

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

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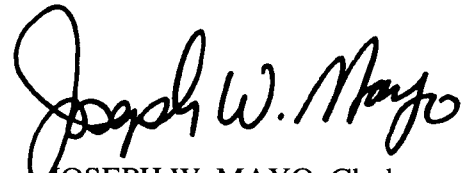
H.P. 415

House of Representatives, February 17, 1995

**An Act to Transfer Regulatory Control of Whitewater Rafting to the  
Department of Conservation's Bureau of Parks and Recreation.**

---

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative ROTONDI of Madison.  
Cosponsored by Representatives: GREENLAW of Standish, JACQUES of Waterville,  
KEANE of Old Town, ROSEBUSH of East Millinocket, TUFTS of Stockton Springs,  
UNDERWOOD of Oxford, Senators: HALL of Piscataquis, KIEFFER of Aroostook.

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

Sec. 1. 5 MRSA §12004-I, sub-§70, as amended by PL 1991, c. 780, Pt. S, §§2 and 3, is further amended to read:

70.	Whitewater	\$25/Day	12 MRSA
Natural	Safety		§7367
Resources:	Committee		§1804
Recreation			

Sec. 2. 12 MRSA c. 220 is enacted to read:

CHAPTER 220

COMMERCIAL WHITEWATER RAFTING

§1800. Legislative findings

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

The Legislature further finds that increased use of the State's rapidly flowing rivers has increased the environmental, physical and social burdens on that resource.

The Legislature further finds that it is in the public interest for the State, as trustee of the public waters, to regulate commercial whitewater rafting, pursuant to: the State's authority to protect the health, safety and welfare of its citizens; the State's authority to protect its natural resources and rapidly flowing rivers; and the State's authority over the care, supervision and protection of navigation.

The Legislature further finds that, in exercising this authority, it is in the public interest for the State to adopt measures to ensure the competence of commercial whitewater outfitters; to adopt recreational use limits; and to allocate the privilege of commercial use where necessary to meet the objectives and goals of this chapter.

The Legislature further finds that it is in the public interest to allow stable, well-qualified outfitters who are providing excellent service and meeting the conditions of their

2 allocations to continue to do so, subject to periodic review when  
3 allocations are reviewed.

4 **§1801. Definitions**

6 As used in this chapter, unless the context otherwise  
7 indicates, the following terms have the following meanings.

8  
9 **1. Affiliated group.** "Affiliated group" means one or more  
10 affiliated outfitters and the outfitter or outfitters with which  
11 they are affiliated.

12 **2. Affiliated outfitter.** "Affiliated outfitter" means:

14 **A.** Any outfitter who owns directly, indirectly or through a  
15 chain of successive ownership 10% or more of the financial  
16 interest in any other outfitter;

18 **B.** Any outfitter, 10% or more of whose financial interests  
19 are owned directly or indirectly or through a chain of  
20 successive ownership by any other outfitter;

22 **C.** Any outfitter, 10% or more of whose financial interests  
23 are owned directly or indirectly or through a chain of  
24 successive ownership by a person who owns 10% or more of the  
25 financial interest in another outfitter; or

28 **D.** Any outfitter who, in the year 1982 or thereafter:

30 (1) Purchases, leases, borrows, accepts, receives or  
31 otherwise obtains on a nonarms-length basis from  
32 another whitewater outfitter, either directly or  
33 indirectly, more than 1/2 of its real or personal  
34 property; or

36 (2) Receives from another outfitter on a  
37 nonarms-length basis more than 1/2 of the ordinary  
38 services related to the business of whitewater  
39 outfitting, including, but not limited to, mail,  
40 telephone, reservations, repair, maintenance, personnel  
41 training and management.

42  
43 A person may not be found to be an affiliated outfitter solely  
44 because of blood relationship, marriage or previous employment.  
45 An outfitter who purchases the business of another outfitter  
46 whose license has been returned to the bureau, as provided in  
47 section 1803, subsection 6, has 60 days from the date of sale to  
48 submit an affidavit applying for the selling outfitter's  
49 allocation, assuring that the level and quality of services of  
50 the selling outfitter will be maintained. If the bureau

2 transfers the selling outfitter's allocation to the buying  
3 outfitter or outfitters, these transferred allocations must be  
4 added to the buyer's allocations and may not be considered as  
5 affiliated. An outfitter may not receive more than the maximum  
6 allocation of 80 passengers a day.

