

MAINE STATE LEGISLATURE

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1 (EMERGENCY)
2 (New Draft of S.P. 479, L.D. 1454)

3 FIRST REGULAR SESSION
4

5 ONE HUNDRED AND ELEVENTH LEGISLATURE
6

7 Legislative Document

No. 1763

9 S.P. 625

In Senate, June 13, 1983

10 Reported by Senator Pearson of Penobscot from the Joint Select
11 Committee on Whitewater Rafting and printed under Joint Rule 2.
12 Original bill presented by Senator Conley of Cumberland.

JOY J. O'BRIEN, Secretary of the Senate

13
14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-THREE
18

19 AN ACT to Regulate Commercial
20 Whitewater Rafting.
21

22 Emergency preamble. Whereas, Acts of the Legis-
23 lature do not become effective until 90 days after
24 adjournment unless enacted as emergencies; and

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

27 Whereas, in accordance with the findings and
28 objectives detailed in this Act, it is important to
29 establish for the 1983 season safety standards for
30 whitewater rafting and recreational use limits for
31 the Kennebec River and the West Branch Penobscot
32 River to ensure consumer protection, prevent environ-
33 mental degradation and protect navigation; and

1 The Legislature further finds that, in exercising
2 this authority, it is in the public interest for the
3 State to adopt measures to ensure the competence of
4 commercial whitewater outfitters; to adopt recrea-
5 tional use limits; and to allocate the privilege of
6 commercial use where necessary to meet the objectives
7 and goals of this subchapter.

8 The Legislature further finds that it is in the
9 public interest to allow stable, well qualified
10 outfitters who are providing excellent service and
11 meeting the conditions of their allocations to con-
12 tinue to do so, subject to periodic review when allo-
13 cations are reviewed.

14 Sec. 3. 12 MRSA §7362, as enacted by PL 1979, c.
15 723, §14, is repealed.

16 Sec. 4. 12 MRSA §§7363 to 7370-A are enacted to
17 read:

18 §7363. Definitions

19 As used in this subchapter, unless the context
20 indicates otherwise, the following terms have the
21 following meanings.

22 1. Affiliated group. "Affiliated group" means
23 one or more affiliated outfitters and the outfitter
24 or outfitters with which they are affiliated.

25 2. Affiliated outfitter. "Affiliated outfitter"
26 means:

27 A. Any outfitter who owns directly, indirectly
28 or through a chain of successive ownership 10% or
29 more of the financial interest in any other
30 outfitter;

31 B. Any outfitter, 10% or more of whose financial
32 interests are owned directly or indirectly or
33 through a chain of successive ownership by any
34 other outfitter;

35 C. Any outfitter, 10% or more of whose financial
36 interests are owned directly or indirectly or
37 through a chain of successive ownership by a

1 person who owns 10% or more of the financial
2 interest in another outfitter; or

3 D. Any outfitter who, in the year 1982 or there-
4 after:

5 (1) Purchases, leases, borrows, accepts,
6 receives or otherwise obtains on a
7 nonarms-length basis from another whitewater
8 outfitter, either directly or indirectly,
9 more than 1/2 of its real or personal prop-
10 erty; or

11 (2) Receives from another outfitter on a
12 nonarms-length basis more than 1/2 of the
13 ordinary services related to the business of
14 whitewater outfitting, including, but not
15 limited to, mail, telephone, reservations,
16 repair, maintenance, personnel training and
17 management.

18 Provided, that a person shall not be found to be an
19 affiliated outfitter solely because of blood rela-
20 tionship, marriage or previous employment.

21 3. Allocation. "Allocation" means the privilege
22 of taking a specified number of passengers per day on
23 whitewater trips on a particular river, as specified
24 annually.

25 4. Bureau. "Bureau" means the Bureau of Parks
26 and Recreation in the Department of Conservation.

27 5. Commercial. "Commercial" means for financial
28 compensation or other remuneration.

29 6. Commercial whitewater outfitter; outfitter.
30 "Commercial whitewater outfitter" or "outfitter"
31 means a person who conducts commercial whitewater
32 trips.

33 7. Demonstrated use. "Demonstrated use" means
34 for a given outfitter, for a given river, the average
35 number of passengers carried on the 10 Saturdays or
36 Sundays with greatest use during the year.

