

MAINE STATE LEGISLATURE

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(EMERGENCY)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 1454

S.P. 479

In Senate, April 12, 1983

Submitted pursuant to Resolves, 1982, Chapter 67 and presented by the President of the Senate on behalf of the Whitewater Rafting Study Commission.

On Motion of Senator Pray of Penobscot, referred to the Committee on Energy and Natural Resources. Sent down for concurrence and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Conley of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-THREE

AN ACT to Regulate Commercial
Whitewater Rafting.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the 1983 whitewater rafting season begins in June; and

Whereas, in accordance with the findings and objectives detailed in this Act, it is important to establish recreational use limits for the 1983 season on the Kennebec River and the West Branch Penobscot River; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of

1 the Constitution of Maine and require the following
2 legislation as immediately necessary for the preser-
3 vation of the public peace, health and safety; now,
4 therefore,

5 Be it enacted by the People of the State of Maine as
6 follows:

7 Sec. 1. 12 MRSA c. 707, sub-c. X-A, first 2
8 lines, as enacted by PL 1979, c. 723, §14, are
9 repealed and the following enacted in their place:

10 SUBCHAPTER X-A

11 COMMERCIAL WHITEWATER RAFTING

12 Sec. 2. 12 MRSA §7361, as enacted by PL 1979, c.
13 723, §14, is repealed and the following enacted in
14 its place:

15 §7361. Legislative findings

16 The Legislature finds that the recreational use
17 of watercraft on rapidly flowing rivers in this State
18 has become an increasingly popular sport. This sport
19 may pose significant risks to the users of these
20 rivers not skilled and knowledgeable in the navi-
21 gation of that water. Many members of the public
22 rely on commercial outfitters to provide safe trips
23 on these rivers.

24 The Legislature further finds that increased use
25 of the state's water resources has increased the
26 environmental, physical and social burdens on that
27 resource.

28 The Legislature declares that it is in the public
29 interest, pursuant to the state's authority to pro-
30 tect the health, safety and welfare of its citizens
31 and to preserve and protect the public's natural
32 water resources of rapidly flowing rivers.

33 Sec. 3. 12 MRSA §7362, as enacted by PL 1979, c.
34 723, §14, is repealed.

35 Sec. 4. 12 MRSA §§7363 to 7370-A are enacted to
36 read:

1 §7363. Definitions

2 As used in this subchapter, unless the context
3 indicates otherwise, the following terms have the
4 following meanings.

5 1. Affiliated outfitter. "Affiliated outfitter"
6 means a commercial whitewater outfitter which shares
7 with or provides to another outfitter management or
8 financing.

9 2. Allocation. "Allocation" means the annually
10 specified number of passengers per day which an
11 outfitter may take on whitewater trips on a partic-
12 ular river.

13 3. Bureau. "Bureau" means the Bureau of Parks
14 and Recreation in the Department of Conservation.

15 4. Commercial whitewater outfitter; outfitter.
16 "Commercial whitewater outfitter" or "outfitter"
17 means a person who conducts commercial whitewater
18 rafting, dory or bateau trips on rapidly flowing
19 ivers and who holds a current license, issued by the
20 department, to engage in this activity.

21 5. Demonstrated use. "Demonstrated use" means
22 for a given outfitter, for a given river, the average
23 number of passengers carried on the 10 Saturdays or
24 Sundays with greatest use during the year.

25 6. Rapidly flowing river. "Rapidly flowing
26 river" means a river or stretch of a river with
27 rapids classified as class IV or V or a river or
28 stretch of a river designated by the department by
29 rule on the basis of public safety.

30 7. Weekday demonstrated use. "Weekday demon-
31 strated use" means the demonstrated use based on the
32 10 weekdays of the year with greatest use.

33 8. Whitewater craft. "Whitewater craft" means
34 any raft, dory, bateau or similar watercraft which is
35 used to transport passengers along rapidly flowing
36 ivers, but does not include canoes or kayaks.

1 9. Whitewater guide. "Whitewater guide" means a
2 person who has met the criteria established by the
3 department to qualify as a whitewater guide and who
4 holds a current guide's license in the whitewater
5 classification.

6 10. Whitewater trip. "Whitewater trip" means
7 any commercial effort to transport passengers by
8 means of a whitewater craft on rapidly flowing
9 ivers.

