

# MAINE STATE LEGISLATURE

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# MAINE LEGISLATURE

ANNUAL REPORT OF THE  
WHITEWATER ADVISORY COMMITTEE

JANUARY 1989



STATE OF MAINE  
114TH LEGISLATURE  
FIRST REGULAR SESSION

ANNUAL REPORT OF THE  
WHITEWATER ADVISORY COMMITTEE

JANUARY 1989

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## EXECUTIVE SUMMARY

A total of 51,662 passengers were carried down Maine's rivers by its 26 licensed whitewater rafting outfitters. This is a decrease of 1% versus the previous year. While realizing that there are other points of view, the Committee feels that the industry has reached its maturity and not much more growth is to be expected. It was estimated by the Bangor Daily News in 1984 when there were 45,000 passengers that the industry contributed \$10mm per year to the State's economy.

As has been the case since the inception of the industry, the Committee can again report that the whitewater legislation appears to be meeting its goals of protecting the safety of rafting passengers and protecting, to the extent possible, the State's natural resources.

However, the Committee must report again a resurfacing of the only real problem involved with the legislation, namely complaints from small and new outfitters that they are unable to grow in the industry. There are a number of issues that have been raised at one time or another as to the cause of this conflict. These can be briefly summarized as follows:

1. The legislation contains provisions that are not necessary to its objectives and thus represent an unnecessary restriction on free competition. (For an extended discussion of this issue see "Maine's Commercial Whitewater Outfitter Laws; Maximizing Competition or Destroying It?" 11 VT. L. Rev 233, 1986).
2. Several of the goals of the allocation system are in conflict with each other.
3. The factors which the law requires that the Department consider in assigning allocations do not, and perhaps can not, provide much opportunity for new outfitters to receive allocations.
4. The weighting by the Department of the factors that it is required to consider unduly favors large, established outfitters.

During the past year the State's Supreme Court ruling on an outfitter suit on this subject limited its decision to a finding that the 3 year allocation made in December 1987 was invalid because of a failure to follow the steps of the Administrative Procedures Act. The Advisory Committee has concurred with a recommendation by the Department and a majority of the outfitters that State action be limited to redoing last year's allocation process under proper procedures. All concerned feel that this is the best solution but not a cure-all and that controversy and perhaps litigation

will continue to plague this aspect of the whitewater allocation system.

In the course of its yearly review the Committee identified three internal problems which it will be pursuing with the Department; namely,

1. Failure of outfitters to use all of their allocations;
2. Lateness in outfitter reporting; and
3. Rafting fund receipts from outfitter fees being in excess of expenditures required by the Department and the Bureau on rafting related activity.

## Whitewater Advisory Committee Annual Report

### I. Background

In 1983 the 111th Legislature enacted An Act to Regulate Commercial Whitewater Rafting, P.L. 1983, ch. 502. 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.

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

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 1988. Three of the six members were in attendance. Clinton Townsend, who had been chairman since the inception of the Committee, resigned from the Committee early in 1988. The Committee did not have a quorum at its only 1988 meeting so that a new chairman could not be elected. Vice chairman Wilmot Robinson is currently acting as chairman.

Nineteen eighty-eight also saw the retirement of Col. John Marsh, Chief Warden of the Department of Inland Fisheries

and Wildlife. Colonel Marsh had supervised the rafting industry since the inception of the law regulating it. His place has been taken by Alan Clark, Wildlife Resource Planner.

## II. Allocation process

According to statute, the major focus of the Committee's yearly report is to be the allocation process.