1 8. Financial interest. "Financial interest"
2 means any voting or nonvoting security, partnership
3 interest whether limited or general, trust interest,
4 joint venture interest or any other beneficial inter-
5 est in any form of business association.

6 9. Person. "Person" means an individual, corpo-
7 ration, business trust, estate, trust, partnership or
8 association, 2 or more persons having a joint or com-
9 mon interest, or any other legal or commercial
10 entity.

11 10. Rapidly flowing river. "Rapidly flowing
12 river" means a river or stretch of a river with
13 rapids classified as class IV or higher by the
14 department according to the International River Clas-
15 sification System, or a river or stretch of a river
16 designated by the department by rule on the basis of
17 public safety, including, but not limited to, the
18 Kennebec River between Harris Station and West Forks,
19 and the West Branch Penobscot River between McKay
20 Station and Pockwockamus Falls.

21 11. Whitewater craft. "Whitewater craft" means
22 any raft, dory, bateau or similar watercraft which is
23 used to transport passengers along rapidly flowing
24 rivers, but does not include canoes or kayaks.

25 12. Whitewater guide. "Whitewater guide" means
26 a person who receives any remuneration for accompany-
27 ing, assisting or instructing passengers on the river
28 on whitewater trips, and who holds a current guide's
29 license in the whitewater classification.

30 13. Whitewater trip. "Whitewater trip" means
31 any commercial effort to transport passengers by
32 means of a whitewater craft on rapidly flowing
33 rivers.

34 §7364. River management objectives

35 The following objectives are established for man-
36 agement of rapidly flowing rivers for the benefit of
37 the people of the State:

38 1. Safety and health requirements. To assure
39 that safety and health requirements are met by all
40 river users;

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

4 3. Recreational use. To allow a reasonable
5 level of recreational use;

6 4. Quality wilderness experience. To maintain a
7 quality wilderness experience on the rivers;

8 5. Multiple uses. To minimize conflicts between
9 different uses of the rivers in order to allow for
10 multiple use;

11 6. Diversity of whitewater experiences and ser-
12 vices. To encourage a diversity of whitewater trip
13 experiences and services;

14 7. River use and impact. To monitor river use
15 and its impact;

16 8. Communication. To encourage open communica-
17 tion with all river users, both groups and individu-
18 als, on river management matters; and

19 9. System of allocating river use. To provide a
20 system of allocating river use that is simple and
21 fair, and that meets the specific goals of section
22 7369.

23 §7365. Commercial whitewater outfitters' licenses

24 1. Requirement. A commercial whitewater
25 outfitter's license is required for all commercial
26 whitewater outfitters. Operation of a commercial
27 whitewater trip by an outfitter without a license is
28 prohibited, and is subject to penalty under section
29 7370-A.

30 2. Issuance; term. The commissioner may issue a
31 license to conduct commercial whitewater trips.
32 Licenses shall be issued for the calendar year.

33 3. Fee. The annual basic fee for a commercial
34 whitewater license shall be set by the department and
35 adjusted biennially by rule to reflect the actual
36 cost of administering the license program. The fee

1 for 1983-84 shall be \$250. The fee for reissuance of
2 a license shall be equal to the annual basic fee for
3 a license. These fees shall be credited directly to
4 the department and used in accordance with section
5 7074.

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

13 5. Nonrenewal, suspension or revocation.
14 Licenses are subject to nonrenewal, suspension or
15 revocation for good cause shown, including, but not
16 limited to, unsafe practices, falsifications of
17 reports, or serious or continued violation of this
18 subchapter, subject to the Maine Administrative
19 Procedure Act, Title 5, chapter 375.

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

33 7. Affiliated outfitters. Affiliated outfitters
34 may be licensed, but are subject to additional allo-
35 cation restrictions. License applications shall con-
36 tain a declaration of the extent of affiliation, as
37 defined in section 7363, subsection 2, or a declara-
38 tion of nonaffiliation, and a statement disclosing
39 any relationship with other licensed outfitters,
40 including the giving or receipt of, equipment, mate-
41 rials or other assistance. The department may re-
42 quire submission of any books, memoranda, papers or
43 accounts it reasonably believes necessary to deter-

1 mine whether a person seeking a license is an affili-
2 ated outfitter. These shall be confidential and made
3 available only to persons involved in determining
4 affiliation and only for that purpose, unless they
5 are submitted for another purpose.

