

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 80

H.P. 59

House of Representatives, February 2, 1989

Reported by Representative MITCHELL 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.

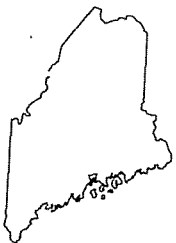
Ed Pert

EDWIN H. PERT, Clerk

STATE OF MAINE

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

An Act Concerning Boating and Other Water-based Activities.



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 generally less than 13 feet in
9 length as manufactured, is capable of exceeding a speed of 20
11 miles per hour and has the capacity to carry not more than the
13 operator and one other person while in operation. The term
15 includes, but is not limited to, a jet ski, wet bike, surf jet,
17 miniature 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15 §1, is repealed and the following enacted in its place: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 those waters are put, the depth and the amount of
31 water-borne traffic and determine whether the rule is
33 necessary to ensure the safety of persons and property;
35 and

37 (2) The natural resource management values of the
39 waters and determine whether the rule is necessary to
41 protect and manage adequately 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 habitats, erosion potential or rocky
conditions; and

(v) Other conditions concerning special
natural resource character which the
commissioner adopts by rule as necessary to
protect and manage adequately the State's
natural resources.

1
3 (b) The commissioner shall consult with the
5 Commissioner of Marine Resources, the Commissioner
7 of Conservation and the Commissioner of
9 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.

11 (c) Notwithstanding subparagraph (a), the
13 commissioner shall adopt rules restricting the
 horsepower on waters where the following
 requirements apply:

15 (i) The waters are classified as a "gem
17 lake" by the Maine Land Use Regulation
 Commission;

19 (ii) The surface area of the waters is less
21 than the minimum size established by the
 commissioner by rule;

23 (iii) The ratio of watercraft to surface
25 area of the waters is greater than the
27 appropriate use level established by the
 commission by rule; or

29 (iv) The waters are used as a public water
31 supply.

33 B. The adoption of rules under this subsection is governed
35 by the Maine Administrative Procedure Act, Title 5, chapter
37 375, 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 by:

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

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

49 **Sec. 3. 12 MRSA §7794, sub-§4, ¶A, as amended by PL 1985, c.**
51 **579, §§4 and 7, is further amended to read:**

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

3
5 **Sec. 4. 12 MRSA §7801, sub-§15**, as enacted by PL 1979, c. 420,
§1, is repealed and the following enacted in its place:

7 15. Operating a motorboat that exceeds the noise limit. A
9 person is guilty of operating a motorboat which exceeds the noise
11 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 standard J-192.

13 A. A motorboat shall be equipped with an effective and
15 suitable muffling device on its engine or engines to
diminish effectively the noise of the exhaust.

17 B. No person may modify the exhaust system of a motorboat
19 in a manner which will increase the noise emitted above the
emission standard provided in this subsection.

21 C. This subsection does not apply to motorboats which are
23 operating in a regatta or race approved by the commissioner
25 under section 7797. Those motorboats may use cutouts while
27 on trial runs or competing in speed events for a period not
to exceed 48 hours immediately preceding or following an
authorized event.

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

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

35 A. And any passenger are not wearing personal flotation
37 devices while operating or riding on the personal
watercraft; or

39 B. Operates the personal watercraft between the hours of
41 sunset and sunrise.

43 31. Unlawfully permitting operation. A person is guilty of
45 unlawfully permitting operation of a watercraft if that person
47 owns a watercraft and permits another person to operate the
watercraft and the operator then operates that watercraft in
violation of any section of this subchapter.

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

51 §7802. Operating within the water safety zone

1 1. Headway speed only. No person may operate a watercraft
2 at a speed greater than headway speed while within the water
3 safety zone or within a marina or an approved anchorage in
4 coastal or inland waters. For the purposes of this section,
5 "headway speed" means the minimum speed necessary to maintain
6 steerage and control of the watercraft while the watercraft is
7 moving.

8 2. Water-skiing. The prohibition in subsection 1 does not
9 apply to watercraft picking up or dropping off one or more
10 persons on waterskis in the water safety zone if a reasonably
11 direct course is taken through the water safety zone between the
12 point that the skiers are picked up or dropped off and the outer
13 boundary of the water safety zone.

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

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

19 **Sec. 8. 38 MRSA §13 is enacted to read:**

20 §13. Applicable in all municipalities and plantations

21 This subchapter applies to all municipalities and
22 plantations with water located within their borders, regardless
23 of whether the municipality or plantation is located on coastal
24 or inland waters.

25 The municipal officers of 2 or more municipalities which
26 border on the same inland waters may jointly appoint a single
27 harbor master to carry out this subchapter within the
28 jurisdictions of the participating municipalities.

