STATE OF MAINE
113TH LEGISLATURE
FIRST REGULAR SESSION

ANNUAL REPORT OF THE WHITEWATER ADVISORY COMMITTEE

January, 1987

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Background

A. Legislative

In 1983 the 111th Legislature enacted An Act to Regulate Commercial Whitewater Rafting. The purpose of this legislation was to enable 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 the competence of commercial rafters, to adopt use limits and to allocate these limits among the various interested parties. This legislation may be found in 12 MRSA 7361 - 7370.

B. Responsibility

1. The Department of Inland Fisheries & Wildlife

The Department of Inland Fisheries & Wildlife is given the major portion of the responsibility for implementing the regulations concerning the industry.

2. Bureau of Parks and Recreation

Great Northern Paper Co. granted an easement along both sides of the Penobscot to the Bureau of Parks and Recreation to manage the recreation activity along the river. Since the major portion of this activity is whitewater rafting, the Bureau has developed expertise on this subject which has led them to become an advisory body to the Department of Inland Fisheries and Wildlife on the administration of the allocation system. The Legislature gave the Bureau responsibility with the Department for the 1985 review of the use limit and allocation system required by the legislation.

3. State Planning Office

The State Planning Office is not specifically mentioned in the whitewater legislation. However, 5 MRSA 3305 assigns the following powers and duties to that office.

a. Coordinate the preparation of goals and policies to guide the conservation of the State's natural resources;
b. Compile, analyze and maintain information useful to the development of industry in the State;
c. Study problems peculiar to the industry and economy of Maine with a view toward broader utilization of the State's natural resources.

In the first two years following the enactment of whitewater legislation that Office analyzed and reported the annual industry statistics. This function in the last two years has been performed by the Bureau of Parks & Recreation.

4. Land Use Regulation Commission

LURC is not mentioned in the whitewater legislation. However, 12 MRSA §683 gives that agency the responsibility for planning, zoning and subdivision control in the unorganized territories to prevent inappropriate uses detrimental to the proper use value of these areas. In implementing this law LURC requires permits for development activities, which in the case of the whitewater industry would include construction of headquarters buildings, roads, parking areas, ramps and, importantly, the change in the use to which an existing building is to be put. Along the Penobscot easement, which is managed by the Bureau of Parks and Recreation for Great Northern Paper Co., LURC has created a planned reserve protection zone. The Bureau has management authority within this zone within the limits of the plan.

LURC's specific relationship with the industry during the past year is discussed later in this report.

5. Whitewater Safety Committee

The whitewater legislation set up a Whitewater Safety Committee (12 MRSA 7367). The responsibily of this committee is to advise the Department of Inland Fisheries and Wildlife on:

a. safety requirements;
b. developing a safety information program; and
c. reviewing the safety record of guides and outfitters.

This committee is required to submit a written report annually to the Advisory Committee on each outfitter's safety record.

6. Whitewater Advisory Committee

The whitewater legislation 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. A committee report is required to be submitted by Jan. 31 of each year. The four legislative members of the Committee are appointed during their legislative terms. The two non-legislative members serve until successors are nominated. The legislation originally called for the Committee to terminate June 30, 1986. This date was extended by the 112th Legislature until June 30, 1990, P.L. c. 571.

Members are entitled to $25 per diem compensation plus expenses. The Committee met once in 1986. Three of the six members were in attendance.

C. Rafting

The major portion of 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 of Central Maine Power Co. 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 may be released on Sundays, and outfitters are notified so that they can schedule trips.

On the Penobscot River, water releases through the dam are governed by the amount of water available in upstream storage and by operating conditions at the Great Northern Paper Co. 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 on the Kennebec, Great Northern usually notifies outfitters of any changes in its release schedule.

Use limits were set for the Kennebec and Penobscot rivers by the original legislation based on a number of factors; including days and durations of release and launch characteristics on the Kennebec and maneuvering times at difficult rapids and demands by other users on the Penobscot. These limits are currently as follows:

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 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 (45 pts.), outfitter safety record (25 pts.), the level of financial investment in whitewater outfitting (15 pts.), the level and quality of services provided to customers (15 pts.), performance in meeting past allocations (25 pts.), and other factors (5 pts.).

