

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

AUGUSTA, MAINE

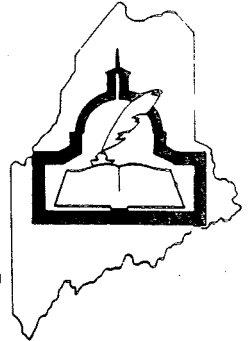


MAINE LEGISLATURE

ANNUAL REPORT OF THE
WHITEWATER ADVISORY COMMITTEE

January, 1986

GV
780
.1134
1986



1986

ANNUAL REPORT OF THE
WHITEWATER ADVISORY COMMITTEE

January, 1986

MEMBERS:

Clinton B. Townsend, Chairman
Wilmot Robinson, Vice-Chairman
Sen. Ronald Usher
Rep. Paul F. Jacques
Rep. Patrick McGowan
Sen. Zachary Matthews

Staff: John B. Knox

Office of Policy and Legal Analysis
Room 101, State House--Sta. 13
Augusta, Maine 04333
(207) 289-1670

Index

Page #

Background

A. Legislative.....	1
B. Whitewater Advisory Committee.....	1
C. Rafting.....	1
D. Finances.....	3

1985 Rafting Season

A. Passengers.....	3
B. The Commercial Outfitters Industry.....	4
C. Individual Outfitter Analyses.....	5
D. Recent Changes in Legislation & Rules.....	6
E. Whitewater Rafting Fund.....	6

Discussion & Recommendations

A. Allocation Issues.....	7
B. Safety.....	10
C. Data Collection & Analyses.....	11
D. Committee Membership.....	12
E. Overall Conclusion & Committee Sunset.....	12

Acknowledgement

Background

A. Legislative

In 1983 the 111th Legislature passed LD 1763 An Act to Regulate Commercial Whitewater Rafting. The purpose of this legislation was for the State to regulate whitewater rafting to protect the health, welfare and safety of its citizens and to protect its natural resources. To do so the legislation sought to ensure commercial outfitters competence, to adopt use limits and to allocate the privilege of commercial use. This legislation may be found in 12 MRSA 7361 - 7370.

B. Whitewater Advisory Committee

The legislation referred to above set up a Whitewater Advisory Committee to advise the Department of Inland Fisheries & Wildlife and to report to the Legislature on the allocation process and other aspects of the operation of the industry which relate to the legislation. An annual committee report is required to be submitted by Jan. 31 of each year. The 4 legislative members of the Committee are appointed during their legislative terms. The 2 non-legislative members serve until successors are nominated. The legislation calls for the Committee to terminate June 30, 1986.

Members are entitled to \$25 compensation plus expenses. The Committee met once in the 1985 reporting year and 4 times in 1984. Expenses were \$39.92 for 1985 and \$565.34 for 1984. Attendance has averaged 4 members of the 6 assigned.

The initial whitewater rafting legislation called for two one-time reports as follows:

1. Safety review by Inland Fisheries & Wildlife to be reported to the 2nd session of the 111th Legislature. This report was not issued in a formalized form. LD 1763, Sec. 5. 1983.

2. Recreational use limit and allocation review by the Department of Inland Fisheries & Wildlife and the Bureau of Parks & Recreation to be reported to the Legislature by Oct. 1, 1985. LD 1763, Sec. 6. 1985. A preliminary report was issued at that time and a follow-up companion volume on Dec. 15. These reports were concurred in by the Committee and form the basis for this present Committee report. LD 1809 sponsored this year by Rep. McGowan of the Committee puts into legislation many of the recommendations of these reports.

C. Rafting

Use limits were set for the Kennebec and Penobscot rivers by the Legislature based on a number of factors, including days and durations of release and launch characteristics on the Kennebec; maneuvering times at difficult rapids and demands by other users on the Penobscot.

Use Limits

Kennebec River:

Sunday (no scheduled release) – no limits set
Weekdays (avg. 6–8 hr. release) 1000 passengers/day
Saturdays (avg. 1 hr. release) – 800 passengers/day
Memorial Day, July 4th, Labor Day – 800 passengers/day

Penobscot River:

Any day – 560 passengers/day between 8:30 A.M. to
5:00 P.M.

