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WHITEWATER RAFTING  
REPORT OF THE  
COMMERCIAL WHITEWATER RAFTING STUDY COMMISSION  
TO THE  
MAINE LEGISLATURE  
March, 1983

Commission Members:

Sen. Ronald E. Usher (Chair)  
Rep. Paul F. Jacques (Vice-Chair)  
Sen. Howard M. Trotzky\*  
Rep. Herbert E. Clark  
Herbert Hartman, Director, Bureau of Parks & Recreation, Department of Conservation  
John F. Marsh, Chief Warden, Dept. of Inland Fisheries & Wildlife  
Kenneth Bailey, public member  
Wayne Hockmeyer, public member  
Sandra D. Neily, public member  
William Stearns, public member

\*term expired December 1, 1982

Staff:

John R. Selser & Haven Whiteside  
OFFICE OF LEGISLATIVE ASSISTANTS  
State House, Augusta, ME 04333

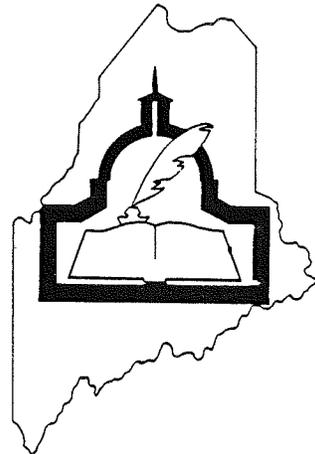




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REPORT OF THE COMMERCIAL WHITEWATER RAFTING STUDY COMMISSION  
TO THE MAINE LEGISLATURE  
MARCH 28, 1983

EXECUTIVE SUMMARY

The Maine Commercial Whitewater Rafting Study Commission was established by the 110th Legislature in response to the rapid growth of the rafting industry on the Kennebec and the West Branch Penobscot Rivers. There was concern for environmental degradation, safety, and conflicts with competing uses of the rivers.

The Commission has found that the industry has grown rapidly, from its beginning in 1976 to an estimated 20-25,000 passengers carried by 19 outfitters in 1982. Since the rivers are a natural resource of the State, the State has a responsibility to protect the public health, safety and welfare in their use.

The following questions were faced by the Commission. Consensus was reached on many, but not all of these, so there are two different reports, with additional views by certain members. They are summarized in the answers below, and the details are available in the full report and accompanying legislation.

1. What are the objectives and goals of regulation of commercial whitewater rafting?

The Commission agreed unanimously on certain river management objectives, which are in Section 7364 of the proposed legislation. Goals are set for the recreational use limits in Section 7368, and for the allocation system in Section 7369.

2. Is whitewater rafting safe?

The overall safety record of the industry is good, but rafting has its dangers, especially in the class 4 and 5 rapids of the Kennebec and Penobscot Gorges. Probably the greatest danger is falling from a boat and drowning. The cliff at the put-in on the West Branch is also dangerous.

Since May 1982, Maine has had safety regulations that are reputed to be as tough as any in the nation. But, the Commission recommends that these be improved by: requiring all guides to take the license test (no grandfather rights); requiring more complete accident reporting; and by establishing an ongoing Safety Review Committee. In addition, the Department of Inland Fisheries & Wildlife is to review certain specific regulatory

issues such as helmet requirements and operating procedures in heavy rapids. The additional views of S. Neily have other comments.

3. Are there environmental degradation problems?

Some problems have been identified, including erosion of river banks and a need for sanitary facilities at launch, takeout and lunch sites. But, at present use levels, rafting has not had a major adverse environmental impact.

The Commission finds that existing problems are being addressed by the outfitters, private landowners, and the Bureau of Parks and Recreation in the Department of Conservation, and that the recreational use limits recommended below would prevent significant environmental degradation.

4. Are there social degradation problems?

The major problem is crowding, which can adversely affect the river environment, destroy the wilderness experience quality of the raft trip, and create safety problems at the launch site, as well as interfere excessively with competing uses of the area.

The Commission recommends that recreational use limits be set to address these problems. Two different versions of these limits are proposed for consideration:

Report A proposes for the Kennebec, 640 passengers per day on Saturdays, and 800 on weekdays. The reasons are that on the Kennebec on Saturdays there is usually only 1 hour of water, and only 600-800 passengers can physically be launched in that time. Weekday flows average 6 to 9 hours, but about 5% of the time they last for only one hour. The weekday limit would avoid disappointed passengers on those days. Also, weekday use is well below the limit now, but if it grows near the limit, it could be revised upward if appropriate.

For the Penobscot it proposes 560 passengers per day any day. Water flows are continuous every day, but in order to avoid the safety problems of rafts running into one another in the rapids in the Gorge, there needs to be an average interval of 5 minutes between rafts. Assuming only 6 hours of launch and only 8 persons per raft (many carry 10), this number could be launched safely.

Report B proposes : for the Kennebec, Saturdays, 800 passengers per hour of water release. This is the maximum that can be physically launched in an hour. Although Saturday water releases are usually only one hour, this report allows increased rafting whenever more water is available. During the week there

is no limit because there is generally 6 -9 hours of water, and no crowding problem and no conflicting uses. Passengers could be rescheduled on the few weekdays with low water.

For the Penobscot, it proposes 320 passengers per day, any day. This is equal to the largest recorded use to date, and the Recreational Management Plan of the State for the conservation easement area along the Penobscot states "Significant increases in public use will not be encouraged."

5. Does rafting interfere with fishing and other competing uses?

In the last year or two, on the Penobscot, the rafters have worked closely with the fishermen, with some success, to avoid conflicts. But, just having a parade of rafts go by is bound to have some negative effect, and it is disrupting to many other users and camp owners. On the Kennebec there is very little competing use.

The Commission recommends restricting the hours of rafting on the Penobscot, to allow time for competing uses.

Report B recommends rafting hours 9 am to 5 pm;

Reports A recommends 8 am to 5 pm.

6. If the number of rafting passengers is limited by law, who gets to carry them?

This was one of the most troublesome issues for the Commission. When the state sets a recreational use limit by law, it also creates a valuable right-- the right to an allocation within that limit. It was unanimously agreed that right should not be salable for profit. Two methods of allocation are proposed for consideration:

Report A recommends that no outfitter be allowed more than 80 passengers per day on each river. The allocation is based on average demonstrated use in the previous year. An outfitter with average use of 14 or fewer passengers per day would get the minimum allocation of 15. Subject to the limits, an outfitter could be awarded an increase of 10 or 20 in any year. Unused allocations would be lost in future years.

Report B recommends that no outfitter be allowed more than 80 passengers per day on the Kennebec, or 80 passengers total per weekend on the Penobscot. The allocation is awarded by the Dept. of Inland Fisheries & Wildlife on the basis of bids. The criteria

for accepting a bid are equally weighted, and include: ability to meet the management objectives, experience, financial stability, and the dollar amount of the bid.

7. Should there be a moratorium on licenses for whitewater outfitters?

The number of outfitters has grown rapidly. In 1981 there were about 6 active, but at the end of 1982 there were 19. Any moratorium has both antitrust and business implications. The Commission divided on this issue.

Report B recommends no moratorium. It argues that a moratorium is not needed to protect the rivers, and it is not up to the state to protect the existing outfitters from business competition.

Report A recommends a 3-year moratorium on new licenses. They argue that existing outfitters have been the pioneers while whitewater rafting was being developed, and it is in the best interest of the state to protect them while they consolidate their business, in order to end up with a reasonable number of strong companies.

8. What about "sister companies"?

This name describes companies that are affiliated with another outfitter, through shared management or financing. In the last two years, 3 or 4 outfitters have set up affiliated but separately licensed companies. The question is whether these will be treated as separate entities, regardless of their affiliation. The Commission was divided on this issue.

The additional views of S. Neily place no special restrictions on affiliated companies. If they can meet the same conditions, they can be licensed and receive an allocation just like any other company.

Reports B and A prohibit licensing of affiliated companies because they are seen as merely a device to get around the 80 passenger limit.

9. What are the financial implications to the state of rafting?

The rafting business is very lucrative. In 1981, based on an average fee of \$53, the outfitters grossed nearly \$1 million, and the gross economic benefit to the state was \$2.3 million, according to a UMO study. Also, proper regulation and monitoring, with wardens or rangers on the river during the summer, will cost more money than the state has available for that purpose. State funding will also be required if the development of new

facilities recommended by this report, such as a new take out at Pochwockamus Falls and improvements to the launch site opposite McKay Station, are implemented.



## INTRODUCTION

1. The Maine Commercial Whitewater Rafting Study Commission has studied and evaluated commercial whitewater rafting on the Kennebec River and the West Branch of the Penobscot and presents the following findings and recommendations to the First Regular Session of the 111th Legislature. Appendices A and B present two versions of recommended legislation.

A substantial amount of factual background material is included in Appendices bound with the full report, but not with the summary.

Whitewater rafting is already regulated for safety purposes, and licenses are issued to both outfitters and guides by the Dept. of Inland Fisheries and Wildlife, for an annual fee of \$250. Their authority is in 12 MRSA Sec. 7361 et. seq., enacted in 1979.

There were 19 licensed outfitters, as of August 4, 1982. That number has been increasing with the prospect of a limit on licenses. Four of these outfitters are "sister companies" to the major existing companies, with shared management and financing; several others are not actively running the rivers.

The number of customers is increasing rapidly. In 1981 there were 14,000, with 8,000 on the Kennebec, and 6,000 on the West Branch of the Penobscot. In 1982, there were an estimated 20-25,000 customers. Yet, commercial rafting really began only in 1976.

As a result, this Commission was established by the 110th Legislature to study the social, safety, economic, environmental and aesthetic aspects of commercial whitewater rafting, and report to the 111th Legislature.

The Commission met on 9 occasions between July, 1982 and January, 1983. These meetings included 3 public hearings: one in Caratunk, one in Greenville, and one in Millinocket. In addition, rafting trips were taken on both the West Branch of the Penobscot and on the Kennebec, courtesy of the Whitewater Outfitter's Association of Maine, in order to study the problems first-hand.

Members of the Commission, in addition to four legislators, included the Director of the Bureau of Parks and Recreation for the Commissioner of the Department of Conservation, the Chief Warden of the Dept. of Inland Fisheries and Wildlife for the Commissioner of the Department of Inland Fisheries and Wildlife, a former Executive Director of the Sportsmen's Alliance of Maine, a leading member of the Penobscot Paddle and Chowder Society, and the two largest whitewater outfitters.

The Commission generally agreed on many issues, including goals, safety requirements, basic licensing requirements, and penalties. There was agreement that recreational use limits should be set in some circumstances to protect public health, safety and the environment. There was also agreement that if recreational use limits on a river are set by law, that law must also establish a scheme or provide guidelines for allocation of the rights to use that limited capacity. Finally, there was agreement to establish a Whitewater Rafting Fund, funded by substantial fees, and to be spent by public agencies for purposes related to whitewater trips.

But, there was disagreement on several issues, including the specifics of safety, recreational use limits, allocation and fees, and on the issue of licensing affiliated outfitters. As a result, two reports are presented

here, with additional views by certain members, with recommendations for legislation. The core and structure of the reports is identical. The differences are noted in the discussion.



## FINDINGS AND RECOMMENDATIONS

### A. GENERAL

The Commission finds that the recreational use of watercraft on rapidly flowing rivers in this State has become an increasingly popular sport. This sport may pose significant risks to the users of these rivers who are not skilled and knowledgeable in the navigation of that water. Many members of the public rely on commercial outfitters to provide safe trips on these rivers.

The Commission further finds that increased use of the state's water resources has increased the environmental, physical, and social burdens on that resource.

The Commission declares that it is in the public interest for the state, pursuant to its authority, to protect the health, safety, and welfare of its citizens, and to preserve and protect the public's natural water resources of rapidly flowing rivers.

The Commission recommends that the following general goals be established for a commercial whitewater rafting policy for the state:

#### General Goals

1. Minimize environmental impact on river and corridor, including access roads. Maximize use, while minimizing detrimental impacts.
2. Provide a quality wilderness experience, and some diversity of experience.
3. Assure that safety and health requirements are met by all users.
4. Minimize conflicts between different uses of the rivers in order to provide a multi-use experience, on both rivers, but especially the Penobscot. (Reassess this in 2-3 years).

5. Consistent with the goals and objectives of the Recreation Management Plan for the Penobscot, significant increases in public use will not be encouraged. (Some increase will be permitted by the recreational use limits selected by the Commission report A but the increase was judged by the proponents of report A to be so small as to be considered not "significant").

6. Provide adequate flexibility in the management system to adapt to changing conditions.

7. Monitor river use and its impact.

8. Encourage open communication with all river users, groups, and individuals on river management matters.

The commission recommends that the following specific goals be established for the allocation system for whitewater trip rights on any river with restrictive recreational use limits:

#### Allocation Goals

9. An allocation system that is simple and easy to understand.

10. Encourage efficient use of the allocation system. Don't waste slots.

11. Establish penalties for outfitters who cheat the system.

12. Allow for reasonable business stability for outfitters.

13. Allow for a diversity of experiences and services.

14. Provide a fair distribution of river use among existing and future users.

15. Maximize competition, within the recreational use limits.

16. Provide opportunity for public access.

#### B. SAFETY

The Commission finds that Maine has safety regulations that are

reputed to be as tough as any in the nation.

The Commission finds that the overall safety record of the industry is good.

The Commission finds that on crowded days on the Kennebec, there is competition among the outfitters for early launch times, in order to be assured of good rafting conditions, or in fact the chance to go at all.

The Commission did find some room for improvement, as illustrated by the following specific findings:

#### Safety Findings

1. In 1982, there were 29 reported whitewater rafting accidents, involving 33 injuries. In 8 of these the person was incapacitated over 24 hours. Presumably there were many other instances of a passenger falling out. If there was no injury they would not have been reported. In 1981, there was one death, due to a heart attack after a long swim.

2. Accident risk is about twice as great on the W. Branch Penobscot as on the Kennebec. (With only half as much traffic the Penobscot has an equal absolute number of accidents.)

3. About half the accidents occurred when a boat flipped or a passenger fell out.

4. Accident reporting is incomplete. If there is no personal injury, no report is made. Three outfitters accounted for all the accident reports except one. This suggests that there is some inconsistency in reporting which is voluntarily now.

5. In the past there have been 4 other recorded fatalities of special interest, one on a commercial trip. All occurred at high water. In one

case the victim had a type V life jacket, but it slipped off because she was wearing artificial breasts. In 3 cases the victim wore only a Type II (horsecollar) life jacket. As a result, Type II life jackets are not permitted on commercial trips. Some rafters want Type III (kayak type) jackets allowed for guides.

6. Helmets can be useful protection if a person does fall in the water or if they are hit by a paddle. They are not now required, but one outfitter uses them and others offer them.

7. Despite the overall good safety record of the industry there is reason to be concerned, especially as the number of passengers continues to increase dramatically. Whitewater activity has its dangers, especially in the Class 4 and 5 rapids of the Kennebec and Penobscot Gorges. These are generally accessible only to rafts and kayaks. Probably the greatest danger is falling from a boat, and drowning, perhaps as a result of becoming caught underwater in a recirculating current (a "hydraulic") or being pinned below a raft. Also, there is a dangerous situation at the put-in on the W. Branch, when a guide could slip and fall over the cliff, or a passenger could fall down the trail.

The Commission proposes that the following safety recommendations be adopted. The additional views of S Neily recommend a different approach to safety.

#### Safety Recommendations

1. Departmental Responsibility. It is important to have a good public information program on safety, and tough requirements on guides, equipment, and procedures. The Commission recognizes the progress made by the Dept. of Inland Fisheries & Wildlife in these areas, and recommends that the

Department review the situation and adopt or modify requirements as appropriate. (Dept.)

2. Guide testing, general. All guides, including any who have been previously exempted, must take the license test. (Statutory)

3. Guide testing, practical. A "hands-on" test should be added to the written guides test. It is understood that the Department is considering several ways of implementing this, including video tape, on-the-river, etc. (Dept.)

4. Life jackets. Review lifejacket requirements for commercial users and recommend to 2nd regular session of the Legislature. Consider the need for a lifejacket requirement for non-commercial users. (Dept.)

5. Helmets. Consider requiring that helmets be offered (or perhaps that they be issued) for all commercial users. (Dept.)

6. Safety Review Committee. Establish a Safety Review Committee to advise the Dept. of Inland Fisheries & Wildlife. (Statutory)

7. Public Information. Improve public information by preparing a safety leaflet, and by posting river stretches with basic safety information, including rating by difficulty. (Dept.)

8. Flow restrictions. Consider whether flow restrictions would be desirable, for example: Kennebec only between 2500 and 7000 cfs, or Penobscot Gorge only below 5000 cfs. (Dept.)

9. Operating procedures in Cribwork. Consider whether special operating procedures (such as bowguides, lookouts, or clear passage before start) would be desirable for the Cribwork. (Dept.)

10. Reporting, penalties. Require complete reports on use levels and accidents to the Dept. of Inland Fisheries & Wildlife by outfitters. The

penalty for inaccuracy or failure to file reports may include license suspension or revocation. (Statutory)

11. Cooperation. NOTE: The next three items will require working cooperatively with adjacent municipalities and private landowners: CMP on the Kennebec, and Gt. Northern on the Penobscot. Other Departments, such as Conservation may be involved. A letter should be sent by the Department of Inland Fisheries & Wildlife to each municipality or landowner to explore these points. (Dept.)

12. Privies. Consider installing privies at the put in and take out where they are not already available, and carrying portable privies in and out for use along the river on all commercial trips on both rivers.

13. Safety rail. Consider installing a safety rail and a hoist at the put in, and a safety rail on the trail on the Penobscot.

14. Landowner liability. Except in cases of negligence, consider ways of reducing landowner liability, such as providing an easement to the State.

15. Rental rafts. The issue of rental rafts does not require action at this time, but that should be monitored closely by the Department. There could be a safety problem if commercial rentals were developed which rented to unqualified lay persons. (Dept.)

16. Craft length. Another issue that relates only indirectly to the Kennebec and Penobscot is the possibility of allowing craft less than 13 feet long on other rivers, if flow is moderate (say, below 2000 cfs.) If allowed, this could reduce the commercial pressure on the two major rafting rivers. The Dept. of Inland Fisheries & Wildlife should examine this possibility. (Dept.)

17. Order of launch. The order of launch shall be established by

agreement among the licensed outfitters by January 1 each year. Any outfitter who is aggrieved may appeal to the Department of Inland Fisheries & Wildlife, which has the authority to modify the launch schedule for good cause. If the outfitters fail to reach agreement, the Department shall establish the launch schedule. (Dept.)

18. Review & report to Legislature. The Dept. of Inland Fisheries & Wildlife shall review these safety recommendations and report to the 2nd Regular Session of the 111th Legislature, on their implementation and recommend any necessary legislation. (Statutory)

### C. LICENSING

The Commission finds that present licensing requirements for whitewater outfitters are generally adequate but makes the following specific findings:

#### Licensing Findings.

1. The Commission finds that if the State restricts use of the rivers by establishing recreational use limits and allocations, there is a danger of speculative profit on licenses if the rights to these allocations could be sold for profit.

2. The Commission finds that several outfitters have formed affiliated companies, that is separately licensed companies that share management or financing.

3. The Commission finds that whitewater guides must take a rigorous written examination, and show significant practical experience, but that they are not tested on the river.

4. The Commission finds that certain licensed whitewater guides have been grandfathered, and have never taken the whitewater guides

examination.

Licensing Recommendations.

1. General. The Commission recommends that minor modifications to the licensing scheme be made as necessary to conform to the other recommendations here.

2. Penalties. The Commission recommends that specific penalties, including nonrenewal, suspension or revocation of the license be authorized by law for violation of licensing requirements.

3. Speculative profit. The Commission recommends that speculative profit on licenses issued by the state be prohibited.

4. Affiliated Outfitters. Report A and report B recommend that affiliated outfitters not be licensed. The additional views of S. Neily recommend that affiliated outfitters be treated the same as any others. Note that this only becomes an issue when licenses or allocations are restricted.

5. Moratorium. Report A recommends a 3-year moratorium on new licenses, but report B recommends no moratorium. This is related to allocations, discussed below.

6. Guides Tests. The Commission recommends that the Department of Inland Fisheries & Wildlife consider establishing a practical test for whitewater guides.

And, the Commission recommends that all whitewater guides be required to take the license test, with no exceptions.

D. FEES, WHITEWATER RAFTING FUND

Findings.

The Commission finds that whitewater rafting causes some real costs to

the state, both for regulation and in environmental impact.

Recommendations.

1. Basic Fees. The Commission recommends that reasonable fees be charged for licensing whitewater outfitters and guides, sufficient to cover the cost of the licensing process, and that the fees go to the Department of Inland Fisheries and Wildlife for that purpose.

2. Additional Fees. The Commission recommends that substantial additional fees or surcharges be charged the outfitters for the use of the limited river resource, and that those fees be placed in a dedicated Whitewater Rafting Fund.

3. Whitewater Rafting Fund. The Commission recommends that the Fund be used for administration, regulation, safety education, enforcement, and mitigation of environmental and safety problems related to whitewater rafting.

Reports A and B recommend that the fund be divided among the Department of Inland Fisheries and Wildlife (55%), and the Bureau of Parks and Recreation (35%), and the impacted localities (10%).

Reports A and B recommend allocation of \$50,000 per year for FY 84 and FY 85. However, there was some sentiment for substantially smaller numbers.

RECREATIONAL USE LIMITS: CARRYING CAPACITY

The term carrying capacity implies an independent limit which exists and has an inherent meaning in and of itself. In the context of recreational use it implies a specific number beyond which a recreational resource cannot be utilized. The Commission rejects the notion of an independent carrying capacity easily ascertainable from certain natural

characteristics of an area. A recreational use limitation, however, implies an action taken by someone for a defined purpose and in this instance consistent with the management objectives for a particular river. The determination of a recreational use limit constitutes a resource allocation decision based on several basic policy decisions. It examines the relationship between specific levels of recreational use and the environmental, physical, and social impact of those uses. It then involves a decision as to how much impact is acceptable and a determination of the appropriate level of use to maintain that acceptable impact. The Commission feels that the concept of a recreational use limit is more accurate to reflect the establishment of a limit on the number of commercial whitewater rafting passengers allowed on the river in a given period of time. The Commission proposes the following recreational use limits:

#### Findings.

The Commission finds that there is should be a limit to the recreational use of the rivers. Environmental considerations are important, and, on the Kennebec, water releases typically occur for only 1 or 2 hours on Saturdays, and not at all on Sundays. However, it is estimated that only enough rafts for 600-800 passengers can be physically launched in an hour. On the Penobscot, water releases are continuous, except when the mill is shut down in Millinocket, for a few days each summer. However, the rapids are dangerous, and rafts can get pinned in the "Cribwork" at low water, so it is estimated that an average interval of 5 minutes between rafts is needed for safety.

The Commission finds that the West Branch of the Penobscot has

other significant uses that compete with rafting, especially fishing in the Big Eddy area, a unique landlocked salmon fishery. Other uses include camping and canoeing. In addition, it is subject to a state-approved recreational management plan.

The Commission finds that non-commercial whitewater rafting use is not extensive.

Recommendations.

1. Non-commercial use. The Commission recommends that no limits be set on non-commercial whitewater rafting use at this time. The limits below apply only to commercial use.

