned lands. It is incumbent upon all of us to work together to develop appropriate public policy for the establishment and conservation of wildlife species and habitat that is mindful of public desires and of the legitimate rights of private landowners. MDIFW feels that its *Administrative Policy Regarding Access to Private Property, Effective January 1, 2010* [see pages 9-10] strikes the proper balance between its necessary and appropriate respect for private property rights and its effective and efficient conduct of its public-trust responsibilities and legislative mandates.

L.D. 561 RESOLVE, TO DIRECT STATE AGENCIES TO DEVELOP POLICIES TO GUIDE EMPLOYEES WHEN ACCESSING PRIVATE WOODLAND, FARMLAND, OR COASTAL LANDS

In response to concerns among landowner groups about the collection and use of information gathered by natural resource agencies on private lands, the 124th Legislature passed *Resolve Chapter 30 L.D. 561, Item 1 Resolve, To Direct State Agencies To Develop Policies To Guide Employees When Accessing Private Woodland, Farmland, or Coastal Lands*. Specifically, this resolve stipulates:

Sec. 1 Policies. Resolved: That the Department of Inland Fisheries and Wildlife, the Department of Environmental Protection, the Department of Marine Resources, the Department of Agriculture, Food and Rural Resources and the Department of Conservation, referred to in this resolve as "the departments," shall develop written policies regarding entering private woodland, farmland or coastal lands for nonemergency purposes to collect information. The policies must address such items as when prenotification or permission is appropriate; when no notification or permission is needed; what constitutes notification or permission; motorized and nonmotorized access; and when

woodland or farmland owners or owners of coastal lands should be informed regarding potential uses of data or information collected. The departments may have different policies for accessing woodland, farmland or coastal lands for different purposes. This resolve does not interfere with the departments' enforcement authority; and be it further

Sec. 2 Feedback from woodland owners. Resolved: That, in developing the policies under section 1, the departments shall solicit feedback from woodland and farmland owners and owners of coastal lands. The departments shall ensure that department employees are aware of and comply with the policies. The departments may alter these policies as necessary; and be it further

Sec. 3 No rulemaking. Resolved: That the policies required under this resolve do not constitute rules and the departments are not required to further undertake rulemaking for purposes of adopting these policies; and be it further

Sec. 4 Report on policies; legislation authorized. Resolved: That the departments shall report to the Joint Standing Committee on Agriculture, Conservation and Forestry no later than January 15, 2010 on the policies developed under section 1. The report must include a copy of each department's policies pertaining to accessing private woodlands, farmlands and coastal lands and a summary of input received from farmland and woodland owners and owners of coastal lands during the development of these policies. The report must also include a description of how information collected on private land is used by the departments, the types of information that are available to the public and how that information is provided.

The Joint Standing Committee on Agriculture, Conservation and Forestry may submit legislation to the Second Regular Session of the 124th Legislature pertaining to state employees' access to private lands or the dissemination of information collected on private lands; and be it further

Sec. 5 Adoption. Resolved: That the policies required under this resolve must be adopted by January 1, 2010.

SUMMARY OF LANDOWNER INPUT

On December 16, 2009 the Maine Department of Inland Fisheries and Wildlife hosted a meeting of interested landowners, landowner groups, and Department staff to: 1] discuss the types of information collected by MDIFW; 2] review how information collected on private land is used and provided; and 3] solicit input on MDIFW's draft written policy to govern Department employees when accessing private lands to collect information.

The following individuals attended the meeting.

Guests

Affiliation

James Cote

Maine Forest Products Council

Tom Doak

Small Woodland Owners Association of Maine

Molly Docherty

Maine Natural Areas Program

Clark Granger

Maine Farm Bureau

Liz Hertz
Jon Olson
Ray “Bucky” Owen
George Smith
Tin Smith
Barbara Vickery

Maine State Planning Office
Maine Farm Bureau
Orono Land Trust
Sportsmen’s Alliance of Maine
Wells National Estuarine Research Reserve
The Nature Conservancy

Department Staff

John Boland
Peter Bourque
Phillip deMaynadier
John Pratte
Sandy Ritchie
Mark Stadler
Steve Walker

Director of Fisheries
Director of Fisheries
Reptile, Amphibian, & Invertebrate Group Leader
Wildlife Management Section Supervisor
Habitat Conservation & Special Projects Biologist
Director of Wildlife
Beginning with Habitat Program Coordinator

A brief overview of the meeting is presented below [see also Appendices 1A-1D].

1. Introductions and Opening Remarks

Sandy Ritchie, MDIFW Habitat Conservation and Special Projects Biologist, facilitated the meeting and outlined the meeting purpose, desired outcomes, and agenda. Guests and Department staff introduced themselves.

2. Reviewed Resolve, Chapter 30 LD 561, Item 1

Sandy reviewed Resolve, Chapter 30 LD 561, Item 1 *Resolve, To Direct State Agencies To Develop Policies To Guide Employees When Accessing Private Woodland, Farmland or Coastal Lands*.

3. Overview of MDIFW Mandates and Responsibilities

Mark Stadler, MDIFW Wildlife Division Director, presented an overview of the *North American Wildlife Conservation Model* and a summary of MDIFW’s mandates and responsibilities. A copy of Mr. Stadler’s presentation can be found in Appendix 1B.

4. Fish and Wildlife Data Collection and Use

MDIFW’s data collection work is undertaken to fulfill its public trust responsibilities and its mandates and responsibilities under Maine law. The Department employs a “species planning” process to guide its many data collection jobs. This planning process determines the types of data that MDIFW will collect and how staff will use that data in decision-making. [More information on MDIFW’s species planning process can be found in Appendix 1C.]