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 including transportation between base camp and river, a cookout lunch and basic rafting equipment. In addition, many offer overnight camping trips.

D. Finances

The law requires a 1983-84 commercial outfitters license fee of $250 and makes no provision for subsequent years. In practice, the fee continues at that level. Guide licenses are $25. Both these fees are credited to the Department of Inland Fisheries and Wildlife and are used for the same purposes as any Department fees.

In addition, outfitters pay the following fees:

- A season allocaton fee of $250 per unit of 20 passengers per river

- A $1 per passenger fee for any river.

Both of these fees go to the Whitewater Rafting Fund which is to be used for activities related to river recreation. Reports on these expenditures for the current fiscal year and the plans for the next fiscal year are to be made to the Joint Standing Committee on Fisheries & Wildlife by Feb. 1 of each year by the Department and the Bureau, who share with the host municipalities the proceeds of the fund on a 65% Department, 25% Bureau, and 10% municipality basis.

1986 Rafting Season

A. Passengers

Data is available showing the hours of raftable flow on the Kennebec for the last three years. It indicates a steady down trend of - 7% for 1984 to 1985 and - 6% from 1985 to 1986. In spite of the lower water levels, rafting has increased on the Kennebec for each of the last two years. Some portion of the increase is undoubtedly due to transfers from the Penobscot, as discussed below.

There is no specific flow information for the Penobscot. However, existing data does indicate that the last two years have been ones of low rainfall and low storage which was compounded by system repairs beginning in August of this year. As a result, Penobscot rafting, of which the rate of growth had been exceeding the Kennebec, experienced an actual decline in 1986.

The table below shows the number of commercial whitewater rafting passengers by year:

	Kennebec River			Penobscot River			All Rivers		
	#	% Change	# Change	#	% Change	# Change	#	% Change	# Change
1981	7341	+37%	+2001	8425	+38%	+2319	15766	+38%	+ 4320
1982	13326	+82	+5985	8588	+ 2	+ 163	21914	+39%	+ 6148
1983	17517	+31	+4191	11981	+40	+7393	29498	+35%	+ 7584
1984	22369	+28	+4852	15382	+28	+3401	39698	+35%	+10200
1985	23677	+ 6	+1308	18912	+23	+1530	44757	+13%	+ 5059
1986	27546	+16	+3869	18130	- 4	- 782	48228	+ 8%	+ 3471

The breakdown of rafting by month for the year in 1986 was:

	Kennebec	Penobscot
May	10%	9%
June	15	23
July	26	27
Aug.	38	34
Sept.	8	7

The only emerging change in this pattern is for a slight decline in the percentage of rafting in the fall on the Kennebec and a matching increase in the spring. The seasonal breakdown in business varies little by outfitter size.

On the Penobscot, where rafting is available every day of the week, 43% of the passengers were carried on Saturday, 31% on Sunday and 10% on Friday. On the Kennebec 45% of the rafting was on Saturday, 13% on Friday and 11% on Monday. The Penobscot is showing a slight increase on Mondays and decrease on Sundays. The Kennebec is showing a decrease in the percent of passengers carried on Saturdays with no pattern for the days gaining passenger share. The largest outfitters tend to have a higher proportion of the weekday business than they do the weekend business.

A day by day nearness to capacity analysis is summarized in the following chart:

		Daily Allocation	Times Over	Within 10 Passengers	Times less than 67%
Kennebec	Saturday	800	0	1	5
Penobscot	Saturday	560	1(562)	3	6
Penobscot	Sunday	560	0	0	7

In addition to commercial rafting on the Kennebec and the Penobscot, there are currently two other major incidences of rafting activity.

1. Data submitted to the Department indicates that the Dead River had 2,914 rafters last year for 6% of the total rafters in the State. While this number is not large, it does represent a 28% increase over the previous year and, more importantly, it all takes place during several days at the end of May coincident with water release on that river.