2. Commercial Use Limits. The Commission recommends that recreational use limits be established for the Kennebec and the West Branch of the Penobscot, as follows. The limits are set in terms of commercial passengers per day, with one exception where there is an hourly limit, as noted.

	Report A	Report B
Kennebec River:		
Saturdays	640	800/hr release
Sundays	no water:	no limit set-----
Weekdays	800	no limit set
West Branch:		
Any day	560	320

3. Time Limits. Report A recommends that rafts only be allowed on the West Branch of the Penobscot between 8 am and 5 pm, in order to allow time for competing uses of the river, especially fishing. Report B recommends 9 am to 5 pm.

F. ALLOCATION SYSTEM

### Findings.

The Commission finds that the application of commercial recreational use limits by the State creates a need for an allocation system to divide that use.

The Commission finds that there were about 20 companies licensed as whitewater outfitters in the state during the 1982 rafting season.

### Recommendations.

Report A recommends that no licensee be allocated the right to carry more than 80 passengers per day on a given river. Report B limits this to 60 on the West Branch Penobscot during weekdays and a total of 80 for the entire weekend, and 80 per hour on Saturday on the Kennebec. These limits allow the allocation to be spread among a reasonable number of companies.

2. Criteria for allocation. Reports A recommends that existing licensees be given exclusive rights to allocations during the 3-year moratorium period, based on "actual demonstrated use". Report B recommends that allocations be awarded on the basis of bids, where the bid criteria include both money, performance and ability to meet river use objectives.

3. Allocation systems. The allocation systems are best described by excerpts from the proposed legislation, as follows:

Report A recommends allocation by demonstrated use:

" - The initial allocation to each outfitter for 1983 shall be based on actual demonstrated use in 1982, rounded to the nearest 10, with 5 or more rounded up to 10. Any outfitter with demonstrated use of 14 or less passengers shall be awarded the minimum allocation of 15. On application, any outfitter will be granted an increase of 10 or 20,...provided that his total does not exceed the 80 passenger per day maximum.

" - The allocation for any future year shall be based on the allocation of the previous year. But, if an outfitter has not used part of his allocation for two consecutive years, that allocation shall be reduced by 10 if the unused portion of the allocation is 10 to 19 passengers per day or 20 if the unused portion is greater.... In

addition, any outfitter may apply for an increase of 10 or 20, provided that its total does not exceed the 80 passenger per day maximum. If the demand for additional allocations exceeds the available supply, they shall be auctioned by the State to the highest licensed bidder.... The department shall establish rules for the bidding process."

Report B recommends allocation by bid:

- " The Department and the Bureau shall allocate the right to conduct whitewater trips to licensed outfitters pursuant to the bid procedures established in this sub-chapter. The commissioner of the department and the director of the bureau shall establish a Bid Committee to receive, review, and approve bids received. All bids must be received by the department by 5:00 P.M., November 1 of the year preceding the three-year bid period to be considered for approval. All bids shall be awarded by December 1.

"Allocation shall be awarded on the basis of four equally weighted bid criteria:

1. ability to contribute to the meeting of the management and allocation objectives;
2. Experience and expertise;
3. Financial capacity, financial stability of the company; and
4. Financial consideration, dollar amount of bid.

" All allocations shall be awarded for a three year period. All allocations shall be rebid at the end of that period."

4. Unused allocations. The commission, in all reports recommends a mechanism for loss of unused allocations in later seasons.

5. Payments to the State for the Allocation. Report A recommends an allocation fee of \$500 per 10 passengers on one river. Report B recommends a bid fee and a user fee of \$1 per head instead of an allocation fee. The additional views of S. Neily recommend a substantially smaller fee. Each of these fees would go to the Whitewater Rafting Fund.

Unlike the user fee, money bid for an allocation under the concept of Report B would go to the General Fund.

## G. REVIEW AND REPORT

### Findings.

The Commission finds that whitewater rafting is a rapidly changing industry, and that many other eastern states have not yet established economic regulation of it. Pennsylvania has established industry regulation and West Virginia just completed a three year study. In addition, the National Park Service and the National Forest Service regulate rafting on water flowing through Federal lands.

### Recommendations.

1. Report. The Commission recommends that the Department of Inland Fisheries & Wildlife and the Bureau of Parks & Recreation review the situation and report to the Legislature by October 1, 1985. This will allow time for additional legislative action before the 1986 season, if necessary.

## WHITEWATER OUTFITTER USE DATA

Based on the records of the Department of Inland Fisheries & Wildlife, at the end of 1982 there were 25 licensed outfitters. Of these, 11 were new licensees in 1982, 6 of them issued after the rafting season. And, in January, 1983, 2 more new outfitters were licensed. Of the 19 outfitters licensed during the 1982 rafting season, 2 reported no runs (Rapid Transit Maine Adventure Tours), and the Department was unable to contact 4 others: (of these, Great Adventures is known to have carried many passengers and Rolling Thunder may have carried a few. The status of the other 2: Backcountry Rafting and Destinations Inc. is unknown). Passengers carried in 1982 is shown below:

The Commission was unable to make its own judgment on use statistics except in a few cases. The following data in Tables 1 and 2 is based primarily on estimates from the industry.

TABLE 1. GROWTH OF WHITEWATER RAFTING

Source: estimates provided by the Whitewater Outfitters Association of Maine.

YEAR	LICENSED OUTFITTERS RUNNING THE RIVER	PASSENGER DAYS (est.)
1976	1	600
1977	3	2000
1978	4	4700
1979	6	7500
1980		8000(drought year)
1981	14	14000
1982(during season)	19	25000
1982(Dec.31)	25	.

TABLE 2. WHITEWATER RAFTING, 1982

Source: Reported by the Department of Inland Fisheries & Wildlife based on outfitters' reports except estimates (est.) provided by the Whitewater Outfitters Association of Maine.

COMPANY	CONTACT	TOTAL PASSENGERS	WEEKEND DAILY AVERAGE	
			KEN	PEN
Eastern River	Connolly	4,500(est.)	91	89
(A)Back Country River Tour	(Neily)		48	32+
Northern Whitewater	Hockmeyer	7,000(est.)	88	80
(A)Adventures Rafting	Hockmeyer		40	45+
Maine Whitewater	Ernst	3,500(est.)	77	45
(A)Maine Adventure Tours	Ernst		-	-
Downeast Rafting	Hoddinott	3,000(est.)	66	27
Unicorn	Schurman	3,500(est.)	65	48
(A)Frontier	(Sarope)		62*	-
Great Adventures	Abbott	2,000(est.)	50est.	50est.
Wilderness Rafting	Babb & Willard	1,000(est.)	35	13
Whitewater Adventures	?		35?	-
Wildwater Adventures	Sargent	600(est.)	16	17
Voyagers	Kokajko	100(est.)	14?	-
Rolling Thunder	Dunn & Longley	100(est.)	10est.	10est..
New England W.W. Ctr.	Bruce	100(est.)	8*	-
Rapid Transit	Sarli	100(est.)	6**	
Back Country Rafting	Hanson	?	?	
Destinations Inc.	Anderson	?	?	
<b>TOTAL</b>		<u>25,500(est.)</u>	<u>711xx</u>	<u>456xx</u>

Foot Notes: (A) Companies which are or may have been affiliated with the preceding company.

+ 1 run only

\* 2 runs only

\*\* 6 runs only

NOTE: xx These totals appear to be too high: The Bureau of Parks & Recreation monitored the West Branch Penobscot on Saturdays and Sundays from July 17 through September 4th. (15 days) The highest 8 days were: 317, 305, 225, 268\*, 302, 195, 290\*, which averages 274. (An 8-day, rather than a 10-day, average is taken because the first two weekends in July were not monitored)

The Department of Inland Fisheries & Wildlife monitored the Kennebec on 2 Saturdays: July 31 and August 7th, when 494 and 611 passengers were carried.

SIGNATURE SHEET

REPORT A            Kenneth Bailey  
                      Wayne Hockmeyer  
                      Rep. Paul F. Jacques  
                      William Stearns  
                      Howard Trotzky  
                      Sen. Ronald E. Usher

REPORT B            Rep. Herbert E. Clark  
                      Herbert Hartman  
                      John T. Marsh

Sandra D. Neily signed neither report (see additional views).

ADDITIONAL VIEWS OF WILLIAM STEARNS

I support report A, except that the recreational use limit on the West Branch Penobscot, §7368, sub-§3, para. C. should be only 450 commercial passengers per day, any day, in order to avoid encouraging a significant increase in rafting, in the spirit of the conservation easement and recreation management plan. This will also avoid excessive interference with other uses of the river.

I am also sympathetic with lower allocation fee, phased in over a 3-year period.

## ADDITIONAL VIEWS OF S. NEILY

### COMMENTS ON DRAFT A

Draft A is the nearer to my views, but it has certain inadequacies as follows. And, there are certain amendments that I intend to propose to it when the legislation comes before committee.

1. Sec. 7363, sub-sec. 1: There was never agreement about the definition of "affiliated." There was much debate and no consensus, certainly nothing which would lead to this definition.

2. Sec. 7364, sub-sec. 4: There has never been a definition of "wilderness experience" or agreement on that as a common goal. This concept was part of Draft B's rationale for low use figures on the Penobscot and does not belong in draft A. (In fact, the Cheat River (WV) study and several western studies, found there was low raft-user interest in wilderness and high interest in excitement.) This study committee never defined who has the goals of maintaining a wilderness experience and for what groups. Also the term is absurd on the Penobscot, flanked by a heavily used logging road, leased cabin sites, and the noise of woodland operations.

3. Sec. 7368, sub-sec. 1: There was no documentation and no study which would suggest these findings to be accurate. In fact, in most of the hearings, local and forester testimony was totally inconclusive on these issues. This Commission compiled nothing to give validity to this statement. It is an opinion stated as a fact.

This does not mean that a statement of impact couldn't be framed, researched, and evaluated, but because much of state regulation which is being proposed would be based on this statement, this statement should be eliminated.

If anything, we could state that there are competing uses of the river and that there is increased use. Both of those points seem clear from hearing and expert testimony. But the major impact of these situations has yet to be studied and therefore no conclusions could be drawn. (In fact, the Cheat River Study, which expected to find great impact, found the nature of whitewater outfitting, with bases, mass transportation, and limited landing sites, to be much less than expected. I refer to the Cheat Study because it was a study, not a set of hastily compiled theories formed by a part-time Commission unable to devote the time and expertise necessary to the subject.)

4. Sec. 7365, sub-sec. 7: Eliminate the provision on affiliated outfitters. The allocation system will curb existing growth potential and this provision would cause extreme hardship for companies who have capitalized licenses and are depending on revenues to make bank payments on equipment notes. This type of provision would throw the state into a legal quagmire and force the state into litigation with company owners who clearly own more than 80% of the company stock. Trying to prove affiliation under those circumstances would be a legal mess.

5. Sec. 7367, sub-sec. 2: A safety committee of this type will not serve the public's interest. Rafting is an industry new to Maine but it is advanced and more experienced in other areas of the country. A committee of this composition would offer no real expertise and depth of experience. We would continue to have regulations suggested which are often inappropriate for safety. Depending on the outfitters and guides chosen, it would be possible under this proposal to have guides trained only in Maine and basically unfamiliar with industry developments and standards. The longest operating outfitter in Maine has only seven years of experience, operating mainly on Maine rivers. It is possible that the rest of the committee might also lack the depth of experience for decisions of this nature.

Also, the current competitive climate in Maine means using only two outfitters and two guides would open the committee to abuses where safety regulations and charges could be developed that were prompted by competitive motives. Already some outfitters have suggested regulations which would only standardize the industry because their customers were asking questions about another outfitter's procedures and equipment. The state will never have a frank accounting of the real safety issues if outfitters feel threatened by a committee with so few representatives of the industry.

I originally proposed that we have some safety review, but my suggestion was very different from this current draft. I suggested that the state develop a system similar to Outward Bound's peer review system that allowed for frank discussion of accidents and "near-misses" with consultation by experts in the field.

I propose that the Department of Inland Fisheries and Wildlife create a council of managers who would, in turn, report to a safety committee composed of wardens with river experience, boating professionals and racers of this state, members of recognized rescue teams, and industry representatives, including a recognized expert. (For example, Charles Walbridge, chairman of the ACA safety committee and designer of whitewater safety equipment.) The council would be composed of managers of head guides from large companies and owners of the smallest companies. This is to discourage owner conflict and to focus the discussion away from political advantage and onto safety.

The council would be chaired by a warden with river experience who had the trust of the outfitters. The council would have a clear agenda and would be convened several times a year, for river emergencies, or to review a fatality. The council would a) bring accident report forms for discussion and suggestions, b) share incidents of "near-misses," company solutions and encourage discussion of alternate procedures, c) review fatalities by completely reviewing the facts of an incident. None of this discussion is to place blame, but is designed to create a climate of sharing, free from repercussions, where real safety issues can be opened for review, praise, or refinement.

The current climate in Maine favors one company "reporting" on another and it is impossible to sort out positive suggestions from competitive motivations.

Out of the council would come proposals for regulations and safety education which then could be evaluated by a larger state board. The state can draft hundreds of regulations, but it will never remove the inherent risk of adventure activities. Safety is best served when there is a climate of trust between outfitters, frank discussion of incidents which never make it to state forms, and a sharing of the latest safety innovations and discoveries.

The proposed safety committee approach is punitive in approach in that its goal is regulation which is seen as a threat in the industry. That goal will never serve the public in real terms of safety although a multitude of regulations might create a "perceived" sense of safety.

6. Sec. 7369, sub-sec. 4: I would like to revise the initial allocation system by allowing for no increase of 10 or 20 when licenses are first granted, except for outfitters who have run fewer than 10 customers. Outfitters should have to demonstrate their need for an increased allotment the year following the initial allotment. Automatically adding 10 or 20 to this year's demonstrated capacity gives away too much which should be reserved in a pool for companies who can demonstrate their growth and need and apply for those allotments the following season.

7. Sec. 7369, sub-sec. 6: River fees should be \$250 per river, with a moderate and graduated use fee not to exceed 50 cents per person. Graduations should be as follows: first year, 15 cents; second year, 25 cents; third year, 35 cents. The use fee would be used to develop a true professional study of use capacity and management plans for these rivers. The commission has gathered absolutely no data on what might be an economic burden to the industry. (I have economic data available) It has arbitrarily set the fee at a level proposed by the most capitalized and powerful outfitter without any study as to the effects of these fees and regulations upon the health of an industry which is a positive asset to this state.

ADDITIONAL VIEWS OF H. HARTMAN  
COMMENTS ON THE REPORT

The following comments are my additional comments on the report:

1. EFFECT ON LOCAL COMMUNITIES

Since the commission hearings last summer, several rafting companies have become more involved in their own lodging, camping, and restaurant enterprises, including seeking application for liquor licenses. While this activity is undoubtedly good business for the rafting companies, it may affect the attitude of some established competing businesses in the area.

2. INCREASE IN USE LIMITS FROM CURRENT LEVELS

Most river studies have found it useful to discuss river use limits in terms of annual passenger days as well as peak days. The total annual passenger days for 1982 on both rivers has been estimated at 25,500 (p. 19). These figures have been supplied by the Whitewater Outfitters Association of Maine. Due to constraints of time and funding the commission was not able to conduct a statistically accurate study of its own. Based on periodic observation by rangers and wardens, these figures appear to be in excess of the actual river use during the year. The weekend daily average figures in the same chart (p. 19) appear to be closer to peak weekend daily average use rather than an annual weekend daily use.

The Bureau of Parks and Recreation estimates the peak average peak daily use on the Penobscot at something in the neighborhood of 300. This figure was obtained on a weekend day. The average daily use on weekdays is considerably lower. Report B would establish a recreational use limit of 320 passengers on any day for the Penobscot. If we conservatively estimate a 100 day rafting season, the annual passenger days permitted in report B for the Penobscot River is 32,000. This figure represents a generous increase from the current use on the Penobscot, which is estimated at 8,000 passenger days. By the same calculations, Report A's recreational use limit would provide for 56,000 annual passenger days on the Penobscot, a figure almost seven times the current estimated use and would distribute that limit only among rafting companies which carried passengers on the rivers by December 16, 1982. This is certainly a "significant" increase from the current use level and does not appear to be consistent with the goals of the Recreation Management Plan for the Penobscot or the river management goals established by the commission (page 5, item # 5.)

### 3. MORATORIUM

Report A recommends a three year moratorium on licenses (p. 12, item #5.) Unless this restriction is limited to licenses for the Kennebec and the West Branch Penobscot, this moratorium will effect all whitewater rafting on all Class IV and V rivers in Maine. Only those existing outfitters who receive a license to raft on the Kennebec and Penobscot will be able to raft on the other Maine rivers. If, after the three year moratorium, no new outfitters are able to obtain an allotment (see # 8 below), this will effectively eliminate any new outfitter in Maine and "lock-up" the rafting market to those who currently qualify. I see no reason to stop licensing on all rivers.

### 4. PERPETUAL EXCLUSIVE FRANCHISE

Report A proposes an allocation system which would only allow existing outfitters who qualify to obtain a license (pp. 15-16, item # 3.) No new licenses would be issued for a period of three years (p.12, item # 5.) After that three year period, new licenses may be issued; but no allotment will be available unless an existing outfitter fails to meet his allocated use or voluntarily relinquishes all or part of his allocation (ID 1454, §7369, sub-§ 5.) The value of a license without an allotment is questionable. New entry is clearly discouraged.

In effect, Report A provides a perpetual exclusive franchise to those currently licensed outfitters who meet the criteria established in that report. That criteria is not based on objectively measured skill, experience, or safety; but merely whether or not the outfitter has carried any passengers on the river commercially prior to December 16, 1982.

COMMERCIAL WHITEWATER OUTFITTERS

1982

Maine Whitewater, Inc.  
Jim Ernst (1977)  
Suite 454  
Bingham, ME 04920

Northern Whitewater Expeditions, Inc.  
Wayne Hockmeyer (1976)  
Box 100  
The Forks, ME 04985

Great Adventures, Inc. d/b/a/Kennebec Dories  
John Abbott (1978)  
PO Box 1  
West Forks, ME 04985

Wilderness Rafting Expeditions, Inc.  
(David Babb & John Willard)  
PO Box 41  
Rockwood, ME 04478

Adventure Rafting Expeditions, Inc. 8/11  
(Wayne Hockmeyer) (1981)  
Box 1191  
Greenville, ME 04441

Rapid Transit  
Paul F. Sarli  
110 Coyle St.  
Portland, ME 04103

Rolling Thunder, Inc.  
(Charles Dunn & Steve Longley)  
PO Box 291  
Kingfield, ME 04947

Destinations, Inc.  
(Steve Anderson)  
RFD #1, Box 197M  
Bar Harbor, ME 04609

Backcountry Rafting Company  
(James Hanson) 6/11/82  
Box 172  
Fryeburg, ME 04037

New England Whitewater Center, Inc.  
Robert "Joe" Bruce, Jr. 8/4/82  
RR 1, Box 71  
Fryeburg, ME 04037

Unicorn River Expeditions  
Jay Schurman  
Box 50  
West Forks, ME 04985

Eastern River Expeditions, Inc.  
John Connolly (1978)  
Box 1173  
Greenville, ME 04441

Downeast Rafting, Inc.  
Rick Hoddinott  
Gott Rd.  
Wayne, ME 04284

Wildwater Adventures  
Dave Sargent  
RFD #3, Box 7860  
Skowhegan, ME 04936

Voyager's Whitewater  
John Kokajko  
Box 25  
The Forks, ME 04985

Backcountry River Tours  
Sandra Neily 12/15/81  
Box 109  
Greenville, ME 04441

Maine Adventure Tours  
Jim Ernst 3/22/82  
Suite 454  
Bingham, ME 04920

Whitewater Adventures  
Tom Hey 3/26/82  
10 New Searles Rd.  
Nashua, NH 03062

Frontier River Expeditions, Inc.  
Wm. Sarape III 7/28/82  
Box 50  
West Forks, ME 04985

Licensed after the 1982 season

North Star Rafting 82 p.s.  
c/o John & Lunda Hammond  
RR #2  
Cornish, NH 03745

Class VI River Runners 82 p.s.  
PO Box 78  
Lansing, WV 25882

Kennebec Whitewater 82 p.s.  
PO Box 927  
Sanford, ME 04073

All Outdoor Adventures 82 p.s.  
John Palmer  
21 Center Circle  
Plaistow, NH 03865

Kennebec Wild River Riders 82 p.s.  
Frank C. Indermuehler  
RFD #1, Box 136  
Oxford, ME 04270

Coliseum River Tours 82 p.s.  
150 Longvue Drive  
West Mifflin, PA 15122

1983

Kennebec Wild River Riders  
Frank C. Indermuehler  
RFD #1, Box 136  
Oxford, ME 04270

North Star Rafting  
John Hammond  
RR #2  
Cornish, NH 03745

High Adventure Whitewater new in 83  
Rafting Expeditions  
Robert E. Crellin  
PO Box 531  
Saunderstown, RI 02874

Kennebec Whitewater new in 83  
Box 297  
Margaret Golrick  
Sanford, ME 04073



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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

APPENDIX A

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 rivers 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 rivers, 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 accor-  
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 cense 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 subsec-  
9 tion 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 por-  
18 tion 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, pro-  
22 vided that its total does not exceed the 80 passen-  
23 gers 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

The penalty for failure to comply with this subchapter or for providing false information under this subchapter may include nonrenewal, revocation or suspension of the license, subject to the procedures of the Maine Administrative Procedure Act, Title 5, chapter 375.

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

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

Sec. 6. Recreational use limit and allocation review. The Department of Inland Fisheries and Wildlife and the Bureau of Parks and Recreation of the Department of Conservation shall jointly review the recreational use limit and allocation system established by this Act and report to the Legislature by October 1, 1985, with recommendations as appropriate.

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

	<u>1983-84</u>	<u>1984-85</u>
<u>INLAND FISHERIES AND WILDLIFE,</u> <u>DEPARTMENT OF</u>	\$27,500	\$27,500
<u>CONSERVATION, DEPARTMENT OF</u>		

Bureau of Parks and Recreation	\$17,500	\$17,500
Somerset County	\$2,500	\$2,500
Piscataquis County	\$2,500	\$2,500
Total	\$50,000	\$50,000

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

#### STATEMENT OF FACT

This bill is the Majority Report of the rafting study.

The Maine Commercial Whitewater Rafting Study Commission was established by the 110th Legislature to study commercial whitewater rafting on the Penobscot and Kennebec Rivers. That commission found rapid growth in the commercial whitewater rafting industry and a need to propose recreational use limits for each river. As a result of that study, a report with 2 legislative proposals (the Majority Report and Minority Report) was submitted to the Legislature. One commission member approved a variation of the Majority Report and will prepare amendments to that Report at the public hearing. This bill reflects the Majority Report of the commission's findings and conclusions.

Both reports agreed on river management objectives, and the establishment of a Whitewater Rafting Fund to fund river recreation activities. There was general agreement on licensing requirements and safety requirements. The Majority Report and Minority Report differ most dramatically in the actual recreational use limits proposed and the method of allocating the limited use among prospective outfitters. The Majority Report provides:

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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FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 1453

S.P. 478

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 Revise Laws Concerning  
Commercial Whitewater Rafting.