Description of Data Collected and Its Use

In general, the types of data that MDIFW collects falls into two broad categories: 1] data necessary to manage wildlife populations [biological data] and 2] data for the identification of wildlife habitats [habitat data].

Biological Data: The data that MDIFW collects to manage populations consists of various metrics that help it gauge the status of a specific population, for example: the sex and age structure of the population; the physical condition of individuals and of the larger population; and the factors contributing to population growth and population losses and their effect on the population.

Department staff access private property to collect much of this biological data, which is required for several wildlife management projects. The following list is not exhaustive, but is illustrative:

- Deer biological data
- Moose biological data
- Canada Lynx project
- Black bear project
- Wild turkey biological data
- Waterfowl bag checks
- Waterfowl brood counts
- Mid-winter waterfowl surveys
- Mourning dove surveys
- Woodcock surveys
- Breeding bird surveys [largely for songbirds]
- Black racer biological data
- Blanding's and spotted turtle biological data

Habitat Data: Department staff collects habitat data to augment wildlife population management data because successful population management is ultimately dependent upon an accurate knowledge of habitat conditions. MDIFW also collects habitat information to identify "Essential Wildlife Habitat" [Maine Endangered Species Act] and "Significant Wildlife Habitat" [Natural Resources Protection Act]. In addition, MDIFW staff collects deer wintering area data and seabird nesting island data in the unorganized townships under the jurisdiction of the Land Use Regulation Commission.

- Essential Wildlife Habitats [Maine Endangered Species Act, MDIFW]
 - Piping Plover, Least Tern nesting, feeding, and brood-rearing areas
 - Roseate Tern nesting areas
- Significant Wildlife Habitats [Natural Resources Protection Act, Dept. of Environmental Protection]
 - Habitat for species appearing on the official state or federal lists of endangered and threatened species
 - High and moderate value deer wintering areas and travel corridors
 - High and moderate value waterfowl and wading bird habitat
 - Shorebird nesting, feeding, and staging area
 - Seabird nesting islands
 - Significant vernal pool habitat
 - Critical spawning and nursery areas for Atlantic salmon
- Site Location of Development / Site Law [Dept. of Environmental Protection]

- Protection-Fish and Wildlife [Land Use Regulation Commission, Dept. of Conservation]
 - Deer wintering areas
 - Seabird nesting islands
- Comprehensive Planning and Land Use Regulation Act [State Planning Office]

Maine municipalities are required to consider and address wildlife habitats in the development of their comprehensive plans. The Department provides this wildlife habitat data to the municipalities through its *Beginning with Habitat* project.

Additional information about Beginning with Habitat can be found at:

<http://www.beginningwithhabitat.org/index.html>

- MDIFW also collects coastal wildlife habitat data as part of its responsibilities in Maine's oil spill response planning.

Information that is available to the public

MDIFW is an entity that exists within the sphere of Maine State Government. As such, it is bound by the laws governing state departments and agencies, including those laws that address transparency in government and public access to government information. Hence, all of MDIFW's biological and habitat data is available to the public.

How this information is provided

MDIFW provides biological and habitat data to the public:

- Verbally: in person, telephone
- In writing: letters, fax, reports, and paper maps
- Digitally: email, digital copies of letters, reports, maps; GIS map layers, and database files

5. Landowner Issues and Concerns

Meeting participants were given the opportunity to identify their issues and concerns and to provide comment. The following is a list of issues identified.

- Mapping waterfowl and wading bird habitats
- Mapping vernal pools
- Beginning with Habitat [BwH]
 - landowner interests are not represented on the BwH Steering Committee
 - landowners learn of information on their property after the fact
 - need to engage landowners in Beginning with Habitat
 - errors on the map – a landowner doesn't see the map in order to "truth" the information

- poor communication between people collecting the information and landowners
- Data most prone to error is that where the Department doesn't ground truth. Highest quality data requires access to private property.
- Who has the information and what does MDIFW do with it?
- This is an electronic age – landowner information is readily available. Data is so easily available that landowners almost feel “violated”.
- IFW assumes it has the permission of the landowner to publish the information.

Q/A Discussion

What percent of Department survey and inventory work is done remotely? Mark Stadler: Course mapping is generally done remotely.

Tom Doak: Does the Department have rights to access private land or is it by custom or tradition? Mark Stadler: The Department is not claiming any legal rights to access private property other than law enforcement officers engaged in law enforcement activities and Department personnel conducting environmental permit reviews. The legislature has not granted any special authorization as we understand it.

George Smith: Do fisheries biologists seek landowner permission prior to accessing private lands? John Boland: Not unless the land is posted.

Jon Olson to Tom Doak: Why did SWOAM push LD 561? Tom Doak: To get a dialog going, because of mapped habitats (inland waterfowl and wading bird habitats, vernal pools), wild turkey / farming conflicts, Beginning with Habitat, and the electronic age rendering landowner information being readily available.

Steve Walker (responding to questions about Beginning with Habitat): When towns are sent BwH information in advance of a Department presentation, MDIFW also sends a draft press release and encourages elected officials and area residents to attend a BwH presentation. The Department discusses the sources and limitations of the mapped data and clearly indicates that data is for landscape conservation planning. BwH staff rarely has instances where publication of BwH information has been questioned by landowners. On the contrary, many landowners are often excited by wildlife occurrences on their property. Often landowners notify Department officials of the presence of species and habitats on their property when not denoted on BwH maps.

