

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 79

H.P. 58

House of Representatives, February 2, 1989

Reported by Representative RUHLIN for the Special Commission on Boating pursuant to Resolve 1987, chapter 111.

Reference to the Joint Standing Committee on Fisheries and Wildlife suggested and printing ordered under Joint Rule 18.

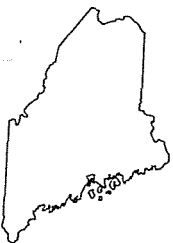
Ed Pert

EDWIN H. PERT, Clerk

STATE OF MAINE

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

An Act Concerning the Safe and Responsible Operation of Watercraft.



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

3 **Sec. 1. 12 MRSA §7791, sub-§11-A** is enacted to read:

5 11-A. Personal watercraft. "Personal watercraft" means any
7 motorized watercraft which is less than 13 feet in length as
9 manufactured, is capable of exceeding a speed of 20 miles per
11 hour and has the capacity to carry, while in operation, not more
13 than the operator and one other person. The term includes, but
15 is not limited to, a jet ski, wet bike, surf jet, miniature
17 speedboat and hovercraft.

13 **Sec. 2. 12 MRSA §7792, sub-§4,** as enacted by PL 1979, c. 420,
15 §1, is repealed and the following enacted in its place:

17 4. Rules governing horsepower. The commissioner may adopt
19 rules governing the horsepower of motors used to propel
21 watercraft on the internal waters of the State.

23 A. In adopting rules, the commissioner shall take into
25 consideration:

27 (1) The area of the internal waters, the use to which
29 the internal waters are put, the depth of the waters
31 and the amount of waterborne traffic and determine
33 whether the rule is necessary to insure the safety of
35 persons and property; and

37 (2) The natural resource management values of the
39 waters and determine whether the rule is necessary to
41 adequately protect and manage the State's natural
43 resources.

45 (a) Natural resource management values to be
47 considered are:

49 (i) Proximity to zoned backcountry
51 recreation areas;

(ii) Remoteness of water body;

(iii) Marshes and wetlands;

(iv) Waters identified as having significant
wildlife habitat, erosion potential or rocky
conditions; and

(v) Other factors concerning special natural
resource character which the commissioner
determines necessary to adequately protect
and manage the State's natural resources.

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(b) The commissioner shall consult with the Commissioner of Marine Resources, the Commissioner of Conservation and the Commissioner of Environmental Protection in adopting rules concerning the natural resource management values to be considered and in adopting rules regulating horsepower for natural resource management purposes.

B. The adoption of rules under this subsection is governed by Title 5, Part 18, except that the rules may be adopted only as a result of a petition made as follows requesting the issuance of such a rule for a particular body of internal water and stating the proposed horsepower limitation. The petition must be made:

(1) By the municipal officers or 25 citizens of the municipality or municipalities in which the waters exist; or

(2) If the waters are located in unorganized territory, the county commissioners of the county or 25 citizens of the unorganized territory in which the waters exist.

Sec. 3. 12 MRSA §7794, sub-§4, ¶A, as amended by PL 1985, c. 579, §§4 and 7, is further amended to read:

A. All watercraft requiring or requesting certificate of number \$ 4 ~~\$15~~

Sec. 4. 12 MRSA §7801, sub-§15, as enacted by PL 1979, c. 420, §1, is repealed and the following is enacted in its place:

15. Operating a motorboat which exceeds the noise limit. A person is guilty of operating a motorboat which exceeds the noise limit if that person operates a motorboat which exceeds 82 decibels of sound pressure level at 50 feet on the "A" scale as measured by the Society of Automotive Engineers standards J-192.

A. Each motorboat shall be equipped at all times with an effective and suitable muffling device on its engine or engines to effectively deaden or muffle the noise of the exhaust.

B. No person may modify the exhaust system of any motorboat in any manner which will increase the noise level above the emission standard provided in this subsection.

C. This subsection does not apply to motorboats which are operating in a regatta or race approved by the commissioner under section 7797. Any such motorboat may use cutouts

1 while on trial runs or competing in speed events for a
3 period not to exceed 48 hours immediately preceding or
 following such an authorized event.

5 **Sec. 5. 12 MRSA §7801, sub-§§30 and 31** are enacted to read:

7 30. Failure to comply with additional safety requirements
 while operating a personal watercraft. A person is guilty of
9 failure to comply with additional safety requirements while
 operating a personal watercraft if:

11 A. That person and any passenger are not wearing personal
13 flotation devices while operating or riding on the
 watercraft; or

15 B. That person operates the personal watercraft between the
17 hours of sunset and sunrise.

19 31. Unlawfully permitting operation. A person who owns a
 watercraft is guilty of unlawfully permitting operation of a
21 watercraft if that person permits another person to operate that
 watercraft and the operator operates that watercraft in violation
23 of this subchapter.