29 **Sec. 9. 38 MRSA §321, as amended by PL 1987, c. 674, §1, is**
30 **further amended to read:**

31 **§321. Director of the Bureau of Parks and Recreation; duties**

32 The Director of the Bureau of Parks and Recreation, with the
33 advice of the Bureau of Parks and Recreation, shall acquire,
34 construct and maintain, within the funds available, public
35 facilities for boats in the waters of the State, including, but
36 not limited to, launching ramps, parking sites and access roads.
37 Waters-of-the-State "Waters of the State" means any waters within
38 the territorial limits of the State, and the marginal sea
39 adjacent to the State.

1 The Director of the Bureau of Parks and Recreation shall
2 decide where the facilities shall be located and which facilities
3 shall be constructed by the Department of Transportation.

5 The Director of the Bureau of Parks and Recreation shall
6 decide when ~~in his opinion~~ hazards to boating exist and mark the
7 waters of the State, within the funds available, by placement of
8 aids to navigation and regulatory markers on the waters
9 consistent with the rules provided in section 323.

11 In carrying out the purposes of this chapter, the Bureau of
12 Parks and Recreation, its authorized agents and employees, may
13 enter upon any lands, waters and premises in the State for the
14 purpose of making surveys and examinations as it may--deem
15 considers necessary or convenient in the discharge of its duties,
16 and such entry shall not be deemed considered a trespass.

17 The Director of the Bureau of Parks and Recreation may make
18 rules for the uniform marking of the water areas of this State
19 not otherwise regulated, through the placement of aids to
20 navigation and regulatory markers. No city, county or person
21 shall may mark the waters of this State in any manner in conflict
22 with the marking system prescribed by the Director of the Bureau
23 of Parks and Recreation.

25 The Director of the Bureau of Parks and Recreation shall
26 remove, within the funds available, minor hazards to boating
27 when, in his the director's opinion, removal of the minor hazard
28 or obstacle is necessary for the safe passage of watercraft. The
29 Bureau of Parks and Recreation, its authorized agents and
30 employees, in carrying out the purpose of this paragraph, may
31 enter upon any lands with the owner's permission, waters and
32 premises in the State for the purpose of removing minor hazards
33 or obstacles as it may--deem considers necessary or convenient in
34 the discharge of its duties, and such entry shall not be deemed
35 considered a trespass.

37 If the Bureau of Parks and Recreation, after written request
38 from the governing body of any city or town either declines to
39 mark a waterway or is unable to mark a waterway, then the
40 governing body of the city or town may mark hazards to boating on
41 waterways within its jurisdiction. The Bureau of Parks and
42 Recreation shall be deemed considered to have declined to mark a
43 particular waterway if the bureau does not respond to a request
44 within 30 days.

47 The Bureau of Parks and Recreation may at any time reverse a
48 decision not to mark a certain waterway or portion of that
49 waterway and replace any existing markings in accordance with the
50 rules of uniform marking promulgated by the bureau.

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

5 **Sec. 10. 38 MRSA §321-A, sub-§2,** as enacted by PL 1967, c.
6 103, §2, is amended to read:

7
8 **2. Establish rules and regulations.** To establish such
9 rules and regulations as it deems necessary:

11 A. For the protection and preservation of public facilities
12 acquired, constructed and maintained pursuant to this
13 subchapter;

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

17 C. For observances of the conditions and restrictions
18 expressed in deeds of trust or otherwise, of any-~~such~~ the
19 public facilities; ; and

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

23
24 **Sec. 11. 38 MRSA §321-B** is enacted to read:

25 §321-B. Control of seasonal objects

27
28 **1. Regulation; definition.** Except in municipalities which
29 regulate seasonal objects under their home rule authority under
30 the Constitution of Maine, Article 8, Part Second, Section 1, and
31 Title 30-A, section 3001, the Director of the Bureau of Parks and
32 Recreation shall regulate the placement of seasonal objects in
33 open waters of the inland waters of the State. "Seasonal
34 objects" include, but are not limited to, docking floats, mooring
35 systems, swim and dive floats, and buoys used to mark boat
36 moorings, organized swim areas, water ski slalom courses, ski
37 jumps and race courses left in the inland waters of the State for
38 less than 7 months. For the purposes of this section, "bureau"
39 means the Bureau of Parks and Recreation and "director" means the
40 Director of the Bureau of Parks and Recreation.

41
42 **2. Rules.** The director, together with the Commissioner of
43 Inland Fisheries and Wildlife, shall adopt rules to govern the
44 placement of seasonal objects to protect free navigation, public
45 safety, fish and wildlife resources and the natural character of
46 great ponds and rivers.

47
48 A. The rules may allow for the placement of seasonal
49 objects by shorefront property owners, within the first 100
50 feet of water adjacent to their properties, without
51 obtaining a permit from the bureau.