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

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

SUBCHAPTER X-A

COMMERCIAL WHITEWATER RAFTING

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

§7361. Legislative findings

1 The Legislature finds that the recreational use  
2 of watercraft on rapidly flowing rivers in this State  
3 has become an increasingly popular sport. This sport  
4 may pose significant risks to the users of these  
5 rivers not skilled and knowledgeable in the naviga-  
6 tion of that water. Many members of the public  
7 rely on commercial outfitters to provide safe trips  
8 on these rivers.

9 The Legislature further finds that increased use  
10 of the state's water resources has increased the  
11 environmental, physical and social burdens on that  
12 resource.

13 The Legislature declares that it is in the public  
14 interest, pursuant to the state's authority to pro-  
15 tect the health, safety, and welfare of its citizens  
16 and to preserve and protect the public's natural  
17 water resources of rapidly flowing rivers.

18 Sec. 3. 12 MRSA §7362, as enacted by PL 1979, c.  
19 723, §14, is repealed.

20 Sec. 4. 12 MRSA §§7363 to 7370-A are enacted to  
21 read:

22 §7363. Definitions

23 As used in this subchapter, unless the context  
24 indicates otherwise, the following terms have the  
25 following meanings.

26 1. Affiliated outfitter. "Affiliated outfitter"  
27 means a commercial whitewater outfitter which shares  
28 with or provides to another outfitter management or  
29 financing.

30 2. Allocation. "Allocation" means the annually  
31 specified number of passengers per day which an  
32 outfitter may take on whitewater trips on a partic-  
33 ular river.

34 3. Bureau. "Bureau" means the Bureau of Parks  
35 and Recreation in the Department of Conservation.

36 4. Commercial whitewater outfitter; outfitter.  
37 "Commercial whitewater outfitter" or "outfitter"

1 means a person who conducts commercial whitewater  
2 rafting, dory or bateau trips on rapidly flowing  
3 rivers and who holds a current license, issued by  
4 the department, to engage in this activity.

5 5. Rapidly flowing river. "Rapidly flowing  
6 river" means a river or stretch of a river with  
7 rapids classified as class IV or V or a river or  
8 stretch of a river designated by the department by  
9 rule on the basis of public safety.

10 6. Whitewater craft. "Whitewater craft" means  
11 any raft, dory, bateau or similar watercraft which is  
12 used to transport passengers along rapidly flowing  
13 rivers, but does not include canoes or kayaks.

14 7. Whitewater guide. "Whitewater guide" means a  
15 person who has met the criteria established by the  
16 department to qualify as a whitewater guide and who  
17 holds a current guide's license in the whitewater  
18 classification.

19 8. Whitewater trip. "Whitewater trip" means any  
20 commercial effort to transport passengers by means of  
21 a whitewater craft on rapidly flowing rivers.

22 §7364. River management objectives

23 The following objectives are established for man-  
24 agement of rapidly flowing rivers for the benefit of  
25 the people of the State:

26 1. Safety and health requirements. To assure  
27 that safety and health requirements are met by all  
28 river users;

29 2. Minimize environmental impact. To minimize  
30 environmental impact on the rivers and the river cor-  
31 ridors, including access roads;

32 3. Recreational use. To allow a reasonable  
33 level of recreational use; but to discourage signifi-  
34 cant increases in public use on the West Branch of  
35 the Penobscot, consistent with the goals and objec-  
36 tives of the Recreation Management Plan for the  
37 Penobscot;

1       4. Quality wilderness experience. To maintain a  
2 quality wilderness experience on the rivers;

3       5. Multitple uses. To minimize conflicts between  
4 different uses of the rivers in order to allow for  
5 multiple use;

6       6. Diversity of whitewater experiences and ser-  
7 vices. To encourage a diversity of whitewater trip  
8 experiences and services;

9       7. River use and impact. To monitor river use  
10 and its impact;

11       8. Communication. To encourage open communica-  
12 tion with all river users, both groups and individu-  
13 als, on river management matters; and

14       9. System of allocating river use. To provide a  
15 system of allocating river use that is simple and  
16 fair, and that meets the specific goals of section  
17 7368.

18 §7365. Commercial whitewater outfitters' licenses

19       1. Requirement. . . A commercial whitewater  
20 outfitter's license is required for all commercial  
21 whitewater outfitters. Operation of a commercial  
22 whitewater trip by an outfitter without a license is  
23 prohibited.

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

28       3. Fee. The annual basic fee for a commercial  
29 whitewater license shall be set by the department and  
30 adjusted biennially by rule to reflect the actual  
31 cost of administering the license program. The fee  
32 for 1983-84 shall be no more than \$250. The fee for  
33 transfer of a license shall be equal to the annual  
34 basic fee for a license. These fees shall be cred-  
35 ited directly to the department and used in accor-  
36 dance with section 7074.

1       4. Exceptions. Nothing in this subchapter  
2 applies to the operation of canoes or kayaks. This  
3 subchapter does not apply to guides or camp trip  
4 leaders licensed under subchapter VIII, or motorboat  
5 operators licensed under chapter 715, subchapter I,  
6 unless those persons are in the business of conduct-  
7 ing commercial whitewater trips.

8       5. Nonrenewal, suspension or revocation.  
9 Licenses are subject to nonrenewal, suspension or  
10 revocation for good cause shown, such as unsafe prac-  
11 tices, falsifications of reports, or serious or con-  
12 tinued violation of this subchapter, subject to the  
13 Maine Administrative Procedure Act, Title 5, chapter  
14 375.

15       6. Sale of business. When a licensed whitewater  
16 outfitter's business is sold, the license shall be  
17 returned to the department. On application, the li-  
18 cence shall be reissued to the purchaser, provided  
19 that the purchaser meets the licensing requirements  
20 of the department and pays the license fee. Profit  
21 on the return and reissuance of the license itself is  
22 prohibited, but nothing in this subchapter may be  
23 construed to prohibit profit on the sale of any of  
24 the assets of a business. The license is not an  
25 asset. The department may require an affidavit from  
26 the purchaser to aid in enforcement of this provi-  
27 sion.

28       7. Affiliated outfitters. Affiliated outfitters  
29 may not be licensed.

30 §7366. Whitewater guide license

31       A whitewater guide license shall be required for  
32 all whitewater guides. The whitewater guide license  
33 shall be issued by the department only to those per-  
34 sons who pass or have passed the whitewater guide  
35 examination established by the department and who  
36 have met the other requirements of the department  
37 established by rule. Waivers of the examination are  
38 not permitted. Guide license fees shall be credited  
39 to the department and used in accordance with section  
40 7074.

41 §7367. Safety

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

3 A. There shall be at least one licensed  
4 whitewater guide in each watercraft.

5 B. Outfitters shall ensure that each person  
6 participating on a whitewater trip wears a se-  
7 curly fastened type I or type V personal  
8 flotation device.

9 C. Each whitewater craft shall be equipped with  
10 at least one throw line, not less than 50 feet  
11 long.

12 D. Each whitewater craft shall be equipped with  
13 an adequate first aid kit.

14 2. Whitewater Safety Committee. The Whitewater  
15 Safety Committee is established to review the  
16 monthly safety reports and other relevant information  
17 annually and recommend safety standards to the  
18 department. The committee shall assist the depart-  
19 ment with development of the public information pro-  
20 gram on whitewater trip safety. The committee shall  
21 submit a written report on each whitewater  
22 outfitter's safety record to the Bid Committee.

23 A. The Whitewater Safety Committee shall be com-  
24 posed of 8 members: Two members of the  
25 whitewater guides board designated by the board;  
26 2 commercial whitewater outfitters and 2  
27 whitewater guides designated by the Governor; and  
28 2 members from the general public, one designated  
29 by the President of the Senate and one designated  
30 by the Speaker of the House of Representatives.

31 B. Terms of members of the Whitewater Safety  
32 Committee shall be for 2 years, expiring on  
33 December 31st, except that initially the members  
34 shall draw lots for a one-year or a 2-year term.  
35 Terms shall be staggered so that the term of one  
36 member in each category expires each year. Mem-  
37 bers shall serve until their successors are nomi-  
38 nated and qualified. Members shall serve without  
39 compensation, except for per diem and reimburse-  
40 ment for travel and actual expenses for up to 4  
41 meetings per year.

1 3. Safety reports. In addition to the water-  
2 craft accident report required by section 7801, sub-  
3 section 19, each commercial outfitter shall submit a  
4 complete monthly safety report on forms provided by  
5 the commissioner containing the following:

6 A. A summary of any watercraft accident reports  
7 filed during that month; and

8 B. A written report of all accidents during the  
9 month where a whitewater craft overturns or a  
10 passenger or whitewater guide involuntarily falls  
11 out of or is thrown from a whitewater craft.

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

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

27 §7368. Recreational use limits

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

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

1 A. On the Kennebec River, only enough rafts for  
2 600 to 800 passengers can be physically launched  
3 in an hour. Water releases average 6 to 9 hours  
4 on weekdays, one or 2 hours on Saturdays and  
5 never on Sundays. Weekday use has not increased  
6 to a level which places a burden on the environ-  
7 ment or the physical launching facilities.

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

12 C. The recreational use limit on the Kennebec  
13 River between Harris Station and West Forks is  
14 specified as follows. Noncommercial recreational  
15 use is not limited. The commercial recreational  
16 use limits are set at a level which does not  
17 interfere with noncommercial use. The commercial  
18 limits are:

19 (1) Saturdays: 800 passengers for each hour  
20 of water released;

21 (2) Sundays: No water released; no limit  
22 set; and

23 (3) Weekdays: No recreational use limit.

24 D. Recreational use limits for weekday  
25 whitewater trips on the Kennebec River may be  
26 established, by rule, by the department and the  
27 bureau upon a finding that the river or river  
28 corridor is becoming subject to:

29 (1) Detrimental environmental deteriora-  
30 tion;

31 (2) Detrimental social conflicts; or

32 (3) Other hazardous circumstances.

33 These limits shall remain in effect until 90 days  
34 after the adjournment of the next regular session  
35 of the Legislature, unless superseded by law.  
36 The department and the bureau shall jointly  
37 report these limits to the Legislature, along

1 with a recommendation for legislation, if appro-  
2 priate.

3 3. West Branch Penobscot River. Recreational  
4 use limits for the West Branch Penobscot River are  
5 set as follows.

6 A. On the West Branch Penobscot River, water  
7 releases are typically continuous from McKay Sta-  
8 tion every day, except a few days a year when the  
9 mill at Millinocket is shut down; however, the  
10 rapids are dangerous and rafts can get pinned in  
11 the cribwork at low water. It is estimated that  
12 an average interval of 5 minutes between rafts at  
13 the cribwork is needed for safety. Rafts ordi-  
14 narily carry 8 to 10 passengers. In addition,  
15 regulations adopted by the Maine Land Use Regula-  
16 tion Commission require that significant  
17 increases in current river recreational use not  
18 be encouraged.

19 B. It is found that use of the river is shared,  
20 especially with salmon fishing. Rafts shall only  
21 be allowed on the West Branch Penobscot River  
22 between McKay Station and Pockwockamus Falls  
23 between 9 a.m. and 5 p.m., in order to allow free  
24 time for other uses.

25 C. The recreational use limit of the West Branch  
26 Penobscot River between McKay Station and  
27 Pockwockamus Falls is specified as follows. Non-  
28 commercial recreational use is not limited. The  
29 commercial limit is set at a level which does not  
30 interfere with noncommercial use. The commercial  
31 recreational use limit for whitewater trips is  
32 320 passengers per day. This limit reflects the  
33 current 1982 use of the river in order to:

34 (1) Maintain the present character and high  
35 quality of the river environment;

36 (2) Provide for continued multiple use for  
37 other recreation, such as fishing, camping,  
38 canoeing, picnicking, driving for pleasure,  
39 photography and hiking; and

1 (3) Provide a minimum of conflict with or  
2 alteration of present use patterns and  
3 safety margins.

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 avoid creation of transferable asset  
20 value; and

21 H. To provide opportunity for public access.

22 2. Allocation required. Operation of a commer-  
23 cial whitewater trip on the Kennebec River between  
24 Harris Station and West Forks on Saturday or on the  
25 West Branch Penobscot River between McKay Station and  
26 Pockwockamus Falls without an allocation is prohib-  
27 ited. No allocation is required for other rivers nor  
28 for other stretches of those rivers.

29 3. Allocation by bid. The department and the  
30 bureau shall allocate the right to conduct whitewater  
31 trips to licensed outfitters pursuant to the bid  
32 procedures established in this subchapter. The com-  
33 missioner of the department and the director of the  
34 bureau shall establish a Bid Committee to receive,  
35 review and approve bids received. All bids must be

1 received by the department by 5 p.m., November 1st of  
2 the year preceding the 3-year bid period to be con-  
3 sidered for approval. All bids shall be awarded by  
4 December 1st.

5 Three classes of allocation categories shall exist  
6 based on trip size:

7 A. Class A Allocation: From 61 to 80 passengers;

8 B. Class B Allocation: From 31 to 60 passengers;  
9 and

10 C. Class C Allocation: Up to 30 passengers maxi-  
11 mum.

12 The initial distribution of the allocation shall,  
13 insofar as possible, be divided equally among all  
14 categories allowed for each river. An equal number  
15 of allocations shall be awarded in each class. The  
16 department and the bureau may jointly vary the dis-  
17 tribution of the allocations among the categories in  
18 subsequent years based on river management goals.

19 4. Term of allocation. All allocations shall be  
20 awarded for a 3-year period. All allocations shall  
21 be rebid at the end of that period.

22 5. Abandonment or forfeiture of allocation;  
23 transfer. Any outfitter which has not used all or a  
24 portion of the allocation during a whitewater trip  
25 season, June through September, will lose the unused  
26 allocation for the next season. Allocations forfe-  
27 ited in the middle of a bid period shall be open  
28 for bid by any other licensed outfitter licensed for  
29 that season.

30 Any outfitter wishing to abandon all or a portion of  
31 an awarded allocation before the 3-year period  
32 expires may do so by notifying the department in  
33 writing. The abandoned allocation shall be open for  
34 bid by any other licensed outfitter as soon as  
35 practicable. If the allocation is awarded to another  
36 licensed outfitter, an appropriate portion of the  
37 financial consideration for the bid shall be rebated  
38 to the original holder of the allocation.

1 Transfer between outfitters of all or a portion of an  
2 allocation on an occasional basis will be permitted  
3 in order to maximize recreational use within the  
4 recreational use limits. All transfers shall be  
5 reported to the department. Excessive use of this  
6 privilege will result in loss of that privilege by  
7 that outfitter. Sale of any portion of an allocation  
8 is prohibited.

9 6. Acceptance of bids. Bids will be accepted as  
10 follows.

11 A. Bids will be accepted for allocation in Class  
12 A, Class B or Class C on the Kennebec River for  
13 the initial one hour of water release on Satur-  
14 days.

15 Allocations for water releases after the initial  
16 hour are automatic and need not be bid for. An  
17 outfitter who holds an allocation for the first  
18 hour of water release automatically holds an  
19 equal allocation for each additional hour of  
20 water released. Order of launch shall duplicate  
21 the initial order of launch.

22 B. Bids will be accepted for allocation in Class  
23 B or Class C on the Penobscot River for each day  
24 of the week. No bids will be permitted in Class  
25 A. This will increase the number of outfitters  
26 able to raft the Penobscot River and is justified  
27 by the smaller recreational use limit.  
28 Outfitters must bid separately for each day of  
29 the week they wish to conduct whitewater trips.  
30 The maximum allocation for any outfitter for the  
31 weekend is a combined total of 80 passengers.

32 C. Each outfitter submitting a bid shall indi-  
33 cate the priority of each bid in relation to  
34 other bids submitted by that outfitter.

35 D. Bids should be made in units of 10 passen-  
36 gers.

37 7. Bid criteria. Allocations shall be awarded  
38 on the basis of how well they meet the bid criteria.  
39 The bid criteria shall be weighted equally. The bid  
40 criteria are:

1 A. Ability to contribute to the meeting of the  
2 management and allocation objectives;

3 B. Experience and expertise;

4 C. Financial capacity, financial stability of  
5 the company; and

6 D. Financial consideration, dollar amount of  
7 bid.

8 8. Financial consideration of bid. The finan-  
9 cial consideration of the bid shall go to the General  
10 Fund.

11 9. Bid deadlines. All bids shall be submitted  
12 by October 1st of the year preceding the year which  
13 is bid for. All bids shall be awarded by November  
14 2nd.

15 10. Reporting. Each outfitter shall report  
16 monthly to the department the number of passengers  
17 carried each day on each river. Inaccurate reporting  
18 or failure to report may subject the outfitters to  
19 the penalties prescribed in section 7370-A.

20 §7369-A. User fee

21 All licensed outfitters shall pay a user fee of  
22 \$1 per passenger, excluding guides, carried on each  
23 river. This fee shall be paid by the 30th day fol-  
24 lowing the month in which the passengers were car-  
25 ried, and shall be deposited in the Whitewater  
26 Rafting Fund.

27 §7370. Whitewater Rafting Fund

28 1. Established. There is established a  
29 Whitewater Rafting Fund to be used by the department  
30 and the bureau to fund activities related to river  
31 recreation, with primary emphasis on those activities  
32 which relate to whitewater trips.

33 2. Funding. All user fees collected under  
34 section 7369-A shall be credited to the Whitewater  
35 Rafting Fund.

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

11           4. Use of the fund. The fund shall be used as  
12 follows.

13           A. The moneys deposited in the fund shall be  
14 credited as follows.

15                 (1) 55% of each fee or surcharge shall be  
16 credited to the department; and

17                 (2) 35% of each fee or surcharge shall be  
18 credited to the bureau.

19                 (3) 10% of each fee or surcharge shall be  
20 credited to the county in which the river is  
21 located for distribution among the affected  
22 municipalities and for use in the affected  
23 unorganized townships.

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

35 §7370-A. Penalties

36           The penalty for failure to comply with this sub-  
37 chapter or for providing false information under this  
38 subchapter may include nonrenewal, revocation or sus-  
39 pension of the license, subject to the procedures of

1 the Maine Administrative Procedure Act, Title 5,  
2 chapter 375.

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

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

20           Sec. 6. Recreational use limit and allocation  
21 review. The Department of Inland Fisheries and Wild-  
22 life and the Bureau of Parks and Recreation of the  
23 Department of Conservation shall jointly review the  
24 recreational use limit and allocation system estab-  
25 lished by this Act and report to the Legislature by  
26 October 1, 1985, with recommendations as appropriate.

27           Sec. 7. Budget allocation. The following funds  
28 are allocated from the Whitewater Rafting Fund for  
29 the fiscal years ending June 30, 1984, and June 30,  
30 1985. In the event less or more funds are available,  
31 they shall be allocated proportionately.

	<u>1983-84</u>	<u>1984-85</u>
32		
33 <u>INLAND FISHERIES AND WILDLIFE,</u>		
34 <u>DEPARTMENT OF</u>	\$27,500	\$27,500
35 <u>CONSERVATION, DEPARTMENT OF</u>		
36         Bureau of Parks and Recrea-		
37         tion	\$17,500	\$17,500
38         Somerset County	\$ 2,500	\$ 2,500

1	Piscataquis County	\$ 2,500	\$ 2,500
2		<hr/>	<hr/>
3	Total	\$50,000	\$50,000

4 STATEMENT OF FACT

5 This bill is the Minority Report of the rafting  
6 study.

7 The Maine Commercial Whitewater Rafting Study  
8 Commission was established by the 110th Legislature  
9 to study commercial whitewater rafting on the  
10 Penobscot and Kennebec Rivers. That commission found  
11 rapid growth in the commercial whitewater rafting  
12 industry and a need to propose recreational use  
13 limits for each river. As a result of that study, a  
14 report with 2 legislative proposals (Majority Report  
15 and Minority Report) was submitted to the Legis-  
16 lature. One commission member approved a variation  
17 of the Majority Report and will prepare amendments to  
18 the Majority Report at the public hearing. This  
19 bill reflects the Minority Report of the commission's  
20 findings and conclusions.

21 Both reports agreed on river management objec-  
22 tives, and the establishment of a Whitewater Rafting  
23 Fund to fund river recreation activities. There was  
24 general agreement on licensing requirements and  
25 safety requirements. The Majority Report and Minor-  
26 ity Report differ most dramatically in the actual  
27 recreational use limits proposed and the method of  
28 allocating the limited use among prospective  
29 outfitters. The Minority Report provides:

30 Recreational use limits:

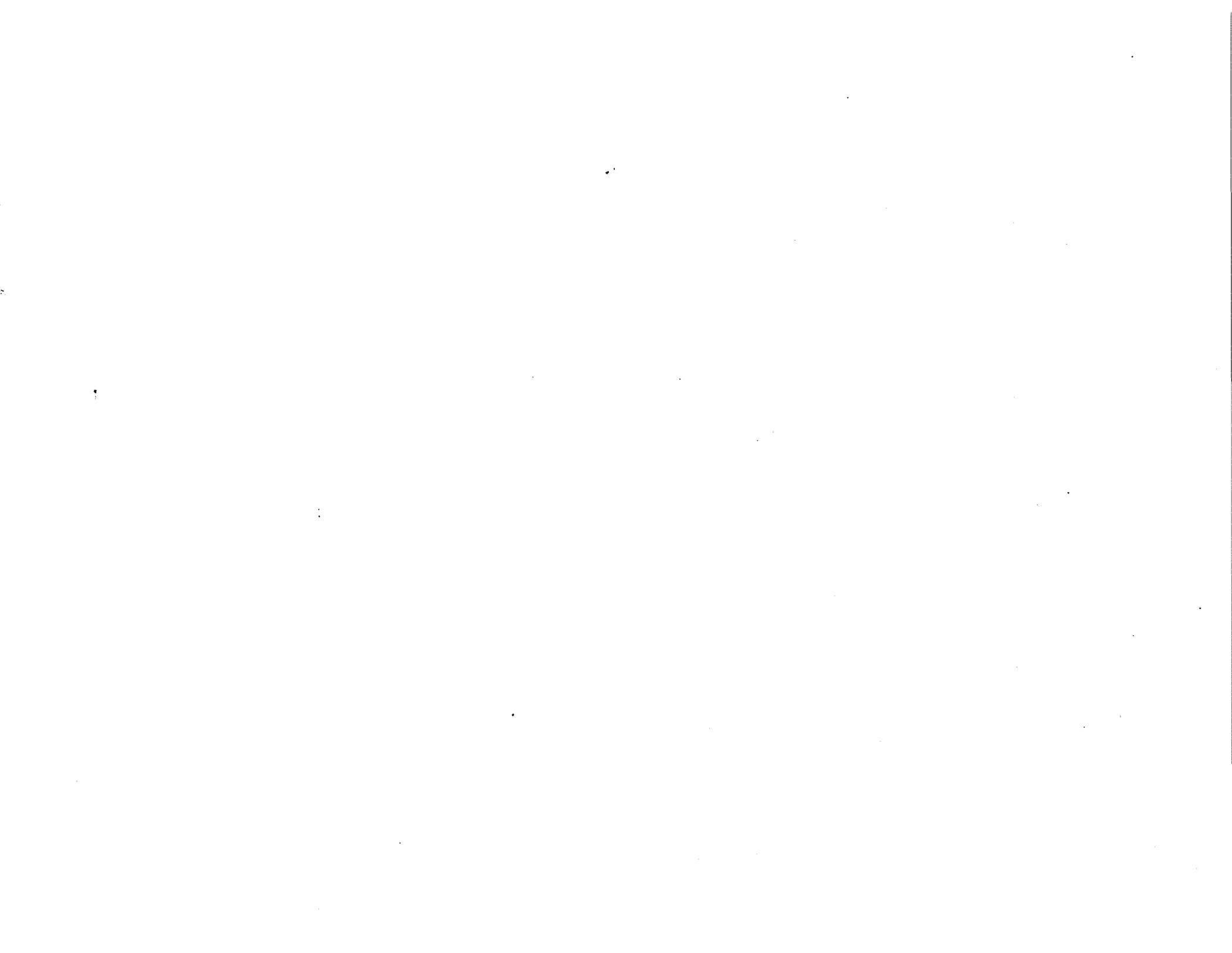
31	Kennebec River	
32	Saturday	800
33	Weekdays	no limit
34	Penobscot River, any day	320

1 Allocation system:

2 80 passengers per company limit for each day on  
3 the Kennebec River and 80 total for Saturday and  
4 Sunday combined on the Penobscot River. Allot-  
5 ments will be awarded on a bid basis based on  
6 ability to meet management objectives, experi-  
7 ence, financial stability and the dollar amount  
8 of the bid. No moratorium on commercial  
9 licenses.