6 8. Limitation. Nothing in this subchapter may
7 be construed as revoking any right of passage or ac-
8 cess created by statute, contract or operation of
9 law, or creating any such right for any whitewater
10 outfitter or any associates or customers of any
11 whitewater outfitter upon the project or project
12 works of any licensee of the Federal Energy Regula-
13 tory Commission, as the terms "project" and "project
14 works" are defined in the United State Code, Title
15 16, Section 786 (11) and (12), respectively.

16 §7366. Whitewater guide license

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

27 §7367. Safety

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

30 A. There shall be at least one licensed
31 whitewater guide in each watercraft.

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

36 C. Each whitewater craft shall be equipped with
37 at least one throw line, not less than 50 feet
38 long.

1 D. Each whitewater craft shall be equipped with
2 an adequate first aid kit.

3 E. Each whitewater craft used by a licensed
4 outfitter for a whitewater trip shall be plainly
5 marked with a number, as assigned by the depart-
6 ment, in lettering at least 6 inches high, so as
7 to be easily readable from the river bank.

8 2. Whitewater Safety Committee. The Whitewater
9 Safety Committee is established. The committee shall
10 advise the commissioner in establishing and reviewing
11 safety requirements for whitewater trips, developing
12 a safety information program and reviewing the safety
13 record of whitewater guides and outfitters. The com-
14 mittee shall submit a written report annually on each
15 outfitter's safety record to the Whitewater Advisory
16 Committee, while the advisory committee remains in
17 existence.

18 A. The Whitewater Safety Committee shall be com-
19 posed of 8 members: Two members of the
20 whitewater guides board designated by the board;
21 2 commercial whitewater outfitters and 2
22 whitewater guides designated by the Governor; and
23 2 members from the general public, one designated
24 by the President of the Senate and one designated
25 by the Speaker of the House of Representatives.

26 B. Terms of members of the Whitewater Safety
27 Committee shall be for 2 years, expiring on
28 December 31st, except that initially the members
29 shall draw lots for a one-year or a 2-year term.
30 Terms shall be staggered so that the term of one
31 member in each category expires each year. Mem-
32 bers shall serve until their successors are nomi-
33 nated and qualified. Members appointed to fill a
34 vacancy created by the resignation, death or
35 incapacity of a member shall complete the term of
36 the vacancy and be eligible for reappointment.
37 Members shall serve without compensation, except
38 for per diem and reimbursement for travel and ac-
39 tual expenses for up to 4 meetings per year.

40 3. Safety reports. Each commercial outfitter
41 shall submit a complete monthly safety report on
42 forms provided by the commissioner containing the
43 following:

1 A. A written report of any accident occurring in
2 connection with a whitewater trip conducted by
3 that outfitter and which results in the death of
4 a person, a person's losing consciousness or
5 receiving medical treatment, a person's becoming
6 disabled for more than 24 hours, a person's dis-
7 appearance from a whitewater craft under circum-
8 stance indicating death or injury or damage to
9 the whitewater craft or other property of more
10 than \$100. A summary of the watercraft accident
11 reports required by section 7801, subsection 19
12 may be used to satisfy this requirement; and

13 B. A written report of such other dangerous ac-
14 cidents and occurrences as the department may, by
15 rule, require.

16 4. Safety information. The department shall
17 implement a public information program on whitewater
18 trip safety. In developing the program, the depart-
19 ment shall consult with the Whitewater Safety Commit-
20 tee. The department may also require outfitters and
21 guides to provide safety information to passengers on
22 whitewater raft trips.