1 B. The rules shall define the phrase "adjacent to
2 shorefront property."

3
4 C. The rules shall require a permit for placement of
5 seasonal objects in the following situations. The bureau
6 shall issue permits for a reasonable length of time as
7 determined by the bureau. Permits shall not be assignable
8 or transferable.

9
10 (1) A person who is not a shorefront property owner
11 must obtain written permission from the shorefront
12 property owner and obtain a permit from the bureau
13 before placing a seasonal object adjacent to the
14 owner's shorefront property.

15
16 (2) A shorefront property owner planning to place a
17 seasonal object further than 100 feet from the normal
18 high-water mark of that owner's shorefront property
19 must first obtain a permit from the bureau. Due to the
20 hazards that may be posed to navigation or public
21 safety, no shorefront property owner may place any
22 seasonal object within the inland waters of the State
23 more than 200 feet from the normal high-water mark
24 unless that owner can demonstrate to the bureau that no
25 other reasonable alternative exists and the bureau
26 determines that the placement of that object will not
27 pose a hazard to navigation or safety.

28
29 (3) A shorefront property owner planning to charge a
30 fee for the placement or use of seasonable objects
31 adjacent to that owner's shorefront property must first
32 obtain a permit from the bureau.

33
34 If a shorefront property owner plans to charge a fee
35 for the placement or use of 5 or more seasonal objects
36 or for the dockage rights of 5 or more boats at any
37 docking float or mooring system, the bureau may hold a
38 public hearing in or near the jurisdiction in which the
39 shorefront property is located to receive public
40 comment on the permit application and shall consider
41 these comments in its decision regarding issuance of
42 the permit.

43
44 D. The rules shall require the payment of a reasonable fee
45 to the bureau for any application and permit required by
46 this section, and for each seasonal object for which a
47 shorefront property owner plans to charge a fee.

48
49 E. The rules may provide for the removal of illegal
50 seasonal objects by the director or the Bureau of Warden
51 Service.

1 F. The Bureau of Warden Service shall enforce rules adopted
2 under this section.

3

4 3. Use of resources. The bureau may use funds as provided
5 by this chapter for hiring staff and purchasing equipment to
6 operate and enforce the permit system.

7

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

11 **§329. Penalties**

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

18

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

26

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

31

32 **Sec. 13. Allocation.** The following funds are allocated from
33 the Department of Inland Fisheries and Wildlife to carry out the
34 purposes of this Act.

35

36

1989-90

1990-91

37

**INLAND FISHERIES AND WILDLIFE,
DEPARTMENT OF**

38

Enforcement Division

39

Positions	(10)	(10)
Personal Services	\$204,045	\$293,730
All Other	33,750	36,500
Capital Expenditures	257,480	

40

41

42

Provides funds for 10
additional full-time wardens,
general operating expenses
and 5 new boats on trailers.

43

44

1
3 **DEPARTMENT OF INLAND FISHERIES AND
WILDLIFE**

5 **TOTAL** \$495,275 \$330,230

7 **Sec. 14. Effective date.** Section 4 of this Act shall take
effect on January 1, 1991.

9 **STATEMENT OF FACT**

11 This bill contains recommendations of the Special Commission
13 on Boating, created by Resolve 1987, chapter 111, and serves as a
15 minority report of one member of the commission. Sections 2 and
10 of this bill represent minority positions, while the remaining
sections are unanimous recommendations of the commission.

17 Section 1 defines the term "personal watercraft" which a few
19 states refer to as "thrill craft." Section 5 places 2
21 restrictions, in addition to the restrictions which apply to all
23 watercraft, including personal watercraft, on the operation of
25 personal watercraft. One is the requirement that the operator
and any passenger must wear proper personal flotation devices
while operating or riding on the watercraft. Requirements
currently prescribe that the personal flotation devices simply be
on board the watercraft.

27 The 2nd restriction is that no personal watercraft may be
29 operated at night. Night is the time between sunset and
31 sunrise. Night operation can be dangerous to both persons on the
33 personal watercraft and other boaters. Because most personal
35 watercraft have no lights, they cannot be seen at night. Even if
the operator displays a light or installs lights, however, the
personal watercraft, because of their size, are difficult to see
at night. In addition, it is almost impossible to see a person
in the water at night and persons can fall off a personal
watercraft very easily.

37 Section 2 revises the authority of the Commissioner of
39 Inland Fisheries and Wildlife to make rules restricting
41 horsepower of watercraft on inland waters. Current law allows
43 the commissioner to consider only the safety of persons and
45 property in regulating horsepower. This bill expands that
47 authority to include consideration of natural resource management
49 values and to allow those values to be the basis of rules
restricting horsepower on any particular water body. The bill
specifically lists certain resource values which must be
considered, and allows the commissioner to adopt rules governing
additional concerns which must be considered in order to protect
and manage adequately the natural resources of the State. The
commission will consult with the Commissioner of Marine
51 Resources, the Commissioner of Environmental Protection and the
53 Commissioner of Conservation, which includes the Maine Land Use
Regulation Commission and the Bureau of Parks and Recreation.