### A. Background

Use limits for commercial rafting 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. On the Kennebec and Penobscot there are daily total passenger limits and use on days of expected heavy use is regulated by the allocation system. These days currently 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 river use limits are not exceeded in heavy rafting use days. The following are the statutory goals of the allocation system:

- A. To encourage a wide diversity of whitewater trip experiences and services;
- B. To provide a fair distribution of river use among existing and future users;
- C. To maximize competition within the recreational use limits;
- D. To allow for reasonable business stability for outfitters by allowing stable, well-qualified outfitters who are providing excellent service and meeting the conditions of their allocations to continue to do so, subject to periodic review when allocations are reviewed;
- E. To encourage efficient use of the allocation system;
- F. To be flexible enough to adapt to changes in river use or river conditions;
- G. To prevent evasion of the system; and
- H. To provide opportunity for public access.

The law requires that allocations be distributed among outfitters according to the following specific criteria: the experience of the outfitter (45 points), outfitter safety records (25 points), the level of financial investment in whitewater rafting (15 points), the level and quality of services provided to customers (15 points), performance in meeting past allocations (25 points), and other factors (5 points). The decision on the weight to be assigned to the various criteria is delegated to departmental rule making and through 1987 was as indicated in the parentheses in the preceding sentence.

In addition to the assignment of allocations, outfitters are also assigned to a launch time. This assignment is based on operator preference, with conflicts being decided in favor of the operator with the longer record of continuous operation.

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. The law also sets a minimum allocation of 20 on the Kennebec and 16 on the Penobscot.

There is currently no restriction on the extent of non-commercial rafting, but registration is required for such trips. There is a provision in the law for setting aside for non-commercial rafting up to 10% of the use limit, should this be required. To date, the Department has deemed this not to be necessary.

B. Allocation for 1988-1990

1. December 1987 Allocation.

The whitewater allocations are to be awarded for a period not to exceed 3 years, as determined by rule. Currently, the allocation period is 3 years and the latest 3 year period concluded with the 1987 season.

The Department of Inland Fisheries and Wildlife promulgated new allocations for the period 1988-1990 on December 16, 1987. The procedures for these allocations differed in two fairly significant respects from previous procedures. First, 10 points that had previously gone to experience on non-Maine rivers were taken from that category and divided equally between experience on allocated rivers (30 points) and experience on other Maine rivers (15 points). Second, all outfitters with at least 50% of the maximum possible score were to be awarded the minimum allocation. The remaining allocations were to go to completely filling the requests of each outfitter in order of the scores attained by the outfitters.

These new allocations resulted in three outfitters receiving less than their previous Penobscot allocations on Saturday in one doing so on Sunday. In addition, three companies applied for their first allocations on the Kennebec and one on the Penobscot and all were unsuccessful.

On December 21, 1987 North Country Rivers, one of those receiving fewer allocations, petitioned in Superior Court for review of the allocations awarded by the Department. An outfitter's suit of this type on the new allocations was not unexpected by the Department. As is common on petitions of this type, the grounds were quite far reaching. The more specific grounds were: (1) that the allocations violated the goals of the allocation system, (2) that the department was exceeding its statutory authority, and (3) that the allocation factors improperly favored larger outfitters.

North Country Rivers was later joined in the suit by New England Whitewater and All Outdoors. Three other outfitters entering the suit as defendant-intervenors. (Tables II-IV contain a history of allocations granted.)

## 2. Discussion

Far and away the greatest problem that has plagued the implementation of the whitewater rafting legislation has been criticism by smaller outfitters that they are unable to grow and by persons unable to obtain first time allocations.

Three basic issues have been raised regarding this criticism of the allocation system. First, is the point that several of the goals of the allocation system are in opposition with and incompatible with each other. The goals which are generally seen as being in opposition are the one that calls for allowing business stability, on the one hand, and the one calling for providing a fair distribution of river use among existing and future users and the one calling for maximizing competition, on the other. The point has been made that it is impossible to do these three things within a fixed passenger limit. Small outfitters and those seeking first time allocations have tended to feel that the Department's rules have favored business stability over maximizing competition.