23 5. Order of launch. Launch order of commercial
24 outfitters on a particular river or portion of river
25 may be determined and enforced by the department to
26 protect public health and safety. The department
27 shall provide for the outfitters to choose, in the
28 order of their first documented dates of continuous
29 commercial operation on the particular river or por-
30 tion of river, their preferred launch positions. The
31 department shall establish and publish the launch
32 schedule by February 1st annually, except that the
33 launch schedule for 1983 shall be promulgated within
34 30 days after the effective date of this subchapter.
35 To facilitate that determination, each outfitter
36 shall submit a sworn affidavit to the department
37 stating their dates of continuous commercial opera-
38 tion. For 1983, in order to expedite promulgation of
39 the launch order, the notice and hearing provisions
40 of the Maine Administrative Procedure Act, Title 5,
41 chapter 375, may be modified, to the minimum extent
42 necessary in the judgment of the department to meet
43 the promulgation date.

1 §7368. Recreational use limits

2 1. Findings and goals. Increased use has
3 resulted in increased environmental impact on the
4 Kennebec and West Branch Penobscot Rivers, as well as
5 on their valleys, nearby roads and the social struc-
6 ture of the areas. Recreational use limits are
7 necessary to allow for rafting use and other compet-
8 ing uses, such as fishing, camping and canoeing,
9 while minimizing detrimental impacts and maintaining
10 the opportunity for a quality wilderness experience
11 for rafters and for other users.

12 2. Kennebec River. Recreational use limits for
13 the Kennebec River are set as follows.

14 A. On the Kennebec River, only enough rafts for
15 600 to 800 passengers can be physically launched
16 in an hour. In years with normal water flow,
17 water releases average 4 to 7 hours on weekdays,
18 one or 2 hours on Saturdays and never on Sundays.
19 Saturday use has increased to a level which
20 places a burden on the physical launching facili-
21 ties.

22 B. There is little competing use of the stretch
23 of the Kennebec River where rafting occurs,
24 between Harris Station and West Forks, because of
25 its inaccessibility.

26 C. The recreational use limit on the Kennebec
27 River between Harris Station and West Forks is
28 specified as follows. Noncommercial recreational
29 use is not limited. The commercial limits are:

30 (1) Saturdays: 800 commercial passengers;

31 (2) Sundays: No water released; no limit
32 set; and

33 (3) Weekdays: 1,000 commercial passengers.

34 3. West Branch Penobscot River. Recreational
35 use limits for the West Branch Penobscot River are
36 set as follows.

1 A. On the West Branch Penobscot River, water
2 releases are typically continuous from McKay Sta-
3 tion every day, except a few days a year when the
4 mill at Millinocket is shut down; however, the
5 rapids are dangerous and rafts can get pinned in
6 the cribwork at low water. The department has
7 estimated that an average interval of 5 minutes
8 between rafts at the cribwork is needed for
9 safety. Rafts ordinarily carry 8 to 10 passen-
10 gers.

11 B. It is found that use of the river is shared,
12 especially with salmon fishing. Whitewater craft
13 shall only be allowed on the West Branch
14 Penobscot River between McKay Station and
15 Pockwockamus Falls between 8:30 a.m. and 5 p.m.,
16 in order to allow free time for other uses.

17 C. The recreational use limit of the West Branch
18 Penobscot River between McKay Station and
19 Pockwockamus Falls is specified as follows. Non-
20 commercial recreational use is not limited. The
21 commercial limit is 560 commercial passengers per
22 day, any day.

23 §7369. Allocation system

24 1. Goals. The goals of the allocation system
25 are:

26 A. To encourage a wide diversity of whitewater
27 trip experiences and services;

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

30 C. To maximize competition within the recrea-
31 tional use limits;

32 D. To allow for reasonable business stability
33 for outfitters by allowing stable, well-qualified
34 outfitters who are providing excellent service
35 and meeting the conditions of their allocations
36 to continue to do so, subject to periodic review
37 when allocations are reviewed;

38 E. To encourage efficient use of the allocation
39 system;

1 F. To be flexible enough to adapt to changes in
2 river use or river conditions;

3 G. To prevent evasion of the system; and

4 H. To provide opportunity for public access.

5 2. Allocation required; 80 passenger limit on
6 any river; affiliated outfitters restricted. Except
7 as provided in subsection 10, operation of a commer-
8 cial whitewater trip on the Kennebec River between
9 Harris Station and West Forks or on the West Branch
10 Penobscot River between McKay Station and
11 Pockwockamus Falls on weekends or legal holidays or
12 other days specified by the department by rule under
13 subsection 10, paragraph A, without an allocation is
14 prohibited. No allocation is required for other
15 rivers nor for other stretches of those rivers, but
16 no outfitter may carry more than 80 passengers per
17 day on any rapidly flowing river within the State.
18 Not more than one member of an affiliated group may
19 conduct whitewater trips on any river or stretch of
20 river for which a specific allocation is required,
21 even on days for which an allocation is not required.