10 A more detailed analysis of the commission's  
11 report and of the 2 legislative proposals is avail-  
12 able in the complete commission report.

13 2711033083



APPROVED

CHAPTER

APR 16 '82

67

BY GOVERNOR

RESOLVES

STATE OF MAINE

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

S.P. 981 - L.D. 2140

RESOLVE, to Establish a Commercial  
Whitewater Study Commission.

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

Whereas, serious environmental degradation of Maine's rafting rivers shall occur if permits for rafting are not limited; and

Whereas, the increased number of whitewater rafters creates serious safety problems; and

Whereas, this limit must be enacted and enforced immediately prior to the upcoming season so that a review of the level of activity these rivers may sustain can be made; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1. Study commission created. Resolved: That there is established a commission to study commercial whitewater rafting on the Penobscot and Kennebec Rivers, referred to in this resolve as the commission; and be it further

Sec. 2. Appointment. Resolved: That the commission shall consist of 10 members, as follows: The Commissioner

of Inland Fisheries and Wildlife or his designee; the Commissioner of Conservation or his designee; 2 Senators and 2 public members appointed by the President of the Senate; and 2 Representatives and 2 public members appointed by the Speaker of the House; and be it further

Sec. 3. Duties. Resolved: That the commission shall:

1. Determine the size of the present commercial whitewater rafting industry and study potential future growth of this industry;

2. Determine the social, safety, economic and environmental impact of the commercial whitewater rafting industry in Maine, based on the present and potential size of the industry, and identify actual or potential conflicts with other uses of rivers, including fishing, camping and canoeing;

3. Determine the carrying capacity of the Penobscot and Kennebec Rivers to support commercial whitewater rafting without undue adverse social, economic, environmental or aesthetic impact, and methods to maintain the industry within this carrying capacity; and

4. Make any other studies and evaluations necessary to fully assess the impact and adequacy of current regulations governing the commercial whitewater rafting industry; and be it further

Sec. 4. Reports. Resolved: That the commission shall present its findings, together with any recommended legislation, to the First Regular Session of the 111th Legislature; and be it further

Sec. 5. Assistance. Resolved: That the Office of Legislative Assistants shall provide assistance to the commission in carrying out its charge; and be it further

Sec. 6. Acceptance and expenditure of funds. Resolved: That the commission may accept funds from any agency of the United States or from any other public or private source, and may use these funds and any other funds appropriated to the commission to hire personnel, contract services or for other purposes necessary to carry out this resolve.

Emergency clause. In view of the emergency cited in the preamble, this resolve shall take effect when approved.

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In House of Representatives, ..... 1982

Read and passed finally.

..... Speaker

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In Senate, ..... 1982

Read and passed finally.

..... President

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Approved ..... 1982

..... Governor



## STATE OF MAINE

Inter-Departmental Memorandum Date January 19, 1983

To Members, Commercial White Water Rafting Study Commission  
 From John R. Selser & Haven Whiteside Dept. Legislative Staff  
 Subject Final Meeting

Just a REMINDER of the final meeting of the Commercial White Water Rafting Study Commission on Monday, January 24, 1983 in Room 135, State House, Augusta. The meeting is scheduled for 8:30 - 10:30 A.M.

We have enclosed a corrected copy of Proposal B and an additional communication received regarding this study. You are encouraged to review the entire report before the meeting. See you Monday.

enclosure  
 JRS/elk

cc: interested parties (less enclosure)

## AGENDA

## COMMERCIAL WHITEWATER RAFTING STUDY COMMISSION

January 24, 1983

Call to order

Clarification of Proposals (as needed)

Final Vote

Adjournment

MAINE COMMERCIAL WHITEWATER

RAFTING STUDY COMMISSION

Thursday, December 16, 1982, 9:30 A.M.  
Room 135, State House, Augusta

AGENDA

- 9:30           General discussion and Action on Working Paper  
                River Management Objectives  
                Allocation Goals  
                Carrying Capacity  
                Allocation System  
                Commercial Outfitters Licensing  
                Safety
- 12:30           Break for lunch
- 1:30           Continue as necessary to complete action  
                on working paper and instruct staff on  
to 3:30       preparation of Commission report (or reports)

NOTICE OF MEETINGS FOR INCLUSION IN THE  
WEEKLY LEGISLATIVE ACTIVITY CALENDAR

DATE: NOV. 4, 1982 DAY: Thursday TIME: 9:30 A.M.

COMMITTEE: White Water Rafting Study Commission

SUB-COMMITTEE: NA

BUILDING: State House

ROOM NO.: 134

AGENDA TOPICS:

Discussion of the safety aspects of white water rafting  
and a continuation of the discussion of commercial  
white water rafting in Maine. The meeting is open to the  
public.

SIGNED: John R. Selser

NOTE: Please indicate if these are public hearings.

To be included in next week's LEGISLATIVE ACTIVITY CALENDAR, this information must be received by the Clerk of the House Office by noon on Wednesdays. Please telephone the information to the Clerk's Office (Telephone: 289-2366) if you are unable to mail this sheet on time.

MAIL TO: LEGISLATIVE ACTIVITY CALENDAR  
CLERK OF THE HOUSE  
STATE HOUSE  
AUGUSTA, MAINE 04333

MAINE COMMERCIAL WHITEWATER  
RAFTING STUDY COMMISSION  
Thursday, October 7, 1982  
AGENDA

- 9:00 A.M. (1) Staff Update
- (2) Staff Reports
- Carrying Capacity: Water Flow HW
- Carrying Capacity: River Traffic Survey HW
- Carrying Capacity: Fundamental Considerations JRS
- Allocation: Competition & Legal Considerations JRS
- 9:30 A.M. COFFEE
- 10:00 A.M. (3) Proposals on Carrying Capacity & Allocation
- A. Whitewater Outfitters Association
- B. Others
- 10:45 A.M. (4) Commission discussion
- 12:45 P.M. (5) Future meeting schedule & direction to staff
- (Note: a presentation on safety is still pending)
- 1:00 P.M. Adjourn.

PUBLIC HEARING

MAINE COMMERCIAL WHITEWATER  
RAFTING STUDY COMMISSION

Tuesday, August 17, 1982

9:30-11 am

at the Fire Station

Main Street, Greenville

PUBLIC HEARING

MAINE COMMERCIAL WHITEWATER  
RAFTING STUDY COMMISSION

Tuesday, August 17, 1982

7-8:30 pm

at Baxter Park Authority Headquarters

64 Balsam Drive

Millinocket

The Commission was established by the Legislature in 1982 to study problems related to rafting on the Penobscot and Kennebec Rivers. The hearing is to receive testimony on: the social, safety, economic and environmental impact of rafting; its impact on competing uses such as fishing, camping and canoeing; limits on carrying capacity of the rivers; and methods of implementing those limits.

for further information  
call: 289-2486

# STATE OF MAINE

Inter-Departmental Memorandum Date July 22, 1982

To White Water Rafting Study Commission Dept. Members

From John Selser & Haven Whiteside Dept. Legislative Staff

Subject July 27, 1982 meeting

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The next meeting of the White Water Rafting Study Commission will be held on Tuesday, July 27, 1982, at 9:30 A.M.-11:00 A.M. at the Caratunk School in Caratunk. When you reach Caratunk traveling north on Route 201, you will see a store on your left. Take the road beside the store (left turn). The school is a short distance from that store. (There is only one school in Caratunk.)

A hearing has been scheduled for 11:00 A.M. after the general meeting of the commission. I have enclosed a copy of the public notice for that meeting.

enclosure  
JRS/elk

cc: Licensed White Water Outfitters

COMMERCIAL WHITEWATER RAFTING

STUDY COMMISSION

MEETING TOPIC: A general Overview of the Rafting Industry

University of Maine, Orono  
Memorial Union, The 1912 Room  
WEDNESDAY: July 14, 1982  
9:30 A.M. - 12:00 Noon

AGENDA

- 9:30 Report on the Kennebec trip - John Selser, Legislative Assistant
- 9:45 Water Flow
- Kennebec River (and Dead River) - Otis Bacon, Manager, Kennebec Water Power Co.
  - West Branch, Penobscot River - Paul Firlotte, Power Systems Manager, Great Northern Paper Co. (tentative)
- 10:45 Census of Outfitters in Maine - John Selser
- 11:00 Regulation in Other States: carrying Capacity and Allocation - Haven Whiteside, Legislative Assistant
- 11:30 General Discussion
- 12:00 Adjourn (next meeting at The Forks July 27th)

COMMERCIAL WHITEWATER  
RAFTING STUDY COMMISSION

State House - Room 327  
Augusta, Me.  
THURSDAY, JUNE 24, 1982

4:00 - 5:30 P.M.

TENTATIVE AGENDA

1. Call to order - John Martin, Speaker of the House
2. Swearing in of public members - Dedimus Justice
3. Election of Chairperson & Vice-Chairperson
4. Charge to the Commission (1981 Resolves, c. 67)
5. Informal introductory discussion
  - The rafting industry
  - Report on the West Branch trip
  - Safety regulation
  - Fishing
  - Resource Protection Plan
  - Other Conservation Aspects
5. Discussion of Commission schedule

JAMES E. TIERNEY  
ATTORNEY GENERAL



STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
STATE HOUSE STATION 6  
AUGUSTA, MAINE 04333

July 23, 1982

John R. Selser  
Legislative Assistants' Office  
State House Station 13  
Augusta, Maine 04333

RE: Whitewater Rafting Study Commission

Dear John:

Enclosed please find a memorandum from me and Rae Ann French of the Consumer and Antitrust Division to Jim Tierney, setting forth our analysis of the whitewater rafting industry. The memorandum, of course, does not reflect an official opinion of the Attorney General on any of the matters involved, and should not be understood to imply that the Department of the Attorney General will or will not act pursuant to its responsibilities to enforce antitrust laws. Nor should the memorandum be considered an exhaustive treatment of the subject.

If you wish to discuss this matter with us further, please contact Rae Ann French at 289-3717.

Very truly yours,

A handwritten signature in cursive script that reads "Robert S. Frank".

ROBERT S. FRANK  
Assistant Attorney General

RSF:sl  
Enclosure

# STATE OF MAINE

Inter-Departmental Memorandum Date July 23, 1982

To James E. Tierney, Attorney General Dept. Attorney General

From Robert S. Frank and Rae Ann French Dept. Attorney General  
Assistant Attorneys General

Subject WHITEWATER RAFTING STUDY COMMISSION--ANTITRUST CONCERNS

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L.D. 2140, as amended, created a commission to study commercial whitewater rafting on the Penobscot and Kennebec Rivers. The commission will study the advisability of use limitations on the rivers as well as safety and other regulations.

While we expect the commission to base its recommendations on a variety of factors, our remarks here are offered solely from an antitrust perspective. As you know, this office is charged with enforcement responsibilities under federal (15 U.S.C. §§ 1 et seq.) and state (10 M.R.S.A. § 1101 et seq. and 5 M.R.S.A. § 207) antitrust statutes. The goals of antitrust laws are to preserve competition in all sectors of the economy. Competition insures that consumers will pay no more than necessary for goods and services. It also stimulates business to build a better product, develop efficient production methods and improve services. Monopolies and price-fixing cartels are the targets of antitrust enforcement: both extract unjustifiably high prices from consumers and seek to stifle other would-be competitors who may have a "better mousetrap" to sell.

From the perspective of these principles, we set forth our comments below. Please bear in mind that we are not now able fully to verify all of the information on which our analysis is based, but all information is derived from sources that we consider reliable.

## THE RESOURCE

Certain stretches of the Kennebec and Penobscot Rivers support summertime whitewater rafting activity. The rafting on the Kennebec is centered around the Kennebec Gorge, running from the Harris Dam to The Forks. The Penobscot River activity is centered around the Ripogenus Dam/Ripogenus Gorge area.

Water flows on both of these rivers are regulated. Water releases from the dams are necessary to support the rafting activity. The releases are staggered between the Kennebec and

Penobscot, and thus, whitewater rafting is usually available only during the weekdays on the Kennebec, and only on weekends down the Penobscot.<sup>1/</sup>

Both rivers are available for use by both private and commercial rafters.

#### COMMERCIAL OUTFITTERS

At present, there are at least 9 operating commercial rafting companies servicing the Penobscot and Kennebec Rivers.<sup>2/</sup> One of these, Northern Whitewater, inaugurated whitewater rafting on the Kennebec in 1976. The next year, Maine Whitewater entered the market, and the following year, 1978, two more companies, Kennebec Dories and Eastern Rivers, entered the market. According to one of the rafters, Northern Whitewater maintains a 45% market share; Eastern Whitewater, 30%, and Maine Whitewater, 10%.

It has been estimated that for 1982, approximately 15,000 people will ride commercial rafts down the Kennebec River; and approximately 9,000 people down the Penobscot River. The Maine Sunday Telegram of July 11, 1982, mentions a total estimate of 20,000 rafters. Assuming that these estimates are approximately correct, commercial whitewater rafting in Maine has become a million dollar industry.

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<sup>1/</sup> The Dead River also supports limited commercial rafting activity. Because water flows in the Dead River are not regulated, whitewater rafting is available only for a relatively short period.

<sup>2/</sup> We understand that there may be as many as eight other non-operating "operators" now holding commercial whitewater rafting licenses from the Department of Inland Fisheries. We suspect that some or most of these other licensees are persons now affiliated with operating companies and who, desirous of starting their own company at some point, have now acquired a license in order to avoid being shut out by a moratorium.

## OUTFITTERS ASSOCIATION

In 1980, the six then-currently operating commercial rafting companies formed the Whitewater Outfitters Association of Maine. The organization was formed to promote the goals of whitewater rafting, and the interests of its members in advertising, promotion, and legislative and lobbying activities. Currently, 7 of the 9 commercial outfitters are Association members.

The Joinder Agreement among Association members provides, among other things:

1. The Association intends to acquire for the exclusive use of its members all put-in, take-out, and launch sites along the rafting rivers in Maine. The Association will also regulate the times and rights of access to the sites according to a seniority system; that is, the Association member who joined most recently will have the last pick among Association members in choosing times and sites controlled by the Association.

2. No member of the Association shall run more than 80 persons per day on any river rafting trips on the rivers in Maine.

3. No member shall acquire any put-in, take-out, launch or camping sites for their own account, but may do so only on behalf of the Association.

The Bylaws of the Outfitters Association provide the authority for Association members to reject applicants for membership. They also provide for periodic meetings.

Neither the Joinder Agreement nor the Bylaws provide for price-fixing. Five of the Association members, however, reportedly accounting for over 85% of the total market share, all charge the same price for one-day trips down the Kennebec - \$60. The two other most recent members of the Association charge \$62 and \$59, respectively. Four of the same five outfitters charge the same price for the long one-day trip down the Penobscot River - \$70. The fifth charges \$75, but charges \$5 less than the other four for short trips down the Penobscot River.<sup>3/</sup>

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<sup>3/</sup> By comparison, 1982 prices for-one day raft trips down the American River near Sacramento, California, have been quoted as \$37 per person for a group of six persons (1 raft) per weekday and \$45 per person on weekends.

The Association has lobbied for a moratorium on the issuance of additional whitewater rafting permits, voicing concern that the Kennebec and Penobscot Rivers are at or nearing full rafting capacity. Efforts to obtain a license moratorium through legislation failed when L.D. 2140 was amended to delete the license moratorium provisions.

In early 1981, the Association acquired from CMP an exclusive license to use the Harris Dam site on the Kennebec as a put-in site. After a non-member outfitter brought suit, CMP terminated the agreement.

#### COMMENTS

Though an association may serve certain functions that tend to benefit the public--promoting the safety of whitewater rafting and the preservation of rivers as rafting resources--the interests of association members are not fully consonant with the public's. In the case of the Whitewater Outfitters' Association of Maine, the Outfitters' desire to limit the use of the river may spring from business as well as aesthetic motives - preventing actual or potential competitors from eroding their market share and reducing income. The same concern applies to the Association's acquisition of rights to put-in and take-out sites: the rights preserve access to the river, but only for Association members. Non-members cannot compete.

The study commission should be skeptical of Association claims that the Penobscot and Kennebec Rivers are near or at full capacity and that the number of commercial licenses should be limited. The matter requires investigation and study. We assume that the commission's inquiry will extend to use rates on other river systems, and will include interviews or correspondence not only from operating companies, but from would-be operators and customers. For our part, we have no opinion on whether commercial use of the river should now be limited.

If the commission concludes that a use limit is in order, it may wish to consider various schemes to allocate use rights among commercial users. Usage could be allocated by time of day, days of the week, or combinations thereof, and each package of use rights could be set for a monthly, yearly, or multi-year term. Once the form of allocation is decided upon, a plan must be devised for distributing the use rights among users. There are several conceivable distribution schemes: 1) selling each use right to the highest bidder; 2) awarding rights by lottery, as is done for moose hunting in Maine; 3)

awards on a first-come, first-serve basis; and 4) grandfathering in existing license holders. Any such scheme must resolve the question whether the award of use rights will be limited to qualified operators or whether any person or firm can apply, and correlatively, whether use rights would be transferrable.

From an antitrust perspective, the most desirable allocation and distribution system is one that allows new as well as existing operators to compete for use rights on an equal basis. This would likely result in a different mix of pool operators during each licensing period and, concomitantly reduce the possibility that competition will stagnate. Correspondingly, the least desirable system is one that would set a license moratorium and "grandfather" in existing licensees. With a limited number of operators holding exclusive rights to the river on a perennial basis, the possibilities for cartel-like behavior are much enhanced.

The commission should recognize that any limit on use rights is likely to increase the price of whitewater rafting for consumers. Anyone holding use rights in such a system will have a valuable asset--a franchise--for which others may be willing to pay. This raises a troublesome issue--who is entitled to the profit or wealth that arises only because the government has chosen to limit the supply of use rights? A strong argument can be made that since the river is a public resource, and since it is government regulation that produces the excess profit in the first place, the public should reap the profits of regulation. If one accepts this view, then competitive bidding for use rights is the best allocation scheme. The price that bidders will be willing to pay for prime time use rights will reflect the higher prices that could be charged under a limited use system, and thus the public will recoup the additional profit generated by the regulatory scheme. Competitive bidding for limited use rights has been employed for other river systems. On the Chatooga River running through South Carolina and Georgia, for example, the U.S. Forest Service in the early 1970's issued permits on a competitive bidding basis, with the minimum accepted bid being \$25 per 100 user-days.

For similar reasons, the Commission may wish to consider a recommendation that the State or Department itself acquire access and recreational sites and license their use on a competitive basis, at least in those instances where only one site is available.<sup>4/</sup> The Harris Station Dam on the Upper Kennebec River may be such a site. If a private party were to

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<sup>4/</sup> User fees derived from competitive bidding could be devoted to this purpose.

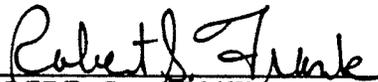
acquire such a site, it might gain monopoly control over the best whitewater stretches of the river, with the concomitant ability to fix artificially high prices and destroy competitors.

Lastly, there are several purely antitrust concerns that could be addressed by comprehensive regulatory legislation. There have been reports that prices have been discussed at Association meetings. Whether there has been actual agreement on prices is difficult to determine, but there is, as described above, a surprising uniformity among the price schedule of Association members. In addition, the Association members have agreed to limit each company's volume to 80 customers per day, a practice that may have the effect, if not the design, of allocating market shares among members and restricting competition between them. As a safeguard against price-fixing activity, (an activity that will be encouraged by any moratorium on licenses), the commission may wish to consider a proposal to prevent commercial rafters from privately agreeing to limit customers and from exchanging price information prior to distributing their published brochures for the upcoming year, to be enforced through license revocation.

Many of these antitrust concerns could be addressed by treating the commercial rafting companies as public utilities. The companies are "regularly engaged in the transportation of persons or property for compensation upon the waters of this state . . .," 35 M.R.S.A. § 15(3). Through its rate-setting and regulatory functions, the Public Utilities Commission could act to insure that members of the public, and not only the private operators, were the ultimate beneficiaries of river use limitations. We have no opinion on whether the commercial rafting companies should be regulated by the PUC, but the study commission may wish to consider the public utilities framework as an alternative regulatory approach.

To summarize: we have no opinion on whether the rivers at full capacity or whether the number of commercial outfitters should be limited. After studying the need for a limit, the Commission may decide no limit is necessary. If a limit is required, we are concerned that such limits not exacerbate certain anti-competitive tendencies in the Maine commercial rafting industry. We hope that the commission would

incorporate into any use limit recommendation a use rights allocation scheme providing for an equal opportunity for outfitters to obtain use rights and for other safeguards against anti-competitive behavior.



ROBERT S. FRANK  
Assistant Attorney General  
289-3661



RAE ANN FRENCH  
Assistant Attorney General  
389-3717

RSF:RAF:s1

Table 2. Summary of management programs utilized on major white-water rivers within the United States.