After the meeting of the Whitewater Rafting Committee at which the season was reviewed, one outfitter stated that these figures represented major under-reporting. Although there is a per outfitter limit of 80 passengers per day on all rivers, neither statute nor rules requires reporting on other than allocated rivers. While there is a $1 per passenger fee on rapidly flowing rivers, this requirement is in a section on allocations, where it is perhaps missed by some outfitters. Therefore, the Committee feels that this comment on under reporting could well be true and suggests an appropriate addition of a reporting requirement to departmental rules be made and will consider its addition to legislation in the next bill dealing with whitewater rafting.

The legislation requires that the Department shall set aside up to 10% of the use limit for recreational rafting if the demand makes this appropriate. Non-commercial rafting was monitored for the first time in 1986. It was found that virtually all of the non-commercial rafting was on the Kennebec where it accounted for 3% of all rafters on that river. On only 1 day was the 10% exceeded.

Based on these figures, and on the outfitters demonstrated willingness to give priority to non-commercial rafters, the Committee concurs with the Department's recommendation that it is not necessary to have a non-commercial allocation at this time.

B. The Commercial Outfitters Industry

There were 27 licensed outfitters in 1986 with 24 on the Kennebec, 24 on the Penobscot and 26 on the Dead River. This level of 27 statewide was reached for the first time in 1985 and is the highpoint for the industry. However, by river the data represent a decrease of two for the Kennebec and three for the Penobscot from the high year of 1982.

In terms of outfitters with allocations, there has been a slow down trend on each river since 1983 as shown below:

	Kennebec Saturdays	Penobscot Saturdays	Penobscot Sundays
1983	16	13	14
1986	14	10	10

It is interesting to note that at least some normal marketplace attrition is being experienced even within the confines of a regulated industry.

The table below shows the breakdown of allocations for the 1986 season:

	# of Outfitters		
# of Allocations	Kennebec	Penobscot Saturday	Penobscot Sunday
80	7	3	3
72	0	1	1
64	0	2	0
60	0	0	1
56	0	0	1
50	1	0	0
48	0	1	1
40	3	0	1
32	0	1	0
30	1	0	0
28	0	0	1
20	2	2	0
16	0	0	1
TOTAL:	14	10	10

Allocations were fixed in 1985 for a three year period, so that the only changes versus a year ago are due to outfitters abandoning their allocations. On the Kennebec, one outfitter abandoned his allocation of 30 and this was split with ten going to Crabapple, bringing them to 40, and 20 to New England, bringing them to the maximum of 80. Two Penobscot outfitters abandoned their allocations. On Saturdays, 20 of these went to New England for their first on that day, and 16 went to North Country, raising them to 32. On Sundays, the split was 24 to New England, bringing them to 60, and 16 to North Country, bringing them to their level of two years ago. (Sixteen is the minimum allocation on the Penobscot.)

C. Individual Outfitter Analysis

1. New & Inactive Outfitters

Three outfitters, with market shares of 1 to 2%, in 1983, were not active in 1986. Three new outfitters appeared for the first time in 1986, none with shares of over 1%. (The small shares are to be expected as no new outfitters could get an allocation in 1986).

2. 1986 Market Share

On a combined river basis Northern Outdoors was the largest outfitter in 1986 with 18% of the passenger business. Northern Outdoors was followed by Unicorn (15%), Eastern River (12%) and Downeast 10%. The top five outiftters controlled 64% of the market. Judgementally, this would seem to be somewhat less concentration than would be expected in an unregulated industry. Northern Outdoors has been the industry leader since the inception of the whitewater legislation.

On the Kennebec, Northern Outdoors, as it has been since 1983, is also the market leader with 19% of the market, followed by Unicorn and Downeast with 11% each. On the Penobscot, Unicorn is the market leader with 20% followed by Eastern at 18% and Northern Outdoors at 17%. The year 1986 marked the first time that Eastern River lost the Penobscot market leadership. The Penobscot has considerably more market concentration (5 leaders=74%) than the Kennebec (5 leaders=59%).

3. Trends

Data by outfitters for 1983, the first year of the allotment system, is not considered to be accurate. For the period 1984 to 1986 the major market share gains were enjoyed by New England Whitewater (plus 4.24%) and Unicorn (plus 2.94%). Major losers were Eastern River (-3.11%) and Wildwater Adventures (-2.57%). The changes for the year 1985 to 1986 mirrored exactly the 1984-86 changes.