7 3. Allocation. "Allocation" means the privilege of taking  
8 a specified number of passengers per day on whitewater trips on a  
9 particular river, as specified annually.

10 4. Bureau. "Bureau" means the Bureau of Parks and  
11 Recreation in the Department of Conservation.

12 5. Commercial. "Commercial" means for financial  
13 compensation or other remuneration.

14 6. Commercial whitewater outfitter; outfitter. "Commercial  
15 whitewater outfitter" or "outfitter" means a person who conducts  
16 commercial whitewater trips or who collects dues or fees or  
17 receives any form of compensation for providing whitewater  
18 rafting services or for operating a whitewater rafting  
19 organization.

20 7. Commissioner. "Commissioner" means the Commissioner of  
21 Conservation.

22 8. Demonstrated use. "Demonstrated use" means for a given  
23 outfitter, for a given river, the average number of passengers  
24 carried on the 10 Saturdays or Sundays with greatest use during  
25 the year.

26 9. Department. "Department" means the Department of  
27 Conservation.

28 10 Financial interest. "Financial interest" means any  
29 voting or nonvoting security, partnership interest, whether  
30 limited or general, trust interest, joint venture interest or any  
31 other beneficial interest in any form of business association.

32 11. Person. "Person" means an individual, corporation,  
33 business trust, estate, trust, partnership or association, 2 or  
34 more persons having a joint or common interest, or any other  
35 legal or commercial entity.

36 12. Rapidly flowing river. "Rapidly flowing river" means a  
37 river or stretch of a river with rapids classified as class IV or  
38 higher by the bureau according to the International River  
39 Classification System, or a river or stretch of a river  
40 designated by the bureau by rule on the basis of public safety,  
41 including, but not limited to, the Kennebec River between Harris  
42 and

2 Station and West Forks, and the West Branch Penobscot River  
3 between McKay Station and Pockwockamus Falls.

4 13. Whitewater craft. "Whitewater craft" means any raft,  
5 dory, bateau or similar watercraft that is used to transport  
6 passengers along rapidly flowing rivers, but does not include  
7 canoes or kayaks.

8 14. Whitewater guide. "Whitewater guide" has the same  
9 meaning as in section 7381.

10 15. Whitewater trip. "Whitewater trip" means any  
11 commercial effort to transport passengers by means of a  
12 whitewater craft on rapidly flowing rivers.

13 **§1802. River management objectives**

14 The following objectives are established for management of  
15 rapidly flowing rivers for the benefit of the people of the State:

16 1. Safety and health requirements. To ensure that safety  
17 and health requirements are met by all river users;

18 2. Minimize environmental impact. To minimize  
19 environmental impact on the rivers and the river corridors,  
20 including access roads;

21 3. Recreational use. To allow a reasonable level of  
22 recreational use;

23 4. Quality wilderness experience. To maintain a quality  
24 wilderness experience on the rivers;

25 5. Multiple uses. To minimize conflicts between different  
26 uses of the rivers in order to allow for multiple uses;

27 6. Diversity of whitewater experiences and services. To  
28 encourage a diversity of whitewater trip experiences and services;

29 7. River use and impact. To monitor river use and its  
30 impact;

31 8. Communication. To encourage open communication with all  
32 river users, both groups and individuals, on river management  
33 matters; and

34 9. System of allocating river use. To provide a system of  
35 allocating river use that is simple and fair, and that meets the  
36 specific goals of section 1807.

2  
3 **§1803. Commercial whitewater outfitter's license**

4 **1. Requirement.** A commercial whitewater outfitter's  
5 license is required for all commercial whitewater outfitters.  
6 Operation of a commercial whitewater trip by an outfitter without  
7 a license is prohibited, and is subject to penalty under section  
8 1809.

9  
10 **2. Issuance; term.** The commissioner may issue a license to  
11 conduct commercial whitewater trips. Licenses are issued for the  
12 calendar year.