Commercial use on all days is monitored by reviewing monthly reports filed by outfitters. Use on days of expected heavy use is regulated by the allocation system. These days include Saturdays between mid-May and mid-September on the Kennebec, and Saturdays and Sundays between mid-May and mid-September on the Penobscot. Outfitters are restricted to carrying a specified number of passengers on these days, the total of which does not exceed the use limit.

The allocation system is used to assure that the legislative river use limits are not exceeded in heavy rafting use days. Passenger slots (allocations) are distributed among outfitters according to the experience of the outfitter, outfitter safety record, the level of financial investment in whitewater outfitting, the level and quality of services provided to customers, performance in meeting past allocations, and other factors.

There is an 80 passenger per day limit for any outfitter on any rapidly flowing river. (This number was adopted as a maximum largely because of traditional passenger loads on larger trips by established outfitters prior to regulation.) Thus, the maximum allocation an outfitter can receive is 80.

Nearly all outfitters with allocations offer basic one-day trips on the Kennebec or Penobscot River ranging in price from \$63 to \$80 and including transportation between base camp and river, a cookout lunch and basic rafting equipment.

The rafting legislation addresses commercial whitewater rafting between Harris Station and the Forks on the Kennebec River and between McKay Station and Pockwockamus Falls on the West Branch Penobscot River.

On the Kennebec River, Harris Station is used to deliver peaking power and releases the "big water" desirable for rafting during times of greatest electric power demand. This generally includes a 6–8 hour release on weekdays, a 1–3 hour release on Saturdays, and no scheduled release on Sundays. When there is a surplus of water in storage, the excess is released on Sundays, and outfitters are notified so that they can schedule trips.

On the Penobscot River, the average long term flow through Ripogenus Dam is 2500 cfs. Water releases through the dam are governed by the amount of water available in upstream storage and by operating conditions at the mills. Release is continuous but is occasionally modified when boilers or machines are down and is regularly reduced twice each summer for 2-3 days during the July 4th and Labor Day shutdowns. Like CMP, Great Northern notifies outfitters of any changes in its release schedule.

Finances

Statute calls for a 1983-84 commercial outfitters license fee of \$250 and makes no provision for subsequent years. In practice, the fee continues at that level. Guides licenses are \$25. Both these fees are credited to the Department and are used for the same purposes as any Department fees.

In addition, outfitters pay the following fees:

- A season allocation fee of \$250 per unit of 20 passengers per river
- A \$1 per passenger fee for any river.

Both these fees go to the Whitewater Rafting Fund which is to be used for activities related to river recreation. A report on this fund is to be made to the Fisheries & Wildlife Committee by Feb. 1 of each year by the Department and the Bureau, who share the proceeds.

1985 Rafting Season

A. Passengers

The 1985 season was a low water one on the Penobscot for the entire season and on the Kennebec for the early part of the season. The table below shows the number of commercial whitewater rafting passengers by year:

	<u>Kennebec River</u>		<u>Penobscot River</u>	
	<u>#</u>	<u>% Changed</u>	<u>#</u>	<u>% Changed</u>
1981	7341	+37%	8425	+38%
1982	13326	+82	8588	+ 2
1983	17517	+31	11981	+40
1984	22369	+28	15382	+28
1985	23677	+ 6	18912	+23

The breakdown of rafting by month of the year in 1985 was:

	<u>Kennebec</u>	<u>Penobscot</u>
May	6%	8%
June	17	22
July	28	28
Aug.	39	35
Sept.	10	7

The major outfitters fit this general pattern.

On the Penobscot where rafting is available every day of the week 42% of the passengers were carried on Saturday, 32% on Sunday and 10% on Friday. The major outfitters have a somewhat higher percent of their business on weekdays.

In spite of a considerable increase in the number of rafters on these rivers, overall levels of use are well below what is permitted by the recreational use limits on a season long basis: May to September rafting on the Kennebec is at 15% of maximum use, and May to September rafting on the Penobscot is at 22% of maximum use. Weekend days in July and August, however, are periods of heavy use, and on allocated days in these months rafting is at 88% of maximum use on the Kennebec and at 82% of maximum use on the Penobscot. Use limits were exceeded on only two days (Saturdays) in 1985: August 17 on the Kennebec and July 20 on the Penobscot.

