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ANNUAL REPORT OF THE
WHITEWATER ADVISORY COMMITTEE

JANUARY 1988

MEMBERS:

Clinton B. Townsend, Chairman
Wilmot Robinson, Vice-Chairman
Sen. Edgar E. Erwin
Sen. Ronald Usher
Rep. Paul F. Jacques
Rep. Patrick McGowan

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Annual Report of the Whitewater Advisory Committee

I Background

In 1983 the 111th Legislature enacted An Act to Regulate Commercial Whitewater Rafting. The purpose of this legislation was to enable the State to regulate whitewater rafting to protect the health, welfare and safety of its citizens and to protect its natural resources. To do so, the legislation sought to ensure the competence of commercial rafters, to adopt use limits and to allocate these limits among the various interested parties. This legislation may be found in 12 MRSA 7361 - 7370.

The whitewater legislation set up a Whitewater Advisory Committee to advise the Department of Inland Fisheries & Wildlife and to report to the Legislature on the allocation process and other aspects of the operation of the industry which relate to the legislation. A committee report is required to be submitted by Jan. 31 of each year. The four legislative members of the Committee are appointed during their legislative terms. The two non-legislative members serve until successors are nominated. The legislation originally called for the Committee to terminate June 30, 1986. This date was extended by the 112th Legislature until June 30, 1990, P.L. c. 571.

Members are entitled to \$25 per diem compensation plus expenses. The Committee met once in 1987. Four of the six members were in attendance.

II Overview of Current Industry Situation

At the annual review hearing of the Committee the following testimony was offered:

Col. John Marsh, Chief Warden, Department of Inland Fisheries & Wildlife:

"The whitewater legislation has brought needed order to the industry."

Herbert Hartman, Director, Bureau of Parks & Recreation:

"The industry is maturing and presents few problems to my department."

Normand Rodrigue, Director of Real Estate, Central Maine Power Co.:

"The industry still appears to be growing. I am pleased with the good working relationship that my company has with the industry."

10he Committee had no reason to disagree with these optimistic assessments of the current state of the industry and the legislation governing it.

III 1987 Rafting Activity

Required outfitter reports showed a 4% increase on the Kennebec River in 1987, the smallest increase both in numbers and percentage since records have been kept. The Penobscot River experienced a 6% decrease, the second year of a decreased number of passengers for that river. As it did last year, the Dead River accounted for 6% of all rafters, ninety percent rafting on Mondays & 95% in May, both results reflecting the water release practices on that river.

Northern Outdoors with 19% of rafting passengers and Unicorn 15% continued as the 2 largest outfitters, with little change from last year. Eastern River continued the decline shown a year ago and was replaced as the number three company by Downeast Rafting. New England Whitewater continued its strong growth and moved into 4th place.

IV Safety

The Whitewater legislation created a Whitewater Safety Committee. One of its duties is to submit an annual report to the Advisory Committee.

The 1987 report of the Committee indicated a injury rate on the Kennebec of 8 per 10,000 rafters and 11 per 10,000 on the Penobscot. The former rate was the highest yet experienced, while the latter was the lowest. The Safety Committee said they could discern no meaningful pattern of excessive injuries by any one outfitter. The Safety Committee concluded that industry accident figures do not support the public perception that the rafting is a hazardous endeavor.

V Insurance

At the request of Col. Marsh, Michael Adams, President of Excess Insurance Underwriters, made a report to the Committee on liability insurance. Mr. Adams stated that Western World Insurance was the only company writing whitewater insurance in Maine. He said that there is no indication that they would discontinue this if circumstances remained essentially as they are. Maine has an excellent safety record and a good reputation for safety. However, when there are such a small group of companies to be insured, a major disaster by one company could result in Western World, or any company, rethinking the insurance situation in Maine. Mr. Adams suggested that Maine might consider working with the other New England states to improve their safety records, as insurers base their rates on the total region, not just one state. He also pointed to the practice in Western states of combining for insurance purposes all companies that are involved in any type of outdoor activity.