10 §7364. River management objectives

11 The following objectives are established for man-
12 agement of rapidly flowing rivers for the benefit of
13 the people of the State:

14 1. Safety and health requirements. To assure
15 that safety and health requirements are met by all
16 river users;

17 2. Minimize environmental impact. To minimize
18 environmental impact on the rivers and the river cor-
19 ridors, including access roads;

20 3. Recreational use. To allow a reasonable
21 level of recreational use;

22 4. Quality wilderness experience. To maintain a
23 quality wilderness experience on the rivers;

24 5. Multiple uses. To minimize conflicts between
25 different uses of the rivers in order to allow for
26 multiple use;

27 6. Diversity of whitewater experiences and ser-
28 vices. To encourage a diversity of whitewater trip
29 experiences and services;

30 7. River use and impact. To monitor river use
31 and its impact;

32 8. Communication. To encourage open communica-
33 tion with all river users, both groups and individu-
34 als, on river management matters; and

1 9. System of allocating river use. To provide a
2 system of allocating river use that is simple and
3 fair, and that meets the specific goals of section
4 7368.

5 §7365. Commercial whitewater outfitters' licenses

6 1. Requirement. A commercial whitewater
7 outfitter's license is required for all commercial
8 whitewater outfitters. Operation of a commercial
9 whitewater trip by an outfitter without a license is
10 prohibited.

11 2. Issuance; term. The commissioner may issue a
12 license to conduct commercial whitewater rafting,
13 bateau or dory trips on rapidly flowing rivers.
14 Licenses shall be issued for the calendar year.

15 3. Fee. The annual basic fee for a commercial
16 whitewater license shall be set by the department and
17 adjusted biennially by rule to reflect the actual
18 cost of administering the license program. The fee
19 for 1983-84 shall be no more than \$250. The fee for
20 transfer of a license shall be equal to the annual
21 basic fee for a license. These fees shall be cred-
22 ited directly to the department and used in accord-
23 dance with section 7074.

24 4. Exceptions. Nothing in this subchapter
25 applies to the operation of canoes or kayaks. This
26 subchapter does not apply to guides or camp trip
27 leaders licensed under subchapter VIII, or motorboat
28 operators licensed under chapter 715, subchapter I,
29 unless those persons are in the business of conduct-
30 ing commercial whitewater trips.

31 5. Nonrenewal, suspension or revocation.
32 Licenses are subject to nonrenewal, suspension or
33 revocation for good cause shown, such as unsafe prac-
34 tices, falsifications of reports, or serious or con-
35 tinued violation of this subchapter, subject to the
36 Maine Administrative Procedure Act, Title 5, chapter
37 375.

38 6. Sale of business. When a licensed whitewater
39 outfitter's business is sold, the license shall be
40 returned to the department. On application, the li-

1 license shall be reissued to the purchaser, provided
2 that the purchaser meets the licensing requirements
3 of the department and pays the license fee. Profit
4 on the return and reissuance of the license itself is
5 prohibited, but nothing in this subchapter may be
6 construed to prohibit profit on the sale of any of
7 the assets of a business. The license is not an
8 asset. The department may require an affidavit from
9 the purchaser to aid in enforcement of this provi-
10 sion.

11 7. Affiliated outfitters. Affiliated outfitters
12 may not be licensed.

13 8. Moratorium. Issuance of licenses for calen-
14 dar years 1983, 1984 and 1985 shall be restricted to
15 persons who held a valid 1982 license as of December
16 16, 1982, and had run a commercial trip prior to that
17 date.

18 §7366. Whitewater guide license

19 A whitewater guide license shall be required for
20 all whitewater guides. The whitewater guide license
21 shall be issued by the department only to those per-
22 sons who pass or have passed the whitewater guide
23 examination established by the department and who
24 have met the other requirements of the department
25 established by rule. Waivers of the examination are
26 not permitted. Guide license fees shall be credited
27 to the department and used in accordance with section
28 7074.

29 §7367. Safety

30 1. Whitewater trip restrictions. The following
31 safety restrictions apply during whitewater trips.

32 A. There shall be at least one licensed
33 whitewater guide in each watercraft.

34 B. Outfitters shall ensure that each person
35 participating on a whitewater trip wears a se-
36 curely fastened type I or type V personal
37 flotation device.

1 C. Each whitewater craft shall be equipped with
2 at least one throw line, not less than 50 feet
3 long.

4 D. Each whitewater craft shall be equipped with
5 an adequate first aid kit.

6 2. Whitewater Safety Committee. The Whitewater
7 Safety Committee is established to review the
8 monthly safety reports and other relevant information
9 annually and recommend safety standards to the
10 department. The committee shall assist the depart-
11 ment with development of the public information pro-
12 gram on whitewater trip safety.