Looked at by river, the greatest 1984-86 gain was enjoyed by New England (plus 4.38%). On a last year basis, however, Rolling Thunder showed the greatest gain (plus 4.82%), a gain which followed a 1984 to 1985 loss of 3.35%. The largest 2 year loss was shown by Downeast (-3.36%) but for the last year the greatest loss was that of Wildwater Adventures (-2.85%).

On the Penobscot, there were 3 roughly equal gains for the period 1984-86 by New England, Unicorn and North Country. However, for the most recent year New England's gain was somewhat larger than that of the other two. In terms of losses, Eastern River experienced major losses for the 1984-86 (-9.63%) and the 1985-86 period (-4.39%).

The data of the last three paragraphs is summarized below:

	1984-86	1985-86
Major Gain		
Kennebec	New England Whitewater (4.38%)	Rolling Thunder (4.82%)
Penobscot	New England Whitewater (3.95%)	New England White-water (2.95%)
Combined	New England Whitewater (4.24%)	New England White-water (3.50%)
Major Loss		
Kennebec	Downeast Rafting (-3.36%)	Wildwater Adventures (-2.85%)
Penobscot	Eastern River (-9.63%)	Eastern River (-4.39%)
Combined	Eastern River (-3.11%)	Eastern River (-2.41%)

An indicator of the impact of regulation on the industry is shown by the market concentration data. It would normally be expected that an industry would become more concentrated as it matures. However, for the period 1984-1986 the share of market enjoyed by the 5 leading outfitters dropped from 67% to 64%. What appears to be happening is that the top outfitters have reached the allocation ceiling, so that normal weekend growth and reissuance of abandoned allocations are not available to them.

Interestingly, the concentration analysis shows the medium size outfitters gaining shares, while the smaller ones are losing shares at about the same rate as the largest. Among the explanations for this would appear to be the system for reassigning abandoned allocations, a system which favors experience, financial stability, record of using assigned allocations etc., all items for which a medium sized outfitter would be likely to have a stronger record than a smaller one.

D. 1986 Legislation

1. An Act to Improve Whitewater Rafting P.L. c. 571

a. Permitted allocation transfer to the Kennebec under high water conditions on the Penobscot and prohibited transfers to the Penobscot under any conditions. (Transfers were previously, and continue to be, permitted under low water conditions on the Penobscot.);

b. Created a non-commercial whitewater trip registration procedure;

c. Extended the term of Whitewater Advisory Committee; and

d. Changed the provision for allowing the occasional exceeding of daily allocations to require that the average of the ten best days should not exceed the allocation.

2. LD 1976. An Act to Set Standards of Care in Whitewater Rafting.LVWD

Limited the liability of the outfitters to situations where they fail to comply with the whitewater rafting safety law.

3. LD 2054. An Act Relating to Cancellation and Nonrenewal of Property & Casualty Insurance Contracts. P.L. c. 671

Severely limited the right of insurers to cancel a policy.

4. LD 2254. An Act Concerning Liability Insurance for Commercial Whitewater Outfitters. P.L. c. 669

Permitted operation of commercial whitewater rafters without liability insurance when such insurance is not available.

E. Non-Licensed Commercial Trips

Responding to complaints by outfitters the legislation enacted in 1986 requiring registration of a non-commercial rafting trip had as one of its purposes the elimination of commercial rafting by those without a license.

The Department reports that in spite of intense efforts to apprehend persons circumventing this law only one person was so charged during the 1986 season.

F. Outfitter Fees & Licenses

1. Kennebec

Central Maine Power charges outfitters a per customer charge of $6. In the early 1980's, Voyagers Whitewater filed a complaint with the Federal Energy Commission claiming that the $6 fee is excessive. The case is still pending.

2. Penobscot

Great Northern Paper Co. has for the last 2 years charged the Bureau $500 per site for any site whose ultimate use is commercial. The Bureau has not passed this cost on to the outfitters. Great Northern Paper Co. has in the past made no direct charge to outfitters. They have proposed the following schedule to begin April 1.