River	Administrator	User ratio, commercial to private	Commercial permits	Private user restrictions	Maximum trip size
Chattooga	U.S. Forest Service	34:66 user days	Bidding 3-year	None	30
Snake in GTNP	National Park Service	70:30 launches 90:10 user days Desired, 50:50 launches	Bidding 5-year	None	None
Colorado in GCNP	National Park Service	92:8 launches 92:8 user days	5-year	1 party per day, first-come, first-serve	Private--15; combined commercial--150 people per day
Green and Yampa	National Park Service	75:25 user days	Annual special-use	Permit required, first-come, first-serve	25
Rogue	Many	50:50 launches 71:29 user days	Annual	None	24
Main Salmon	U.S. Forest Service	65:35 launches 70:30 user days Desired, 63:27 launches	Annual	Reservations, permit	25
Middle Fork Salmon	U.S. Forest Service	75:25 launches 68:32 user days Desired, 50:50 launches	Annual	Permit required, first-come, first serve	26
Selway	U.S. Forest Service	50:50 launches 65:35 user days	Annual	Permit, lottery for launch dates	16
Middle Snake	U.S. Forest Service	45:55 launches 64:36 user days	Annual	Permit required, first-come, first serve	30
Upper Snake	U.S. Forest Service	Incomplete data	Annual	None	None
Stanislaus	Bureau of Land Management	45:55 user days	Annual	None	20

Source: An Operations Analysis of the Ohiopyle State  
Park Float Trip System  
Charles H. Strauss, Penn State U.  
July 26, 1976

Additional information on major multi-day whitewater rivers.

	max. # of outfitters	max. trip size	daily limit (commercial)	daily private limit	launch restriction	persons	Annual Use person days
Colorado R. - GCNP	21	40 (15 private)	150 passengers total	1 party (1st-come)	-	16,500	<u>89,000</u> limit
Green & Yampa (UT & WY)	11	25	3 trips spring 2 trips summer total	3 trips (spr.) 3 trips (sum.) (1st-come)	tie to campgrounds	17,000	34,000
Rogue (OR)	40	24	2 trips/week per outfitter	none	-	-	-
Salmon (ID) - Main - Middle Fork	30	20	2 trips/8 days per outfitter i.e., 6-8 trips/day	3 trips (1st-come)	-	- 4,000	- 22,000
Selway (ID/MT)	4	16	4 trips/season/ outfitter	lottery	1 launch/day	-	-
Snake - Middle (ID) - Upper	18 17	30 -	2 1/2 trips/day	2 1/2 trips -(1st-come) -(none)		1,807 30,000	
Stanislaus	22	20	(annual use) limit	none		29,000	

Source: Penn State report; Management plans for Dinosaur Nat. Mon.;  
Canyonlands Nat. Pk. & Salmon River

## ALLOCATION SURVEY

ARCHES AND CANYONLANDS NATIONAL PARK, MOAB, UTAH

## A. Noncommercial allocation.

1. Permit required.
2. Applications accepted after 15 Dec. on a first come first served basis.
3. Confirmation requires 2 weeks prior to launch date to avoid unused allocation.
4. Trip subject to cancellation due to extreme water level fluctuations. Superintendent of Park may cancel or reschedule trip.

## B. Commercial allocation.

1. 19 outfitters. Equal allotment to all permit holders.
2. Passenger pool maintained by Park. On June 15th, outfitters voluntarily donate allotment which they don't think they will use. Other outfitters request additional allotment if they plan to use it. The extra, donated slots are divided equally among all outfitters requesting additional allotments.
3. Items 1 & 2 are conducted new each year.
4. Franchise fee based on greater of actual use or allocation.
5. To increase competition, a maximum allotment was set for each outfitter.

DINOSAUR NATIONAL MONUMENT, GREEN RIVER/YANPA RIVER, UTAH-COLORADO

## A. Noncommercial Allocation

1. Permit required. Applications accepted from 1 December to 15 January.
2. Primary Season: Selection is by drawing. If subsequent drawee has chosen a launch date already allocated, he may change dates. Trip subject to cancellation. Only one trip per applicant permitted.
3. Low Season: First come - first served basis for permits and launch date. Lottery used if demand exceeds allocation.

## B. Commercial Allocation

1. Outfitters required to have permit good for up to 5 years. Maximum of 11 outfitters. (Previous limit was 14.)
2. Public notice is given when outfitters seek renewal of permit.
3. Criteria for renewal:
  - a. experience, financial capabilities, amount of use requested, services to be provided, trip pricing, and equipment and interpretive program.
4. Allocation based on economically viable unit.
5. Launch dates are assigned.

MAIN SALMON RIVER, IDAHO

A. Commercial allocation.

1. Maximum outfitters is 30. All existing outfitters were granted permits. 30 was considered a sufficient number. New outfitters were not considered desirable: they felt it might lead to overcrowding. Businesses may be bought. Permit may be issued to new owner if he qualifies.

2. Allocation distributed equally. Outfitters may take 2 parties of 20 each every 8 days.

3. Use limit had not been reached at the time of this report; however, in anticipation of reaching that level, the following three proposals were considered as alternatives to the current method of allocation:

- a. Issue permits to individuals or groups on a drawing basis and leave it up to them to arrange their trip. This has considerable merit since it does not require any arbitrary decision allocating use between commercial and private groups. It would provide problems for the commercial outfitter because he advertises and promotes to fill his trips. He competes with other outfitters and must offer price or quality benefits to remain in business.
- b. Use an arbitrary allocation figure such as 50% private and 50% commercial. This allocation system splits the 8 launches available right down the middle. However, it does not recognize the current demand for each type of trip and makes no adjustment for future changes in demand.
- c. Develop a proportional split based on demand. This system requires some measure of present demand and a means to adjust to future shifts in demand. These parameters are difficult to define, but demand probably is the most equitable means of allocating use between the two groups. The demand for private reservations and the actual use by the outfitters of their allocated use should provide current indices of demand for each type of trip. As these indices change they will indicate changes in demand and can be used periodically to adjust the commercial/private allocation.

Other alternatives may be available for determining the commercial/private allocation, but the three alternatives listed are the most feasible at the present time.

B. Noncommercial allocation: advance reservations required. Allocation distributed on a first come - first served basis. Total allocation had not been utilized at the time of this report.

COOEE RIVER, TENNESSEE

No licensing or permits are required. A management plan is expected in the near future.

STANISLCUS, CALIFORNIA: Bureau of Land Management

1. 30,000 people use the river.
2. 22 outfitters formed an association. The association is closed to new members. An annual permit is issued to the association.
3. There are trip and passenger limits.

UPPER SNAKE, IDAHO: NPS

1. 30,000 people used the river.
2. No new outfitters were permitted and transfers of allocation were prohibited.
3. Total number of outfitters declined from 25 in 1972 to 17 in 1975.

SNAKE RIVER, GRAND TETON NATIONAL PARK

1. 16 maximum outfitters allowed. Five year permits allowed by nonfinancial bidding. Permits issued based on operating qualifications.
2. Over 100,000 passengers. 95 trips per day maximum.
3. Outfitters have maximum number of trips per day limitation, based on average daily number of trips during 1972-1974.
4. NPS retains 10% of total daily trips in reserve for distribution during periods of high demand.
5. An interpretive program is required.

CHATTOOGA, N.C., S.C., GA.

1. River usage is 18,000 people. Current private:commercial ratio is 2:1.
2. Maximum of three outfitters permitted. 3 year permits are issued by bid. Bid requires:
  - a. statement of outfitter experience,
  - b. standards for hiring guides,
  - c. statement of guides experience,
  - d. detailed financial status, and
  - e. equipment list, e.g. quality and type of raft.
3. Trip limited to 30 clients/6 rafts.
4. Weekends: 2 trips/day maximum,  
Weekdays: no limit.
5. Commercial trips must stay one mile apart.

Pennsylvania

- Youghiogheny R. (Ohiopyle State Park)
  - 6 1/2 miles Class 3&4; 3-5 hr. trip; season May-Oct.
  - safety regulation
  - private user restrictions: none
  - commercial permits: bid, 10 yr.; 4 outfitters
  - maximum trip size: 80 passengers not incl. guides; 20 boats
  - daily limit: 3 trips/outfitter i.e., 960 passengers
  - launch: 8 a.m. - 2:30 p.m.; 1/2 hr. spacing
4. The four "highest, most responsible and qualified" bidders, if any are selected, will be determined at the discretion of the DEPARTMENT, and will be based on that proposal which will be in the best interest of the COMMONWEALTH and the general public, and which complies with all of the requirements prescribed herein. Factors to be considered will be the applicant's financial responsibility, business experience, professional integrity, competence, and other qualifications, in addition to the value of the monetary bid received. Heavy emphasis will be placed on the individual's experience in operating commercial boating tours or in related fields of endeavor.

West Virginia

- Cheat, New, Gauley & Shenandoah R.  
(also Bluestone & Tygart R.)
- safety regulation since 1976
- commercial permits: 44 licensed outfitters, moratorium on new licenses pending study

## STATE OF MAINE

Inter-Departmental Memorandum Date July 9, 1982

To File \_\_\_\_\_ Dept. \_\_\_\_\_

From John R. Selser \_\_\_\_\_ Dept. \_\_\_\_\_

Subject Kennebec River Trip, Observations; 26 June 1982 \_\_\_\_\_

DESCRIPTION OF TRIP

The trip begins at Central Maine Power Company's Harris Station dam at the outlet of the Kennebec River on Indian Pond and continues for 13 miles to the take-out point at The Forks.

The water flow is subject to the controlled release of water from Harris Station. This dam is used to provide peaking power for Central Maine Power Company. During the week 5,000 - 7,000 cfs of water is released daily to provide electrical energy when the demand is highest. This provides sufficient water for rafting for up to six hours. On Saturday the water is usually only released for one hour. On Sunday there is usually no scheduled water release. The length of time the water is released limits the length of time the river is available for rafting. Rafting generally commences 15 minutes after the water has reached its maximum flow. This allows time for the large pools at the bottom of the rock ledges to fill up completely. Failure to observe this delay often results in a rafting spill in the turbulent water with some risk to the rafters. Once the water flow ceases, the river quickly returns to its former level, which is too low for rafting. Failure to leave a sufficient time before the water flow stops can result in a disappointing raft trip either because the rapids and drops which provide much of the excitement have lost their "punch" or, in the extreme cases, the water drops so low the rafters end up carrying their raft over the shallow rocks.

The well-timed trip provides a continuous 5 and 1/2 mile run through class IV and V rapids where the water shoots through the narrow Kennebec Gorge surrounded by spectacular cliffs reaching up to 100 feet high. Some of the more memorable spots include "Three Sisters" (a series of three drops in rapid succession) and "Magic Falls", a large drop near the end of the Gorge that is one of the more likely places for a raft to overturn. The gorge then widens to include secluded forests and stretches of rolling waves. The entire trip is through secluded wilderness area with no access other than the river. Throughout the trip the rafter is exposed to the natural beauty of the surrounding land interspersed with cascading waterfalls created as major tributaries (such as Cold Stream

and Moxie Stream) contribute their waters to the Kennebec.

The Kennebec Trip differs from the Penobscot Trip in several ways. It is not as rugged a whitewater trip when evaluated in terms of its individual rapids and drops. It does provide a longer continuous stretch of whitewater and it provides a more remote trip through a more secluded section of the Maine wilderness.

Many of the rafts stop along the river for lunch when the water flow allows it. Otherwise, the lunch is provided at the end of the trip. Often the rafters will stop to explore the beautiful waterfalls before continuing their journey.

#### LAUNCHING LOGISTICS

Transportation to the dam site is provided by the rafting companies in buses. The buses are unloaded at a fairly large staging area about 1/2 mile from the dam facility. There they pick up their gear (lifejackets, paddles, and protective head gear) and walk the remaining 1/2 mile on the paved road to the dam site. (Only two of the rafting companies provide protective head gear.) Wet suits, when necessary, are obtained at the rafting companies headquarters. Changing facilities are provided before the rafters board the bus for the trip to the dam site.

In 1977, Central Maine Power Company bulldozed a put-in spot for rafters and other recreational users of the river. The rafts are generally already at the dam site and lined up along the edge of the put-in ramp and small parking lot at the dam site. There appears to be sufficient room for other recreational users to park and fish or observe at the small parking lot beside the dam in spite of the fact that there was an inordinately large number of rafters on the river this day.

Members of the Association have established a prearranged order for each member-company to launch. Other rafters not in the Association and private users of the river launch whenever they desire and can find the room to put in. On this day, three rafts of a non-association company were already on the river and "hanging off the wall" before the water was released. They continued to hold their rafts to the side of the Gorge until the water flow was sufficient for the trip.

Due to the fact that the Penobscot had been unexpectedly closed for rafting, many of the rafting companies ran their Penobscot trips on the Kennebec this day. In view of this, CMP had agreed to release the water for a three hour period instead of their usual 1 hour Saturday release. This unusually heavy use of the Kennebec by rafters allowed a unique opportunity to observe the capacity of the Kennebec for rafting in excess of its normal traffic. Hopefully it provided a view of

rafting on the Kennebec that might correspond to future use of the river if rafting use continues to increase as it has in the past. The actual use figures for this day are included in a table attached to this report. These figures were provided with the assistance of the Whitewater Rafting Association, who had hired someone to gather this data at the entry gate.

Traffic in the waters immediately below the dam was congested during the initial 20-30 minutes rafting. During that period three rafting companies, representing over 20 rafts, began their river trip. For the remainder of the launching period, the launching continued in an orderly fashion with approximately 15 minutes between each rafting company's launch. Eastern River had one of the larger groups of rafts and was one of the later companies to put-in. Consequently their rafts were not as near the water as those who launched earlier. They launched their rafts in two segments and in an orderly fashion without any apparent difficulty. Each raft crew carried their raft to the water, put the raft in, and waited for the remainder of their group.

In spite of the apparent agreement on the order of launch, there were some instances of rafting companies going out of turn. While this did not please those who had to wait, it did not cause any extreme delay in the launching and was handled without incident.

#### THE RIVER EXPERIENCE

Shortly after all the companies had launched their rafts, I put in with Wayne Hockmeyer as guide from Northern Whitewater Expeditions. We completed the trip in a small raft outfitted with oars. The trip was handled competently in a professional manner with obvious concern for the safety of the passengers. Due to the late departure time of our raft, the water level (and consequent flow) was noticeably diminished from what was experienced by the earlier rafters. A late departure definitely provided a different trip experience. We traversed some of the more significant rapids and drops with little of the difficulty or exciting challenge that was experienced by those who had left at the beginning of the trip. Magic Falls, where one raft had overturned earlier in the day, was noticeably smaller. Several of the drops were avoided for safety reasons because of the changed pattern of water flowing over them. This is not to say, however, that we did not experience our share of excitement. We did not escape the inevitable drenching and the necessity for bailing out the raft periodically. And, of course, the beauty of the Gorge remained unchanged.

Because of the large amount of traffic and the limited release, Northern Whitewater Expeditions chose to eat at the end of the trip rather than stopping along the river. We consequently passed several other companies who were still at their lunch sites. Although it was a minor annoyance, it was noticeable that there were many rafts on the trip sharing this primitive wilderness experience.

Near the end of the trip, we were directed to the bank by several Game Wardens who were making an unannounced inspection of the rafts to check for safety equipment. The rafts which I observed being checked all had the required equipment on board.

The weather, which had been cloudy and rainy early in the morning, had given way to sunshine and clear skies. A delightful trip through a beautiful, primitive wilderness area ended with a steak lunch at the take-out point below the Forks.

#### KENNEBEC RIVER TRIP

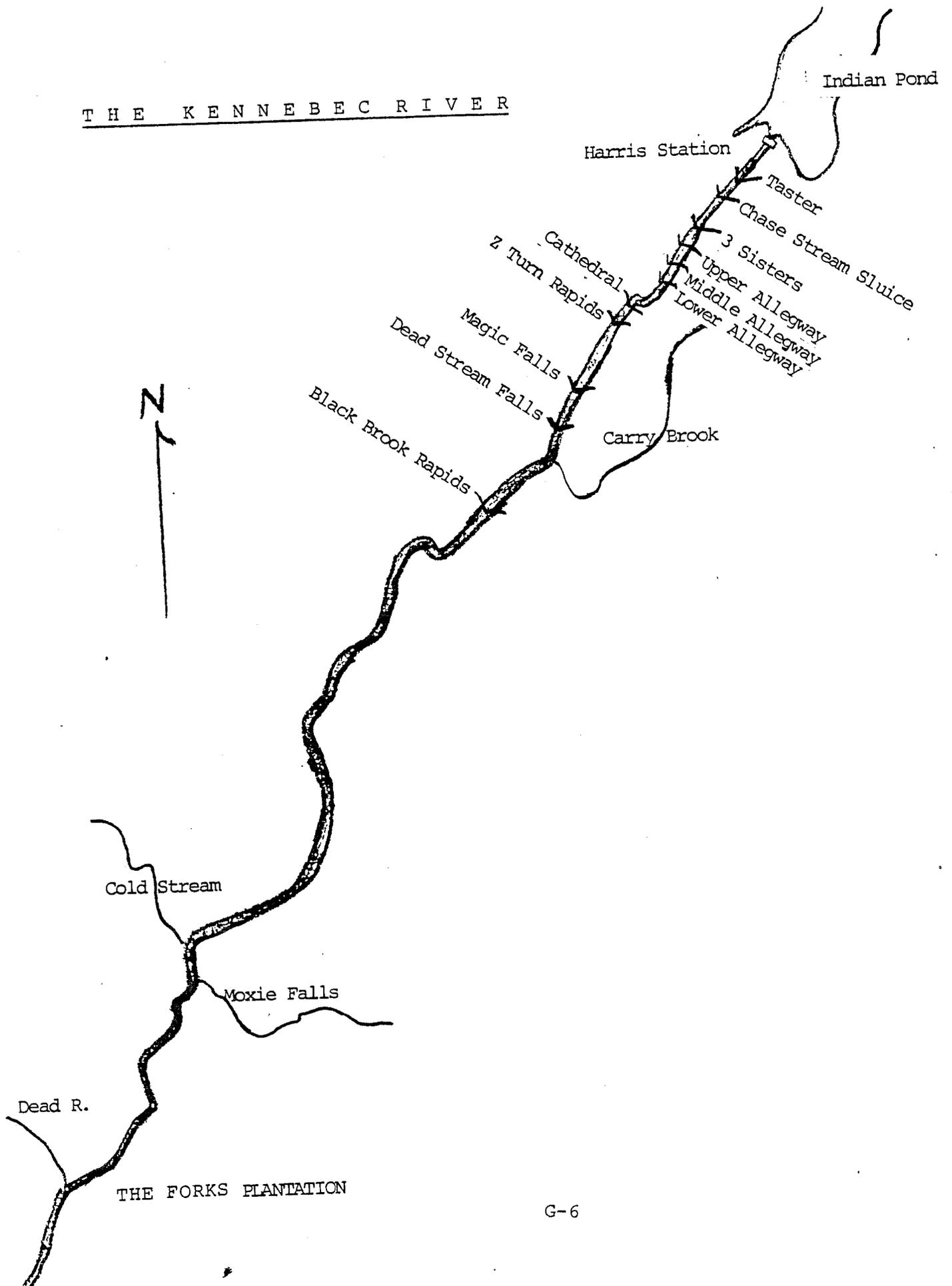
Saturday, 26 June, 1982

<u>COMPANY</u>	<u>NUMBER OF RAFTERS</u>
Northern White Water Expeditions	148
Eastern River Expeditions	144
Unicorn Rafting	58
Maine Whitewater	52
Down East	47
Kennebec Dories	24
Wilderness Expeditions	15
Voyagers Whitewater	4
Wilderness Adventurers	2
 <u>INDIVIDUALS</u>	
Mr. Sweet	1 Kayak
Jim Pepper	1 Kayak
	<hr/>
TOTAL	496

Kennebec Trip Saturday June 26, 83  
 (Resort was closed)

name of company	# of People	where from?
✓ Maine whitewater	<del>50</del> 52	Branford
✓ DOWN EAST	47	The Forks
✓ Eastern Rivers	144 <sup>(142)</sup>	Greenville
✓ Northern whitewater	148	The Forks
✓ Wilderness EXP	15	Racine wood
✓ Whitewater adventures	2	Doc & Kira
→ Hernandez DORIES	24	West Forks
✓ Unicorn Rafting	5-8	The Forks
✓ → Voyagers Whitewater	4	
Mr. Sweet	1 KAYAK	IOWA
Jim Pappas	1 K1	THE FORKS
	96	

THE KENNEBEC RIVER



THE FORKS PLANTATION

STATE OF MAINE (Corrected Copy) APPENDIX H

Inter-Departmental Memorandum Date June 21, 1982

To Files Dept.
From Haven Whiteside & John Selser Dept. Legislative Staff
Subject Trip Report West Branch, Penobscot River (June 13, 1982)

The purpose of the trip was to observe first hand the problems and opportunities of white water rafting in Maine.

The starting point is on the West Branch, just below Ripogenus Dam, 40 miles north of Greenville. The trip begins in Ripogenus Gorge and continues 13 miles downstream to the takeout below Pockwockamus Falls. The trip may also be run beginning at Big Eddy, continuing to Pockwockamus Falls then returning by land to Ripogenus Gorge to run the first half of the trip east, taking out at Big Eddy. It takes about 6 hours including a steak cookout for lunch. The river is rated Class 4 "Extremely difficult", and the major rapids are impossible for open canoes. A particularly difficult rapids, the Cribwork, is rated as Class V. Interspersed are quieter stretches, which have good fishing for landlocked salmon.

The raft trip was very exciting, with big waves, waterfalls and beautiful scenery. On a good day, Katahdin looms over the River, but this day was too cloudy. Wet suits, helmets and life jackets were necessary. (Only 2 outfitters require helmets.) The age limit for this trip is 16. There are 6-10 people in a boat, including 1 licensed guide and 3-8 rafts in a party including a lead boat and a sweep boat. We went with Eastern River Expeditions. They were competent, well-organized and personable. Memorable points were: the Exterminator & Cribwork in the gorge, between 100 foot rock cliffs; Big Eddy with canoes fishing on the right as the rafts go through on the left. A short trip from Big Eddy down is also available. (The age limit is 12 but there still are plenty of thrills). From Big Eddy we went through Big Ambejackmockamus Falls (Big-A), where one of our rafts got pinned on the rocks. We got off with good rope work. Then we continued through a pleasant class 2 rapid at Horserace, 2 miles of dead water and Nesowadnehunk, a 12-15 foot sheer drop. It was quite a surprise from the bow of the raft!! Lunch tasted good: we were chilly by then although the wet suits did pretty well on that 40° cloudy day. The Abol deadwater was a bit long but the falls were nice. Then Pockwockamus, last but not least, gave a thrilling roller-coaster ending.

Passengers included: Sen. Howard Trotzky; Herb Hartman (Dir. of Parks & Recreation); Zelda Smith (paddler & frequent camper at Big Eddy); Pat (student at UMO); Bart Harvey (Great Northern Paper); Norman Manwell (Design & Development, Parks & Recreation); Haven Whiteside (Legislative Staff) and Sandra Neilly (guide). In another boat were: John Marsh (Chief Warden IF&W); Casey LaCasce (camp operator in Spencer Bay Camps); John Selser (Legislative Staff); Owen Fenderson (fish biologist);

Roger Milligan (Forestry, Fire Control); Calvin Hafford (forester who maintains forest campsites) and John Connolly (guide). Tom Cieslinski (Parks & Recreation) made the arrangements and took photos from the shore.

Before the trip we gathered at Peter Pray's Campground at Sen. Trotzky's request for a 1/2 hour discussion of background and concerns.

### Factual Background

There are 17 licensed rafting companies. Some are merely holding licenses and others are subsidiaries of the larger companies. 9 are running the Penobscot now: Eastern River Expeditions; Maine White Water; Northern White Water (Wayne Hockmeyer); Unicorn; Downeast, etc.. Members of a Whiteoutfitters' Association have agreed on a voluntary limit of 80 person-trips/company/day. The West Branch generally has a steady water flow because Great Northern controls the dam to meet the needs of the paper mill. The Kennebec is different - the dam there is used for peaking power so sufficient water to raft is released only at certain times of day. Most trips occur on the weekends, some are overnite trips.

### Concerns

Jim Ernst (Maine White Water Rafters Association):

- crowding: could destroy the wilderness quality of the experience;
- logistics: put in, take out, lunch, camping; overnites
- safety: low water turns the cribwork into a nasty, punishing rapid creating pinning problems sometimes;
- 2 large companies have formed others with separate licenses, thereby skirting the 80-person limit;
- issues are carrying capacity and allocation of capacity;
- future market potential unknown. One study projects doubling each year for 5 years, but that seems too high.