25 **Sec. 6. 12 MRSA §7802** is enacted to read:

27 §7802. Operating within the water safety zone

29 1. Headway speed only. No person may operate any
 watercraft at a speed greater than headway speed within the water
31 safety zone or within a marina or an approved anchorage in
 coastal or inland waters. For the purposes of this section,
33 "headway speed" means the minimum speed necessary to maintain
 steerage and control of the watercraft.

35 2. Waterskiing. The prohibition in subsection 1 does not
37 apply to watercraft towing one or more waterskiers and picking up
 or dropping off one or more waterskiers in the water safety zone
39 if a reasonably direct course is followed through the water
 safety zone between the point that the skiers are picked up or
41 dropped off and the outer boundary of the water safety zone.

43 **Sec. 7. 12 MRSA §7901, sub-§13** is enacted to read:

45 13. Unlawfully permitting operation of watercraft. A
47 violation of section 7801, subsection 31, is a civil violation
 for which a forfeiture of not less than \$100 nor more than \$500
49 may be adjudged.

51 **Sec. 8. 38 MRSA §321**, as amended by PL 1987, c. 674, §1, is
 further amended by adding at the end a new paragraph to read:

1
3 The Director of the Bureau of Parks and Recreation shall regulate the placement of seasonal objects according to section 321-B.

5
7 **Sec. 9. 38 MRSA §321-A, sub-§2, ¶¶B and C,** as enacted by PL 1967, c. 103, §2, are amended to read:

9 B. For the protection and safety of the public; and,

11 C. For observances of the conditions and restrictions expressed in deeds of trust or otherwise, of any such public facilities; and

15 **Sec. 10. 38 MRSA §321-A, sub-§2, ¶D** is enacted to read:

17 D. For the purposes of controlling the placement of seasonal objects in the inland waters of the State according to section 321-B.

21 **Sec. 11. 38 MRSA §321-B** is enacted to read:

23 **§321-B. Control of seasonal objects**

25 1. Placement regulation; definition. The Director of the Bureau of Parks and Recreation shall regulate the placement of seasonal objects in open waters of the inland waters of the State to protect rights of free navigation, public safety and fish and wildlife resources and to maintain, to the greatest extent possible, the natural character of great ponds and rivers. "Seasonal objects" include, but are not limited to, docking floats, mooring systems, swim and dive floats, and buoys used to mark boat moorings, organized swim areas, water ski slalom course, ski jumps and race courses left in the inland waters of the State for less than 7 months.

37 2. Rules. The director and the Commissioner of Inland Fisheries and Wildlife shall adopt rules to govern the placement of seasonal objects to accomplish the purposes set out in subsection 1.

41
43 A. The rules may allow for the placement of seasonal objects by shorefront property owners within the first 100 feet of water adjacent to the owner's property without obtaining a permit from the bureau.

47 B. The rules shall define what is meant by the term "adjacent to shorefront property."

49
51 C. The rules shall require a permit for placement of seasonal objects in the following situations. The bureau shall issue permits for a reasonable length of time as

1 determined by the bureau. Permits shall not be assignable
2 or transferable.

3
4 (1) Any person who is not a shorefront property owner
5 must obtain written permission from the shorefront
6 property owner and a permit from the bureau before
7 placing a seasonal object adjacent to that owner's
8 shorefront property.

9
10 (2) Any shorefront property owner proposing to place a
11 seasonal object further than 100 feet from the normal
12 high-water mark of that shorefront property must first
13 obtain a permit from the bureau. Due to the hazards
14 that may be posed to navigation or public safety, no
15 shorefront property owner may place any seasonal object
16 within the inland waters of the State more than 200
17 feet from the normal high-water mark unless that owner
18 can demonstrate to the bureau that no other reasonable
19 alternative exists and the bureau determines that the
20 placement of that object will not pose a hazard to
21 navigation or safety.

22 (3) Any shorefront property owner proposing to charge
23 a fee for the placement or use of seasonable objects
24 adjacent to the shorefront property must first obtain a
25 permit from the bureau.

26
27 If a shorefront property owner proposes to charge a fee
28 for the placement or use of 5 or more seasonal objects
29 or for the dockage rights of 5 or more boats at any
30 docking floats or mooring system, the bureau may hold a
31 public hearing in or near the jurisdiction in which the
32 shorefront property is located to receive public
33 comment on the permit application and shall consider
34 these comments in its decision regarding issuance of
35 the permit.

36
37 D. The rules shall require the payment of a reasonable fee
38 to the bureau for any application and permit required by
39 this section and for each seasonal object for which the
40 owner of a shorefront property proposes to charge a fee.

41
42 E. The rules may provide for the removal of illegal
43 seasonal objects by the director or the warden service.