22 Three or more years after the period of affiliation,
23 the department may, in its discretion, consider
24 requests by any former members of an affiliated group
25 to run passengers on allocated rivers. The burden
26 shall rest on the former member of an affiliated
27 group to demonstrate that the reasons for any finding
28 of affiliation have been so diminished in effect that
29 the public interest will be served by considering the
30 former member's request to run passengers on an allo-
31 cated river.

32 3. Allocations, maximum, minimum. The depart-
33 ment shall allocate the right to conduct whitewater
34 trips to licensed outfitters. The maximum alloca-
35 tion for an outfitter is 80 passengers per day. The
36 minimum allocation to be awarded is 20 passengers per
37 day on the Kennebec River and 16 passengers per day
38 on the West Branch Penobscot, except that an
39 outfitter may request fewer passengers.

40 4. Allocation for 1983. The department shall
41 award initial allocations to licensed outfitters for

1 1983 within 30 days after the effective date of this
2 subchapter on the following basis.

3 A. Any licensed outfitter desiring an allocation
4 shall submit a request to the department, accom-
5 panied by a sworn affidavit stating the number of
6 passengers carried by that outfitter on the river
7 in question on each Saturday and Sunday in 1982.
8 The outfitter may also submit other information
9 relevant to the allocation criteria.

10 B. The basic allocation awarded to any outfitter
11 that receives an allocation shall be equal to the
12 larger of his demonstrated use in 1982 or the
13 minimum allocation as specified in subsection 3.

14 C. Subject to the 80 passenger per day maximum
15 and the minimum allocations specified in subsec-
16 tion 3, additional allocations may be awarded in
17 accordance with the criteria of subsection 7.
18 These additional allocations shall be awarded to
19 allow for competition in the industry, including
20 growth of outfitters with demonstrated use in
21 1982 and for entry of new outfitters, especially
22 when a substantial business commitment directly
23 related to whitewater rafting was made prior to
24 June 15, 1983.

25 D. In order to expedite allocation for the 1983
26 season, the notice and hearing provisions of the
27 Maine Administrative Procedure Act, Title 5,
28 chapter 375, may be modified to the minimum
29 extent necessary in the judgment of the depart-
30 ment to meet the required allocation date.

31 E. In determining the initial allocation for
32 1983, the passengers carried on a given river by
33 any outfitters which were in an affiliated group
34 may be counted by only one of the outfitters of
35 that group for purposes of calculating demon-
36 strated use.

37 5. Term of allocation; abandonment of alloca-
38 tion. All allocations shall be awarded for a one-
39 year period based on the calendar year. Any
40 outfitter may abandon all or part of an allocation at
41 any time by giving the department 30 days written

1 notice. In the event that the department reissues an
2 abandoned allocation, any duplicate portion of the
3 allocation fee shall be refunded.

4 6. Allocation procedure. Except for the initial
5 allocation in 1983, which shall be governed by sub-
6 section 4, the department shall award allocations to
7 licensed outfitters on the basis of the criteria
8 established in this section. Any outfitter desiring
9 an allocation shall submit a proposal to the depart-
10 ment in the year preceding the year for which the
11 allocation is desired, on or before a date specified
12 by rule. Allocations shall be awarded on or before
13 December 1st, but, if any open allocation remains, it
14 may be awarded at any time. Allocations shall be
15 promulgated by rule in accordance with the Maine
16 Administrative Procedure Act, Title 5, chapter 375,
17 with a public hearing required on the proposed rule
18 in the vicinity of the river in question. The
19 department shall promulgate rules as necessary to
20 facilitate the allocation process.

21 Based on the demand for noncommercial public use, the
22 department shall set aside up to 10% of the recrea-
23 tional use limit on any particular rapidly flowing
24 river for noncommercial public use of whitewater
25 craft.