Nick Gess (Friends of Penobscot):

- noisy compressors and excited rafters disturb the tranquility of the early morning;
- bus activity is disturbing;
- rest stop at Big Eddy Campground disturbs campers and fishermen;
- rafts can get in the way of fishermen;

- launch on the left bank at Big Eddy would help: fishing is best near the right bank. (The left is less accessible);
- rafters have made a real effort to cooperate;
- ospreys and other birds lose feeding time during raft trips;
- multiple use is OK, probably inevitable.

Owen Fenderson (fish biologist);

- no problems identified concerning damage to fisheries (no studies done yet).

Herb Hartman:

- open fires (permits are required);
- fire pans; porta-toilet for over 15 people;
- overnites; camping space is limited on the deadwater. This year there is no camping except at the gravel pit, which is also available for private campers;
- there is little erosion at the launch sites;
- lunch sites (rafters desire hot lunches and separate sites; concern for permanency of the lunch sites);
- State doesn't have right and title to direct access to Great Northern or Pray-leased land, for launch or other purposes;
- concerned with resident population of river birds (Bald Eagle/Osprey) and other wildlife.

Great Northern Paper Co.

- increase in public use of facilities they constructed for their own use;
- fire hazard;
- increased road use creates potential conflict with logging trucks, although rafts generally don't go during the week;
- safety of GNP equipment/people operating in the area; a congestion problem.

#### The Big A Dam Project

- Great Northern has tentative plans for a dam. This would conflict with rafting and possibly fishing by creating a lake over the upstream rapids and diverting the water from the downstream rapids.

### West Branch Management & Protection Plans

- Great Northern donated a conservation easement along the river to the State in 1981. The plan calls for maintaining the area in a primitive state with a few exceptions, including existing uses and hydro development. (See Resource Protection Plan and Recreation Management Plan for portions of the East and West Branches of the Penobscot River and Lobster Lake and Stream. Effective July 8, 1981.);
- Maine's safety regulations, issued by Inland Fisheries & Wildlife on May 6, 1982, are thought to be the most stringent in the country;
- Maine has no regulations limiting total use. Most other rafting states do.

### Comments on Regulation

Responses to an inquiry as to how the rafters should be regulated/Should there be many or few licensed companies.

Jim Ernst: Few companies = fewer vehicles (buses).

e.g. 80 people with 1 company equals 3 vehicles  
80 people with 2 companies equals 4 vehicles

lunch spots limit the maximum usage to a certain degree.

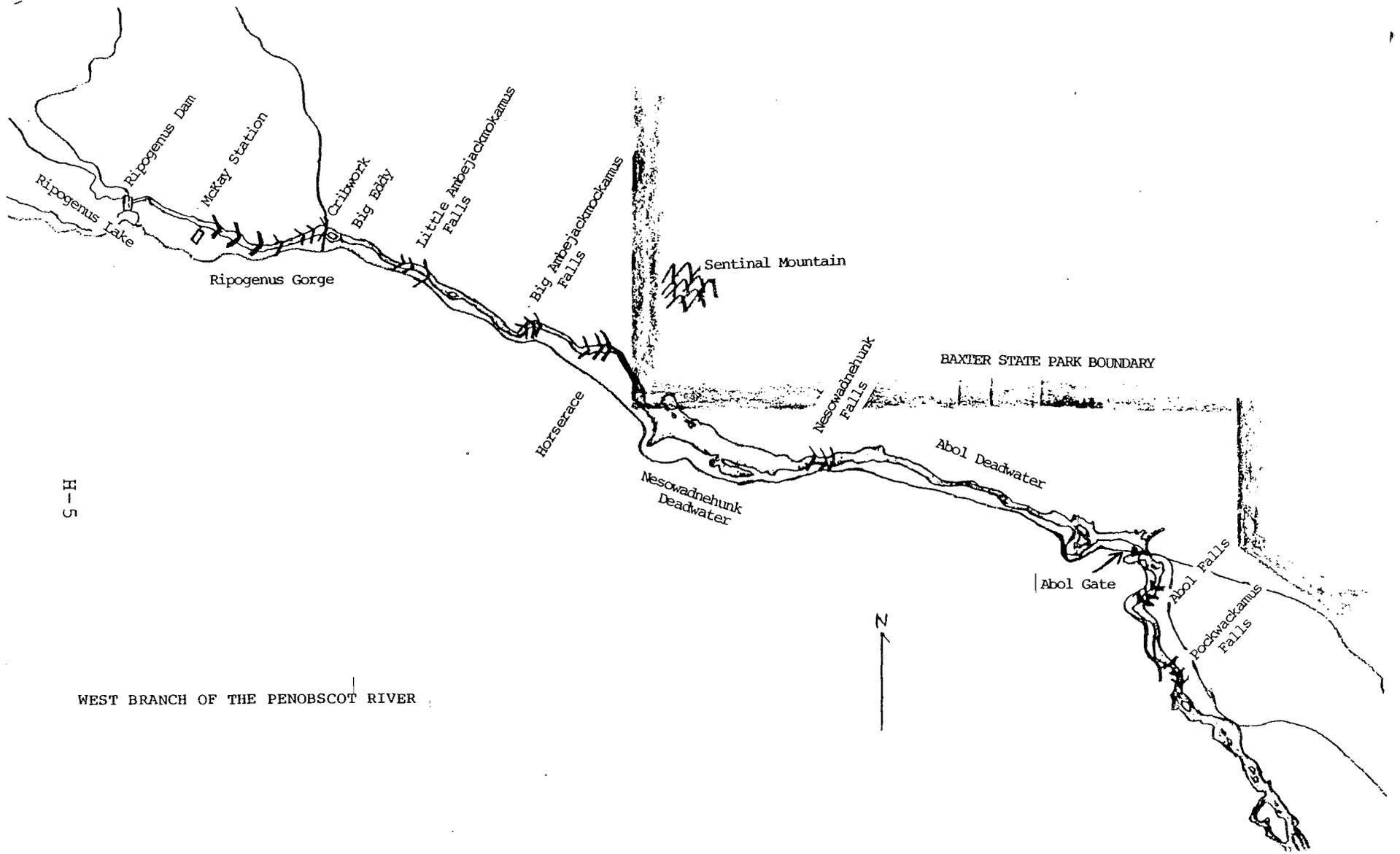
John Marsh: Easier to license fewer people.

John Connolly: Self-regulation best. There is currently competition for the quality of the trip; but the rest of the system's offerings are similar.

Howard Trotzky: potential for monopoly vice competition; Difficult to decide how to allocate a limited number of spaces, if limitation is a solution.

Sandra Neilly: Populativity is growing now. Maine's distance from population centers may limit the maximum number of participants.

HW/elk



S-H

WEST BRANCH OF THE PENOBSCOT RIVER



## Ch. 707                      LICENSES AND PERMITS                      12 § 7361

**Cross References**

Deer hides and heads, authority to purchase, see § 7458 of this title.

**Library References**

Licenses ☞18.

C.J.S. Licenses § 30.

**Notes of Decisions****1. Transportation of deer parts**

A butcher shop owner, transporting deer skins from persons who killed deer and had legal right to dispose thereof, to one licensed to buy them, was not guilty of transporting deer or parts thereof not open to view and plainly labeled with names and residences of, and accompanied by, persons who killed deer. *State v. Artus* (1945) 141 Me. 347, 43 A.2d 924.

**§ 7353. Repealed. 1979, c. 543, § 33, eff. Jan. 1, 1980****Historical Note**

The repealed section, derived from Laws 1979, c. 420, § 1, provided for fur dealer licenses. See, now, § 7352 of this title.

## SUBCHAPTER X-A

## COMMERCIAL WHITEWATER OUTFITTERS

## Section

7361. Legislative findings.

7362. Commercial whitewater outfitters' license.

*Subchapter X-A, Commercial Whitewater Outfitters, was enacted by Laws 1979, c. 723, § 14.*

**§ 7361. Legislative findings**

The Legislature finds that:

**1. Popular sport.** The recreational use of watercraft upon so-called whitewater and other highly turbulent and hazardous sections of rivers and streams in this State is becoming an increasingly popular sport;

**2. Risks.** This sport may post significant risks, particularly to those members of the public not skilled and knowledgeable in the same;

**3. Organized trips.** Many watercraft trips are organized and conducted by commercial operators who hold themselves out as possessing the skills and equipment necessary to navigate the waters with reasonable safety; and

**12 § 7361 INLAND FISHERIES & WILDLIFE Title 12**

**4. Safe equipment.** Accordingly, the public interest requires that commercial operators who conduct these trips utilize watercraft and equipment which are reasonably safe for these purposes and have sufficient training and skill in the operation of the watercraft and equipment in order to insure the safety of the public.

1979, c. 723, § 14.

**Historical Note**

**Derivation:**

Laws 1979, c. 518, § 4.

Laws 1979, c. 543, § 81.

Former §§ 2085, 7841 of this title.

**§ 7362. Commercial whitewater outfitters' license**

**1. Issuance.** The commissioner may issue a license to conduct commercial whitewater rafting, dory or bateau trips on rapidly flowing rivers.

**2. Fee.** The annual fee for a commercial whitewater outfitter's license shall be \$250.

**3. Restrictions.**

**A.** There shall be at least one license guide in each watercraft during whitewater rafting trips.

**B.** Outfitters shall ensure that each person participating on a whitewater boating or rafting trip wears a securely fastened Type I or Type V personal flotation device.

**C.** Each watercraft shall be equipped with at least one throwline, not less than 50 feet long.

**D.** Each watercraft shall be equipped with an adequate first aid kit.

**4. Exceptions.** Nothing in this subchapter applies to the operation of canoes. This subchapter does not apply to guides or camp trip leaders licensed under subchapter VIII,<sup>1</sup> or motorboat operators licensed under chapter 715, subchapter I,<sup>2</sup> unless these persons are in the business of conducting commercial whitewater trips described in subsection 1.

1979, c. 723, § 14.

<sup>1</sup> Section 7301 et seq. of this title.

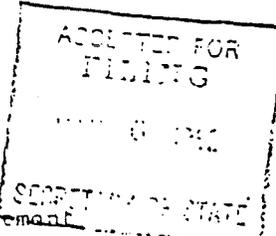
<sup>2</sup> Section 7701 et seq. of this title.

REGULATIONS FOR PERMIT SITES USED BY RAFTERS ON THE WEST BRANCH  
OF THE PENOBSCOT

- promulgated by the Bureau of Parks and Recreation, Department  
of Conservation.

1. Portable toilets be present at the site when in use by more than 15 persons at a time, and removed after such use.
2. Wood fires for cooking and warming to be contained in a fire pan with 4 sides and bottom. The pan should be placed at the water's edge during use and removed from the sites afterward;
3. No live wood shall be cut at the sites; ashes, coals, and any signs of lunch fires should be removed.
4. No permanent structures will be erected or left on the site;
5. Smoking by members of the party will be allowed only at the water's edge;
6. Rafting parties wishing to use the site will need a permit from the Bureau of Forestry, which will include the above conditions;
7. The Bureau of Forestry and the Bureau of Parks will have the right to close lunch sites at their discretion.

TO: Secretary of State  
ATTN: Administrative Procedure Officer  
State House, Augusta, Maine 04333



Leave Blank  
82-94  
Effective 5/10/82

1. Agency: \* Inland Fisheries and Wildlife Department  
2. Agency umbrella and unit #: 09-137  
3. Title of rule(s): Commercial Whitewater Rafting, Dory or Bateau Trips

4. Number assigned to the rule(s): Chapter 14, 14.01 through 14.06

5. Date(s)/method(s) of notice: March 10, 1982 - See Secretary of State  
Advertising List

6. Date(s)/place(s) of hearing(s): March 24, 1982 - Augusta, Maine (Civic Center)

7. Type of rule:  new rule       amendment of existing rule       suspension of existing rule  
 repeal of existing rule       emergency rule

8. Name/phone of agency contact person: Chief Warden John Marsh 289-2766

9. Certification Statement: I, Glenn H. Manuel, hereby certify that the attached is a true copy of the rule(s) described above and lawfully adopted by Commissioner of Inland Fisheries and Wildlife on April 22, 1982

Signature *Glenn H. Manuel*  
Printed Name & Title Glenn H. Manuel, Commissioner

10. Approved as to form and legality by the Attorney General on May 6, 1982  
Signature *Cabanne Howard*  
Printed Name Cabanne Howard, Assistant Attorney General

\*For instructions on completing this cover sheet see "A Guide to Rule-making for State Agencies", pp.8-10.

09-137 INLAND FISHERIES AND WILDLIFE DEPARTMENT

Chapter 14. Commercial Whitewater Rafting, Dory or Bateau Trips

14.01 Scope of Rules

These rules shall be applicable only to commercial whitewater rafting, dory or bateau trips as described in Title 12, Section 7362. Nothing in these rules shall in any way restrict or regulate the use of Maine's inland waters by groups or individuals which are not associated with a commercial whitewater trip.

14.02 Definitions

When used in these rules, unless otherwise specifically provided, the following words and terms shall have the following meanings:

A. Trip leader - "Trip leader" means a person who is licensed as a whitewater guide and has been designated by the whitewater outfitter to supervise activities on a whitewater trip.

B. Trip vehicle - "Trip vehicle" means a motor vehicle which transports equipment necessary to a whitewater trip and which accompanies the trip to the extent allowed by existing road systems.

C. Whitewater craft - "Whitewater craft" means any raft, dory, bateau or similar watercraft which is used to transport passengers along rapidly flowing rivers or streams.

D. Whitewater guide - "Whitewater guide" means a person who has met the criteria established by the Department of Inland Fisheries and Wildlife to qualify as a whitewater guide and who holds a current guide's license in the whitewater classification.

E. Whitewater outfitter - "Whitewater outfitter" means a person (or corporation) who conducts commercial whitewater rafting, dory, or bateau trips on rapidly flowing rivers or streams and who holds a current license, issued by the Department of Inland Fisheries and Wildlife, to engage in this activity.

F. Whitewater trip - "Whitewater trip" means any commercial effort to transport passengers by means of raft, dory, bateau or similar watercraft on rapidly flowing rivers or streams.

14.03 Whitewater Personnel Requirements

A. Trip leader

1. One licensed whitewater guide who has been designated by the outfitter as a "trip leader" shall supervise each whitewater trip.

2. Each trip leader shall be certified in Advanced First Aid or E.M.T.

B. Guides

1. Each craft involved in a whitewater trip shall carry a minimum of one licensed whitewater guide.
2. Each whitewater guide shall be certified in Basic First Aid and C.P.R.
3. The minimum number of licensed whitewater guides on any whitewater trip shall be two.
4. Each whitewater guide shall carry on his/her person a knife and a whistle, both of which are in serviceable condition.
5. Each whitewater guide shall wear a securely fastened Type I or Type V Coast Guard approved life jacket.
6. Life jackets worn by guides shall contrast in color with those worn by other passengers to such a degree that guides are easily recognized as such by all trip participants.
7. It shall be the responsibility of a whitewater guide to see that all passengers within his craft are wearing personal flotation devices as required by Title 12, Section 7362.

14.04 Safety Equipment Requirements

A. First aid

1. One major medical first aid kit shall be carried, securely attached to one of the craft, on each whitewater trip.
2. One additional major medical first aid kit shall be carried on all whitewater trips involving more than 5 watercraft.
3. Major medical first aid kits shall include the following items:

Inflatable splints	Safety pins
Finger splint	Adhesive tape
Emergency space blanket or equivalent	Antiseptic solution for cleaning
12 triangular bandages	Sting swabs
Ace bandages	Scissors
Quick cold packs	Tweezers
Hot packs	Knife
Gauze compresses at least 2x2 or larger	Sun screen
Roller gauze 2" - up	Matches or equivalent
Band-aids 3/4" - up	Sanitary napkins
Butterfly band-aids	Accident report form

4. A serviceable backboard shall be carried in one of the trip vehicles on each whitewater trip.

B. Additional items and provisions

1. The following items shall be carried on all whitewater trips:

- a. An emergency patch kit;
- b. A foot or hand pump;
- c. Throw lines at least 50 feet long securely attached to each whitewater craft; and
- d. At least one bail bucket in each whitewater craft. Bail buckets, when not in use, shall be safely secured against loss.

2. All rafts used in connection with whitewater trips shall be equipped with:

- a. An inside safety line, at least  $\frac{1}{2}$  inch in diameter, securely attached around the inside of the raft;
- b. An outside safety line, at least  $\frac{1}{2}$  inch in diameter, securely attached around the outside of the raft; and
- c. A carabiner.

14.05 Whitewater Craft Specifications

A. Minimum number per trip

The minimum number of watercraft on any whitewater trip shall be two, one of which may be a kayak.

B. Size and capacity

1. Any watercraft carrying passengers on a whitewater trip shall be at least 15 feet in length, except as follows:

- a. Craft under 15 feet in length but at least 13 feet in length may be used on the Kennebec River and the Dead River; and
- b. Whenever conditions warrant, the Commissioner may, upon written request from a whitewater outfitter, authorize the use of whitewater craft less than 15 feet in length on any river or stream.

2. The maximum number of passengers allowed in a whitewater craft, not including the guide, shall be as follows:

- a. Craft at least 13 feet but under 15 feet in length (where allowed) - 7 passengers.
- b. Craft at least 15 feet but under 20 feet in length - 10 passengers.
- c. Craft 20 feet and over in length - 12 passengers.

14.06 Additional Requirements and Restrictions

A. Liability insurance

Prior to conducting any commercial whitewater trip, each whitewater outfitter shall file written proof with the Department of Inland Fisheries and Wildlife of current liability insurance protection in the amount of at least three hundred thousand dollars.

B. Age restriction

All persons 12 years of age or under must be accompanied during any whitewater trip, by a parent or guardian or by an adult, at least 18 years of age, approved in writing by a parent or guardian.

C. Record Keeping

1. Each whitewater outfitter shall keep current and accurate records of all whitewater trips conducted.

2. The records shall be maintained in a legible manner and shall include the following information for each trip:

a. Trip date (s);

b. Waters involved;

c. Names of licensed guides who accompanied the trip; and

d. Names and addresses of all passengers who participated in the trip.

3. Such records shall be retained by the outfitter for a period of two years and shall be made available to any law enforcement officer upon request.

D. Safety practice runs

In the interest of safety, the Department of Inland Fisheries and Wildlife may require that whitewater outfitters and guides conduct practice runs on dangerous sections of river or stream prior to carrying passengers.

AUTHORITY: Title 12, MRSA, Section 7035.

EFFECTIVE DATE: May 11, 1982

BASIS STATEMENT

Unit Number 09-137

AGENCY: Department of Inland Fisheries and Wildlife

Rule Title: Chapter 14. Commercial Whitewater Rafting, Dory or Bateau Trips

The use of watercraft upon turbulent sections of Maine rivers and streams as a form of recreation has increased substantially within the past few years. Many whitewater trips, so called, are organized and conducted by commercial operators who advertise themselves as having the necessary skills and equipment to safely transport members of the public along rapidly flowing waterways.

These rules are necessary to ensure that persons licensed to conduct commercial whitewater trips are, in fact, adequately trained, staffed and equipped to transport passengers along hazardous sections of rapidly flowing rivers and streams with as little risk to human safety as can reasonably be expected under those conditions.

Representative comments concerning adoption of these rules, received at the public hearing on March 24, 1982, and during the required comment period are summarized as follows:

A. (Comment) - It is unnecessary to require that "trip leaders" be certified in Advanced First Aid or E.M.T. Basic First Aid and C.P.R. training should be sufficient to ensure adequate medical treatment to those who might sustain injuries while on a whitewater trip.

(Not incorporated) - Whitewater rafting can be a very hazardous recreation, depending on water conditions, and passengers often face the risk of bodily injury. Although all whitewater guides must be certified in Basic First Aid and C.P.R., it is the feeling of the Department that at least one person on each whitewater trip - the trip leader - should have the training necessary to administer advanced medical treatment to victims of serious injury or illness.

B. (Comment) - The two guide/two craft requirement for each whitewater trip is unnecessary and discriminates against small outfitters.

(Not incorporated) - Many of the passengers on a whitewater trip have little knowledge or skill concerning whitewater rafting. If a guide becomes involved in a mishap or if a craft gets into trouble, it is essential that a second guide and/or craft be available to provide advice and assistance.

Because of the safety risks involved, the Department feels very strongly that each whitewater trip should include a minimum of two guides and two crafts.

C. (Comment) - Guides should have the option of wearing Type III personal flotation devices as well as Types I and V.

(Not incorporated) - To give guides this option would require a statutory change. The statute now states that all persons participating on a whitewater trip must wear either a Type I or Type V P.F.D.

D. (Comment) - For visibility reasons, use of a red cross on the back of each guide's life jacket for identification purposes is less desirable than requiring guides to wear life jackets of a contrasting color.

(Incorporated) - The red cross provision has been deleted and the section has been rewritten as suggested. The change does not affect the intent of this section.

E. (Comment) - The section on craft size requirements should be rewritten to allow the use of smaller rafts as water conditions allow.

(Incorporated) - The raft size section has been revised to allow the Commissioner, upon written request from an outfitter, to authorize the use of craft less than 15 feet in length on any river or stream if conditions warrant.

F. (Comment) - The section on raft capacity should be rewritten to allow one additional passenger in 13 to 15 foot rafts, two additional passengers in 15 to 20 foot rafts and two additional passengers in rafts over 20 feet in length.

(Incorporated) - This provision has been rewritten as suggested to more closely conform to the capacity ratings listed by the manufacturers for this type of craft.

G. (Comment) - The safety boat section is vague, unenforceable and should be eliminated for the time being.

(Incorporated) - The Department agrees with the comment and this section has been deleted for now. "Dangerous rapids" must be better defined in order for this provision to serve any useful purpose.

H. (Comment) - The log book requirement, as written, could jeopardize the confidentiality of the outfitters mailing list. (Most of the outfitters expressed serious concerns with this provision.)

(Incorporated) - The term "Log Book" has been changed to "Record Keeping" and the section has been rewritten to address the concerns of the outfitters. The change will have no effect on the rights of law enforcement officials to inspect the records of whitewater outfitters.

## STATE OF MAINE

APPENDIX K  
Traffic SurveysInter-Departmental Memorandum Date 9-8-82To Herb Hartman, DirectorDept. Conservation- Parks & Rec.From Calvin L. Hafford, District RangerDept. Conservation- ForestrySubject West Branch Penobscot Rafts and Kayak Trips.

The following is a complete account of all raft trips on the Penobscot from July 17th to Sept. 4th.