A report by the Bureau and the Department entitled Commercial Whitewater Rafting - Review of Recreational Use Limit and Allocation System, Preliminary Report, October, 1985, treated this subject. It states that "the overall distribution of passenger slots reflects the outfitters share of total passengers." The same study indicates that in 1983, 75% of the Kennebec slots and 61% of those on the Kennebec were given for demonstrated use. The report makes the further point that this situation is due to the direction given in the law. It would appear to the Committee that it is not the direction given in the law, but the ease of measuring use factors and the importance of experience versus the difficulty of measuring factors that favor small outfitters.

The second problem facing the allocation system is the difficulty in developing criteria for judging applications which give weight to the maximizing competition objective and the fact that the currently legislated specified criteria could be considered weak in providing categories which

reflect this goal. While the weightings assigned by the Department could be debated and modified, some people have questioned if any amount of adjustment will make any significant difference in terms of increasing growth and entry possibilities for small and new companies.

The third problem, and the one generally receiving most attention, perhaps because it is easiest and least disruptive to deal with, is the weighting given by the Department to the various factors that the legislation requires be considered. Prior to last year, of the 130 weighting points, 25 were given to experience on the Kennebec and the Penobscot, 15 to the level of financial investment, and 25 to the performance in meeting past allocations. Thus, confirming the 1985 study cited previously, 50% of the weighting points were assigned based on criteria that it would be very difficult for a new outfitter to attain, whereas there are no criteria that operate in favor of the new operator.

Two outfitter letters dealing with this subject are at the conclusion of the appendix.

### 3. Results of Civil Action

#### a. Superior Court

The Superior Court orally delivered its decision on March 11, 1988 on the civil action complaint referred to previously. The Court held that the plaintiffs had not been afforded due process during the allocation procedure, in that the rafters were not advised of the criteria for selection before filing their applications and were not allowed opportunity for public comment on each others' applications. The Court subsequently granted the request of one of the three prevailing parties for attorney's fees.

The situation regarding the 1988 season became somewhat confused. The Court's official ruling was that all petitioners should have the same allocations that they had in 1987, while the defendant-intervenors were to have the new allocations given them in December, 1987. According to the Attorney General's office, in actual practice both defendants and intervenors were given the higher of their 1987 allocation or their December, 1987 allocation for 1988.

Also, according to the Attorney General, one company, Great Adventures, initially was a defendant-intervenor but did not participate in the hearings. This company is not listed in the Court reports concerning the case but was treated as a participant in so far as the decision regarding the 1988 allocations was concerned.

One of the obvious results of this decision regarding 1988 was that the total allowed passengers would have exceeded the legally mandated totals of 800 and 560. The Court ruled that it was acceptable to exceed this limit by 2 to 4 passengers times the number of outfitters under the provisions of 12 MRSA section 7369 subsection 10 paragraph C which states that outfitters may occasionally exceed their allocations by 2 passengers on 40 passenger trips and 4 passengers on 80 passenger trips. On the Penobscot, where the court-allowed allocations would have exceeded even these limits, 3 of the 4 defendant-intervenors agreed to slight reductions in their allocations.

A second result of this court decision regarding 1988 is that the one company (Rolling Thunder) that lost allocations by the December 16, 1987 allocations but was not a petitioner in the law case was the only company ending up with fewer allocations than it had in 1987.

b. Supreme Court

The Department and the three rafters who had been intervenors in the case appealed the decision to the Supreme Court. The case was argued on June 17, 1988 and decided on October 12, 1988, Decision No. 4867. The Court held the allocations in question were void, since the administrative procedures act had not been followed as required because rule changes had been involved in the granting of the allocations. The court did not uphold the due process decision of the lower court, ruling that the plaintiffs had never addressed their concerns to the Department.

