

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1997

Legislative Document

No. 1801

S.P. 604

In Senate, April 15, 1997

**An Act to Adopt Long-range Changes in the Methods by Which
Whitewater Rafting Trips Are Allocated among Licensees.**

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MILLS of Somerset.

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

2
4 **Sec. 1. 12 MRSA §7361, 5th ¶**, as enacted by PL 1983, c. 502, §2, is amended to read:

6 The Legislature further finds that it is in the public
8 interest to allow stable, ~~well---qualified~~ well-qualified
10 outfitters who are providing excellent service and meeting the
 conditions of their allocations to continue to do so, subject to
 periodic review ~~when-allocaations-are-reviewed~~.

12 **Sec. 2. 12 MRSA §7365, sub-§6-A**, as enacted by PL 1989, c.
14 883, §5, is repealed.

16 **Sec. 3. 12 MRSA §7367, sub-§5**, as enacted by PL 1983, c. 502,
 §4, is amended to read:

18 **5. Order of launch.** Launch order of commercial outfitters
20 on a particular river or portion of river may be determined and
 enforced by the department to protect public health and safety.
22 The department shall provide for the outfitters to choose, in the
 order of their first documented dates of continuous commercial
24 operation on the particular river or portion of river, their
 preferred launch positions. The department shall establish and
 publish the launch schedule by February 1st annually, ~~except that~~
26 ~~the launch schedule for 1983 shall be promulgated within 30 days~~
 ~~after the effective date of this subchapter.~~ To facilitate that
28 determination, each outfitter shall submit a sworn affidavit to
 the department stating ~~their dates of~~ the date the outfitter
30 first began continuous commercial operation. ~~For 1983, in order~~
32 ~~to expedite promulgation of the launch order, the notice and~~
 ~~hearing provisions of the Maine Administrative Procedure Act,~~
34 ~~Title 5, chapter 375, may be modified, to the minimum extent~~
 ~~necessary in the judgment of the department to meet the~~
 ~~promulgation date.~~

36 **Sec. 4. 12 MRSA §7368, sub-§2-A**, as amended by PL 1995, c.
38 667, Pt. B, §5, is further amended to read:

40 **2-A. Kennebec River.** The recreational use limit on the
42 Kennebec River between Harris Station and West Forks is specified
 ~~as follows~~ 1,000 commercial passengers per day. Noncommercial
 recreational use is not limited. ~~The commercial limits are:~~

44 A. ~~Saturdays: 800 commercial passengers;~~

46 B. ~~Sundays: 1,000 commercial passengers; and~~

48 C. ~~Weekdays: 1,000 commercial passengers.~~

2 **Sec. 5. 12 MRSA §7368, sub-§3**, as repealed and replaced by PL
1985, c. 571, §4, is amended to read:

4
6 **3. West Branch Penobscot River.** Whitewater In order to
allow free time for other uses, whitewater craft shall only be
8 are allowed on the West Branch Penobscot River between McKay
Station and Pockwockamus Falls between 8:30 a.m. and 5:00 p.m.
10 in order to allow free time for other uses only.

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

18 **Sec. 6. 12 MRSA §7368-A, sub-§3**, as amended by PL 1995, c.
455, §20, is further amended to read:

20 **3. Passenger limitation.** Except as provided in this
22 subsection subchapter, an outfitter may not carry more than 80
24 passengers per day on any rapidly flowing river. On allocated
26 days, that limit may be exceeded only as provided in section
28 7369, subsection 10, paragraph C. On unallocated days, an
outfitter may occasionally carry up to 4 additional passengers to
accommodate problems in booking. Abuse of this privilege results
in its loss.

30 **Sec. 7. 12 MRSA §7368-A, sub-§§4 and 5** are enacted to read:

32 **4. Limits on certain unallocated days.** On certain
unallocated days, as designated by the department, an outfitter
34 may carry up to 120 passengers per day; however, no more than 80
passengers may be launched at the time of that outfitter's
36 preferred order of launch as established in section 7367,
subsection 5. An outfitter's passengers remaining after the
38 first launch may not proceed until 5 minutes after all other
outfitters have completed launching their passengers for that
40 day. If more than one outfitter has additional passengers to
launch, each such outfitter shall proceed in the same order as
42 required for the initial launch. By November 1st of each year,
the department shall publicly designate for the following year
44 the days on which the extra passengers permitted by this
subsection may be carried.

46 **5. Limits on the Dead River.** An outfitter may carry no
more than 240 passengers per day on the Dead River. The
48 department may establish sequence and locations for launch and
may adopt other rules necessary for the orderly and safe
50 management of rafting on the Dead River. Rules adopted under

2 this subsection are routine technical rules pursuant to Title 5,
3 chapter 375, subchapter II-A.