Commercial Recreation License	$50 application fee
	$ 4 per customer
McKay Put-in Fee	$ 2.50 per customer
Commercial Campgrounds	$50 per week

These fees were to have been finalized by the end of 1986. However, they are still being discussed with the outfitters, working toward a deadline of January 20th.

G. 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 7-1-85	$24,972
Revenues Fiscal 1986	68,690
Distributed to Agencies	50,000
Warden Service	32,500
Parks & Recreation	12,500
Municipalities	5,000
Balance 6-30-86	$43,663

The fund carried a fiscal year-end balance after distribution because distribution is made by budget and actual revenues exceeded budget forecast. The transfer ceiling has been changed to accomodate such situations and this balance will be allocated.

In fiscal 1986, Warden Service expended $16,565 on whitewater activities, leaving a considerable surplus from the funds transferred to them from the Fund plus any surplus from the previous year. Parks & Recreation spent $4,852, leaving them also a considerable surplus from their 1986 income from the Fund and their $7,016 surplus for the previous year.

In 1986, funds allocated to Piscataquis County were used for the benefit of the unorganized territories in which the rafting takes place. Specifically, it was added to surplus to reduce the taxation required to provide other services to these areas. Somerset County funds were allocated as follows: The Forks $1,000, West Forks $1,000 and the unorganized territories $500. Both Somerset County municipalities place the money in the general fund to be used as needed for any needed expense. This pattern of use by the municipalities would appear to be somewhat inconsistent with 12 MRSA 7370 which specifies that all moneys from the fund shall be expended for purposes related to river recreation, with primary emphasis on activities related to whitewater rafting.

12 MRSA 7370 sub-§3 requires by February 1 each year a report by the Department and the Bureau to the Joint Standing Committee on Fisheries & Wildlife of their planned expenditures for the next fiscal year and their committed and proposed expenditures for the current year.

The Bureau entered fiscal 1987 (July 86-June 87) with a surplus of $14.7M. The Bureau's plan for fiscal 1987 (July 86-June 87) calls for expenditures of $7,885. This will leave a year end surplus of $19.3.M

The greatest single portion of the fiscal 1987 expenditures are to go Great Northern Paper for the lease of outfitter sites along the river. In fiscal 1986, this was charged to another account. The second largest amount is for insurance at Moxie Falls. Sightseeing by rafters at the Falls has grown to such a point that the Bureau feels that insurance is warranted.

The Bureau's plans for fiscal 1988 show principal expenditures for commercial site leases and for liability insurance and contractual payments to Great Northern in conjunction with construction by them of the much needed McKay Station put-in. Great Northern will pay the entire initial construction cost and the Bureau will reimburse them over a 10 year period. Great Northern will charge the outfitters a fee for the use of this facility to cover operating costs, particularly staffing.

The Bureau has not been receiving its annual distribution from the fund until April. Since the rafting season is over in October, this would seem an unduly long time to wait for the money to be made available for use. The Committee will discuss this with the Department at its next meeting.

As of January 15, 1987, the status report for fiscal 1987 and plans for 1988 were not available from the Department.

H. Land Use Regulation Commission

Two outfitters in the last year had involvements with the Land Use Regulation Commission which received some media attention.

1. Northern Outdoors

Between the 1985 and 1986 seasons, Northern Outdoors, the largest outfitter, received a permit to build a camp on Pockwockamus Pond about 2 miles from Baxter State Park. The Park Authority and the Natural Resources Council both opposed the camp on the grounds of its incompatibility with the wilderness character of the area.

Early in the season, LURC charged Northern Outdoors with being in violation of the conditions of its permit and with operating without a compliance certificate. Northern Outdoors countered that they felt that most of these violations were not true and were motivated by the bias of the LURC employee who conducted the inspection.

LURC took this case to the Attorney General. A settlement was reached in which Northern Outdoors pleaded guilty to six violations among them inadequate erosion control, failure to monitor water quality, and having tents too close to the pond. Other charges including failure to deal properly with water runoff, improper building colors, and number of campsites were dropped.