13  
14 **3. Insurance requirements.** All outfitters shall carry  
15 liability insurance covering the operation of whitewater trips  
16 and motor vehicles carrying passengers. The bureau shall  
17 establish, by rule, the minimum limits of liability insurance.

18  
19 **4. Fee.** The annual basic fee for a commercial whitewater  
20 license must be set by the bureau and adjusted biennially by rule  
21 to reflect the actual cost of administering the license program.  
22 The fee for reissuance of a license is equal to the annual basic  
23 fee for a license.

24  
25 **5. Exceptions.** This chapter does not apply to the  
26 operation of canoes or kayaks. This chapter does not apply to  
27 guides or camp trip leaders licensed under chapter 707,  
28 subchapter VIII-A, or motorboat operators licensed under chapter  
29 715, subchapter I, unless those persons are in the business of  
30 conducting commercial whitewater trips.

31  
32 **6. Nonrenewal, suspension or revocation.** Licenses are  
33 subject to nonrenewal, suspension or revocation for good cause  
34 shown, including, but not limited to, unsafe practices,  
35 falsifications of reports, or serious or continued violation of  
36 this chapter, subject to the Maine Administrative Procedure Act.

37  
38 **7. Sale of business.** When a licensed whitewater  
39 outfitter's business is sold, the license must be returned to the  
40 bureau. On application, the license must be reissued to the  
41 purchaser, provided that the purchaser meets the licensing  
42 requirements of the bureau and pays the license fee. Profit on  
43 the return and reissuance of the license itself is prohibited,  
44 but nothing in this chapter may be construed to prohibit profit  
45 on the sale of any of the assets of a business. The license is  
46 not an asset and may not be transferred as part of a sale or  
47 transaction. The bureau may require an affidavit from the  
48 purchaser to aid in enforcement of this provision.

49  
50 **8. Sale of business; allocations.** When a licensed  
whitewater outfitter's business is sold, the selling outfitter's

2 allocations or portions of the allocations subject to the sale  
3 must be returned to the bureau. On application to the bureau,  
4 allocations may be reissued to the purchaser, provided that the  
5 purchaser meets the licensing and allocation requirements of the  
6 bureau and pays the license and allocation fees. Profit on the  
7 return and reissuance of any allocations is prohibited, but  
8 nothing in this chapter prohibits a profit on the sale of any of  
9 the assets of a business. The allocations are not assets of a  
10 business. The bureau may require an affidavit from the selling  
11 outfitter or purchaser, or both, to aid in enforcement of this  
12 provision. Allocations or portions of the allocations may be  
13 transferred, pursuant to this chapter, from a selling outfitter  
14 to one or more purchasers only if the selling outfitter's  
15 allocations or portions of the allocations subject to the sale  
16 are returned to the bureau.

17 9. **Affiliated outfitters.** Affiliated outfitters may be  
18 licensed, but are subject to additional allocation restrictions.  
19 Applications for allocations must contain a declaration of the  
20 extent of affiliation, as defined in section 1801, subsection 2,  
21 or a declaration of nonaffiliation, and a statement disclosing  
22 any relationship with other licensed outfitters, including the  
23 giving or receipt of equipment, materials or other assistance.  
24 The bureau may require submission of any books, memoranda, papers  
25 or accounts it reasonably believes necessary to determine whether  
26 a person seeking an allocation is an affiliated outfitter. These  
27 are confidential and may be made available only to persons  
28 involved in determining affiliation and only for that purpose,  
29 unless they are submitted for another purpose.

30 10. **Limitation.** This chapter may not be construed as  
31 revoking any right of passage or access created by statute,  
32 contract or operation of law, or creating any such right for any  
33 whitewater outfitter or any associates or customers of any  
34 whitewater outfitter upon the project or project works of any  
35 licensee of the Federal Energy Regulatory Commission, as the  
36 terms "project" and "project works" are defined in the United  
37 States Code, Title 16, Section 786 (11) and (12), respectively.

#### 40 **§1804. Safety**

41 1. **Whitewater trip safety restrictions.** The commissioner  
42 shall by rule establish safety restrictions for whitewater trips.