44
45 F. The warden service of the Department of Inland Fisheries
46 and Wildlife shall enforce any rules adopted under this
47 section.

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49 3. Use of resources. The bureau may use funds provided by
50 this chapter for hiring staff and purchasing equipment to operate
51 and enforce the permit system.

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Sec. 12. 38 MRSA §329, as amended by PL 1987, c. 674, §2, is further amended to read:

§329. Penalties

Whoever moors a vessel, boat, scow or raft to any buoy, beacon or permanent structure placed by the State in any waters of this State or in any manner makes fast thereto ~~shall be guilty of a Class E crime~~ commits a civil violation for which a forfeiture of up to \$500 may be adjudged. Each day shall be a separate violation.

Whoever intentionally destroys, defaces, damages, moves off station or sinks any buoy, beacon or marking device either floating on the waters of the State or permanently fixed to the land or structures adjacent to the water areas of the State, placed by the State, ~~shall be guilty of a Class E crime~~ commits a civil violation for which a forfeiture of up to \$500 may be adjudged. Each day shall be a separate violation.

Whoever places a seasonal object in a manner inconsistent with this subchapter or with the rules adopted under this subchapter commits a civil violation for which a forfeiture of up to \$500 may be adjudged. Each day shall be a separate violation.

Sec. 13. Allocation. The following funds are allocated from the Department of Inland Fisheries and Wildlife dedicated revenue to carry out the purposes of this Act.

	1989-90	1990-91
INLAND FISHERIES AND WILDLIFE, DEPARTMENT OF		
Enforcement Operations		
Positions	(10)	(10)
Personal Services	\$204,045	\$293,730
All Other	33,750	36,500
Capital Expenditures	257,480	
Provides funds for 10 additional full time wardens, general operating expenses and 5 new boats on trailers.		
DEPARTMENT OF INLAND FISHERIES AND WILDLIFE		
TOTAL	\$495,275	\$330,230

1 motorized watercraft are required to be registered. In
2 comparison, the fee to register a snowmobile is \$16 while the fee
3 for an ATV is \$12.

5 Section 4 enacts a noise limit for motorboats based on the
6 same decibel limit as currently applies to ATVs. The bill
7 retains the exemption for boats participating in approved regatta
8 events. To allow boaters to have sufficient time to comply with
9 the law, section 14 delays the effective date of the decibel
10 limit until January 1, 1991. Until that time the current law
11 which requires the use of an effective muffler will remain in
12 effect.

13 Sections 5 and 7 are modeled on a provision of the ATV
14 laws. They provide that the owner of a watercraft commits a
15 civil violation if that person permits any person to operate that
16 watercraft and the operator commits any other prohibited acts
17 concerning the operation of watercraft.

18 These provisions are intended to apply to any situation in
19 which the owner allows another person to use the watercraft
20 including, but not limited to, parents allowing their children to
21 use the watercraft and rental agencies renting watercraft to
22 their customers.

23 Section 6 prohibits high rates of speed within 200 feet of
24 the shore on inland waters and within marinas and approved
25 anchorages on all waters. All watercraft are limited to headway
26 speed only within these areas. The water safety zone is already
27 defined in the Maine Revised Statutes, Title 12, to mean the area
28 of water within 200 feet of any shoreline, whether the shoreline
29 of the mainland or of an island.

30 An exception is made for watercraft towing one or more
31 waterskiers. Boats towing waterskiers may cross through the
32 water safety zone to drop off or pick up waterskiers on or near
33 the shore. The exception only applies if the boat follows a
34 reasonably direct route through the water safety zone; it is not
35 giving boats towing waterskiers free reign to travel in the water
36 safety zone.

37 Sections 9 to 12 clarify that the Director of the Bureau of
38 Parks and Recreation has the power to make rules governing the
39 placement of seasonal objects in Maine waters. That power
40 includes the authority to remove illegally-placed objects. This
41 does not apply to ice houses used for ice fishing on frozen
42 waters; the Department of Inland Fisheries and Wildlife regulates
43 ice fishing. The director, with the Commissioner of Inland
44 Fisheries and Wildlife, will adopt rules to regulate seasonal
45 objects. Both agencies must be involved in the rule-making
46 process as long as the Bureau of Parks and Recreation administers
47

1 the rules relating to the seasonal objects and the warden service
is relied upon to provide the enforcement.

3

5 Section 12 also makes violation of the rules governing
marking of waters and seasonal objects a civil violation rather
than a Class E crime.

7

9 This bill also funds 10 additional full-time wardens to be
assigned where needed most. Their duties will focus on boating
law enforcement during the boating season and boating instruction
11 as well as ATV and snowmobile law enforcement in the off-season.
The warden service will purchase 5 new boats on trailers to help
13 increase their enforcement capability. The boats will be
brightly marked and easily identifiable as wardens' boats.