B. The Commercial Outfitters Industry

There were 24 licensed outfitters on each river in 1985, although they were not necessarily the same outfitters. This is an increase of 2 over 1984 but a decrease of 2 for the Kennebec and 3 for the Penobscot from the high year of 1982. Of the 1984 outfitters, 15 requested 1985 allocations on the Kennebec, down 1 from last year, 12 requested Penobscot allocations for Saturday and 13 for Sunday, up 1 in each case from the previous year.

Requests for allocations have routinely exceeded the use limit. 1985 requests were somewhat higher than in previous years, presumably because this was the first three-year allocation period. Once awarded, these allocations became set until 1988, barring any withdrawal by an outfitter or penalty loss imposed on an outfitter.

Overall Allocations Requested and Awarded 1983-1985

	1983		1984		1985	
	Req.	Awd.	Req.	Awd.	Req.	Awd.
Kennebec Sat.	830	800	910	800	910	800
Penobscot Sat.	650	560	584	560	718	560
Penobscot Sun.	674	560	604	560	690	560

Requests for allocation increases reflect the growth desires of outfitters with less than maximum allocations. Outfitters receiving maximum allocations are "frozen" at the 80 passenger per allocated day level. Since 1983, the number of

outfitters with maximum allocations has increased by one on both rivers: from 5 to 6 outfitters on the Kennebec and from 2 to 3 outfitters on the Penobscot. The number of outfitters with minimum allocations has declined from 3 to 2 on the Kennebec, from 4 to 2 on the Penobscot Saturdays, and from 6 to 1 on the Penobscot Sundays. In 1985, three outfitters requested allocations for days on which they had previously held no passenger slots, representing "new entrants" for those particular days. None of these received allocations.

Records show that the only time allocations have been available for redistribution among all outfitters is when an outfitter loses or forfeits an allocation. The number of allocations redistributed and the reasons they became available are shown below.

<u>Allocations Available for Redistribution 1984 & 1985</u>				
	1984		1985	
	<u>No.</u>	<u>Reason</u>	<u>No.</u>	<u>Reason</u>
	<u>Alloc.</u>	<u>Available</u>	<u>Alloc.</u>	<u>Available</u>
Kennebec Sat.	50	Outfitter	0	---
		disqualified		
	<u>10</u>	<u>Award reduced</u>		
	60			
Penobscot Sat.	16	Outfitter	8	Award
		disqualified		reduced
	40	Alloc. req.		
		not renewed		
	<u>4</u>	<u>Award reduced</u>		
	60			
Penobscot Sun.	16	Outfitter	16	Award
		disqualified		reduced
	40	Req. not	16	Award
		renewed		reduced
	16	Requested	8	Award
		<u>reduction</u>		reduced
	<u>72</u>			

It has been the outfitters with moderate and minimum allocations whose passenger slots have become available. No outfitter with 80 allocations has lost any passenger capacity.

In spite of some redistribution of allocations among outfitters, the overall distribution of passenger slots generally reflects the outfitter's share of total passenger volumes. This reflects the direction given in the 1983 legislation to award basic allocations according to demonstrated use.

C. Individual Outfitter Analysis

The table below presents data on the 4 largest outfitters for each river. As was the case in 1983 & 1984, the top 4 outfitters account for about 60% of the business, with each one carrying between 10 and 20% of the total.

	<u>Northern Outdoors</u>	<u>Downeast</u>	<u>Unicorn</u>	<u>Eastern</u>	<u>Total Industry</u>
<u>Kennebec</u>					
Total Passengers	4578	2784	2391	2131	
Change vs Year Ago	-3%	-16%	+20%	+31%	+ 6%
Share of Passengers	19%	12%	10%	9%	
<u>Penobscot</u>					
Total Passengers	3386	1680	3468	4230	
Change vs Year Ago	+32%	+48%	+41%	+1%	+24%
Share of Passengers	18%	9%	18%	22%	
<u>Both Rivers</u>					
Change vs Year Ago	+10%	+1%	+32%	+10%	+13%
Share of Passengers	19%	10%	14%	15%	

D. Recent Changes in Legislation and Rules

1. A 1984 legislative change expanding the term for which allocations can be issued from 1 to 3 years with review during that period. Allocations awarded for 1985 were made for a 3 year period.