43 2. **Whitewater Safety Committee.** The Whitewater Safety  
44 Committee established by Title 5, section 12004-I, subsection 70  
45 shall advise the commissioner in establishing and reviewing  
46 safety requirements for whitewater trips, developing a safety  
47 information program and reviewing the safety record of whitewater  
48 guides and outfitters. The committee shall submit a written  
49 report to the commissioner.



2 report annually on each outfitter's safety record to the  
commissioner.

4 A. The Whitewater Safety Committee is composed of 8  
6 members: two members of the whitewater guides board  
8 designated by the board; 2 commercial whitewater outfitters  
10 and 2 whitewater guides designated by the Governor; and 2  
members from the general public, one designated by the  
President of the Senate and one designated by the Speaker of  
the House of Representatives.

12 B. Terms of members of the Whitewater Safety Committee are  
14 for 2 years, expiring on December 31st, except that  
16 initially the members shall draw lots for a one-year or a  
18 2-year term. Terms must be staggered so that the term of  
20 one member in each category expires each year. Members  
22 serve until their successors are nominated and qualified.  
Members appointed to fill a vacancy created by the  
resignation, death or incapacity of a member shall complete  
the term of the vacancy and are eligible for reappointment.  
Members are entitled to be compensated as provided in Title  
5, chapter 379 for no more than 4 meetings a year.

24 3. Safety reports. Each commercial outfitter shall submit  
26 safety reports on forms provided by the commissioner as follows:

28 A. A written report of any accident that occurs in  
30 connection with a whitewater trip conducted by that  
32 outfitter and that results in the death of a person, a  
34 person's losing consciousness or receiving medical  
treatment, a person's becoming disabled for more than 24  
hours, a person's disappearance from a whitewater craft  
under circumstances indicating death or injury, or damage to  
the whitewater craft or other property of more than \$100; and

36 B. A written report of such other dangerous accidents and  
38 occurrences as the bureau may, by rule, require.

40 4. Order of launch. Launch order of commercial outfitters  
42 on a particular river or portion of river may be determined and  
44 enforced by the bureau to protect public health and safety. The  
46 bureau shall provide for the outfitters to choose, in the order  
48 of their first documented dates of continuous commercial  
operation on the particular river or portion of river, their  
preferred launch positions. The bureau shall establish and  
publish the launch schedule by February 1st annually. To  
facilitate that determination, each outfitter shall submit a  
sworn affidavit to the bureau stating their dates of continuous  
commercial operation.

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**§1805. Recreational use limits**

1. Findings and goals. Increased use has resulted in increased environmental impact on the Kennebec River and West Branch Penobscot River, as well as on their valleys and nearby roads and on the social structure of their areas. Recreational use limits are necessary to allow for rafting use and other competing uses, such as fishing, camping and canoeing, while minimizing detrimental impacts and maintaining the opportunity for a quality wilderness experience for rafters and for other users.

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

A. Saturdays: 800 commercial passengers;

B. Sundays: 800 commercial passengers; and

C. Weekdays: 1,000 commercial passengers.

3. West Branch Penobscot River. Whitewater craft are allowed on the West Branch Penobscot River between McKay Station and Pockwockamus Falls only between 8:30 a.m. and 5:00 p.m., in order to allow free time for other uses.

The recreational use limit of the West Branch Penobscot River between McKay Station and Pockwockamus Falls is specified as follows. Noncommercial recreational use is not limited. The commercial limit is 560 commercial passengers a day, any day.

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**§1806. Rapidly flowing rivers**

1. User fee. Outfitters shall pay a user fee of \$1 per passenger, excluding guides, carried by any outfitter on any rapidly flowing river. This fee must be paid by the 30th day of the month following the month in which the passengers were carried.

2. Reporting. Each outfitter shall report monthly to the bureau the number of passengers carried each day on each rapidly flowing river. This report must be submitted by the 30th day of the month following the month in which the passengers were carried. Inaccurate reporting or failure to report may subject the outfitter to the penalties in section 1809.