<u>OUTFITTER</u>	<u>DATES</u>	<u>RAFTS</u>	<u>++KAYAK</u>	<u>PEOPLE</u>
Maine White Water	7-17	4		36
	7-18	1		8
	7-24	5		50
	7-25	1	1	9
	7-31	1	1	9
	8-7	4		37
	8-8	4		32
	8-14	2		13
	8-15	1	1	9
	8-21	4		29
	8-22	3		27
	8-28	4		26
	8-29	8		80
9-4	4		32	
Northern White Water Exped.	7-17	8		78
	7-18	8		78
	7-24	8		80
	7-25	8	2	82
	7-31	8		80
	8-1	8		72
	8-7	8		79
	8-8	8		30
	8-14	8		80
	8-15	8		78
	8-21	8		80
	8-22	8		80
	8-28	8		81
8-29	8		80	
9-4	8		80	
Wild Water Adventures	7-17	3		22
	7-18	2		18
	8-21	3		33
	8-28	2		19
	9-3	1		10
Kennebec Dories	7-17	4		32
	7-18	4		30
	8-28	4		27
	8-29	4		19
	8-8	3		22
	8-7	4		30
Unicorn River Exped.	7-17	8		65

<u>OUTFITTER</u>	<u>DATES</u>	<u>RAFTS</u>	<u>KAYAK</u>	<u>PEOPLE</u>
(cont. from page 1)				
Unicorn River Exped.	7-18	4		22
	7-24	8	1	69
	7-25	3		23
Overnight	7-31	4		39
	8-1	2		18
Overnight	8-5	1		10
	8-8	5		31
	8-9	3		22
	8-14	2		13
	8-15	4		34
Overnight	8-19	1	1	6
Overnight	8-21	3		20
	8-21	5		42
	8-22	3		23
Overnight	8-28	1		7
	8-29	3		20
	9-2	1	1	5
	9-4	2		13
Eastern River Exped.	7-17	9		70
	7-18	5		35
	7-24	8		60
	7-25	6	1	43
Overnight	7-30	2		12
	7-31	8	1	56
	8-1	4		21
	8-2	1	1	8
	8-6	4	1	28
	8-7	11	2	81
	8-8	1	1	8
Crib Work Only	8-8	7	2	49
	8-13	3	1	19
Overnight	8-13	3	1	20
	8-14	10	2	70
Two Seperate Trips	8-15	15	2	99
Crib Work Only	8-16	1	1	10
	8-20	2	1	15
Big Eddy Down	8-21	6		65
	8-21	7		53
	8-22	8	1	56
Kayak School	8-22		6	6
Big Eddy Down	8-22	3		20
Crib Work Only	8-22	1		6
	8-23	2		19
	8-27	5		36
Big Eddy Down	8-28	2		17
	8-28	10	1	82
	8-29	7		75
Big Eddy Down	9-3	3		23
	9-3	2	1	13
Downeast Rafting	7-17	2		14
	7-18	4		26
	7-31	4		39
	8-1	4		29
	8-8	2		16
Crib Work Only	8-8	2		20

<u>OUTFITTER</u>	<u>DATES</u>	<u>RAFTS</u>	<u>KAYAK</u>	<u>PEOPLE</u>
Downeast Rafting	8-14	2		16
	8-15	3		24
	8-22	2		10
	8-28	2		15
	8-29	2		16
White Water Adv.	7-18	2		16
	7-25	3		30
	8-13	3		26
	8-15	2		26
Wilderness Rafting	7-23	1	1	11
	7-24	1	1	9
	8-1	2		20
	8-6	1	1	11
	8-12	2		15
	8-18	2		19
	8-28	2		15
	9-2	2		16
	9-3	2		20
	9-4	1	1	7
Fubar Club	7-31	2		10
Pat Dorean	7-31	1		6
Wind Fall( N.J. Camp )	8-2	1		9
Dave Jaquette	8-7	1		5
Tom Hey	8-7	2		12
Tom Hey, Crib Work Only	8-8	4		32
Penobscot Paddle & Chowder	8-7	1	10	19
Fred Robertson	8-11	1		4
Camp Halughra	8-14	1		7
Back Country River Tours	8-15	2		15
Voyager White Water	8-16	2		10
White Water Outfitters of Me.	8-17	2		16
Rocky Cruce	8-22	1		7
Tom Barlett	8-27	2	1	12
Bruce Haines	8-28	4		31
Bill Pullan, 3 Trips on Gourage	9-2	3		8
Troop 110	9-4	4		38
Merrimack Valley Paddlers	7-25		1	1
Steve Kaiw	7-25		2	2
Jim Pepin	7-24,8-3,8-4		3	3
William Dallen	7-27		4	4
Maine Wilderness Canoe Basin	7-30,8-1,2,22,23,24,25		97	97
Boston AMC	7-30		6	6
Robert Harrison	8-1,3,4		8	10
John Connelly	8-3, 8-4		2	2
Steve Kovacs	8-8		1	2
R.W.Craggett	8-12		1	2
Steve Jusem	8-14		1	2
John Grityer	8-19,8-20		7	7
Kim Lynch	8-20		1	1
Maryland River Rats	8-24		5	10
Chuck Coner	9-3		1	1

C.C.

George Bourassa  
Roger Milligan  
Vaughn Thornton

# STATE OF MAINE

Inter-Departmental Memorandum Date October 5, 1982

To Files Dept. \_\_\_\_\_

From Haven Whiteside Dept. \_\_\_\_\_

Subject Whitewater Outfitters on Kennebec, Selected Days

Ref: Reports from John Marsh, Fish & Wildlife Department

Outfitter *	Date	Rafts	People
Maine White Water	7-31 Sat.	11	79
	8-5 Thurs.	8	65
	8-7 Sat.	8	71
	8-9 Mon.	3	29
Northern White Water	7-31	10	80
	8-5	6	56
	8-7	10	78
	8-9	8	62
Eastern River	7-31	6	59
	8-5	1	10
	8-7	9	73
	8-9	2	14
Unicorn	7-31	10	75
	8-5	1	6
	8-7	7	55
	8-9	5	35
Downeast	7-31	5	38
	8-7	10	80
	8-9	1	7
Kennebec Dorries (Great Adventures)	7-31	3	23
	8-5	2	12
Wild Water Adv.	7-31	2	14
	8-7	2	12
Wilderness Rafting	7-31	5	44
	8-7	6	56
Back Country	7-31	6	46
	8-7	6	63
Adventure Rafting	7-21	4	36
	8-7	4	39
Voyagers	8-7	2	14
Frontier	8-7	8	65
Rolling Thunder	8-7	1	5

\* does not include private trips, camps, etc.

THE WEST BRANCH PENOBSCOT RIVER

Flow data was not made available to the Commission. The Great Northern Paper Company is the licensee for the dam at McKay Station.

## THE KENNEBEC RIVER

The Kennebec River rises in Moosehead Lake and flows 150 miles southward to the sea, below Bath. The watershed includes 6000 square miles and 46 billion cubic feet of water storage. For many years it has been an industrial river with over a dozen dams between its source and the head of tide at Augusta. These dams supply hydro-electric power to Scott Paper, Central Maine Power and others.

In the last decade the water has been getting steadily cleaner. Further down, shipbuilding has been a tradition since colonial days. The log drivers which dominated the river in the past were stopped by a new Maine law in 1976, and raw sewage discharges have been cleaned up by installation of modern treatment plants as required by the federal Clean Water Act. The result has been a resurgence of traditional recreational activities, including fishing and boating, and addition of a new one: whitewater rafting.

Nature provides the water resource, but allocation is managed by the Kennebec Water Power Company (Otis Bacon, Manager) which controls the East Outlet Dam on Moosehead Lake. Depending on the lake levels and the rainfall, they set an average daily release to provide as steady a flow as possible year-round at a control point in Madison 60 miles down-river. That release is recalculated every two weeks. Several major feeder streams are also controlled by dams, including: Dead River (Flagstaff Lake); Carrabasset River, Sandy River, Messalonskee Stream, and the Sebasticook River.

On the Kennebec itself, East Outlet releases into Indian Pond, where CMP takes control of the water. Harris Station (FERC #2142) produces 76 Megawatt of peaking power (about 25% of the time). Wyman Dam (#2329) provides 71 Megawatts of intermediate load power (50% of the time) and Williams Station (#2335) at Solon provides 13 Megawatts of base load power (over 95% of the time) and re-regulates the river to the steady flow required by the paper mills downstream.

Rafting was originally run in the 3-mile stretch between East Outlet and Indian Pond, but now it has moved to the Kennebec Gorge, a 6-mile stretch of heavy (Class V) white water just below Harris Dam. That is followed by an equal distance of flat water to the takeout at the Forks.

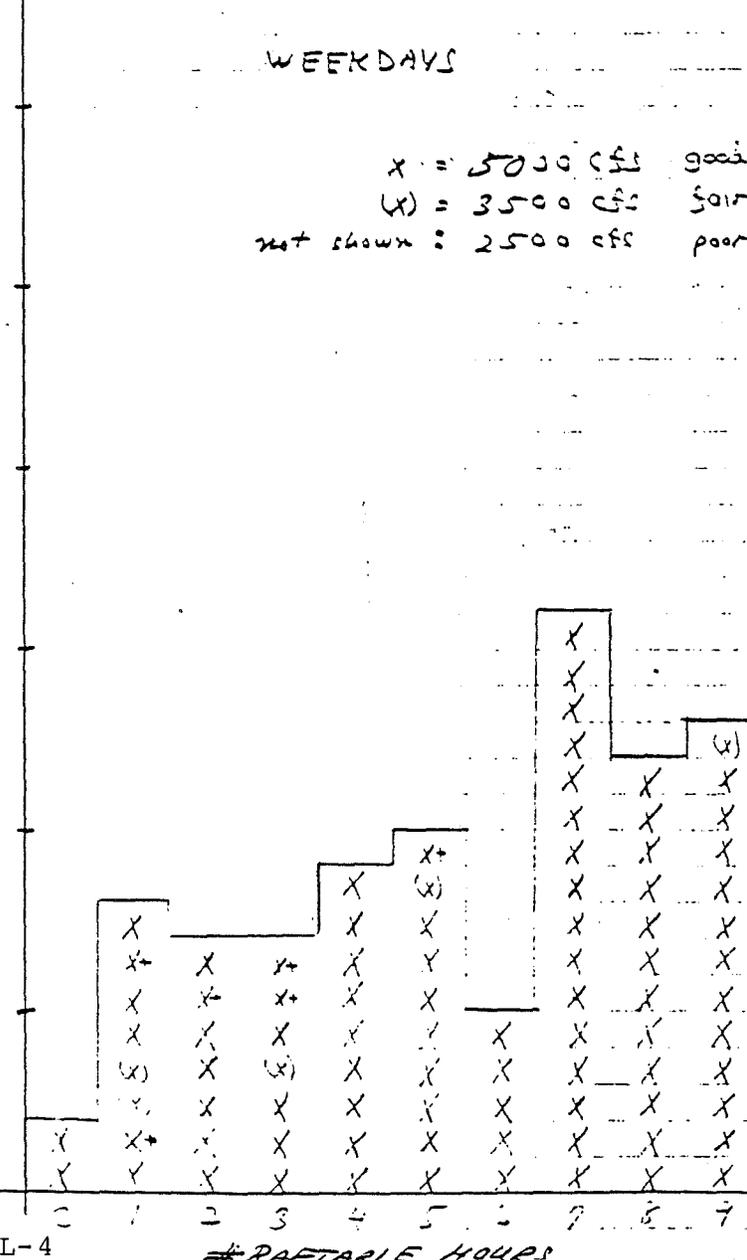
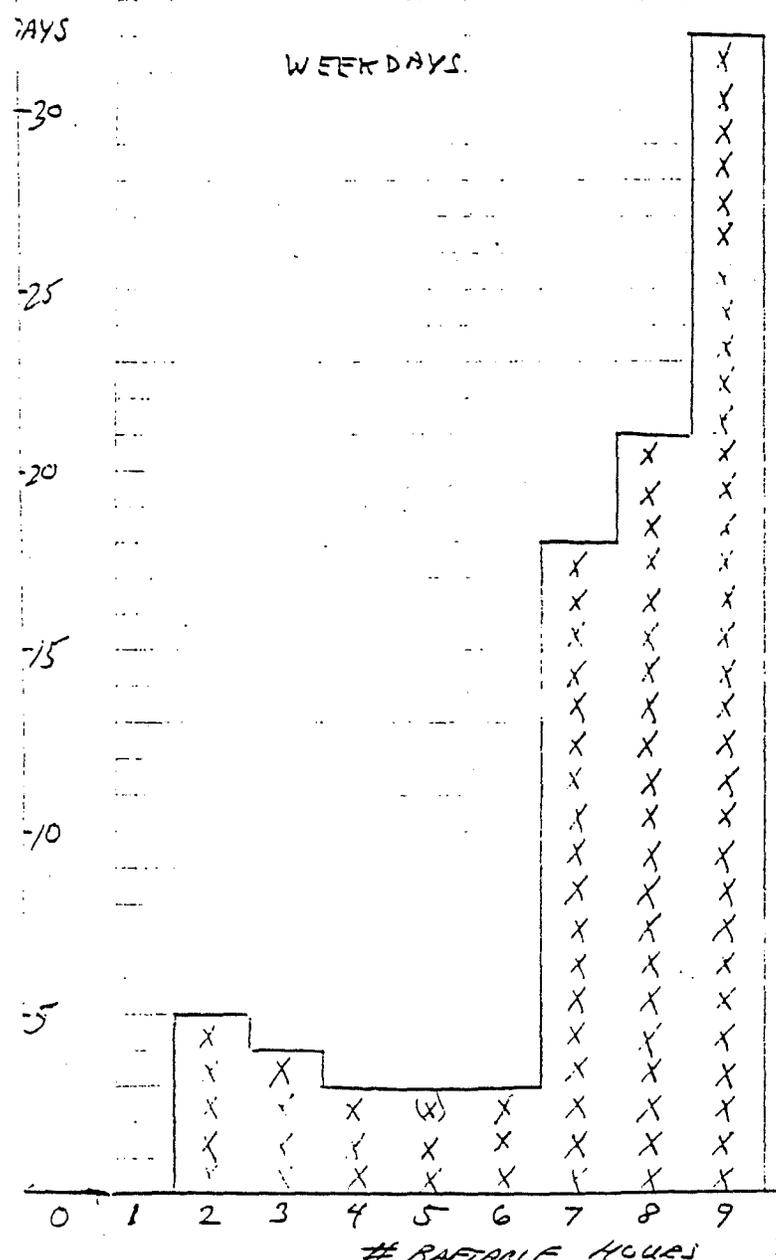
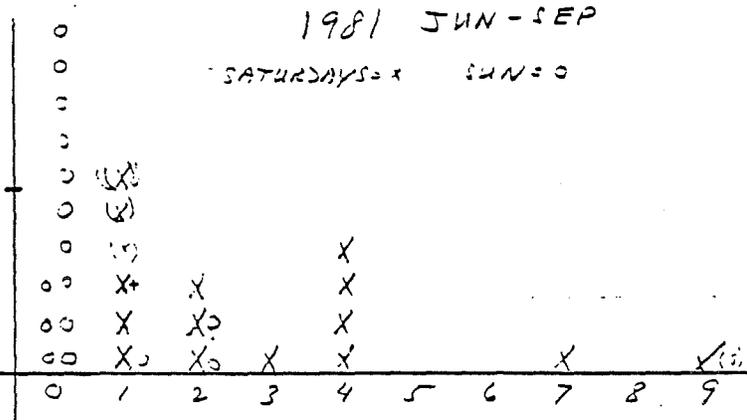
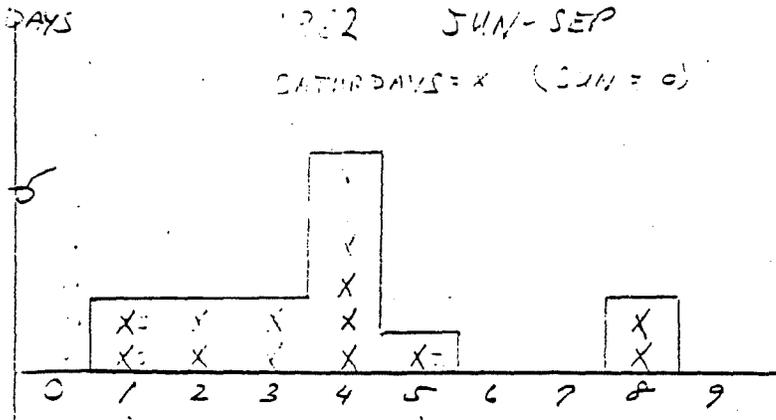
Rafting is only possible when big water is being released by CMP from Harris Dam (5 to 6,000 cubic feet/second (cfs) is good). This generally occurs around 10 a.m. on weekdays when the need for peak power in New England is greatest and lasts for one to six hours, depending on the amount of water available. On Saturdays, a release has been added in the last few years, but it lasts only one to three hours, and on Sundays there is none because peaking power is not needed.

As stated above, the average amount of water available to CMP is set by the release from East Outlet. Last year (1981) that was 1000 cfs, 24 hours/day, 5 days/week. This year it is 2000 cfs. Harris Station, by closing down part of the time, runs at higher flows the rest of the time, for example 6000 cfs, 7 hours/day, 5 1/2 days/week. The actual release, within

the available water, is governed by the needs of the power company for economic electric power, except that a minimum flow of 140 cfs is required at all times by the FERC license for ecological reasons.

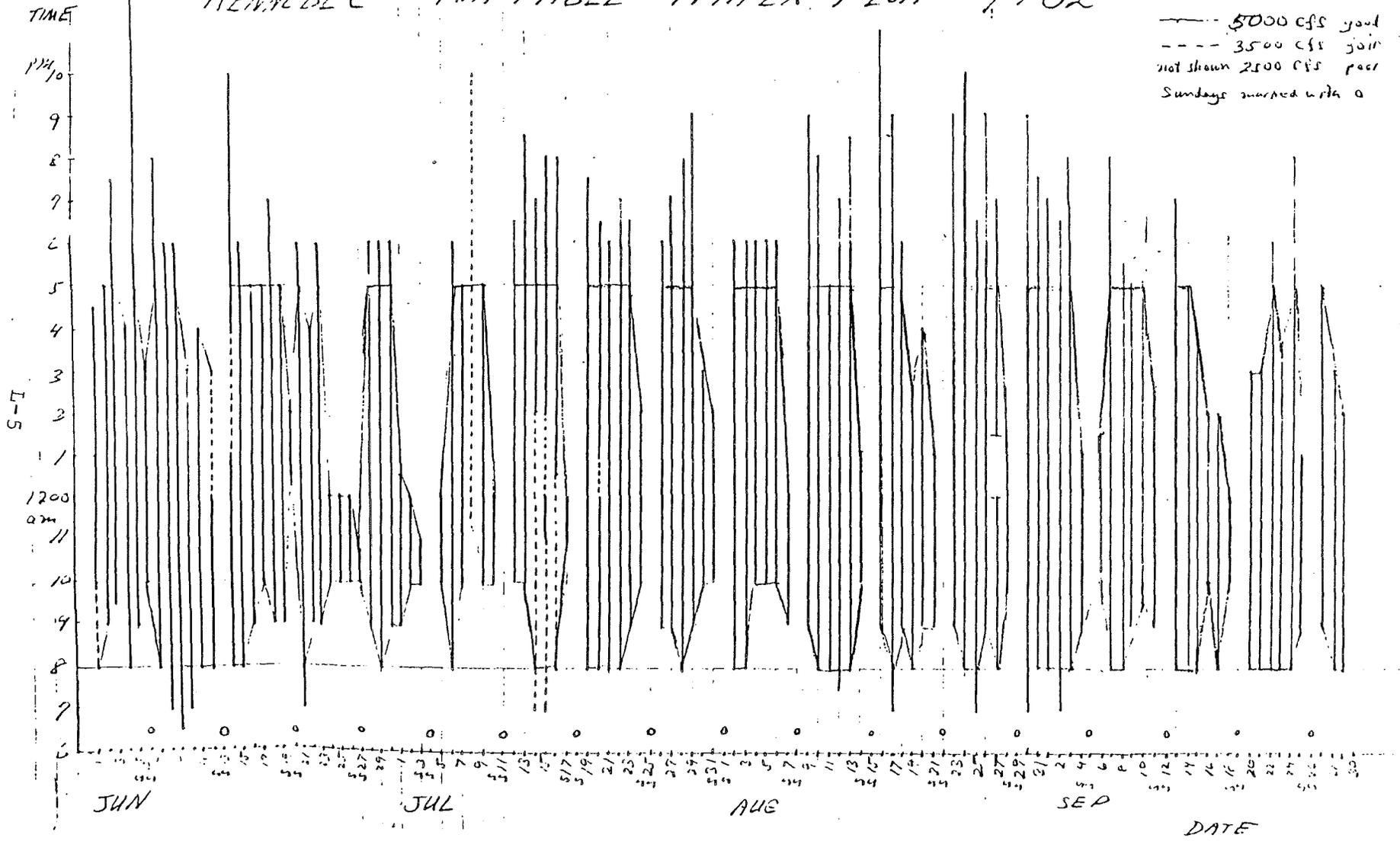
The rafters report that CMP has been cooperative by informing them of planned releases, and allowing use of CMP land for the put-in, lunch stops, etc..

# KENNEBEC RIVER



# KENNEBEC RAFTABLE WATER FLOW 1932

H.W. 20-32





COMMERCIAL WHITEWATER RAFTING  
STUDY COMMISSION

APPENDIX M

SUMMARY: PUBLIC HEARING & MEETING, Caratunk, July 27th

I. The first part of the hearing resulted in comments from the general public as follows:

1. Business impact is favorable:

- Local businessmen reported that rafting was good for business in season:

Clifton Berry - 75% business in his West Forks store

Charles Peabody - 90% business in his inn, Crab Apple Acres (Forks)

Denis Maheux - rafters have doubled his hotel business at his Marshall Hotel in The Forks

Clifton Walter - 25% of business in his Bingham Motor Inn

Nick Roman - rafting is good for business (Caratunk)

- Jim Ernst, President, submitted a study done for the Outfitters Association by UMO that estimates \$2.2 million of in-State expenditures (1981) by the 14,000 rafting customers, based on a survey questionnaire sent to a 10% sample. This translates into \$5.2 million total economic impact, using standard multiples. John Marsh pointed out that the cost of additional services should be subtracted to get net impact.

2. Employment impact is favorable:

- Eastern reports 3 year-round; 12 full-time & 40 part-time in summers, mostly area residents..
- Downeast reports 2 year-round; 6 full-time & 18 part-time, summers.
- Three area residents who are employees reported favorably that rafting provides jobs in an area where there aren't many. (Alan Hadl, Nelson \_\_\_\_\_ & Lou Berry).

3. Environmental problems are manageable (same witnesses as item 1).

- There is a need for toilet facilities, but Rick Hoddinott reported that the association has ordered portable johns for the ballfield (at the take-out point in the Forks) and CMP is building facilities at the put-in at Harris dam.

- Last year the association reseeded the field and stopped parking there.
- With the heavy pulp-truck traffic, parking along the road creates a bit of a safety problem at the stores. Enforcement of the 35 mph limit would help.
- Litter from the rafters is not a problem at the Forks (Denis Maheux) or at Caratunk. Sandra Neily reported that the rafters take out other people's trash. They have asked the Forest Service for trash barrels, and outhouses at the lunch sites. The Forest Service is trying to clear this with CMP, which owns the land, 2000 feet on each side of the river.

4. Other Uses (canoe, fish, etc.) expressed no conflict with the rafters.

5. Danger of unexpected rising water was mentioned by Nick Roman and Mrs. Daniel Beane of Caratunk. This can be a safety problem for un-informed fishermen. The rafters have no control over water levels: CMP releases according to their power needs (roughly 9 am - 7 pm, 5 days/week, plus an hour or two on Saturday). The Association does maintain a phone number with a recorded message giving the hourly releases. The tape is made at 7:30 am, and CMP sticks to it except in a dire emergency. (call 662-2287).