13 A. The Whitewater Safety Committee shall be com-
14 posed of 8 members: Two members of the
15 whitewater guides board designated by the board;
16 2 commercial whitewater outfitters and 2
17 whitewater guides designated by the Governor; and
18 2 members from the general public, one designated
19 by the President of the Senate and one designated
20 by the Speaker of the House of Representatives.

21 B. Terms of members of the Whitewater Safety
22 Committee shall be for 2 years, expiring on
23 December 31st, except that initially the members
24 shall draw lots for a one-year or a 2-year term.
25 Terms shall be staggered so that the term of one
26 member in each category expires each year. Mem-
27 bers shall serve until their successors are nomi-
28 nated and qualified. Members shall serve without
29 compensation, except for per diem and reimburse-
30 ment for travel and actual expenses for up to 4
31 meetings per year.

32 3. Safety reports. Each commercial outfitter
33 shall submit a complete monthly safety report on
34 forms provided by the commissioner containing the
35 following:

36 A. A written report of any accident occurring in
37 connection with a whitewater trip conducted by
38 that outfitter and which results in the death of
39 a person, a person's losing consciousness or
40 receiving medical treatment, a person's becoming
41 disabled for more than 24 hours, a person's dis-

1 appearance from a whitewater craft under circum-
2 stance indicating death or injury or damage to
3 the whitewater craft or other property of more
4 than \$100. A summary of the watercraft accident
5 reports required by section 7801, subsection 19
6 may be used to satisfy this requirement; and

7 B. A written report of such other dangerous ac-
8 cidents and occurrences as the department may, by
9 rule, require, for example, when a whitewater
10 craft overturns or is pinned against the rocks.

11 4. Safety information. The department shall
12 implement a public information program on whitewater
13 trip safety. In developing the program, the depart-
14 ment shall consult with the Whitewater Safety Commit-
15 tee.

16 5. Order of launch. The department shall
17 promulgate rules on the order of launch which shall
18 allow for voluntary agreement by a majority of the
19 licensed outfitters, to be registered with the
20 department by January 1st each year. Any outfitter
21 that is aggrieved may appeal to the department, which
22 may modify the launch schedule for good cause. If
23 the outfitters fail to reach agreement, the depart-
24 ment shall establish the launch schedule by February
25 1st.

26 §7368. Recreational use limits

27 1. Findings and goals. Increased use has
28 resulted in increased environmental impact on the
29 Kennebec and West Branch Penobscot Rivers, as well as
30 on their valleys, nearby roads and the social struc-
31 ture of the areas. Recreational use limits are
32 necessary to allow for rafting use and other compet-
33 ing uses, such as fishing, camping and canoeing,
34 while minimizing detrimental impacts and monitoring
35 the opportunity for a quality wilderness experience
36 for rafters and for other users.

37 2. Kennebec River. Recreational use limits for
38 the Kennebec River are set as follows.

39 A. On the Kennebec River, only enough rafts for
40 600 to 800 passengers can be physically launched

1 in an hour. Water releases average 6 to 9 hours
2 on weekdays, one or 2 hours on Saturdays and
3 never on Sundays. Saturday use has increased to
4 a level which places a burden on the physical
5 launching facilities.

6 B. There is little competing use of the stretch
7 of the Kennebec River where rafting occurs,
8 between Harris Station and West Forks, because of
9 its inaccessibility.

10 C. The recreational use limit on the Kennebec
11 River between Harris Station and West Forks is
12 specified as follows. Noncommercial recreational
13 use is not limited. The commercial limits are:

14 (1) Saturdays: 640 commercial passengers;

15 (2) Sundays: No water released; no limit
16 set; and

17 (3) Weekdays: 800 commercial passengers.

18 3. West Branch Penobscot River. Recreational
19 use limits for the West Branch Penobscot River are
20 set as follows.

21 A. On the West Branch Penobscot River, water
22 releases are typically continuous from McKay Sta-
23 tion every day, except a few days a year when the
24 mill at Millinocket is shut down; however, the
25 rapids are dangerous and rafts can get pinned in
26 the cribwork at low water. It is estimated that
27 an average interval of 5 minutes between rafts at
28 the cribwork is needed for safety. Rafts ordi-
29 narily carry 8 to 10 passengers.

30 B. It is found that use of the river is shared,
31 especially with salmon fishing. Rafts shall only
32 be allowed on the West Branch Penobscot River
33 between McKay Station and Pockwockamus Falls
34 between 8 a.m. and 5 p.m., in order to allow free
35 time for other uses.