3. Passenger limitation. An outfitter may not carry more than 80 passengers per day on any rapidly flowing river.

2       **§1807. Allocation system**

4           **1. Goals. The goals of the allocation system are:**

6           **A. To encourage a wide diversity of whitewater trip experiences and services;**

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

10           **C. To maximize competition within the recreational use limits;**

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

14           **E. To encourage efficient use of the allocation system;**

16           **F. To be flexible enough to adapt to changes in river use or river conditions;**

18           **G. To prevent evasion of the system; and**

20           **H. To provide opportunity for public access.**

22           **2. Allocation required; affiliated outfitters restricted.**

24       **Except as provided in subsection 8, operation of a commercial whitewater trip on the Kennebec River between Harris Station and West Forks or on the West Branch Penobscot River between McKay Station and Pockwockamus Falls without an allocation or in excess of an allocation is prohibited. An allocation is not required for other rivers or for other stretches of those rivers. Not more than one member of an affiliated group may conduct whitewater trips on any river or stretch of river for which a specific allocation is required, even on days for which an allocation is not required.**

26       **Three or more years after the period of affiliation, the bureau may, in its discretion, consider requests by any former member of an affiliated group to run passengers on allocated rivers. The burden rests on the former member of an affiliated group to demonstrate that the reasons for any finding of affiliation have been so diminished in effect that the public interest will be served by considering the former member's request to run passengers on an allocated river.**

28

2 3. Allocations; maximum, minimum. The bureau shall  
allocate the right to conduct whitewater trips to licensed  
4 outfitters. The maximum allocation for an outfitter is 80  
passengers per day. The minimum allocation to be awarded is 20  
6 passengers per day on the Kennebec River and 16 passengers per  
day on the West Branch Penobscot River, except that an outfitter  
may request fewer passengers.

8  
10 4. Term of allocation; abandonment of allocation; loss of  
allocation. This subsection governs allocation terms,  
12 abandonment and loss.

14 A. All allocations are awarded for a period of 5 years.

16 B. Any outfitter may abandon all or part of an allocation  
at any time by giving the bureau written notice. In the  
18 event that the bureau reissues an abandoned allocation, any  
duplicate portion of the allocation fee must be refunded.

20 C. Allocations may be suspended, revoked or reduced in  
whole or in part as provided in this chapter.

22  
24 5. Allocation procedure. The bureau shall award  
allocations to licensed outfitters on the basis of the criteria  
26 established in this section. An outfitter desiring an allocation  
shall submit a proposal to the bureau in the year preceding the  
28 year for which the allocation is desired, on or before a date  
specified by rule. Allocations must be awarded on or before  
30 December 1st, but, if an open allocation remains, it may be  
awarded at any time. Allocations must be awarded in accordance  
32 with the Maine Administrative Procedure Act, Title 5, chapter  
375, subchapter V. The bureau shall hold at least one public  
34 hearing prior to final issuance of allocations. The bureau shall  
adopt rules as necessary to facilitate the allocation process.

36 6. Whitewater rafting allocation criteria. The bureau  
shall review proposals and award allocations so that, taken as a  
38 whole, allocations provide a level and quality of service that  
satisfies the allocation system goals of this section and  
40 contribute to meeting the river management objectives of section  
1802.

42  
44 A. Individual proposals must be evaluated according to the  
following specific criteria:

46 (1) The experience of the outfitter and any employee  
in providing whitewater trips on the river or rivers  
48 for which the allocation is sought, including, but not  
limited to, such factors as the number of trips and  
50 passengers carried, the length of time as an outfitter,

2 and the safety record and experience of guides and  
4 staff. The company experience of only one company  
6 within an affiliated group at the time of that  
8 experience may be counted as company experience for  
10 purposes of allocation;

12 (2) The experience of the outfitter and an employee in  
14 providing whitewater trips on rivers other than those  
16 for which the allocation is sought, including, but not  
18 limited to, such factors as the number of trips and  
20 passengers carried, the length of time as an outfitter,  
22 and the safety record and experience of guides and  
24 staff. The company experience of only one company  
26 within an affiliated group at the time of that  
28 experience may be counted as company experience for  
30 purposes of allocation. For purposes of this  
32 subparagraph, "rivers other than those for which the  
34 allocation is sought" means all rapidly flowing rivers  
36 in the State, including a river on which commercial  
38 recreational use limits are imposed, for which an  
40 allocation is not being sought by the outfitter in the  
42 allocation period;

24 (3) The safety record of the outfitter and any  
26 employee in whitewater outfitting or similar  
28 enterprises;