In a question session, several outfitters indicated that Western World had turned down their most recent request for insurance and that Western World had cancelled all Maine outfitter insurance several years ago. The previous state insurer, Guarantee Insurance, had done the same thing several years prior to that. Both these cancellations left the outfitters with an inability to obtain insurance in Maine. While feeling that the cancellation by Western World was due to state regulations, Mr. Adams did acknowledge that a total pullout could happen again in the event of a major disaster. He recommended that the industry police itself carefully and publicize its good safety record.

VI Whitewater Rafting Fund

The Whitewater Rafting Fund is supported by outfitter allocation fees and is to support river recreation. The following is a report of this fund:

Balance 7-1-86	\$43,173
Revenues Fiscal 1987	63,748
Distributed to Agencies	93,257
Warden Service	60,617
Parks & Recreation	23,314
Municipalities	9,326
Balance 6-30-87	<u>\$13,664</u>

12 MRSA 7370 sub-§3 requires by February 1 each year a report by the Inland Fisheries and Wildlife and of Parks and Recreation to the Joint Standing Committee on Fisheries & Wildlife of their planned expenditures for the next fiscal year and their committed and proposed expenditures for the current year.

In fiscal 1987, Parks & Recreation spent \$13,586, leaving a surplus of \$24,393 from their 1987 income from the Fund plus their \$14,664 surplus for the 1986 year.

The Bureau entered fiscal 1988 (July 87-June 88) with a surplus of \$24,392. The Bureau's plan for fiscal 1988 calls for expenditures of \$16,989. With anticipated fiscal 1988 revenues of \$14,500 there will be a year end surplus of \$21,903.

As of January 26, 1988, the status report for fiscal 1987 & 1988 and plans for 1989 were not available from the Department of Inland Fisheries & Wildlife.

VII Allocation

According to statute, the major focus of the Committee's yearly report is to be the allocation process.

A. Background

Use limits were set for the Kennebec and Penobscot rivers by the original legislation based on a number of factors; including days and durations of release and launch characteristics on the Kennebec and maneuvering times at difficult rapids and demands by other users on the Penobscot. These limits are currently as follows:

Use Limits

Kennebec River:

Sunday (no scheduled release) - no limits set
Weekdays (avg. 6-8 hr. release) - 1000
passengers/day
Saturdays (avg. 1 hr. release) - 800
passengers/day
Memorial Day, July 4th, Labor Day - 800
passengers/day

Penobscot River:

Any day - 560 passengers/ day between 8:30
A.M. to 5:00 P.M.

Commercial use on all days is monitored by reviewing monthly reports filed by outfitters. Use on days of expected heavy use is regulated by the allocation system. These days include Saturdays between mid-May and mid-September on the Penobscot. Outfitters are restricted to carrying a specified number of passengers on these days, the total of which does not exceed the use limit.

The allocation system is used to assure that the river use limits are not exceeded in heavy rafting use days. As set by department rule, passenger slots (allocations) are distributed among outfitters according to the experience of the outfitter (45 pts.), outfitter safety records (25 pts.), the level of financial investment in whitewater outfitting (15 pts.), the level and quality of services provided to customers (15 pts.), performance in meeting past allocations (25 pts.), and other factors (5 pts.).

There is an 80 passenger per day limit for any outfitter on any rapidly flowing river. (This number was adopted as a maximum largely because of traditional passenger loads on larger trips by established outfitters prior to regulation.) Thus, the maximum allocation an outfitter can receive is 80.

B. Two Companies with allocations on all 3 allocation days sold their allocations during 1987. One sold all its allocation and one sold just its Kennebec allocations. The company selling just its Kennebec allocations did so to a company with no previous allocations previously. As a result of this activity plus the failure of one company to have its allocation renewed as described in the next paragraph, the following are the number of companies that currently have allocations:

Kennebec Saturday	12
Penobscot Saturday	9
Penobscot Sunday	8

C. Allocation for 1988-1990

The whitewater allocations are to be awarded for a period not to exceed 3 years, as determined by rule. Currently, the allocation period is 3 years and the latest 3 year period concluded with the 1987 season.