2. Unicorn Rafting

Unicorn Rafting, the second largest outfitter, shifted its base to Parlin Pond which is South of Jackman. They began operating without a permit under the misapprehension that the site was grandfathered for use as a sporting camp. LURC initially turned down their subsequent application for a permit based on a finding that the proposed use was incompatible with the essentially residential nature of the surrounding area. With a redesign of the layout of the property, the Commission subsequently approved the application. Opponents of the application have appealed the decision by requesting a public hearing. LURC does not approve all such request but did this one. The hearing is scheduled for later this winter.

Issues and Recommendations

It is the opinion of the Department and the Bureau that the industry and, in particular, the allocation system are functioning well relative to the authority and responsibility of the State and that the industry is pleased with the conduct of the State government relative to the industry. The Committee concurs in this opinion.

Perhaps brought to a head by the Big A dam controversy, there is evidence of disagreement among industry members relative to the conduct and future direction of the industry and many outfitters do not currently belong to the Whitewater Outfitters Association. The Committee does not at this time view this as a serious situation and sees it as an expected outgrowth of a fastgrowing industry composed of small businesses run by independent and entrepreneurial individuals.

While acknowledging the current satisfactory state of the industry, the Committee does, however, see a number of issues that could develop into problems down the road which need to be monitored. They are discussed in this section, together with recommendations where appropriate.

A. New Entrants

Probably the major problem of the whitewater rafting industry as it affects the Legislature stems from the legislation which regulates it. The legislation has to a significant extent accomplished its objective of an orderly, well run industry. However, in so doing, it has imposed on the industry some of the problems inherent in a regulated industry, for example;

1. Since the allotment system favors established outfitters, it makes it difficult for new entrants into the industry.

2. Since allotments are pretty much locked in, the system tends to mitigate against normal business attrition, i.e. the successful can't drive the weak out of business. This probably results in more companies remaining in business with the comensurate environmental impact that this creates and also in making it difficult for a capable middle size company to become large enough to be truly profitable.

The recent Department decision to more strictly enforce the requirement to use an allocation should act to help the situation of the competent smaller companies. However, as discussed in a later section, this policy has not yet resulted in much change in allotment use.

The Committee, the Department and the Bureau are very aware of this situation and review it periodically. Some suggestions that may alleviate the problem are to have separate allocation systems for new rivers, weekdays and individual months (particulary those early and late in the season).

B. Environmental & Lifestyle Impact

The situation of the whitewater industry versus the areas in which it is located is a sharply focused microcosm of the situation facing the State as a whole, i.e. economic development versus environmental protection. On the one hand, the industry is located in areas which have previously been noted for their beauty and wildnerness character. On the other hand, is the industry itself, an industry which by its nature is in conflict with the character its host communities had prior to the advent of rafting.

- It markets itself as an exciting adventure, not a quiet wilderness experience.
- Because of this and because it is in reality a physically demanding and hazardous sport, it attracts a predominantly young male rather than family market.
- It requested the use of large (and generally past their prime) buses and large brightly colored rafts.
- It is owned and, largely staffed, by non-natives.
- Its distance from centers of population generally requires an overnight stay.

Therefore, while the industry and those charged with regulating it have done an excellent job, there is no way that such an industry can exist in a community the size of the Forks or on a river like the Penobscot and not impact the previous lifestyle and the physical environment.

The Committee, the Department and the Bureau have made every effort to monitor this situation and feel that the trade-offs to date are warranted. However, the small size of these communities makes monitoring difficult because of the reluctance of those affected to criticize an industry that is aiding the economy of the area so markedly and is providing employment to many of their neighbors. Filling any Committee vacancies with non-outfitter residents of the Forks would be one step toward remedying this problem.

C. Use Limits

In the Committee's last report two specific changes in use limits were discussed. Updates on these are as follows:

1. Reduction of the weekday limit on the Kennebec.

In last year's report the possibility of reducing the weekday limit on the Kennebec to prevent use from exceeding the Saturday maximum was mentioned and at this year's review the subject of extending the allocation system to weekdays was discussed.