28 (4) The financial investment of the outfitter in  
30 equipment, training, insurance, facilities and services  
32 directly related to commercial whitewater rafting trips;

32 (5) Ability of the outfitter to serve the interests of  
34 the State by providing safe, economical and  
36 environmentally sound commercial whitewater trips on  
38 the particular river or rivers;

36 (6) Ability of the outfitter to serve the interests of  
38 the consuming public by providing a type of trip  
40 experience that is in the public interest as determined  
42 by the bureau;

42 (7) When allocations are considered for subsequent  
44 years, the performance of the outfitter in providing  
46 the services proposed for the previous allocations and  
48 compliance with the terms of the allocations, including  
the submission of required reports and fees on time; and

48 (8) Other matters that, in the judgment of the bureau,  
relate to orderly business development, including

2                   growth, new entry or extreme hardship on the part of an  
3                   applicant.

4                   B. The bureau may require a surety bond in an amount  
5                   sufficient to cover deposits of customers, and may require  
6                   sufficient evidence of financial stability prior to granting  
7                   an allocation, including, but not limited to, financial  
8                   statements and references from financial institutions.

10                  C. The bureau and other state employees directly involved  
11                  in the allocation process shall hold all financial  
12                  information submitted under this section as confidential,  
13                  except that the bureau may, within its discretion, allow  
14                  information received under this section to be revealed to  
15                  attorneys for a party challenging an allocation decision of  
16                  the bureau. This information must be kept confidential and  
17                  may not be disclosed to any unauthorized person, including  
18                  the attorney's client.

20                  D. Allocations must be issued on condition that the level  
21                  and quality of service indicated by the prospectus will be  
22                  maintained by the outfitter during the term of the  
23                  allocation. Substantial failure to maintain the level and  
24                  quality of service may result in suspension, revocation or  
25                  reduction in all or part of an allocation.

26                                   (1) The bureau may provide by rule for review of an  
27                                   outfitter's provision of service. Reviews may be made,  
28                                   as provided by rule, within an allocation period or  
29                                   when a majority of the ownership of an outfitter is  
30                                   sold or otherwise transferred. Sale or transfer of  
31                                   majority ownership may not be cause for reduction or  
32                                   revocation of an allocation without a showing that the  
33                                   sale or transfer creates a significant possibility of a  
34                                   failure to substantially maintain the level and quality  
35                                   of service.

38                  E. The bureau shall review all allocations issued for a  
39                  period in excess of 3 years at the end of the 3rd year of  
40                  the allocation period. This review is in addition to any  
41                  other review provided by law or regulation. The bureau  
42                  shall review the allocation to determine if the outfitter  
43                  has maintained a passenger level consistent with that  
44                  allocation. Substantial failure to maintain a passenger  
45                  level consistent with the allocation may result in whole or  
46                  partial loss of the allocation by that outfitter for the  
47                  remainder of the allocation period.

48                                   7. Allocation fee. Outfitters shall pay the bureau an  
49                                   allocation fee, for either river when allocations are required,  
50

2 of \$250 per unit of 20 passengers or less allocated per day on  
3 either river in excess of a single unit on a single river. This  
4 may be in quarterly payments, beginning 30 days after the  
5 allocation is awarded. The maximum allocation fee is \$1,750 for  
6 the privilege of carrying 80 passengers per day on both rivers.

7 **B. Exceptions.** The following exceptions apply to  
8 allocations.

10 A. Allocations are required for Saturdays for the period of  
11 June 8th to August 31st. Except as provided in paragraph E,  
12 allocations are required for Sundays on the Penobscot River  
13 for the period of June 8th to August 31st. If the bureau  
14 determines that the recreational use limit will be reached  
15 other days, the bureau shall provide by rule for allocations.

16 B. Under high-water or low-water conditions on the  
17 Penobscot River, an emergency swap of an allocation may be  
18 made to the Kennebec River, provided that sufficient water  
19 is available there. Under no circumstances may a transfer of  
20 an allocation be allowed from the Kennebec River to the  
21 Penobscot River.