Tin Smith (offering a land trust and citizen's perspective on BwH): Never has there been a program that has been open to the public like Beginning with Habitat. Landowners are very interested in what is on their property, and as a citizen he is interested in efficiency and effectiveness. We need more science to make better management decisions. Beginning with Habitat is not being used as a regulatory tool.

Phillip deMaynadier: Efficiency is very important to a very trim, low budget agency. For many species, invertebrates in particular, the window for conducting surveys is very tight. To ask species specialists to require written permission prior to entering private property would

effectively hamstring most survey efforts. Pre-planning and identifying landowners to contact would also become a multi-step process as initial survey sites are typically identified using Maine Natural Area Program community and rare plant occurrence data, aerials, etc to determine likely site conditions, but a broader sweep occurs once on site and actual field conditions determine where efforts are most likely to be fruitful. In other words, you typically do not know what property you need to be on until you're down there.

Tom Doak: We could have different policies depending on the different types of land and habitats. Biological surveys could be treated differently than habitat surveys.

Bucky Owen: If we tighten this too tight we are not going to get good data and do good management.

Farm Bureau: Entry that is non-emergency or court ordered should require landowner permission for the farmland and attendant woodland. Further, landowners should be notified in writing anytime wildlife is released on private lands [see also Appendix 1D].

6. MDIFW's Draft *Administrative Policy Regarding Respect of Private Property*

The remainder of the meeting was devoted to a review and discussion of MDIFW's DRAFT *Administrative Policy Regarding Respect of Private Property, December 16, 2009* including a discussion as to when and how the Department would seek landowner permission, as well as how and under what circumstances a landowner would be notified of a significant finding on his or her property.

The Department developed its final *Administrative Policy Regarding Access to Private Property, Effective January 1, 2010* [pages 9-10 of this report] mindful of its legislative mandates and responsibilities and public input received at its December 16, 2009 meeting. MDIFW feels that this policy strikes the proper balance between its necessary and appropriate respect for private property rights and its effective and efficient conduct of its public-trust responsibilities and legislative mandates. [Copies of the Department's original access policy and the modified version discussed at its December 16th meeting are provided in Appendices 2A and 2B respectively.]

LITERATURE CITED

U.S. Department of the Interior, Fish and Wildlife Service, and U.S. Department of Commerce, U.S. Census Bureau. 2006. 2006 National survey of fishing, hunting, and wildlife-associated recreation.

**MDIFW'S ADMINISTRATIVE POLICY REGARDING
ACCESS TO PRIVATE PROPERTY**

**A 2.4
ADMINISTRATIVE POLICY REGARDING ACCESS TO PRIVATE
PROPERTY**

Effective January 1, 2010

WHEREAS the *North American Model of Wildlife Conservation* states that:

1) wildlife is a public-trust resource, 2) the democratic rule of law determines the allocation and use of wildlife, and 3) scientific research and management are essential for conserving and sustaining North America's wildlife and habitats.

WHEREAS the U.S. Supreme Court affirmed in 1842 the American ideal that wildlife is not owned by individuals, but rather belongs to everyone; the Court set the legal precedent that wildlife was held in common ownership by the state for the benefit of all people.

WHEREAS the democratic rule of law directs the allocation and use of wildlife, rather than do market pressures, land ownership, or special privilege; and therefore, the public has the right to create laws to conserve and manage wildlife and habitats.

WHEREAS scientific research and management are essential to sustaining North America's wildlife and habitats.

WHEREAS the state and federal governments are responsible for managing wildlife for the public.

WHEREAS the Legislature of the State of Maine, acting on behalf of the public, established the Department of Inland Fisheries and Wildlife to preserve, protect and enhance the inland fisheries and wildlife resources of the State; to encourage the wise use of these resources; to ensure coordinated planning for the future use and preservation of these resources; and to provide for effective management of these resources.

WHEREAS the Legislature of the State of Maine, acting on behalf of the public, established the Maine Endangered Species Act, the Natural Resources Protection Act, the Comprehensive Planning and Land Use Regulation Act, as well as other laws for the protection of the state's wildlife populations and their habitats.

WHEREAS ownership of private property conveys certain rights and these rights are granted and protected by the public through the democratic rule of law. The public may choose to grant rights or to restrict rights, consistent with law.

WHEREAS the public has established that private landowners have a "responsibility" for the stewardship of wildlife and its habitat. The public may restrict ownership rights to achieve this stewardship when deemed necessary, consistent with law.

NOW THEREFORE the personnel of the Department of Inland Fisheries and Wildlife, in the discharge of their public-trust responsibilities and legislative mandates, will adhere to the following policy governing their access over and across private property.

When engaged in their official activities, Department personnel will be respectful and courteous to landowners when accessing private property.

Department personnel must obtain the verbal permission of the landowner, a member of the immediate family, or the landowner's agent before crossing over or through any cropland, pasture, or enclosed area containing livestock or other domesticated animals.

Where the landowner has restricted access to his or her property either verbally or via signage, Department personnel must obtain the verbal permission of the landowner, a member of his or her immediate family, or the landowner's agent before entering the property.

Where the landowner has not made his or her desires known, Department personnel will make a reasonable attempt to obtain verbal permission from the landowner, a member of his or her immediate family, or the landowner's agent (if known).