2. A 1985 rule allowing the purchaser of a whitewater rafting business to retain the allocations provided that the level and quality of service is maintained.

E. Whitewater Rafting Fund

The Whitewater Rafting Fund is supported by outfitter allocation fees and is to support river recreation. The following is a report of this fund:

Balance 6/30/84	\$ 7,000
Revenues Fund Fiscal 1985	62,000
Distributed to Agencies	45,000
Warden Service	29,000
Parks & Recreation	11,000
Municipalities	9,000
Balance 6/30/85	24,000
Revenues thru 1/30/86	45,000
Balance 1/30/86	69,000

The fund carried a fiscal year-end balance after distribution because distribution is made by budget and actual revenues exceeded budget forecast. Also, because the activity was greater than anticipated, the Warden Service spent more on the whitewater program than they were allotted from the fund by the budget.

Discussion and Recommendation

A. Allocation Issues

All of the recommendations for change in this section are dealt with in LD 1809 sponsored by Rep. McGowan of the Committee, except number 5. While the Committee initially concurred in all the recommendations emanating from the Parks & Recreation Study, several points were raised in the hearing on LD 1809 that the Committee feels are worth further consideration. These are discussed under the appropriate sections.

With the information available to this point, the allocation system does not appear to be adversely affecting service diversity, competition or business stability among the majority of outfitters who received allocations in the initial year and who continue to hold allocations. There are issues that have been raised concerning how well the system meets some of the other goals identified in the law.

1. Use limits. Commercial rafting does have impact on the river environment, on access roads and on other users. The primary impacts are soil compaction, root exposure and soil erosion on river sites, traffic conflicts on access roads, conflicts with other users, primarily with fishermen on the Penobscot, and disruption of traditional life styles.

The impact on the Kennebec River is more extensive and could use additional discussion. Rafting has a two fold impact on some of the communities in Upper Kennebec River corridor. In the Millinocket area businesses which serve Penobscot River tourists clearly benefit from the patronage of rafters. But tourism dollars are overshadowed by the substantial employment and payroll generated by paper manufacturing at Great Northern Paper Co. In the Kennebec River communities of The Forks, West Forks and Caratunk, each having 1980 populations under 100, the establishment of both permanent and seasonal rafting headquarters has brought employment opportunities, increased real estate values, stabilized school enrollment and tourism dollars to communities with no major industries. However, while these benefits are enjoyed in the Upper Kennebec communities, there appears also to be a regret by many of the residents for the loss of the quieter, less crowded times which preceded rafting.

Because these impacts are occurring at present levels of use, which remain generally below the specified use limits, no increase in recreational use limits can be recommended. To the contrary, it may be advisable in the future to consider the following:

- A) a reduction of the weekday limit on the Kennebec (from 1000 to 800) to prevent use levels from exceeding the current Saturday maximum; and

B) a reduction of the use limit on the Penobscot during periods of low water to assure that rafters are off the river by 5 o'clock.

Additionally, whitewater rafting is a tightly regulated industry, which regulation to a larger extent prevents the industry from being subject to the normal attrition of the market place. As the industry matures this attrition in all probability would result in fewer competitors and thus less traffic and fewer launch, lunch and takeout sites. Consideration should be given by all parties involved as to how the normal industry attrition might be allowed to take place within the confines of the allocation system.

2. Environmental modification. There have been outfitter proposals for such items as the modification of rapids, the transfer of additional rafters to the Penobscot under low water conditions beyond what is presently allowed, and the construction of radio antennae in remote areas solely to assure business or improve safety in the rafting industry. It is the position of the Committee that commercial rafting occurs within a certain set of pre-existing conditions: the natural condition of the rivers, with water flows modified by variations in precipitation or power needs; the remoteness and generally forested character of the areas in which the rivers are located; and on the Penobscot, a long tradition of recreation use by visitors other than rafters and that it is a prime objective of the rafting regulations to limit the adverse impact of commercial rafting on these conditions. There are inherent risks in rafting related to these pre-existing conditions that were accepted at the outset, and these should not be modified for commercial rafting any more than they are modified for other forms of remote forested area outdoor recreation.