22 C. An outfitter may occasionally exceed the allocation by 2  
23 passengers on a trip of up to 40 passengers, or 4 passengers  
24 on a trip of up to 80 passengers, to accommodate problems in  
25 booking, provided that the average of the number of  
26 passengers carried on an outfitter's 10 best allocated days  
27 for each river and for each allocated day of the week does  
28 not exceed that outfitter's allocation for that river and  
29 day. Abuse of this privilege results in its loss.

30 D. On the several days in the months of April and May when  
31 special water releases are scheduled to be made from the  
32 Flagstaff Dam to permit whitewater rafting on the Dead  
33 River, commercial whitewater rafting trips may be  
34 transferred from the Dead River to the Kennebec River  
35 whenever high-water or low-water conditions render use of  
36 the Dead River unsafe or inappropriate for commercial  
37 whitewater rafting trips.

38 E. Allocations are not required for Sundays on the  
39 Penobscot River for the period of June 8, 1994 to August 31,  
40 1995. The commissioner may by rule establish allocations  
41 for this period if the commissioner determines allocations  
42 are necessary. The commissioner shall submit a report to  
43 the joint standing committee of the Legislature having  
44 jurisdiction over conservation matters no later than January  
45 14, 1996 on the use of the Penobscot River by commercial  
46 whitewater outfitters during this period.

2           **9. Unauthorized use of allocation ratings.** The allocation  
3 system is a tool to accomplish the river management objectives  
4 set forth in subsection 1 and is not a measure of the comparative  
5 ability or worth of outfitters. Any outfitter who represents  
6 otherwise for commercial gain engages in a deceptive practice and  
7 abuses the public trust evidenced by the outfitter's license and  
8 allocation, and, without limitation to any other remedies, may be  
9 subjected to the penalties provided in section 1809.

10           **10. Noncommercial whitewater rafting trips; prior**  
11 **registration required.** Any person without a commercial  
12 whitewater outfitter's license using a whitewater craft on any  
13 stretch of river for which a specific allocation is required, and  
14 including days for which an allocation is not required, shall,  
15 prior to launching the craft, file a noncommercial trip  
16 registration form with the bureau. The form must state that the  
17 person's use of whitewater craft on this river stretch does not  
18 constitute a commercial whitewater trip as defined in section  
19 1801 and must be signed by all persons using the craft.

#### 22 **§1808. Whitewater Rafting Fund**

23           **1. Established.** There is established the Whitewater  
24 Rafting Fund, referred to in this section as the "fund," to be  
25 used by the bureau, the Department of Inland Fisheries and  
26 Wildlife and the affected counties and municipalities to fund  
27 activities related to river recreation with primary emphasis on  
28 those activities that relate to whitewater trips.

29           **2. Funding.** All fees and surcharges collected under this  
30 chapter must be credited to the Whitewater Rafting Fund, except  
31 for license fees collected in accordance with sections 1803 and  
32 7379.

33           **3. Budget.** The expenditures from the Whitewater Rafting  
34 Fund are subject to legislative approval in the same manner as  
35 the General Fund budgets of the bureau and the department are  
36 approved. The bureau and the department shall report annually,  
37 before February 1st, to the joint standing committee of the  
38 Legislature having jurisdiction over conservation matters on  
39 their planned expenditures for the next fiscal year, their actual  
40 and planned expenditures for the current fiscal year and their  
41 final expenditures for the last fiscal year.

42           **4. Use of the fund.** The fund must be used as follows.

43           **A.** The money deposited in the fund must be credited as  
44 follows.



2           (1) Sixty-five percent of each fee or surcharge must  
be credited to the bureau.

4           (2) Twenty-five percent of each fee or surcharge must  
be credited to the department.

6           (3) Ten percent of each fee or surcharge must be  
8           credited to the county in which the river is located  
10           for distribution among the affected municipalities and  
for use in the affected unorganized townships.

12           B. All money from the fund must be expended solely for  
14           purposes related to river recreation, with primary emphasis  
16           on those activities that relate to whitewater trips,  
18           including, but not limited to, administration, regulation,  
20           safety education, enforcement, mitigation of environmental  
and safety problems and mitigation of any adverse effect on  
competing uses of the river. The fund may not be used to  
pay the cost of administering the whitewater outfitter's  
license program or the guide license program.