26 7. Whitewater rafting allocation criteria. The
27 department shall review proposals and award alloca-
28 tions so that, taken as a whole, they satisfy the
29 allocation system goals of this section and contrib-
30 ute to meeting the river management objectives of
31 section 7364. Individual proposals shall be evalu-
32 ated according to the following specific criteria:

33 A. The experience of the outfitter and any
34 employee in providing whitewater trips on the
35 river or rivers for which the allocation is
36 sought, including, but not limited to, such fac-
37 tors as the number of trips and passengers car-
38 ried, length of time as an outfitter, safety
39 record and experience of guides and staff. The
40 company experience of only one company within an
41 affiliated group at the time of that experience
42 may be counted as company experience for purposes
43 of allocation;

1 B. The experience of the outfitter and any
2 employee in providing whitewater trips on rivers
3 other than those for which the allocation is
4 sought, including, but not limited to, such fac-
5 tors as the number of trips and passengers car-
6 ried, length of time as an outfitter, safety
7 record and experience of guides and staff. The
8 company experience of only one company within an
9 affiliated group at the time of that experience
10 may be counted as company experience for purposes
11 of allocation;

12 C. The safety record of the outfitter and any
13 employee in whitewater outfitting or similar
14 enterprises;

15 D. The financial stability of the outfitter,
16 including the ability to provide service as
17 advertised and as reserved by customers;

18 E. The financial investment of the outfitter in
19 equipment, training, insurance, facilities and
20 services directly related to commercial
21 whitewater rafting trips;

22 F. Ability of the outfitter to serve the inter-
23 ests of the State by providing safe, economical,
24 environmentally sound commercial whitewater trips
25 on the particular river or rivers;

26 G. Ability of the outfitter to serve the inter-
27 ests of the consuming public by providing a type
28 of trip experience that is in the public interest
29 as determined by the department;

30 H. When allocations are considered for subse-
31 quent years, the performance of the outfitter in
32 providing the services proposed for the previous
33 allocations and compliance with the terms of the
34 allocations; and

35 I. Other matters which in the judgment of the
36 department relate to orderly business develop-
37 ment, including growth, new entry or extreme
38 hardship on the part of an applicant.

39 8. Allocation fee; user fee. Outfitters shall
40 pay the department the following fees:

1 A. An allocation fee, for either river for which
2 allocations are required, of \$250 per unit of 20
3 passengers or fraction thereof allocated per day
4 on either river in excess of a single unit on a
5 single river. This may be in quarterly payments,
6 beginning 30 days after the allocation is
7 awarded. The maximum allocation fee is \$1,750
8 for the privilege of carrying 80 passengers per
9 day on both rivers; and

10 B. A user fee of \$1 per passenger, excluding
11 guides, carried by any outfitter on any rapidly
12 flowing river. This fee shall be paid by the
13 10th day following the month in which the passen-
14 gers were carried.

15 9. 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 outfitter to the
19 penalties in section 7370-A.

20 10. Exceptions. The following exceptions shall
21 apply to allocations.

22 A. Nonholiday weekday use does not require an
23 allocation. If the recreational use limit of a
24 river is reached on weekdays, the department
25 shall provide by rule for allocations. For pur-
26 poses of this subchapter, the legal holidays are
27 Memorial Day, July 4th and Labor Day.

28 B. Under low-water conditions, an emergency swap
29 of an allocation may be made from one river to
30 the other, provided that water is available, if
31 the receiving river is the Kennebec River; or
32 that the recreational use limit is not exceeded,
33 if the receiving river is the Penobscot. The
34 department shall promulgate rules for emergency
35 swap.

36 C. An outfitter may occasionally exceed the
37 allocation by 2 passengers on a trip of up to 40
38 passengers, or 4 passengers on a trip of up to 80
39 passengers, to accommodate unexpected friends of
40 passengers. Abuse of this privilege will result
41 in its loss.

1 §7369-A. Whitewater Advisory Committee

2 The Whitewater Advisory Committee is established
3 to advise the department and report to the Legis-
4 lature on the implementation of the allocation pro-
5 cess and other aspects of the operation of the indus-
6 try which relate to the purposes of this subchapter.