3. New Entrants. The fairness of the system to new entrants is also questioned, since these outfitters are only able to compete for popular weekend day slots when they become available from another outfitter (through loss or forfeit), and then the new entrant can receive no score for past performance.

This is a condition which exists because the Legislature recognized the commitment and investment of outfitters in business (or establishing businesses) at the time the regulations were imposed, and awarded initial allocations based in large measure on relative levels of demonstrated use at the time. To have done otherwise would have disrupted the stability of these businesses at the time, and any changes in this scheme now would have the same effect.

4. Weekday Limit. Based on the fact that weekday use does not approach use limits (and on the fact that the Kennebec has sufficient weekday water for additional trips), some outfitters have suggested that it is unfair to limit trips on these days to 80 persons per outfitter. Increasing the

weekday passenger limit is not recommended for two reasons: the impact of large group trips would be increased and even with the 80 person trip limit in place, there is the potential for weekday use limits to be exceeded.

5. Proportion of Allocations Filled. The allocation system encourages efficient use of passenger slots by rewarding past performance in filling allocations. Greater efficiency (more slots filled overall) may be achieved by awarding points for the proportion of allocations filled over the season, rather than on the 10 heaviest use days. The Committee will request of the Department a recommendation in this regard for their next meeting.

6. Emergency Transfers. The allocations system should be flexible enough to adapt to some changes in river use due to changes in river conditions. The law currently permits an emergency transfer of allocations to the Kennebec River when water levels on the Penobscot are too low for rafting, but not when water levels are too high for rafting. The statute should be amended to permit transfers to the Kennebec under high water conditions, as well. The system should not, however, be so flexible as to permit regular exceeding of allocations to accommodate additional passengers or to permit exceeding the use limit on the Penobscot River. LD 1809, Sec. 6.

Overall, the number of non-rafting users of the Penobscot River is significant. For this reason, the Legislature permitted no transfer of commercial rafters from the Kennebec to the Penobscot which would exceed the use limit, even under emergency conditions. Since the Penobscot use limit of 560 commercial rafting passengers is already fully allocated to outfitters, it is recommended that the rafting legislation be amended to reflect that it is not possible to transfer passengers to the Penobscot under any condition. LD 1809, Sec. 4.

7. Exceeding Allocations. The privilege of occasionally exceeding allocations to accommodate unexpected friends of passengers is being abused. It is recommended that 12 MRSA, Sec. 7369, subsection 10-C, permitting occasional exceeding of allocations be repealed because of abuse. LD 1089, Sec. 7.

The whitewater rafting industry members are not pleased with this recommendation. They feel that it is virtually impossible to meet their quota right on the nose and that they lose points for being under quota. They feel that as long as the extra passengers don't result in an extra raft no damage is done. They suggest that individual offenders be punished rather than the whole industry. The Fish & Wildlife Committee will review this issue at the worksession on LD 1809.

8. Non Licensed Commercial Trips. Reports by outfitters and preliminary work by the Department indicate that some people are conducting whitewater trips for some type of fee but claiming to run private, noncommercial trips. Such trips are an evasion of outfitter and guide licensing requirements and related safety requirements and fees, as well as an evasion of the allocation system. The magnitude of the problem is not known as there is currently no means of monitoring private rafting. To provide a means of monitoring private rafting and to discourage violations of the law by participants in private trips, yet to avoid restrictive regulations on legitimate private users, it is recommended that the law be amended to require that all trips by persons other than licensed outfitters be registered with DIFW prior to launching, and that all participants in such trips be required to sign a registration form stating that no compensation or remuneration is required for the trip.

Sec. 8 of LD 1809 deals with this issue. The industry feels that the wording of this section could be improved and their recommendations will be considered at the worksession.

9. Transfer of Allotments. Current laws and regulations permit one outfitter to purchase the business of another outfitter and provide for the license and allocations of the seller to be transferred to the buyer, with assurances that the level and quality of service of the business can be maintained by the buyer. Under present definitions, however, the buyer becomes an "affiliate outfitter" and cannot use the transferred allocations. Since the Legislature intended to permit the sale of businesses and the transfer of allocations, it is recommended that the statute be amended to exclude from the definition of "affiliate outfitter", buying outfitters to whom a selling outfitter's allocation is transferred by the Department. LD 1809, Sec. 2.