22           C. Any amount of the fund that is not expended at the end  
24           of a fiscal year may not lapse but must be carried forward.

26           **§1809. Penalties**

28           The penalties for failure to comply with this chapter or for  
30           providing false information under this chapter may include  
32           nonrenewal, revocation or suspension of an outfitter's license or  
34           an allocation or both, subject to the procedures of the Maine  
36           Administrative Procedure Act, or may be a civil offense for which  
a civil penalty not to exceed \$5,000 may be adjudged. Operation  
of a commercial whitewater trip without a license or operation on  
the river in violation of the safety requirements of section  
1804, subsection 1 is a Class E crime.

38           Sec. 3. 12 MRSA c. 707, sub-c. X-A, as amended, is repealed.

40           Sec. 4. 12 MRSA c. 707, sub-c. XII is enacted to read:

42                           SUBCHAPTER XII  
WHITEWATER GUIDE LICENSE

44           **§7381. Definitions**

46           As used in this subchapter, unless the context otherwise  
48           indicates, the following terms have the following meanings.

50           1. Commercial. "Commercial" has the same meaning as in  
section 1801, subsection 5.

2           2. Whitewater guide. "Whitewater guide" means a person who  
receives any remuneration for accompanying, assisting or  
4           instructing passengers on the river on whitewater trips and who  
holds a current whitewater guide license.

6  
8           **§7382. Whitewater guide license**

10           1. Eligibility. A person may not act as a whitewater guide  
until that person is 18 years of age or older and has procured a  
license from the commissioner pursuant to this section.

12  
14           2. Rules. The commissioner shall by rule establish the  
requirements for a whitewater guide license.

16           3. Examination. All initial applicants for a whitewater  
guide license are required to pass an examination developed and  
18           administered by the commissioner.

20           4. Fee. The annual fee for a whitewater guide license is  
\$28 for 1995 and \$29 for 1996 and every year thereafter.

22  
24           5. Renewal. A whitewater guide whose license is not  
suspended or revoked may renew that license annually upon the  
payment of the annual fee. Completion and passage of the  
26           whitewater guide's examination is not a requirement for renewal.

28           **§7383. Penalties**

30           The penalties for failure to comply with this subchapter or  
for providing false information under this subchapter may include  
32           nonrenewal, revocation or suspension of a whitewater guide  
license, subject to the procedures of the Maine Administrative  
34           Procedure Act, or may be a civil offense for which a civil  
penalty not to exceed \$5,000 may be adjudged. Operation of a  
36           commercial whitewater trip without a license is a Class E crime.

38           **Sec. 5. Transition provisions.** The following provisions apply  
to commercial whitewater rafting regulation detailed in section 2  
40           of this Act that is transferred from the Department of Inland  
Fisheries and Wildlife to the Bureau of Parks and Recreation in  
42           the Department of Conservation.

44           1. All existing rules and procedures in effect, in  
operation or promulgated by the Department of Inland Fisheries  
46           and Wildlife are declared in effect and continue in effect until  
rescinded, revised or amended by the proper authority.

48

2. All existing contracts, agreements and compacts currently in effect that pertain to administration of commercial whitewater rafting regulation continue in effect.

3. Any positions authorized and allocated subject to the personnel laws to the Department of Inland Fisheries and Wildlife for the purpose of administering commercial whitewater rafting regulation are transferred to the Bureau of Parks and Recreation within the Department of Conservation.

4. All records previously belonging to or allocated for the use of the Department of Inland Fisheries and Wildlife for regulating commercial whitewater rafting become, on the effective date of this Act, the property of the Bureau of Parks and Recreation within the Department of Conservation.

5. All existing forms, licenses, letterheads and similar items previously used in the administration of commercial whitewater rafting regulation may be used by the Bureau of Parks and Recreation until existing supplies of those items are exhausted.

6. All existing licenses and allocations issued by the Department of Inland Fisheries and Wildlife are declared in effect and remain in effect until expired or until revised or amended by the proper authority.

### STATEMENT OF FACT

This bill transfers from the Department of Inland Fisheries and Wildlife to the Bureau of Parks and Recreation in the Department of Conservation all regulation of commercial whitewater rafting trips, with the exception of responsibility for licensing whitewater guides.