7 1. Membership. The Whitewater Advisory Commit-
8 tee shall be composed of 6 members who shall have no
9 financial or personal interest in the industry,
10 including 2 members designated by the Governor, 2
11 legislative members designated by the President of
12 the Senate and 2 legislative members designated by
13 the Speaker of the House of Representatives.

14 2. Terms; compensation. Legislative members
15 shall serve during their legislative terms. Members
16 shall serve until their successors are nominated and
17 qualified. Members shall serve without compensation,
18 except for per diem and reimbursement for travel and
19 actual expenses for up to 10 meetings per year.

20 3. Reports. The committee shall report to the
21 Legislature annually by January 31st on the imple-
22 mentation of the allocation process.

23 4. Sunset. The Whitewater Advisory Committee
24 shall terminate June 30, 1986.

25 §7370. Whitewater Rafting Fund

26 1. Established. There is established a
27 Whitewater Rafting Fund to be used by the depart-
28 ment, the bureau and the affected counties and
29 municipalities to fund activities related to river
30 recreation with primary emphasis on those activities
31 which relate to whitewater trips.

32 2. Funding. All fees and surcharges collected
33 shall be credited to the Whitewater Rafting Fund,
34 except for license fees collected in accordance with
35 sections 7365 and 7366.

36 3. Budget. The expenditures from the Whitewater
37 Rafting Fund shall be subject to legislative approval
38 in the same manner as the General Fund budgets of the

1 department and the bureau are approved. The depart-
2 ment and the bureau shall report annually, before
3 February 1st, to the joint standing committee of the
4 Legislature having jurisdiction over inland fisheries
5 and wildlife on its planned expenditures for the next
6 fiscal year and the next previous year.

7 4. Use of the fund. The fund shall be used as
8 follows.

9 A. The moneys deposited in the fund shall be
10 credited as follows.

11 (1) 65% of each fee or surcharge shall be
12 credited to the department.

13 (2) 25% of each fee or surcharge shall be
14 credited to the bureau.

15 (3) 10% of each fee or surcharge shall be
16 credited to the county in which the river is
17 located for distribution among the affected
18 municipalities and for use in the affected
19 unorganized townships.

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

31 C. Any amount of the fund that is not expended
32 at the end of a fiscal year shall not lapse but
33 shall be carried forward.

34 §7370-A. Penalties

35 The penalties for failure to comply with this
36 subchapter or for providing false information under
37 this subchapter may include nonrenewal, revocation or
38 suspension of an outfitters or guides license or an

1 allocation or both, subject to the procedures of the
2 Maine Administrative Procedure Act, Title 5, chapter
3 375. Operation of a commercial whitewater trip with-
4 out a license or operation on the river in violation
5 of the safety requirements of section 7367, subsec-
6 tion 1, shall be a Class E crime.

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

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

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

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

	<u>1983-84</u>	<u>1984-85</u>
37		
38 <u>INLAND FISHERIES AND WILDLIFE,</u>		
39 <u>DEPARTMENT OF</u>	\$29,250	\$29,250
40 <u>CONSERVATION, DEPARTMENT OF</u>		

1 \$250 for an outfitter's license;

2 \$1 per passenger user fee on any rapidly flowing
3 river; and

4 \$250 allocation fee for each unit of 20 passen-
5 gers per day, on weekends, on an allocated river,
6 with no charge for one unit per outfitter on one
7 river.

8 The intent of this new draft is that 2 members of
9 the whitewater guides' board be designated by the
10 board to serve on the Whitewater Safety Committee
11 established by Title 12, section 7367, subsection 2.
12 Although not established in statute, a whitewater
13 guides' board has been established by the Department
14 of Inland Fisheries and Wildlife to assist in exam-
15 ining candidates for a guide's license in the
16 whitewater classification and to recommend candidates
17 to the commissioner for licensing. That board now
18 consists of the commissioner or his designee, 2 war-
19 dens and one public member and alternates.

20 There is a history of litigation on issues
21 related to whitewater rafting. This revised subchap-
22 ter X-A is intended to provide a comprehensive legal
23 framework for state regulation of that industry. It
24 is noted that the general severability clause of
25 Title 1, section. 71 applies.

26 Finally, a Whitewater Advisory Committee is
27 established to provide oversight for the first 3
28 years.

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