B. Safety.

The Jan. 1985 report of this Committee commented on the dangers of whitewater rafting. This subject was also brought up in the Bureau of Parks & Recreation's recent report and is cited in LR 1795, a bill introduced in the current legislative session by Rep. McGowan concerning outfitter liability. The Committee continues to be concerned by the potential seriousness of this safety issue.

In light of these facts the following recommendations are made:

1. That the various concerned departments and committees be more observant of the need to make formal issue of safety reports required by statute; specifically

a. The safety review required from the Department of Inland Fisheries & Wildlife by Section 5 of the Act to Regulate Commercial Whitewater Rafting.

b. The annual written reports required of the Whitewater Safety Committee by 12 MRSA 7367 sub¶ 2. The January 1985 report of the Advisory Committee suggested changes in the format of this report whose useability was limited. The report for 1985 has not yet been received. The Safety Committee is an 8 member committee appointed by the Governor which has no termination date. It met 3 times in 1985 and submitted no expenses.

c. The monthly safety report required of each outfitter. As of the Committee's last discussion with the Department, the submission and accuracy of these reports have left considerable room for improvement.

2. Liability Insurance - Currently operators are required by Department rules to carry \$300,000 of liability insurance. Failure to do so results in a loss of allocation points. Since the Committee understands that the whole subject of liability insurance is under consideration by the Legislature, it is making no recommendation at this time. There is also a bill in by Rep. McGowan, LR 1795, which removes commercial rafters from liability for injury.

However, in the event that neither of these activities takes place, the Committee recommends that the Department make a thorough study of this issue. If liability insurance is felt to be necessary, then it is recommended that the adequacy of the amount be studied and the specifics of the required policy be spelled out, eg. is the limit per person or per incident.

C. Data Collection & Analysis.

In the preparation of these annual reports the Committee has been hampered by two items which also hampered the staff responsible for the Bureau of Parks & Recreation's recent study and would like to support the recommendations made:

1. The majority of the goals and objectives cited in the Whitewater Rafting legislation do not lend themselves to objective review. This point should be kept in mind by those preparing future legislation of this type. Also, perhaps the Department and the Bureau could try to set up measurable objectives for future evaluation of rafting activities.

2. Since the industry raw data is not computerized nor a systemized program for specific analysis set up, there has been a difficulty in obtaining comparable analyses from year to year. This problem has the potential of compounding itself since the State Planning Office is no longer actively involved in the implementation of the Whitewater Act and since the large scale study by Parks & Recreation is only a one time study.

It is recommended that the Department assign an individual to the collection and analysis of the whitewater data and that individual prepare a list of needed data and proposed analyses, with a view to maintaining continuity with the past while adding new and more meaningful analyses. Relative to new data, records on variables which could effect rafting such as temperature and weather would aid in judging the growth pattern of the industry.

D. Committee Membership.

Committee Chairman Clinton Townsend plans to resign this June. In replacing him consideration should be given to the desirability of having representation from long term residents of The Forks who are not connected with commercial whitewater rafting. This person could be a spokesman for the impact of the industry on the life of the community.

Currently, legislative committee members are selected for their background as sportsmen regardless of where they live. Should the occasion arise for replacing committee members, it is recommended that the possibility of selecting persons who represent the areas where commercial rafting takes place be given serious consideration.

E. Overall Conclusion and Committee Sunset.

The Committee is due to terminate June 30, 1986. The report of the Bureau of Parks & Recreation recommends that the Committee be extended until June 30, 1990. The Committee concurs in this recommendation but will review its contribution each year to determine whether earlier termination is justified.

The Committee feels that the allocation system is running in good fashion at this time. However, whitewater rafting has built into it issues with somewhat explosive possibilities, particularly those dealing with environmental impact, safety and the considerable business regulating activity mandated by the Whitewater Act. It is for these reasons that the Committee concurs in the recommendation to extend itself.

Acknowledgement

The Committee would like to thank Herb Hartman of the Bureau of Parks & Recreation and John Marsh of the Department of Inland Fisheries for their support and cooperation and would like to acknowledge Cindy Bastey of the Bureau for her very comprehensive report, Review of Recreational Use Limit & Allocation System.