

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

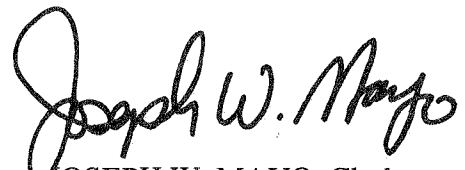
No. 1464

H.P. 1047

House of Representatives, March 11, 1997

An Act Relating to Whitewater Rafting Allocations.

Reference to the Committee on Inland Fisheries and Wildlife suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative DEXTER of Kingfield.

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

2 **Sec. 1. 12 MRSA §7368-A, sub-§3**, as amended by PL 1995, c.
4 455, §20, is repealed.

6 **Sec. 2. 12 MRSA §7369, sub-§2**, as amended by PL 1989, c. 883,
8 §11, is further amended to read:

10 **2. Allocation required; affiliated outfitters restricted.**
12 Except as provided in subsection 10, operation of a commercial
14 whitewater trip on the Kennebec River between Harris Station and
16 West Forks or on the West Branch Penobscot River between McKay
18 Station and Pockwockamus Falls on allocated days without an
20 allocation or in excess of an allocation is prohibited. An
22 allocation is not required for other rivers or for other
24 stretches of those rivers. ~~Not more than one member of an
26 affiliated group may conduct whitewater trips on any river or
28 stretch of river for which a specific allocation is required,
even on days for which an allocation is not required.~~

~~Three or more years after the period of affiliation, the
department 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.~~

30 **Sec. 3. 12 MRSA §7369, sub-§3**, as enacted by PL 1983, c. 502,
32 §4, is repealed and the following enacted in its place:

34 **3. Allocations.** The department shall allocate the right to
36 conduct whitewater trips to licensed outfitters. The department
38 shall award allocations to licensed outfitters on the basis of
40 the outfitters' respective market shares, provided that an
42 outfitter may not receive more than 20% of the allocation of the
44 river for which the allocation is sought. An outfitter's market
share is determined by the percentage of the total number of
passengers carried on the river by the outfitter on unallocated
days on the Kennebec River and allocated days on the Penobscot
River, calculated over a period of 5 years immediately preceding
the time of application.

46 **Sec. 4. 12 MRSA §7369, sub-§6**, as amended by PL 1993, c. 438,
§22, is repealed and the following enacted in its place:

48 **6. Allocation procedure.** This subsection governs the
50 procedure by which licensed outfitters may apply for, and the
department may award, allocations to licensed outfitters.

2 A. An outfitter desiring an allocation shall submit a
4 proposal to the department in the year preceding the year
6 for which the allocation is desired, on or before a date
8 specified by rule of the department. Allocations must be
10 awarded on or before December 1st, but, if an open
 allocation remains, it may be awarded at any time.
 Allocations must be awarded in accordance with Title 5,
 chapter 375, subchapter V. The department shall adopt rules
 as necessary to facilitate the allocation process.

12 B. The department may require a surety bond in an amount
14 sufficient to cover deposits of customers and may require
16 sufficient evidence of financial stability prior to granting
 an allocation, including, but not limited to, financial
 statements and references from financial institutions.

18 C. The department and other state employees directly
20 involved in the allocation process shall hold all financial
22 information submitted under this section as confidential,
24 except that the department may, within its discretion, allow
26 information received under this section to be revealed to an
 attorney for a party challenging an allocation decision of
 the department. This information must be kept confidential
 and may not be disclosed to any unauthorized person,
 including the attorney's client.

28 D. Allocations are issued on the condition that the level
30 and quality of service demonstrated by the outfitter during
32 the previous allocation period be maintained by the
34 outfitter during the term of the allocation. Substantial
 failure to maintain the level and quality of service may
 result in suspension, revocation or reduction in all or part
 of an allocation.

36 (1) The department may provide by rule for review of
38 an outfitter's provision of service. Reviews may be
40 made, as provided by rule, within an allocation period
42 or when a majority of the ownership of an outfitter is
44 sold or otherwise transferred. Sale or transfer of
 majority ownership may not be cause for reduction or
 revocation of an allocation without showing that the
 sale or transfer creates a significant possibility of a
 failure to substantially maintain the level and quality
 of service.

46 E. The department shall review all allocations issued for a
48 period in excess of 3 years at the end of the 3rd year of
50 the allocation period. This review is in addition to any
 other review provided by law or regulation. The department

2 shall review the allocation to determine if the outfitter
3 has maintained a passenger level consistent with the
4 allocation. Substantial failure to maintain a passenger
5 level consistent with the allocation may result in whole or
6 partial loss of the allocation by that outfitter for the
7 remainder of the allocation period.

8 The rules adopted pursuant to this subsection are routine
9 technical rules as defined in Title 5, chapter 375, subchapter
10 II-A.

12 **Sec. 5. 12 MRSA §7369, sub-§7**, as amended by PL 1993, c. 438,
13 §23, is repealed.

14 **Sec. 6. 12 MRSA §7369, sub-§8**, as amended by PL 1989, c. 883,
15 §13, is further amended to read:

18 **8. Allocation fee.** Outfitters shall pay the department an
19 allocation fee, for either river when allocations are required,
20 of \$250 per unit of 20 passengers or less allocated per day on
21 either river in excess of a single unit on a single river. This
22 may be in quarterly payments, beginning 30 days after the
23 allocation is awarded. The maximum allocation fee is \$1,750 for
24 the privilege of carrying 80 passengers per-day on both rivers.

26 **Sec. 7. 12 MRSA §7369, sub-§10, ¶C**, as amended by PL 1985, c.
27 571, §7, is further amended to read:

28 C. An outfitter may occasionally exceed the allocation by 2
29 passengers for every 40 passengers on a trip ~~of up to 40~~
30 ~~passengers, or 4 passengers on a trip of up to 80~~
31 ~~passengers,~~ to accommodate problems in booking, provided
32 that the average of the number of passengers carried on an
33 outfitter's 10 best allocated days for each river ~~and for~~
34 ~~each allocated day of the week~~ does not exceed his the
35 outfitter's allocation for that river ~~and day~~. Abuse of
36 this privilege will result in its loss.

38 **Sec. 8. 12 MRSA §7369, sub-§11**, as enacted by PL 1983, c. 786,
39 §9, is repealed.

42 SUMMARY

44 This bill amends the procedure by which a commercial
45 whitewater outfitter may apply for, and the Department of Inland
46 Fisheries and Wildlife may award, allocations for whitewater
47 trips.
48