36 C. The recreational use limit of the West Branch
37 Penobscot River between McKay Station and
38 Pockwockamus Falls is specified as follows. Non-

1 commercial recreational use is not limited. The
2 commercial limit is 560 commercial passengers per
3 day, any day.

4 §7369. Allocation system

5 1. Goals. The goals of the allocation system
6 are:

7 A. To encourage a wide diversity of whitewater
8 trip experiences and services;

9 B. To provide a fair distribution of river use
10 among existing and future users;

11 C. To maximize competition within the recrea-
12 tional use limits;

13 D. To allow for reasonable business stability
14 for outfitters;

15 E. To encourage efficient use of the allocation
16 system;

17 F. To be flexible enough to adapt to changes in
18 river use or river conditions;

19 G. To prevent evasion of the system; and

20 H. To provide opportunity for public access.

21 2. Allocation required. Except as provided in
22 subsection 8, operation of a commercial whitewater
23 trip on the Kennebec River between Harris Station and
24 West Forks or on the West Branch Penobscot River
25 between McKay Station and Pockwockamus Falls without
26 an allocation is prohibited. No allocation is re-
27 quired for other rivers nor for other stretches of
28 those rivers.

29 3. Allocations, maximum, minimum. The depart-
30 ment shall allocate the right to conduct whitewater
31 trips to licensed outfitters. Allocations are
32 awarded in units of 10 passengers per day on a given
33 river. The maximum allocation for an outfitter is
34 80 passengers per day. The minimum allocation is 15
35 passengers per day.

1 4. Initial allocation by demonstrated use. The
2 initial allocation to each outfitter for 1983 shall
3 be based on actual demonstrated use in 1982, rounded
4 to the nearest 10, with 5 or more rounded up to 10.
5 Any outfitter with demonstrated use of 14 or less
6 passengers shall be awarded the minimum allocation of
7 15. On application, any outfitter will be granted
8 an increase of 10 or 20, in accordance with subsection
9 5, provided that its total does not exceed the
10 80 passenger per day maximum.

11 5. Term of allocation, future allocations,
12 changes in allocations. All allocations shall be
13 awarded for a one-year period. The allocation for
14 any future year shall be based on the allocation for
15 the previous year, but, if an outfitter has not used
16 part of his allocation for 2 consecutive years, that
17 allocation shall be reduced by 10 if the unused portion
18 of the allocation is 10 to 19 passengers per
19 day, or 20 if the unused portion is greater, except
20 as provided in subsection 8. In addition, any
21 outfitter may apply for an increase of 10 or 20, provided
22 that its total does not exceed the 80 passengers
23 per day maximum. If the demand for additional
24 allocations exceeds the available supply, they shall
25 be auctioned by the State to the highest licensed
26 bidder, with the bid fee going to the General Fund.
27 The department shall establish rules for the bidding
28 process.

29 6. Allocation fee. The outfitter shall pay the
30 department an allocation fee per unit of 10 passen-
31 gers per day on one river. This may be in quarterly
32 payments. In addition, there shall be a surcharge
33 per extra passenger for any passengers carried above
34 the allocation which has been paid for. These fees
35 shall be deposited in the Whitewater Rafting Fund.
36 The schedule of fees shall be as follows:

- 37 A. Allocation fee per unit.....\$500
38 B. Surcharge per extra passenger.....\$1

39 The maximum allocation fee is \$8,000 for the right to
40 carry 80 passengers per day on both rivers.

1 7. Reporting. Each outfitter shall report
2 monthly to the department the number of passengers
3 carried each day on each river. Inaccurate reporting
4 or failure to report may subject the outfitters to
5 the penalties prescribed in section 7370-A.

6 8. Exceptions. The following exceptions shall
7 apply to allocations.

8 A. Weekday use does not require an allocation;
9 however, if the recreational use limit of a river
10 is reached on weekdays, the department shall pro-
11 vide by rule for allocations based on weekday
12 demonstrated use.

13 B. Under low-water conditions, an emergency swap
14 of an allocation may be made from one river to
15 the other, provided that water is available, if
16 the receiving river is the Kennebec River; or
17 that the recreational use limit is not exceeded,
18 if the receiving river is the Penobscot. The
19 department shall promulgate rules for emergency
20 swap.

21 C. An outfitter may occasionally exceed the
22 allocation by 2 passengers on a trip of up to 40
23 passengers, or 4 passengers on a trip of up to 80
24 passengers, to accommodate unexpected friends of
25 passengers. Abuse of this privilege will result
26 in its loss.