From time-to-time, Department personnel will access private property to assess wildlife populations or habitats or both as provided for in the Maine Endangered Species Act, the Natural Resources Protection Act, the Comprehensive Planning and Land Use Regulation Act, or other state or federal laws for the protection of Maine's wildlife and habitats. All such access will be governed by the above. In addition, within 180 days of the completion of this field work, the Department will notify the current landowner(s) in writing if, based on any significant findings, the Department determines that the habitat or wildlife occurrence is subject to state or federal law or if the Department intends to "map" the habitat or wildlife occurrence as part of its *Beginning With Habitat* program.

Department personnel will complete their tasks in a professional and timely manner, and will not engage in extraneous activities unrelated to their work assignment.

Under no circumstances will Department personnel make any markings or placement of signs without landowner permission, except when posting health advisories or regulations.

Department personnel involved in law enforcement, investigation of environmental permit applications or compliance, or safety operations will not be required to seek or obtain landowner permission. A warrant is required under some circumstances.

The Department feels this policy strikes the proper balance between its necessary and appropriate respect for private property rights and its effective and efficient conduct of its public-trust responsibilities and legislative mandates.

This policy regarding Access to Private Property replaces the previous version of A2.4, Respect for Private Property. It meets the requirements of LD 561 *Resolve, To Direct State Agencies To Develop Policies To Guide Employees When Accessing Private Woodland, Farmland or Coastal Lands*.

ACCESS TO PRIVATE PROPERTY ~A2.4

**L.D. 561 -- Resolve, To Direct State Agencies
to Develop Policies to Guide Employees
When Accessing Private Woodland,
Farmland, or Coastal Lands**

Appendices

Appendix 1

LD 561 Working Group Meeting – December 16, 2009

- Appendix 1A: Meeting Agenda and Summary
- Appendix 1B: Overview of MDIFW's Mandates, Responsibilities, and Data Collection Efforts
- Appendix 1C: Overview of MDIFW's Species Planning Process
- Appendix 1D: Maine Farm Bureau Policy Regarding Non-Emergency Access to Farmland, Private Woodland and Coastal Lands by Government Employees

Appendix 1A

LD 561 Working Group Meeting

December 16, 2009

1:30 p.m. – 3:30 p.m.

Inland Fisheries and Wildlife, Augusta

Purpose: Review how information collected by MDIFW on private land is used, types of information collected, and how information is provided. Solicit input on the Department's draft written policy to govern MDIFW employees when accessing private lands to collect information.

Desired Outcomes: Written policy that will govern MDIFW employees when accessing private lands to collect information.

PROPOSED AGENDA

Time Frame	Task	Who
1:30 – 1:40	1. Introductions 2. Review Agenda	Sandy Ritchie
1:40 – 1:45	1. Purpose and Outcomes - Review Legislative Resolve	Sandy Ritchie
1:45 – 2:15	1. Overview of IF&Ws mandates and responsibilities 2. Data collected 3. How data is used 4. Discussion, Q&A	Mark Stadler
2:15 – 2:45	1. Stakeholder concerns	Sandy Ritchie / Group
2:45 – 3:30	1. Review MDIFW's draft policy 2. Q&A 3. Next Steps?	Sandy Ritchie / Mark Stadler / Group

L.D. #561 Working Group Meeting Summary

December 16, 2009
MDIFW Main Office
284 State Street, Augusta
1:30 p.m. – 3:30 p.m.

Facilitator:	Sandy Ritchie, MDIFW	Note Taker:	Sandy Ritchie, MDIFW
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Next Meeting: None planned.

Participants:	<p>Guests: James Cote (Maine Forest Products Council); George Smith (Sportsman's Alliance of Maine); Tom Doak (Small Woodland Owners Association of Maine); Tin Smith (Great Works Regional Land Trust, Wells Estuarine Reserve); Clark Granger (Amine Farm Bureau); Jon Olson (Maine Farm Bureau); Ray "Bucky" Owen (Orono Land Trust); Liz Hertz (State Planning Office); Barbara Vickery (The Nature Conservancy); and Molly Docherty (Maine Natural Areas Program)</p> <p>MDIFW: Wildlife Division: Mark Stadler, Sandy Ritchie, John Pratte, Phillip deMaynadier, and Steve Walker. Fisheries Division: John Boland and Peter Bourque</p>
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Agenda – Summary of Meeting Highlights

The intent of this summary is to capture meeting highlights not provide a detailed transcript.

1. Introductions and Opening Remarks

Sandy Ritchie, MDIFW Habitat Conservation and Special Projects Biologist, facilitated the meeting and outlined the meeting purpose, desired outcomes, and agenda. Guests and Department staff introduced themselves.

2. Reviewed Resolve, Chapter 30 LD 561, Item 1

Sandy reviewed Resolve, Chapter 30 LD 561, Item 1 *Resolve, To Direct State Agencies To Develop Policies To Guide Employees When Accessing Private Woodland, Farmland or Coastal Lands.*

Sec. 1 Policies. Resolved: *That the Department of Inland Fisheries and Wildlife, the Department of Environmental Protection, the Department of Marine Resources, the Department of Agriculture, Food and Rural Resources and the Department of Conservation, referred to in this resolve as "the departments," shall develop written policies regarding entering private woodland, farmland or coastal lands for nonemergency purposes to collect information. The policies must address such items as when prenotification or permission is appropriate; when no notification or permission is needed; what constitutes notification or permission; motorized and nonmotorized access; and when woodland or farmland owners or owners of coastal lands should be informed regarding potential uses of data or information collected. The departments may have different policies for accessing woodland, farmland or coastal lands for different purposes. This resolve does not interfere with the departments' enforcement authority; and be it further*

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Sec. 3 No rulemaking. Resolved: That the policies required under this resolve do not constitute rules and the departments are not required to further undertake rulemaking for purposes of adopting these policies; and be it further

Sec. 4 Report on policies; legislation authorized. Resolved: That the departments shall report to the Joint Standing Committee on Agriculture, Conservation and Forestry no later than January 15, 2010 on the policies developed under section 1. The report must include a copy of each department's policies pertaining to accessing private woodlands, farmlands and coastal lands and a summary of input received from farmland and woodland owners and owners of coastal lands during the development of these policies. The report must also include a description of how information collected on private land is used by the departments, the types of information that are available to the public and how that information is provided.