An analysis of the new allocations for the period 1988-1990 as determined by the Department of Inland Fisheries and Wildlife on December 16, 1987 is shown below.

	<u>Kennebec Saturday</u>	<u>Penobscot Saturday</u>	<u>Penobscot Sunday</u>
Currently at Maximum	8	3	4
Requesting Maximum	8	3	4
Receiving Request	8	3	3
Receiving less than Request	0	0	1
Currently Below Maximum	5	6	6
Requesting Status Quo	1	0	1
Receiving Status Quo Request	1	NA	0
Requesting Additional	4	6	5
Receiving less than Current	0	3	1
Not Receiving any Additional	3	0	1
Receiving Entire Additional	1	3	3
Currently Without Allocations	3	1	1
Receiving Allocations	0	0	0

D. Civil Action

On December 21, 1987 North Country Rivers petitioned in Superior Court for a review of the allocations awarded by the Department of Fisheries & Wildlife. An outfitter suit of this type on the new allocation was not unexpected by the Department of Inland Fisheries

and Wildlife. As is common in petitions of this type the grounds were quite far reaching. The more specific grounds for the petition were:

1. That the allocations violated the goals of the allocation system.
2. That the Department was exceeding its statutory authority.
3. That the allocation factors improperly favored larger outfitters.

North Country's allocation situation can be summarized as follows:

	<u>Kennebec Saturday</u>	<u>Penobscot Saturday</u>	<u>Penobscot Sunday</u>
Current	0*	32	16
Requested	40	40	40
Granted	0	16	16

* North Country's petition lists this figure as 20. However, this allocation was sold by them during the 1987 season.

The Committee will follow closely the progress of this petition.

VIII Outfitter and Public Complaints to the Department of Inland Fisheries & Wildlife

- A. Rafting without a license. No complaints were received from the public. The outfitters feel that some unlicensed rafting is still occurring. Two people were prosecuted for this offense in 1986. These private rafting trips are still being very closely checked by the Department.
- B. Environmental impact. No more than in the past. Outfitters do a good job of cleaning up the areas. No public complaints.
- C. Conflict with fishermen. Kennebec River - no conflict. Penobscot River - received 1 written complaint from a fisherman that rafters were very inconsiderate and had used foul language. Wardens working the Penobscot have had other complaints from fishermen of the same nature.

IX Followup on Issues From Previous Report

- A. The incidence of exceeding allocations was at an acceptable level during the last season.
- B. No data exists on transfers between rivers since no such transfers occurred during 1987.
- C. There was no particular problem with late takeouts on the Penobscot in 1987.
- D. The problem with failure to completely use an allocation continued to be a problem in 1987 as indicated by the table below. Individual company performances were used in awarding new allocations and it is hoped that this will aid in improving the situation. Of the 4 companies with below 90% allocation use on the Penobscot on Sunday, 2 lost their entire allocation and 1 had its allocation reduced.

	<u>% of Allocations Used-Total Season</u>			<u>% of Allocations Used-10 Best Days</u>		
	<u>1985</u>	<u>1986</u>	<u>1987*</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>
Kennebec Saturdays	73%	75%	NA	94%	95%	97%
Penobscot Saturdays	73	72	NA	94	95	96
Penobscot Sundays	59	54	NA	83	83	81

* Data for 1987 was not computed

X Acknowledgement

The Committee would like to compliment Col. John Marsh and Herb Hartman, Director, Bureau of Parks and Recreation for their leadership which has lead to the present very satisfactory functioning of the whitewater rafting industry.

The Committee would, in particular, like to recognize Col. Marsh who is to retire this February. Col. Marsh has been the major force behind the allocation program and it is to him that much of its current success can be attributed. Reflective of the Committee's esteem for Col. Marsh was the fact that the Committee and the public gave him a prolonged standing ovation at the close of the yearly review meeting.

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