Based on the recommendation of the Department that weekday use has not yet reached levels to warrant these changes, the Committee took no action. However, the Committee was concerned that there was no hard data to back up the Department's contention and supports the recommendation of the person in the Bureau who has for the last 2 years prepared the annual whitewater data that industry information be computerized so that this analysis can be made available in the future by the Department, which is charged with collecting the data.

(It should be noted that a computer printout from Central Maine Power showing usage by day for the season for the Kennebec was received after the season review meeting. It showed that the highest weekday use recorded was 497 and that 410 was exceeded four times.)

2. Reduction of the use limit on the Penobscot during periods of low water.

Last year's report discussed the possibility of reducing use limits on the Penobscot during low water in order to get the rafters off the river by 5:00 p.m., which hour was put in law in order to allow fishing use of the river after that time. At this year's meeting, the Committee discussed the possibility of extending take out until 6:00 below the Abol Bridge, since that area is not heavily fished.

Although it is the consensus of the Committee that low water on the Penobscot will continue to be a problem, the Committee elected to make no statutory or regulatory changes at this time. The reasoning was:

a. various interest groups would see these as major changes and, therefore, they should not be undertaken without serious study;

b. because, of the major nature of this change, it is not felt desirable to make it until it is determined that the problems that it addresses are, indeed, ongoing;

c. this did not appear to be a subject of sufficient significance to warrant its own legislation and the Committee does not plan any other legislation this session.

D. Proportion of Allocations Filled

There has been a problem with the medium and small sized operators failing to use their allocations.

In response to this the Department instituted a program to remind the outfitters of the importance of filling their allocation. A comparison of 1985 and 1986 seasons is shown below for all allocation days:

	% of Allocations Used -Total Season		% of Allocations Used-10 Best Days	
	1985	1986	1985	1986
Kennebec Saturdays	73%	75%	94%	95%
Penobscot Saturdays	73	72	94	95
Penobscot Sundays	59	54	83	83

As can be seen, the problem identified in 1985 continues to be a problem. Also, the fact that it is greater for the season than for the ten best days lends weight to the argument for allotting points based on the entire season, not the ten best days, as currently done.

E. Emergency Transfers

With the second year in a row of low water on the Penobscot, the Department has indicated a significant number of transfers from the Penobscot to the Kennebec. Unfortunately, specific records on this matter have not been kept. The Committee feels that these records are important and has recommended to the Department that they be maintained in the future.

F. Exceeding Allocations

This is one of the more controversial aspects of the whitewater legislation. The original legislation was set up to allow occasional incidences of exceeding daily allocations to accomodate unforseen situations. The Department came to believe that certain rafters were taking advantage of this provision and, therefore, introduced legislation to remove it. The legislation met heavy industry objection. The point that the industry made is that repeal would give them an unrealistically small target to shoot at. That is, they can't go over the allocation and, if they go under it, they lose points toward future years allocations. To hit the allocation right on the nose is very difficult, they stated, for an industry which involves large groups of individuals traveling many miles to take part in an outdoor sport.

As a result of these comments, the statute was modified to allow exceeding allocations on a given day as long as the average for the ten best days does not exceed the allocation.

The incidence of exceeding allocations in 1986 is as follows:

Penobscot	Saturday	30 times out of 180 possible
Kennebec	Saturday	50 times out of 252 possible
Penobscot	Sunday	24 times out of 180 possible

All outfitters who operated on all three rivers exceeded allocation at least four times out of 53 possibilities. The high was 14 by North County Rivers and Unicorn Rafting. Those exceeding least often tend to be smaller companies, while two of the three highest companies are large outfitters. The data indicates that those incidences might be even higher if the opportunity presented itself. For example, for the six week peak season period of July 19-Aug. 23 four outfitters exceeded their allocation more than 50% of the time.

Based on this data, the Committee has recommended that the Department continue to explore ways to tighten this legislation. One solution would be to require that the average of the six, rather than the ten, best days not exceed allocation.

G. Allocation Criteria

Currently, ten of the 130 possible allocation points are awarded based on experience obtained out-of-state. Several outfitters have suggested that the greater length of time that the industry has been in existence no longer makes it necessary to take out-of-state experience into consideration and that these points be eliminated. The Department is to review this matter.