The Joint Standing Committee on Agriculture, Conservation and Forestry may submit legislation to the Second Regular Session of the 124th Legislature pertaining to state employees' access to private lands or the dissemination of information collected on private lands; and be it further

Sec. 5 Adoption. Resolved: That the policies required under this resolve must be adopted by January 1, 2010.

3. Overview of MDIFW Mandates and Responsibilities

Mark Stadler, MDIFW Wildlife Division Director, presented an overview of the *North American Wildlife Conservation Model* and a summary of MDIFW's mandates and responsibilities, as well as a description of data MDIFW collects and its use. A copy of Mark's presentation is attached to this meeting summary.

4. Landowner Issues and Concerns

Meeting participants were given the opportunity to identify their issues and concerns and to provide comment.

- Mapping waterfowl and wading bird habitats
- Mapping vernal pools
- Beginning with Habitat [BwH]
 - landowner interests are not represented on the BwH Steering Committee
 - landowners learn of information on their property after the fact
 - need to engage landowners in Beginning with Habitat
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- Who has the information and what does MDIFW do with it?
- This is an electronic age – landowner information is readily available. Data is so easily available that landowners almost feel “violated”..
- IFW assumes it has the permission of the landowner to publish the information.

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Phillip deMaynadier: Efficiency is very important to a very trim, low budget agency. For many species, invertebrates in particular, the window for conducting surveys is very tight. To ask species specialists to require written permission prior to entering private property would effectively hamstring most survey efforts. Pre-planning and identifying landowners to contact would also become a multi-step process as initial survey sites are typically identified using Maine Natural Area Program community and rare plant occurrence data, aerials, etc to determine likely site conditions, but a broader sweep occurs once on site and actual field conditions determine where efforts are most likely to be fruitful. In other words, you typically do not know what property you need to be on until you're down there.

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Farm Bureau: Entry that is non-emergency or court ordered should require landowner permission for the farmland and attendant woodland. Further, landowners should be notified in writing anytime wildlife is released on private lands.

5. MDIFW's Draft *Administrative Policy Regarding Respect of Private Property*

The remainder of the meeting was devoted to a review and discussion of MDIFW's DRAFT *Administrative Policy Regarding Respect of Private Property* including a discussion as to when and how the Department would seek landowner permission, as well as how and under what circumstances a landowner would be notified of a significant finding on his or her property.

As part of their official duties to manage the State's public trust wildlife resources, personnel of the Department of Inland Fisheries and Wildlife may need to access private property to survey and monitor priority fish and wildlife populations or high value wildlife habitats. This protocol will govern all such access. In addition, within 180 days of the completion of the field work, the Department will notify the landowner(s) in writing of any significant positive findings and if it intends to "map" the habitat or wildlife occurrence.

When engaged in their official activities, Department personnel will be respectful and courteous to landowners when accessing over and across private property. Furthermore, personnel will complete their tasks in a professional and timely manner, and will not engage in extraneous activities unrelated to their work assignment.

- 1. Before Department personnel enter private land that is posted "**NO TRESPASSING,**" he or she must obtain the verbal permission of the landowner, a member of his or her immediate family, or agent.*
- 2. Where the landowner has not made his or her desires known, Department personnel will make a reasonable attempt to obtain verbal permission from the landowner or a representative of the landowner (if known).*
- 3. Department personnel will obtain the verbal permission of the landowner, a member of the immediate family, or an agent before crossing over or through any pasture or other enclosed area containing livestock or other domesticated animals.*
- 4. Under no circumstances should Department personnel make any markings or placement of signs without landowner permission, except when posting public health advisories or regulations.
Department personnel involved in law enforcement, investigation of environmental permit applications or compliance, or safety operations will not be required to seek or obtain landowner permission. A warrant is required under some circumstances.*

At the conclusion of the meeting the Department indicated that it would consider its mandates and responsibilities as well as public input from the meeting in developing its final policy. MDIFW will provide its final policy and a summary of the meeting to all participants.

Appendix 1B

North American Model of Wildlife Conservation

North American Model of Wildlife Conservation

Consists of seven principles; three of these are applicable to this discussion:

- Wildlife is a public resource
– the public trust
- Democratic rule of law
- Scientific management

The Public Trust

- Wildlife is not owned by individuals
- Wildlife belongs to everyone
- The state and federal governments are responsible for managing wildlife for the public
- The public trust gives everyone the opportunity to view, hunt, and enjoy wildlife

The Public Trust

- In 1842, the U.S. Supreme Court affirmed the American ideal that wildlife belongs to everyone
- The Court set the legal precedent that wildlife was held in common ownership by the state for the benefit of all people

The Democratic Rule of Law

- The allocation and use of wildlife is directed by law, not market pressures, land ownership, or special privilege
- The public has the right to create laws to conserve and manage wildlife and their habitats
- Citizens can participate in ballot measures that direct or redirect wildlife management

The Democratic Rule of Law

- Public involvement
 - MDIFW's species planning process
 - Public participation and comment in MDIFW rule-making / Administrative Procedures Act
 - Public participation and comment in Legislative law-making
 - Submit legislation via Representative or Senator
 - Ballot initiatives
 - Freedom of Access Act

Scientific Management

- Scientific research – and applying that research – is essential to managing and sustaining North America’s wildlife and habitats

Federal and State Fish and Wildlife Conservation Agencies



THE MAINE LEGISLATURE

- ~The elected representatives of Maine people
- ~Enact the laws that govern Maine citizens and state agencies

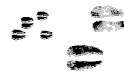
12 § 7011. Department established

There is established the Department of Inland Fisheries and Wildlife to **preserve, protect and enhance** the inland fisheries and wildlife resources of the State; to **encourage the wise use** of these resources; to ensure coordinated **planning for the future** use and preservation of these resources; and to provide for **effective management** of these resources.