1 All these state agencies have expertise in the protection and
management of natural resources which should be included in
3 developing regulations concerning watercraft horsepower
limitations.

5
7 This bill differs from the majority recommendations in that
it requires the commissioner to adopt rules regulating horsepower
on waters that meet certain criteria. Once the petition process
9 is completed for waters which meet these criteria, the
commissioner must limit the horsepower. If the Maine Land Use
11 Regulation Commission has classified a lake or pond as a "gem
lake", the commissioner must adopt rules limiting the
13 horsepower. The commissioner must adopt general rules that
determine appropriate minimums for different levels of
15 horsepower. The commissioner must adopt a horsepower limitation
on bodies of water which meet the size restrictions of those
17 general rules. The commissioner must adopt a horsepower
limitation rule for a body of water which is used as a public
19 water supply. The commissioner must also adopt general rules
which establish one or more appropriate watercraft-to-surface
21 area ratios for the safety and enjoyment of boaters. If
requested in the petition process, the Department of Inland
23 Fisheries and Wildlife must conduct a survey of the body of water
to determine the ratio of watercraft to surface area. If that
25 boating density is higher than the ratio established by rule, the
commissioner must adopt a horsepower limitation on that body of
27 water.

29 Section 3 of the bill raises the annual registration fee for
motorized watercraft to \$15, representing an increase of \$11.
31 Only motorized watercraft are required to be registered. In
comparison, the fee to register a snowmobile is \$16, while the
33 fee of ATV's is \$12.

35 Section 4 enacts a noise limit for motorboats based on the
same decibel limit as currently applies to ATVs. The bill
37 retains the exemption for boats participating in approved regatta
events. To allow boaters to have sufficient time to comply with
39 the law, section 14 delays the effective date of the decibel
limit until January 1, 1991. Until that time, the current law,
41 which requires the use of an effective muffler, remains in effect.

43 Sections 5 and 7 are modeled on a provision of the ATV
laws. They provide that the owner of a watercraft commits a
45 civil violation if that owner permits another person to operate
that watercraft, and the operator commits a prohibited act
47 involving the operation of watercraft.

49 These provisions are intended to apply to any situation in
which the owner allows another person to use the watercraft,
51 including, but not limited to, parents allowing their children to

1 use the watercraft and rental agencies renting watercraft to
2 their customers.

3

4 Section 6 prohibits high rates of speed within 200 feet of
5 the shore on inland waters and within marinas and approved
6 anchorages on all waters. All watercraft are limited to headway
7 speed only within these areas. The water safety zone is defined
8 in the Maine Revised Statutes, Title 12 to mean the area of water
9 within 200 feet of any shoreline, whether the shoreline of the
10 mainland or of an island.

11

12 An exception is made for watercraft towing one or more
13 persons on waterskis. Boats towing persons on waterskis can
14 cross through the water safety zone to drop off or pick up
15 persons on waterskis on or near the shore. The exception only
16 applies if the boat follows a reasonably direct route through the
17 water safety zone; it is not giving boats towing persons on
18 waterskis free rein to travel in the water safety zone.

19

20 Section 8 is a minority recommendation that extends the
21 authority to hire harbor masters to all municipalities and
22 plantations located on water, not just those on coastal waters.

23

24 Sections 9 to 12 clarify that the Director of the Bureau of
25 Parks and Recreation has the power to make rules governing the
26 placement of seasonal objects in Maine waters. That power
27 includes the authority to remove illegally placed objects. This
28 does not apply to icehouses used for ice fishing on frozen
29 waters; the Department of Inland Fisheries and Wildlife regulates
30 ice fishing. The director, with the Commissioner of Inland
31 Fisheries and Wildlife, will adopt rules to regulate seasonal
32 objects. Both agencies must be involved in the rule-making
33 process as long as the Bureau of Parks and Recreation administers
34 the seasonal objects and the Bureau of Warden Service is relied
35 upon to provide the enforcement.

37

36 Section 11 of this bill contains an additional minority
37 recommendation. It limits the authority of the Director of Parks
38 and Recreation to regulate seasonal objects in municipalities.
39 If a municipality adopts its own regulations governing seasonal
40 objects, the director has no jurisdiction within that
41 municipality to regulate seasonal objects.

43

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

47

46 This bill also funds 10 additional full-time wardens to be
47 assigned where needed most. Their duties will focus on boating
48 law enforcement during the boating season, and boating
49 instruction as well as ATV and snowmobile law enforcement in the
50 off-season. The Bureau of Warden Service will purchase 5 new
51

1 boats on trailers to help increase their enforcement capability.
The boats will be brightly marked and easily identifiable as
3 wardens' boats.