4 **Sec. 8. 12 MRSA §7369, sub-§1, ¶D,** as enacted by PL 1983, c.
5 502, §4, is amended to read:

6
7 D. To allow for reasonable business stability for
8 outfitters by allowing stable, well-qualified outfitters who
9 are providing excellent service and meeting the conditions
10 of their allocations to continue to do so, subject to
11 periodic review ~~when allocations are reviewed;~~

12
13 **Sec. 9. 12 MRSA §7369, sub-§2,** as amended by PL 1989, c. 883,
14 §11, is further amended to read:

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

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

35
36 **Sec. 10. 12 MRSA §7369, sub-§3,** as enacted by PL 1983, c. 502,
37 §4, is amended to read:

38
39 **3. Allocations; maximum, minimum.** The department shall ~~may~~
40 allocate the right to conduct whitewater trips to licensed
41 outfitters. The maximum allocation for an outfitter is 80
42 passengers per day. The minimum allocation to be awarded is 20
43 passengers per day on the Kennebec River and 16 passengers per
44 day on the West Branch Penobscot, ~~except that an outfitter may~~
45 ~~request fewer passengers.~~ The total number of allocations issued
46 for an allocated day may not exceed the recreational use limits
47 set by section 7368. The department may declare a day to be an
48 allocated day whenever it appears that regular and persistent use
49 of the river on that day from year to year may exceed the
50 recreational use limit for that day.

2 **Sec. 11. 12 MRSA §7369, sub-§5**, as repealed and replaced by PL
1989, c. 493, §26, is repealed.

4 **Sec. 12. 12 MRSA §7369, sub-§5-A** is enacted to read:

6 **5-A. Conditions for holding allocations.** Allocations are a
8 privilege extended by the State for the use of a limited public
resource. The department may suspend, revoke or reduce the
10 number of allocations when it is advisable to do so for better
management of the resource or for protection of public safety and
12 welfare. An outfitter's allocations are subject to forfeiture or
suspension by the department if the outfitter fails to maintain
14 the conditions of its license, fails to continue using its
allocations productively or fails to maintain a quality of
16 service consistent with the public interest.

18 **Sec. 13. 12 MRSA §7369, sub-§6**, as amended by PL 1993, c. 438,
§22, is repealed.

20 **Sec. 14. 12 MRSA §7369, sub-§6-A** is enacted to read:

22 **6-A. Allocation procedure.** Allocations may be transferred
24 among qualified licensees subject to the limitations of this
subchapter. The transfer of an allocation is not effective until
26 it has been approved and recorded by the department based upon
information the department may reasonably require to fulfill its
28 responsibilities. The department may require that allocations be
transferred or held only upon expressed conditions and may
30 specify that they be held or transferred in certain quantities or
blocks of numbers. When allocations are forfeited or when new
32 allocations become available, the department shall sell them at
public auction to qualified recipients. Net proceeds from a sale
34 of allocations must be paid to the General Fund.

36 **Sec. 15. 12 MRSA §7369, sub-§7**, as amended by PL 1993, c. 438,
§23, is repealed.

38 **Sec. 16. 12 MRSA §7369, sub-§7-A** is enacted to read:

40 **7-A. Allocation criteria.** An outfitter shall submit
42 periodic public reports to the department documenting river use
for both allocated and unallocated days. If the department
44 determines that additional allocated days are required, the
allocation of trips on those additional days must be the same as
46 for those days previously allocated. An outfitter who holds
allocations for a particular river holds them in the same number
48 and upon the same conditions for all allocated days on that river
and may not otherwise divide them.

2 **Sec. 17. 12 MRSA §7369, sub-§11**, as enacted by PL 1983, c.
786, §9, is repealed.

4
6 **Sec. 18. Auction of new allocations.** The additional 200
commercial allocations on the Kennebec River on Saturdays made
available pursuant to this Act must be distributed pursuant to
8 the Maine Revised Statutes, Title 12, section 7369, subsection
10 6-A. The Department of Inland Fisheries and Wildlife shall make
this distribution no later than December 1, 1997.
12 Notwithstanding any provision of law, for this sale only, funds
from the sale of allocations made pursuant to this section must
be distributed as follows: fifty percent to the General Fund and
14 50% to the Department of Inland Fisheries and Wildlife.

16 **Sec. 19. Effective date.** This Act takes effect October 15, 1997.

18

SUMMARY

20

22 This bill amends the commercial whitewater rafting laws in
the following manner.

24 1. It sets a recreational use limit for commercial
passengers on the Kennebec River of 1,000 per day, effectively
26 increasing the number of passengers allowed on Saturdays from 800
to 1,000 passengers. These 200 new allocations must be auctioned
28 by the Department of Inland Fisheries and Wildlife by December 1,
1997 and the proceeds distributed equally between the General
30 Fund and the department.

32 2. It requires the Department of Inland Fisheries and
Wildlife to designate certain unallocated days during which an
34 outfitter may carry up to 120 passengers per unallocated day.

36 3. It establishes a limit of 240 passengers per day on the
Dead River for an outfitter.

38

40 4. It repeals the 5-year term for awarded allocations and
specifies that the department may suspend, revoke or reduce the
42 number of allocations when the department determines it is
advisable to do so for better management or protection of public
44 safety and welfare. The department may also suspend or revoke
the allocations of an outfitter who fails to meet certain
specified requirements.

46

48 5. It repeals the current allocation procedures and the
requirement that the department allocate the right to conduct
whitewater trips, instead giving the department the discretion to

make allocations. Allocations may be transferred between
2 outfitters subject to approval by the department. An outfitter
is required to submit reports to the department documenting river
4 use.