12 § 7013. Bureau of Resource Management

There shall be the Bureau of Resource Management within the Department of Inland Fisheries and Wildlife. The bureau shall be equal in organizational level and status with other major organizational units within the department or its successors. The bureau shall be administered by a director who is immediately responsible to the deputy commissioner.



12 § 7013.

Bureau of Resource Management

The director shall possess full authority and responsibility for administering all the powers and duties of the bureau, subject to the direction of the commissioner and except as otherwise provided by statute. The responsibilities of the bureau shall include, but not be limited to:



12 § 7013.

Bureau of Resource Management

1. Wildlife management. The management of the wildlife resources in the State for their preservation, protection, enhancement and use;

2. Fisheries management. The management of the inland fisheries resources in the public waters of the State for their preservation, protection, enhancement and use;



12 § 7013.

Bureau of Resource Management

3. Propagation of fish. The propagation of fish for the effective management of inland fisheries resources in public waters of the State;

4. Habitat management. The management of habitat for the protection, preservation, enhancement and use of inland fisheries and wildlife resources;

12 § 7013.

Bureau of Resource Management

- 5. Wildlife sanctuaries; wildlife management areas.** The management of wildlife sanctuaries and wildlife management areas for the State as designated in chapter 713;
- 6. Data collection.** The collection of data for the effective management of the inland fisheries and wildlife resources;

12 § 7013.

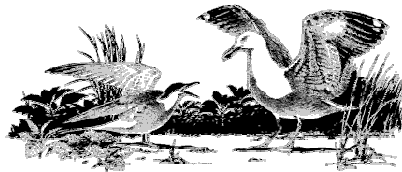
Bureau of Resource Management

- 7. Research.** Research activities for the effective management of the inland fisheries and wildlife resources;
- 7-A. Animal damage control.** The coordination of animal damage control functions throughout the State, including... the control of coyotes and other nuisance wildlife...;

12 § 7013.

Bureau of Resource Management

- 8. Rules.** The development of rules governing the effective management of the inland fisheries and wildlife resources of the State.



1975

Maine Endangered Species Act

Included the Federal Endangered
and Threatened Species List

1988

113th Session of the Maine Legislature

Three important laws regarding the conservation of
wildlife habitats

Maine Endangered Species Act

“Essential Habitat”

Bald eagle nest sites

Least tern / piping plover nesting, feeding, and brood-
rearing areas

Roseate tern nesting areas

Natural Resources Protection Act

Habitat for threatened / endangered species

High / moderate value DWAs and travel corridors

High / moderate value WWHs

Seabird nesting islands

Shorebird nesting, feeding, and staging areas

Significant vernal pools

Critical spawning and nursery habitat for Atlantic sea-run salmon

Comprehensive Planning and Land Use
Regulation Act

Towns required to address wildlife habitats in their comprehensive land-use plans

1989

Legislature clarifies that

Invertebrates

are within the jurisdiction of MDIFW

And now...

The “tension” between public resources and private resources

The “Tension”

- MDIFW’s publicly derived wildlife management goals and objectives may negatively affect landowner goals and objectives
- Conversely, landowner goals and objectives may negatively affect MDIFW’s publicly derived wildlife management goals and objectives

Public

- Wildlife is owned by everyone
- The Public Trust

Private

- Wildlife habitat is owned by private landowners
- Private Property Rights

Private Property Rights

- Ownership conveys certain rights
- The rights associated with ownership are granted and protected by the public [via the state]
- This public also owns the wildlife; and its management is entrusted to the state
- The public may chose to grant rights or to restrict rights consistent with law and legal precedent

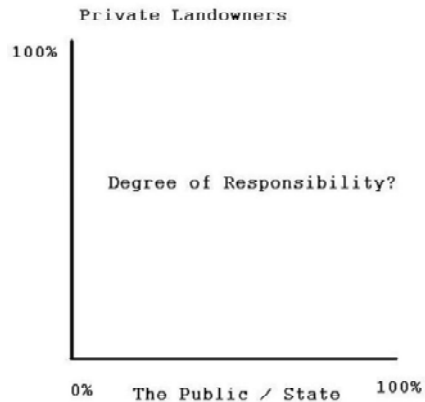
Private Property Rights

- The public / state have established that private landowners have a “responsibility” for the stewardship of public resources, such as wildlife and its habitat
- Ownership rights may be restricted to achieve this stewardship when deemed necessary
- There is abundant legal precedent demonstrating this

Private Property Rights

- Private landowners bear a level of “responsibility” for the stewardship of wildlife habitat:
 - How broad and deep?
 - At what cost?
 - What “responsibility” does the public and the state bear?

Whose Responsibility?



The Proper Tools? What's the Right Mix?