27 D. In the event of severe drought or other
28 adverse condition affecting the entire industry,
29 the department shall waive the loss of alloca-
30 tions specified in subsection 5.

31 §7370. Whitewater Rafting Fund

32 1. Established. There is established a
33 Whitewater Rafting Fund to be used by the depart-
34 ment, the bureau and the affected counties to fund
35 activities related to river recreations with primary
36 emphasis on those activities which relate to
37 whitewater trips.

38 2. Funding. All fees and surcharges collected
39 shall be credited to the Whitewater Rafting Fund,

1 except for outfitters' license fees under section
2 7365 and guide license fees under section 7366.

3 3. Budget. The expenditures from the Whitewater
4 Rafting Fund shall be subject to legislative approval
5 in the same manner as the General Fund budgets of the
6 department and the bureau are approved. The depart-
7 ment and the bureau shall report annually, before
8 February 1st, to the joint standing committee of the
9 Legislature having jurisdiction over inland fisheries
10 and wildlife on its planned expenditures for the next
11 fiscal year and on its use of funds in the current
12 year and the next previous year.

13 4. Use of the fund. The fund shall be used as
14 follows.

15 A. The moneys deposited in the fund shall be
16 credited as follows.

17 (1) 55% of each fee or surcharge shall be
18 credited to the department.

19 (2) 35% of each fee or surcharge shall be
20 credited to the bureau.

21 (3) 10% of each fee or surcharge shall be
22 credited to the county in which the river is
23 located for distribution among the affected
24 municipalities and for use in the affected
25 unorganized townships.

26 B. All moneys from the fund shall be expended
27 solely for purposes related to river recreation,
28 with primary emphasis on those activities which
29 relate to whitewater trips, including, but not
30 limited to, administration, regulation, safety
31 education, enforcement, mitigation of environ-
32 mental and safety problems and mitigation of any
33 adverse effect on competing use of the river.
34 The fund shall not be used to pay the cost of ad-
35 ministering the whitewater outfitters' license
36 program or the guide license program.

37 §7370-A. Penalties

1 The penalty for failure to comply with this sub-
 2 chapter or for providing false information under this
 3 subchapter may include nonrenewal, revocation or sus-
 4 pension of the license, subject to the procedures of
 5 the Maine Administrative Procedure Act, Title 5,
 6 chapter 375.

7 Sec. 5. Safety review. The Department of Inland
 8 Fisheries and Wildlife shall review the safety
 9 aspects of whitewater rafting, with the advice of the
 10 Whitewater Safety Committee and report its findings
 11 and recommendations to the Second Regular Session of
 12 the 111th Legislature.

13 The review shall consider, but not be limited to,
 14 the following items: Practical testing of whitewater
 15 guides; requirements for personal flotation devices
 16 for both commercial and noncommercial trips; the need
 17 for protective helmets; possible whitewater trip re-
 18 strictions based on extremely high-water or low-water
 19 flow; special operating procedures for the cribwork
 20 on the West Branch Penobscot River; the adequacy of
 21 safety reporting; the need for safety rails at steep
 22 put-in points; and whitewater craft length restric-
 23 tions.

24 Sec. 6. Recreational use limit and allocation
 25 review. The Department of Inland Fisheries and
 26 Wildlife and the Bureau of Parks and Recreation of
 27 the Department of Conservation shall jointly review
 28 the recreational use limit and allocation system
 29 established by this Act and report to the Legislature
 30 by October 1, 1985, with recommendations as appropri-
 31 ate.

32 Sec. 7. Budget allocation. The following funds
 33 are allocated from the Whitewater Rafting Fund for
 34 the fiscal years ending June 30, 1984, and June 30,
 35 1985. In the event less or more funds are available,
 36 they shall be allocated proportionately.

	<u>1983-84</u>	<u>1984-85</u>
37		
38		
39		
	\$27,500	\$27,500
40		

INLAND FISHERIES AND WILDLIFE,
DEPARTMENT OF
CONSERVATION, DEPARTMENT OF

1 Recreational use limits:

2 Kennebec River

3 Saturday 640

4 Weekdays 800

5 Penobscot River, any day 560

6 Allocation system:

7 80 passenger limit per company per day. Anyone
8 carrying passengers before December 16, 1982,
9 will receive an allotment of at least 15 passen-
10 gers. No other companies will be permitted com-
11 mercial licenses during a 2-year moratorium
12 period.

13 A more detailed analysis of the commission's
14 report and of the 2 legislative proposals is avail-
15 able in the complete commission report.

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