H. Safety

12 MRSA 7367 requires two safety reports.

1. The report of the Whitewater Safety Committee

The report is to be made annually to the Whitewater Advisory Committee and is to deal with each outfitter's safety record. The report has not been received by the Advisory Committee for the last two years. Note has previously been made of this fact in the Committee's annual report and to the Department. It is felt that issuance of this report is particularly important relative to the issues raised in the next paragraph.

2. Safety reports

Each outfitter is required to submit a monthly safety report to the Department. These have been made available to the Committee each year together with the Department's comment that uneven reporting makes them virtually useless. The Committee has made note of this fact in previous annual committee reports. The Committee has agreed to the Department's request for one more year to straighten out this situation before dealing with it through legislation or regulation.

I. Liability Insurance

Department rules require outfitters to carry $300,000 of liability insurance, with the penalty being loss of allocation points. The rules do not specify if this insurance is for one individual, one incident, or one season. (Federal regulations are for a limit of $100,000 per person and $250,000 per incident.) Also, because the insurance situation has been a state of flux, the Committee has not taken up the adequacy of this amount.

There have been a number of developments relative to insurance in the last year.

1. Legislation was enacted which eliminated the requirement to carry insurance if such insurance is not available.

2. Prior to 1986 the outfitters obtained insurance from companies on the State's approved list of surplus lines, i.e. the companies are approved but not licensed, the latter carrying with it a guarantee. The outfitters obtained insurance in 1986 through the Maine self-procurement law from a company in Utah which is not registered in Maine and, therefore, not regulated by the Bureau of Insurance. This procedure necessitated the outfitters flying to Utah to purchase the insurance.

3. President Reagan has recently expanded the Risk Retention Act to include all business liability, not just product. This Act makes it easier for businesses to purchase insurance as a group or collectively self-fund their own risk.

4. The Committee received correspondence from Tri-county Insurance of Jackman indicating that the increasing availability of reinsurance may improve the marketplace situation. This firm indicates that it is joining with several others to form a national insurance program for the whitewater industry.

5. High Country Insurance of Salt Lake City, Utah, a major provider of insurance last year, has indicated that the new federal legislation will allow them to provide more affordable insurance and will allow them, merely by filing in Maine, to sell insurance here. However, they still would not be licensed or approved by the State of Maine. The limits currently planned are $300,000 for the year. This is more than the federal per incident requirement, but could leave a second incident virtually uncovered.

The Committee feels that the fact that this is a regulated industry gives the State the responsibility of becoming involved in these insurance problems. The Committee will monitor the above developments and recommend appropriate State action should such be deemed necessary.

J. Annual Report

While the whitewater statute requires an annual report from this Committee, it does not require annual reports on the allocation system from the Department. However, the Department, the Bureau, and, until two years ago, the State Planning Office, have been very cooperative in preparing reports for the Committee's yearly review. In the last two years, this has recently been the province of the Bureau, as an outgrowth of the one time use limit and allocation review which was reported in the fall of 1985 by the Department and the Bureau, for which the Bureau took the lead role.

As it did last year, the Committee would particularly like to cite Cindy Bastey of the Bureau for the excellent job she has done in putting the diverse outfitter reports into meaningful form. The Committee would also like to second three of her recommendations:

1. A recommendation that she also made last year, that these outfitter reports be computerized by the Department so that the current manhours can be reduced and so that additional tabulations become logistically feasible. This would also allow the total responsibility for the rafter data to be returned to the Department.

2. Coincident with the computerization it would be desirable to develop data on use for individual weekdays.

3. Current legislation requires monthly outfitter reports on the number of passengers but does not specify a deadline for their receipt. As of the Committee's meeting on November 14th to review the season one outfitter had not submitted his August or September reports and one hadn't submitted his September report. This can perhaps be handled informally or it may be necessary to put a reporting deadline in legislation or rules.

Acknowledgement

The Committee would again like to thank Herb Hartman of the Bureau and John Marsh of the Department for their assistance and cooperation.

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