Wildlife Conservation Challenges / Opportunities

- How will the public / state and landowners address the differences that exist between their mutual desires?
- Is there a proper “mix” of responsibility for wildlife conservation? If so, what is it?
- What are the appropriate wildlife conservation tools?
- What is the best “mix” of these tools?

Challenge and Opportunities

- All of us working together to develop appropriate public policy for the establishment and conservation of wildlife habitat that is mindful of public desires and of the legitimate rights of private landowners

MDIFW Data Collection

[for illustration only, not complete]

2) Biological

- Deer biological data
- Moose biological data
- Canada Lynx project
- Black Bear project
- Waterfowl bag checks
- Waterfowl brood counts
- Mid-winter waterfowl surveys
- Mourning dove surveys
- Woodcock surveys
- Breeding bird surveys [largely for songbirds]

MDIFW Data Collection

[for illustration only, not complete]

1) Habitat

- Deer wintering area surveys
- Eco-regional surveys
- “species of greatest conservation need,” rare, threatened, and endangered wildlife
- Significant Wildlife Habitats
- Essential Wildlife Habitats
- Oil spill planning response

Appendix 1C

Strategic Planning for Wildlife: The Maine Experience

.... managing Maine's wildlife populations to meet society's expectations



History of Maine Experience - The Maine Department of Inland Fisheries and Wildlife (MDIFW) initiated comprehensive planning in 1968 and has refined and expanded the process with each planning update. Initial plans were quite rudimentary; department biologists crafted species management goals and objectives that were reviewed by a 9-member public steering committee and a citizen's Advisory Council. In 1985, the department embarked on a major effort to entrust the public with establishing long term, species management objectives, and required the public to entrust the department with developing management actions to meet the objectives.

Species Driven – Maine's planning process is species driven. Strategic plans are developed for individual species (deer, moose, ruffed grouse, spotted turtle, Tomah mayfly) or groups of species (migratory shorebirds, passerines, island nesting seabirds). Ultimately, MDIFW intends to develop plans for all game and endangered and threatened species, as well as other species of special management concern (more than 90 individual species and groups of species). To date, we are more than half way there. The process is the same, regardless of species status.

For nongame species with no immediate management concern, Maine has initiated a broad-based approach to habitat conservation called *Beginning with Habitat*. This project is a collaborative effort of private and public organizations including MDIFW, Maine Natural Areas Program, Maine State Planning Office, U.S. Fish and Wildlife Service, Maine Audubon Society, Southern Maine Regional Planning Commission, and the Wells National Estuarine Research Reserve. *Beginning with Habitat* is based on a landscape, or regional, model developed with the assistance of the University of Maine Cooperative Wildlife Research Unit and is focused on conservation of wildlife habitats in southern and central Maine. The foundation of this approach is to encourage towns to:

- conserve riparian habitats through effective implementation of the current Shoreland Zoning regulations,
- conserve identified special wildlife and plant habitats through resource protection zoning and other conservation tools, and
- maintain large blocks of forest and grassland habitats by maintaining rural areas and encouraging concentration of development.

Public Working Groups Set Management Direction – A meaningful evolution in Maine’s planning process has been an expansion of public involvement in the development of management goals and objectives within the biological sideboards of a species assessment prepared by department biologists¹. The species assessment develops informed stakeholders and establishes common ground.

The composition of working groups is structured to ensure representation of a variety of interests (sportsmen’s groups, NGOs, landowners, tourism groups, concerned citizens, outspoken critics, etc.) as well as a geographical mix. Every effort is made to keep the group balanced. Members of working groups give freely of their time and advice and provide an essential element to the development of species management plans.

The department conducts working group meetings in a manner designed to encourage active participation by group members while minimizing participation by department staff. Ground rules, agreed to by participants, seek to understand and respect others’ perspectives, maximize participation, and move the process forward. A facilitator, often the department’s planner, conducts each meeting, although occasionally a facilitator from outside the agency is hired.



Meetings are opened with a department overview of the assessment for each species, followed by a discussion of the issues and concerns the working group believes are important to the management of that species or species group. Questions, issues and concerns, and the resulting goals and objectives are recorded and displayed during the course of the meeting. Subsequently, the Department distributes a meeting summary and related material to all working group members.



After the working group develops goals and objectives, the Department evaluates them based on 1) desirability, 2) feasibility, 3) capability of the habitat, and 4) possible consequences, and identifies a number of associated problems and potential strategies of managing toward the goals and objectives. These reports are shared with the working group, and if warranted, the working group modifies the goals and objectives before the Department presents them to a 10-member citizen’s Advisory Council for adoption. Once adopted, the goals and objectives become the Wildlife Division’s “marching orders”.

Management systems, developed by department biologists, document how the department will reach the

¹ The assessment, a compilation of everything that we know about a particular species, critically reviews current and past management, goals and objectives, habitat, population size, and use and demand for hunting, trapping, and other wildlife-associated recreation. A final element of the assessment is a discussion of future projections for habitat, population size, and use and demand for the resource.

goals and objectives by clearly defining data collection protocol, analyses, and interpretation. They also establish rules-of-thumb that drive management actions. These systems undergo regular evaluation and peer review allowing them to be dynamic and adaptive.

In summary, Maine's strategic planning process recognizes the department's legal mandates, public expectations, and the department's ability to meet those mandates and expectations. Public involvement occurs during all stages of the process:

- species experts from outside the agency review the species assessment;
- a public working group develops management goals and objectives;
- goals and objectives are presented to a 10-member citizen's Advisory Council for approval;
- publicly-derived goals and objectives are the foundation of management systems which are reviewed by technical experts from outside the agency;
- management actions may necessitate public informational meetings; and
- rulemaking proceedings require public hearings and input from a citizen's Advisory Council.