Herb Hartman proposed warning signs along the river.

Otis Bacon prepares an annual list of planned releases for rafting and canoeing on the Dead River.

II. The last part of the hearing resulted in comments primarily from the rafters, as follows:

6. The Association includes about half of the outfitters.

- According to Jim Ernst, they pay CMP \$5/head for use of the roads, etc..

Others reported their reasons for not joining: Longley (Rolling Thunder) mentioned the pending lawsuit and that by-laws are unfavorable to small companies. Sarli (Rapid Transit) doesn't like its domination by the big companies.. Abbott (Kennebec Dorries) was denied access to by-laws.

Hockmeyer replied that actual voting has been 1 member - 1 vote but by-laws do specify 1 vote per dollar dues paid, and dues are based on passengers carried to protect against outside speculators. By-laws are available to prospective members. Abbott wanted them for a lawsuit.

Several Commission members pointed out the need for all the rafters to get their thoughts together, both non-members and members of the Association.

7. Small Companies should be allowed:

- According to Sarli (Rapid Transit) and John Kokajko (Voyagers) license fees should not be set so high that they force companies to become big.

8. Safety was discussed, with some rafters criticizing others.

- Sarli is concerned that big companies with discount tours will get too many people on Saturdays and use marginal guides. He criticized the Maine license procedure for lack of an on the river test like Oregon and Idaho. Jay Shurman (Unicorn) stated that Maine has the toughest regulations in the country.
- Kokajko is uneasy about running the river after the Association. Low water is dangerous at Magic Hole and there could have been a bad accident 2 weeks ago. He has heard of a customer being recirculated 3 times! He himself proceeded safely by keeping to the right, away from the hold.

9. Carrying Capacity was discussed briefly.

- Stearns doesn't want private individuals short-changed.
- Trotzky stated that the public should be protected against a bad experience with insufficient water, and pointed out that Baxter Park has a limit.
- Jacques pointed out the difficulty in setting a number. It has not been done on the Allagash yet.
- Ernst agreed that the Association would do a test run next Saturday to see how many boats they can get down in one hour. (Fish & Wildlife will monitor).

III. A letter for the record was received from Thomas Greer of Gorham. He recommends: (1) licensing outfitters (already exist); (2) review access & litter control on the Saco (12 mi near Fryeburg are handled well by the AMC); (3) carefully consider recreation vs. power generation on the Lower Dead, Kennebec & Penobscot Rivers.

IV. The next meeting was set for Tuesday, August 17th, with a public hearing in Greenville from 9:30 - 11:00 A.M., a raft trip on the West Branch, and a public hearing in Millinocket from 8 - 8:30 pm.

# STATE OF MAINE

Inter-Departmental Memorandum Date October 21, 1982

To Members, Whitewater Rafting Study Commission Dept. \_\_\_\_\_

From John R. Selser Dept. Legislative Assistants

Subject Greenville Public Hearing, August 17, 1982; summary of testimony

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The Whitewater Rafting Study Commission held a public hearing at the Greenville Fire Hall, Greenville, Maine on August 17, 1982. All members of the commission were present. The hearing was convened at 9:10 a.m. and adjourned at 11:00 a.m. The testimony was varied. A synopsis of each person's testimony is provided in Appendix A. I have summarized some of the more relevant testimony below. Refer to Appendix A for a complete version of each person's comments.

## ECONOMIC IMPACT

There was a consensus that the whitewater rafting industry has increased tourism in the area, not only for rafting but also for the entire area generally. The result has been an increase in business for many local businesses and a boost to the local economy. A representative of Squaw Mountain Village indicated that rafters provided 4 to 5 times the business of skiers. It was noted that rafters were often repeat visitors to the area.

Testimony was presented that local accommodations and facilities had not been saturated yet; although it was acknowledged that the primary impact from rafting was on the weekends. Some attempt has been made to try to market the mid-week trip with weekday discounts and special mid-week plans at Squaw Mountain.

The rafting industry also provides employment for local residents. The business manager of one outfitter indicated that if limits were placed on an outfitter's passenger capacity, particularly those which would reduce existing capacity, they would not be able to maintain the current employment level.

## SAFETY

Safety was generally not perceived to be a problem by the local business people. The licensing was considered adequate and the rafters were viewed as "professionals doing a professional job". These comments were not based on a wide experience or familiarity with rafting, but mostly from the comments of passengers or discussions with guides.

One restaurant and camp owner speculated that placing limits on the number of commercial trips would create a safety problem. He assumed that the demand for rafting would remain the same or increase and that those unable to obtain passage with a commercial outfitter would raft the rivers on their own. The increase in these inexperienced rafters would increase the safety hazard.

One outfitter suggested that the heavy weekend use and light weekday use created a potential safety hazard on the weekends. He assumed that the greater weekend traffic required a greater number of guides. These guides would naturally be less experienced than the guides who also rafted during the week. He did not feel that it was as safe on the weekend as during the week because of the greater number of guides with limited experience on the river at that time. It is presumed that he was concerned with the ability of the guides above the minimum qualifications required by the state. The underlying assumption is that the more experienced guides will generally provide a safer trip. He suggested that by spreading the passenger load more evenly throughout the week, a larger number of more experienced guides could be maintained and less part-time guides would be needed. Another outfitter disagreed with the theory that limiting the number of passengers on the weekends would improve the quality of the guides.

#### USER CONFLICTS

Testimony concerning river use conflicts with fishing was not consistent. Testimony given by those with identifiable interests other than fishing indicated several reasons why there was no conflict between rafting and fishing. These reasons included the availability of more alternate fishing sites in Maine than alternate rafting sites and the belief that most fishing on the Penobscot is done during the time of day when rafters are not on the river and that the best fishing is in the smaller streams. While one person testified that he did not personally know of anyone who had stopped fishing because of the rafts, another person felt that the number of rafts going down the river may have stopped some people from fishing.

An Inland Fish and Wildlife biologist testified that the Penobscot is a unique fishery known for its landlocked salmon, not duplicated in other Maine rivers. It is one of the heaviest fished rivers for Salmon and one of the few rivers for good fishing in August. He indicated that the rafts themselves have no detrimental affect on the fish in the river. However, he urged the commission to speak to and hear from the people who fish the Penobscot.

There was not perceived to be a use conflict with canoeing. It was felt that the Kennebec and the Penobscot were not the major rivers most of the canoeists used in Maine.

#### MISCELLANEOUS COMMENTS

1. When some outfitters reach their self-imposed limit for a particular day, their policy is to refer the customer to another company.
2. The general feeling among those testifying was that the rafting customers were "basically nice people."
3. Rafting outfitters should be viewed as small-business operators. Limitations on their passenger capacity might limit

their ability to make the payments on their business loans.

4. There are signs of crowding on the Penobscot such as inadequate parking spaces and a lack of campsites and lunch spots for all river users to share. This effects the competing river users and the quality of the "wilderness experience." A lavatory is needed at the Penobscot take-out site.

COMMERCIAL WHITEWATER RAFTING  
STUDY COMMISSION

SUMMARY: PUBLIC HEARING, Millinocket, August 17th, 7 pm.

Commission members present: Usher, Trotzky, Clark, Stearns, Hockmeyer, Neily, Bailey, Hartman, Marsh. 48 members of the public attended.

1. Fredericka Boynton, Millinocket Lake Camps

Rafting has been a tremendous boon to her restaurant. She sends 20-30 people per weekend to motels, too.

Fish aren't biting anymore on the lake, anyway.

Concerned about over-regulation of rafting. 15 people drown in canoes, but they aren't regulated.

2. Wilmot Robinson, 147 Medway Rd., Millinocket, owns a camp between Abol and Pockwockamus.

Concerned about vehicle traffic.

3. Charles Pray, Ripogenus Dam,

Rafting is an economic plus for his cottages and store.

Concerned about environmental impact: every raft touches at Big Eddy. Growth is rapid, and will have an impact. Consider carrying capacity, and don't lose the wilderness experience.

4. Fred Eaton, President, Millinocket Fin & Feather Club

Goals and objectives of the recreation plan for the East and West Branches of the Penobscot is, on the whole, satisfactory.

See their March 18 letter to Parks & Recreation (cc attached) for their 6 suggestions for balanced use: within the carrying capacity; shared among all uses; leave room for Maine residents; State don't promote the area; no physical structures except outhouses etc.; 2 lunch sites for commercial rafters between Horserace and Nesourdnehunk.

Personally, he only fishes in April, to avoid the rafters.

He "almost got run over" by Wayne in a truck. Wayne apologized.

(answering Trotzky) Separate areas for fly fishing, raft lunches etc., would help.

5. Mr. Clapp, local resident and fisherman

Rafts have as much right as anyone, but sometimes they come too close. He worries that one might hit him.

6. Nick Albans, Trout Unlimited, Bangor

He fishes Big Eddy a lot. Last year he would have complained, like Fred, but they met with the rafters, and things have improved. Now, on a scale of 1 to 10 it is 9 1/2, and he fishes more than ever.

Rafts now go on the far side of the Eddy from fishermen.

(answering Clark) The number of fishermen is falling off on weekends.

(answering Marsh) Designated hours for fishing would be good, but designated places would be even better.

He has seen 3 serious injuries: when exuberant rafters dove in at the Deadwater and got a broken leg, broken tooth, and stitches in the head.

7. Ed \_\_\_\_\_, Eddie's Flies and Tackle, Bangor

Looking at rafts spoils the wilderness experience, but canoes and kayaks interfere more with the fish.

The river is being overfished. There is too much of everything. He hasn't promoted the West Branch for 5 years.

(answering Hartman) A limit on rafts would be acceptable, but sometimes he would like to just watch the water.

(show of hands) 10 people felt that total use is too great.

8. Barry Thompson, Brewer (part-time guide for E. River)

Reported that Mason Goodrich, fisherman, was "happy to see rafting", with the only potential problem occurring if a raft were to come too close.

9. Joe Fabin, (guide for E. River)

Present rafters built the business, so you should not have a lottery for allocations.

Rafting brings people into the state.

10. Bruce Hayes, (part-time guide for E. River)

They are trained to avoid fishermen and give them first priority on the river.

11. \_\_\_\_\_, (guide with an outfitter)

The West Branch is getting written up, and attracting more people. So, a way is needed to define the balance between numbers and wilderness.

(Usher noted) The river is accesible, unlike the Kennebec.

12. Dave Sargent, a small outfitter

He likes to fish himself, and would like to see everyone get along.

13. Scott Bridgeman (guide, E. River)  
He has used first aid once in 2 years, for a small cut.  
Trash is a problem, but less so for rafters than for campers, because time of use per person at a given spot is relatively small.

Growth will require limits.

The main danger is the proposed dam (Big-A).

(Hoddinott pointed out that Fish & Wildlife requires accident reports, and the numbers are proportional to last year, adjusted for use levels.

14. (Bill Stearns of the Committee noted) There is an extremely surprising lack of conflict between rafters and other users.

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15. Paul Perry, Maine Forest Service, with numerous questions from the Committee.

If there is a road, there will be camping, anywhere, within 1/2 mile, especially with a population center of 10,000 people nearby in the Millinocket area. There have been complaints of overcrowding at Nes. gravelpit, but this has been relieved by opening other areas, including Pockwockamus and Abol.

Litter is more of a problem with local people than with rafters. The rafters are most cooperative in cleaning up and putting fires out. Also, more people brings more litter. They have not put out barrels, maintaining by pickup instead.

Lunch sites should be made accessible and well-managed. Sourdnehunk Stream is too hard to get into. There have been more complaints of accidents on the roads.

(answering Usher) He recommends that a full-time summer ranger be hired, and that the State invest in picnic tables and waste disposal facilities. The West Branch is getting well-known.

(answering Clark) A campowner complained about rafters using his camp, but that was only one incident.

(answering Clark) He doesn't know about complaints from fishermen, because he isn't the W. Branch ranger.

16. Rick Hoddinott, Maine Whitewater Outfitters Association responded to a question from Charles Pray on carrying capacity:

There should be a limit.

(Hockmeyer described how the Association arrived at 80 per company per day, based on the conclusion that more than 600 to 800 per day on the river would become "obscene and dangerous". Then, as more outfitters came, it became obvious that not everyone could run 80, so they opened sister companies for self-defense. If a quota is established, they have all agreed to give up sister companies. If safety and social considerations dictate a limit of 640, then there is a question of how to divide that up. The Assn. believes it should go to those who have earned it.)



Report to  
LEGISLATIVE WHITEWATER RAFTING COMMITTEE

From  
WHITEWATER GUIDES BOARD

November 4, 1982

The objective of the Whitewater Guides Board is to determine whether or not the applicant is qualified to safely navigate and transport unskilled passengers down rapidly flowing rivers. The Guides Board currently licenses individuals in the following categories:

- a. General (all Maine rivers)
- b. Kennebec River only
- c. West Branch of the Penobscot only
- d. West Branch of the Penobscot from the Big Eddy down only

The following is the procedure for licensing whitewater guides:

1. Individuals first must submit to the Guides Board the following information:
  - a. Biographical data
  - b. Current First Aide Card
  - c. Current CPR Card
  - d. Guide's Medical Evaluation Form from a doctor varifying physical fitness
  - e. Recommendation from a licensed whitewater outfitter
2. Once this information has been submitted to the Fish & Wildlife Department, this individual is scheduled for a written exam covering the river that the individual intends to guide on. The written exam covers the following material:
  - a. Geographic locations on these rivers
  - b. Hazardous areas on these rivers, ie. Hydraulic, Rock Gardens, etc.
  - c. Proper ways to run difficult sections
  - d. Whitewater terminology
  - e. Required equipment and maintenance
  - f. Regulations pertaining to whitewater rafting
  - g. Questions on proper First Aid and C.P.R.
  - h. Ability to make sound decisions
  - i. Ability to read whitewater at different levels

3. Once the individual has passed the written exam, he/she is scheduled for an oral exam before three District Game Wardens, all of which have attended whitewater guides schools on Maine's major rivers. The individual is expected to describe in detail specific answers to questions in the above categories. Through the summer of 1982, 239 oral exams were administered. This figure includes retestings and qualifying for additional waters. An applicant might pass his general whitewater written exam, but the Board only passes him for one specific river on his oral exam. He later will be retested for the additional waters when he has gained experience on those waters. At this time there are 148 licensed whitewater guides, of which 131 are residents and 17 are non-residents.
4. Minimum Standards - The written test consists of 100 questions covering the material as stated above. The applicant must correctly answer 80 of the 100 questions. During the coming winter the Board plans to review the present test and upgrade the caliber of the questions. When answering questions asked by the Oral Board, the applicant is expected to know in detail the river he intends to run. He needs to be nearly 100% accurate on his oral answers.

There are three ways that Whitewater Outfitters currently train their new guides. The larger outfitters advertise and offer whitewater guide training schools of 7-10 days of practical and classroom training for the Kennebec River and the West Branch of the Penobscot, for which they charge between \$150 and \$300. Some of the smaller outfitters combine to offer a similar school, while other small outfitters prefer to train new guides on a one-on-one basis.

It is our recommendation that each trainee be required to run each river a minimum of ten times and actually guide each river a minimum of three times. Although whitewater guides schools are beneficial, the Board does not feel that schools should be mandatory at this time. Should the time come when these schools

are required, we would like to see that the schools cover the following: geographic locations, hazardous areas on the rivers, proper ways to run difficult sections, whitewater terminology, required equipment and maintenance, whitewater rafting regulations, and applicable whitewater rafting first aid.

Currently, any watercraft carrying passengers commercially on a whitewater trip shall be at least 15 feet in length except as follows:

- a. Crafts under 15 feet in length but at least 13 feet in length may be used on the Kennebec River and the Dead River; and
- b. Whenever conditions warrant, the Commissioner may, upon written request from a whitewater outfitter, authorize the use of whitewater crafts less than 15 feet in length on any river or stream.

We have received requests to allow crafts less than 13 feet in length on the Lower Dead, East Outlet, Spencer Stream, and Rapid River. Our recommendation is that this be allowed as long as the water level is 2,000 cfs or less. The reason for the length requirement is because the smaller the raft the greater the potential flipability.

It is the feeling of the Board that only Type I and Type V life jackets be allowed in commercial whitewater rafting. This requirement should include guides but their life jackets should be of a contrasting color.

To our knowledge the following rivers are being rafted commercially:

1. West Branch of the Penobscot River
2. Kennebec River
3. Lower Dead River
4. East Outlet
5. Spencer Stream
6. Rapid River

We consider the Kennebec and the West Branch of the Penobscot to be the most dangerous waters. Our recommendations for minimum safety standards for running these bodies of water are as follows:

Kennebec River - not be run below 2500 cfs.

Magic Hole - not be run below 4500 cfs.

Three Sisters - not be run above 6500 cfs.

West Branch of the Penobscot River - no minimum cfs.

The Gorge - not to be run above 5000 cfs.

The guides feel the Cribwork of the Penobscot offers the greatest personal danger overall to commercial rafters and therefore requires special regulations for navigating same. Through the stretch commonly known as the Cribwork, a bow guide should be required as well as a person at the green bridge to signal that all is clear before any commercial rafts come down through. Before the first raft comes down through, there should also be a person stationed on Vulture Rock with a throw bag. The first raft down through should be that raft which has the strongest paddlers and has the best chance of negotiating the Cribwork successfully. This raft should eddy right and at least one of the guides should then station himself across from Vulture Rock on the right side of the river with a throw bag. As the remainder of the rafts come down, they should eddy left and right, etc. until all are down with additional guides stationing themselves with throw bags on either side. Only one company at a time should be allowed to navigate the Cribwork, but companies should cooperate in assisting other companies in the event of pins, swimmers, injuries, etc.

The Whitewater Guides Board feels that a review committee consisting of two members from the Board, two whitewater outfitters, and two whitewater guides be set up to review at least twice a year all whitewater rafting accidents and make recommendations for better safety standards.

Fatal Rafting Accidents Which Would be of Interest to the Commission

There has been only one fatality involving a licensed commercial rafting company. This occurred on July 19, 1982, on the West Branch of the Penobscot at Pockwockamus Falls. The victim fell out of the 16' raft at the head of Pockwockamus. He succumbed to a fatal heart attack after being picked up by an accompanying raft at the tail of the rapids. C.P.R. was administered immediately and an ambulance was summonsed via Great Northern radio. The subject was 58 yrs. old and had had two previous heart attacks.

There have been four other fatalities which we feel are relevant. On August 2, 1978, on the Kennebec River running about 6000 c.f.s. approximately 1 3/4 miles below Harris Station an 18'6" wooden dory swamped in heavy water. The occupants were thrown out into the river. The victim lost her Type V life jacket. It is felt that she lost the life jacket because she had had a double mastectomy and was wearing artificial breasts at the time.

On May 13, 1978, on the Dead River at Poplar Hills Rapids a four-man type raft with three people in it capsized. The victim was wearing a Type II life jacket which was still secure when she was found. The river was running over 8000 c.f.s. It is felt that hypothermia played an important part in her losing consciousness and drowning. The water temperature at the time was approximately 45 degrees. The victim was not wearing a wetsuit.

On April 24, 1977, at Steeps Falls on the Saco River a 16' military raft carrying three subject capsized. The Saco River was high due to spring runoff. All three subjects were wearing Type II life jackets. When the victim was found, he had no lifejacket on.

On September 2, 1977, at the Kennebec River a six-man type raft capsized with two subjects in it. The victim was wearing a Type II life jacket which was secure when he was found. The river was running over 6000 c.f.s. at the time.

WHITEWATER RAFTING ACCIDENTS REPORTED IN 1982

Ident #	Number of Injuries	River	Section of River	Company	How injury occurred	Incapacitated Over 24 Hours	Boat Length	Make
1	1	Kennebec	Magic Falls	Northern Whitewater	Paddle	No	15'	Maravia
2	2	W. Branch Penobscot	Pockwockamus Falls	Northern Whitewater	Two people collided	No	18'	Maravia
3	1	Kennebec River	Chase Stream	Northern Whitewater	Fell in boat in heavy water	Yes	15'	Maravia
4	1	Kennebec River	Magic Falls	Northern Whitewater	Before flipping - rock cut knee, broke tooth	No	15'6"	Maravia
5	1	Kennebec River	Magic Falls	Northern Whitewater	Flipped Raft	Yes	16'	Maravia
6	1	W. Branch Penobscot	Cribwork	Northern Whitewater	Washed out and swam Cribwork	No	18'	Maravia
7	1	W. Branch Penobscot	Nesowadnehung Falls	Northern Whitewater	Going over falls, victim fell in raft	Yes	16'	Maravia
8	1	W. Branch Penobscot	Rip Gorge	Northern Whitewater	No details	Yes	18'	Maravia
9	1	W. Branch Penobscot	Exterminator	Northern Whitewater	Another person fell on leg	Yes	18'	Maravia
10	1	Kennebec River	Dead Stream	Eastern River Exped.	Rough water	No	--	none
11	1	Kennebec River	Magic Falls	Eastern River Exped.	Fell out of raft and hit rock	No	10'	Rogue
12	1	Kennebec River	Three Sisters	Eastern River Exped.	Fell out of raft in heavy water	Yes	--	Maravia
13	1	Kennebec River	---	Eastern River Exped.	Cut over eye while water battling	No	--	None
14	1	Kennebec River	Alleyway	Eastern River Exped.	Paddle hit glasses causing cut	No	18'	Rogue
15	1	W. Branch Penobscot	Troublemaker	Eastern River Exped.	Foot under thwart, hit rock	No	15'6"	Maravia
16	1	W. Branch Penobscot	Rip Gorge	Eastern River Exped.	Rough water	--	16'	Maravia
17	1	W. Branch Penobscot	---	Eastern River Exped.	Fell out, hit rock	--	18'	Rogue
18	1	W. Branch Penobscot	Cribwork	Eastern River Exped.	Fell out, hit rock	No	18'	Rogue
19	1	W. Branch Penobscot	Cribwork	Eastern River Exped.	Fell out, hit rock	No	18'	Rogue
20	2	Kennebec	Three Sisters	-----	Fell out, hit rock in Alleyway	No	22'	---
21	1	Kennebec	Magic Falls	Eastern River Exped.	Thrown into boat	No	18'	Rogue
22	2	Kennebec	Three Sisters	Eastern River Exped.	Raft flipped	No	16'9"	Maravia
23	1	Dead River	Poplar Rapids	Eastern River Exped.	Hit rock while in raft	Yes	13'4"	Maravia
24	1	W. Branch Penobscot	Big Heater	Eastern River Exped.	Foot under thwart, hit rock	--	18'	Rogue
25	1	Kennebec	Magic Falls	Unicorn Rafting Exped.	Leg under thwart	No	16'	Campways
26	1	Kennebec	Magic Falls	Unicorn Rafting Exped.	Fell out, hit rock	No	16'	Campways
27	1	Kennebec	Magic Falls	Unicorn Rafting Exped.	Hit with paddle while swimming	No	16'	Campways
28	2	W. Branch Penobscot	Cribwork	Kennebec Dories	Pin at the Cribwork, swam rapids	No	15'6"	Maravia
29	1	W. Branch Penobscot	Pockwockamus Falls	Unicorn Rafting Exped.	Heart attach after long swim	Yes	16'	Campways