Although not perfect, the process has proven to be exceedingly beneficial to the department and to the public it serves over the 40 years the process has been in effect.

Appendix 1D

Maine Farm Bureau Policy Regarding Non-Emergency Access to Farmland, Private Woodland and Coastal Lands by Government Employees



Maine Farm Bureau Association

"The Voice Of Organized Agriculture"

December 2009

Maine Farm Bureau Policy Regarding Non-Emergency Access to Farmland, Private Woodland and Coastal Lands by Government Employees

General Policy Statement:

Maine Farm Bureau believes that government employees have no special rights of access to privately owned properties beyond those of ordinary citizens except in cases of emergencies, or unless specifically authorized by statute or court order. Access restrictions articulated by landowners should be respected by all government authorities unless specific exceptions are granted by current landowners. For the purposes of this policy, "government employee" means all publicly compensated employees, private contractors working on behalf of government agencies, and citizen volunteers participating in government projects.

Specific Maine Farm Bureau policies regarding non-emergency access to private lands include:

(1) When permission to enter private land should be sought:

- * Written permission for entry should be sought whenever access to **posted** land is desired. Land posting should be respected even where some signs may be dilapidated or missing, so long the intent of the owner may be reasonably judged to prohibit trespass.
- * Oral permission should be sought whenever access to **unposted** land is desired.
- * Written permission for entry should be sought whenever access to land producing food crops is desired, **whether posted or not**.
- * Written permission for entry should be sought before game animals or other wildlife is released on farmland or attendant woodland.
- * Oral permission for entry should be sought for non-emergency access by motorized vehicle, except on private roads open to the public.
- * All requests for entry should be accompanied by a specific statement defining the purpose of entry, and the anticipated uses of any data collected. Tasks accomplished once entry has been gained must be limited to those stated in the original request for entry.
- * All requests for entry should define a beginning and ending date.

4 Gabriel Drive Suite 1 Augusta, Maine 04330 207-622-4111

(2) When permission is denied:

* Landowners who wish to prohibit all non-emergency and non-statutory access to their land by government authorities should be provided the opportunity to advise Department Commissioners in writing of that desire listing access denied parcels by town, tax map and lot number. Commissioners should compile a master list of properties with restricted access and distribute it to all employees servicing those areas.

* Landowners may also deny access directly to government employees orally at any time, even if consent was granted previously. Such denials should be respected and employees so notified when on private lands should leave the premises immediately.

(3) When government employees wish to enter posted land:

* Government employees who wish to enter posted private land should seek written permission from current property owners or their agents. Affirmative consent should be required prior to entry; **government agencies should not assume consent is granted based on a failure of a landowner to respond to a written request for entry.** Agencies should respect and comply with a landowner's denial of access. If access is deemed critical, agencies should seek statutory approval or a court order prior to entry.

(4) When data is collected:

* Landowners requesting a summary of data collected on or from their property should be provided with a copy of such information within a reasonable time period.

Appendix 2

MDIFW Access Policies

- Appendix 2A Administrative Policy Regarding Respect of Private Property (MDIFW Policy A 2.4, Existing Prior to December 16, 2009)
- Appendix 2B [Revised] Administrative Policy Regarding Access to Private Property (MDIFW Policy A 2.4) Discussed at MDIFW's December 16, 2009 Meeting with Landowner Groups

Appendix 2A

Administrative Policy Regarding Respect of Private Property (MDIFW Policy A 2.4, Existing Prior to December 16, 2009)

The personnel of the Department of Inland Fisheries and Wildlife, when engaged in their official activities, will respect the desires of landowners regarding access over and across private property when the landowner has made his or her desires known. Consequently, before Department personnel enter private land that is posted to "NO TRESPASSING," the verbal permission of the landowner, a member of his or her immediate family, or agent, must be obtained. Department personnel responding to emergencies will be exempt from this requirement.

Where the landowner has not made his or her desires known, a reasonable attempt will be made to obtain verbal permission from the landowner or a representative of the landowner (if known) or verbal notification (your name, purpose for entering private property) will be given to an occupant of a home or business, if present, in the immediate vicinity of your point of entry onto private property. The verbal permission of the landowner, a member of his immediate family, or his agent must be obtained before crossing over or through any pasture or other enclosed area containing livestock or other domesticated animals.

Department personnel will respect the rights of the landowner, will complete their tasks in a professional and timely manner, and will not engage in extraneous activities that are not part of their assignment.

Under no circumstances should any markings or placement of signs be done without landowner permission, except when posting public health advisories or regulations. Individuals involved in law enforcement, investigation of environmental permit applications or compliance, or safety operations will not be required to seek or obtain landowner permission. A warrant is required under some circumstances.

Appendix 2B

[Revised] Administrative Policy Regarding Respect of Private Property

(Policy A 2.4, Discussed at MDIFW's December 16, 2009 Meeting)

As part of their official duties to manage the State's public trust wildlife resources, personnel of the Department of Inland Fisheries and Wildlife may need to access private property to survey and monitor priority fish and wildlife populations or high value wildlife habitats. This protocol will govern all such access. In addition, within 180 days of the completion of the field work, the Department will notify the landowner(s) in writing of any significant positive findings and if it intends to "map" the habitat or wildlife occurrence.

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4. Under no circumstances should Department personnel make any markings or placement of signs without landowner permission, except when posting public health advisories or regulations.

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