4. 1989 Season

a. Committee Agreement

In a joint session with the Department and the outfitters, the Committee could not develop a

system that was preferable to the current one, nor did the Committee hear concrete suggestions for changing the current laws. It was, therefore, agreed between the Committee, the Department and a majority of the outfitters to leave current legislation intact and, to subject the proposed 1988 rules to the proper rule making process, except that: (1) the provision for computing the percent of allocations used would be changed from the 10 best days of the season to all allocated days, (2) the points awarded for non-Maine rivers would be reinstated; and (3) some adjustments would be made in the awarding of allocations based on the score received. The rules resulting from this process would be used to score new outfitter applications and from these develop allocations for the last 2 years of the 3 year period initiated last year.

b. Rulemaking Procedure

As a result of the hearings involved in the Department rule making procedures, several adjustments were made to the weights assigned to the various factors considered in awarding allocations. First, the points for experience on other rivers were reassigned with 5 going to experience on Maine rivers and 5 to a new category which measures the extent to which promised services are provided. (Table I details over time the changes in the weighting assigned to the various allocation factors.) Second, the awarding of points was again adjusted. The final system calls for any outfitter receiving a score of 50 or more to receive a minimum allocation. Next, outfitters with a score of 75 or more will receive the lesser of their prior use based on the 10 best days or their request. Finally, any remaining allocations will go to complete outfitter allocation requests in order of scoring rank.

The three objectives of this system of awarding allocations correlate with the provisions and are, in order of priority:

1. Provide for freedom of entry.
2. Provide for business stability.
3. Provide for growth by rewarding superior performance.

c. 1989 Allocations

On January 24, 1989 the Department made its proposed allocations for the years 1989 and 1990. These allocations resulted in 2 more outfitters with allocations on the Penobscot on Sunday and 1 more on the Kennebec and the Penobscot on Saturday. In terms of size, on the Penobscot on Saturday the increase was divided between outfitters receiving a medium number and a small number of allocations, while on the Kennebec and Penobscot on Sunday it was in those getting a small number of allocations. The Kennebec appears at first glance to also show a switch from those getting a large number of allocations to those getting a medium number. However, those in the medium category are at 76-79 allocations and, therefore, virtually qualify as being in the large category.

The Department is to hold hearings February 3rd prior to finalizing these allocations. With a statutory due date of January 31st for the Advisory Committee's report it was not possible to include the final allocation figures.

5. Other States' Allocation Procedures

Staff discussed by phone the problem of new entrants with the two other Eastern states which regulate whitewater rafting, Pennsylvania and West Virginia. Both states have regulated their industry for over 10 years, neither has had a law suit although they report that a number of the individual outfitters are difficult to work with. There is a general feeling among those involved with the industry in Maine, that Maine has been more successful in dealing with safety and environmental issues than have Pennsylvania and West Virginia.

Procedures in Pennsylvania and West Virginia seem fairly similar to each other and somewhat different from those in Maine. These two states seem to focus their attention on the total number of passengers that the river should carry and give much less attention to the issue of how to divide these passengers among the outfitters. Second, these states appear to have much less in law than Maine and to be more informal, more flexible and more permissive in their regulation. Third, these states give allocations for much longer periods than Maine, i.e. 10 years in Pennsylvania and indefinitely in West Virginia. Fourth, these states gave

allocations to the rafters in business at the time the regulation began and have no provision for new entrants or for growth among existing entrants nor do they offer any promises to people in these situations. Interestingly, this approach results in the two States being very different from each other in terms of the number of outfitters with allocations. Pennsylvania has 4 on one river and 5 on the other. On its 3 regulated rivers, West Virginia has 25, 24 and 17 outfitters with allocations.

In West Virginia and on the last regulated of the Pennsylvania rivers, outfitters in business at the time of the regulation were allowed to continue in business at the level of business that they were doing and there have been no changes since. While West Virginia has a limit for total passengers on a river, once the allocations were given, they have no limit for an individual outfitter. In the case of the first Pennsylvania river, at the beginning of the regulatory process the State determined the number of passengers necessary for an outfitter to be financially successful. This determined the number of outfitters that could divide up the total passenger capacity of the river. This turned out to be 4 outfitters. These outfitter slots were then auctioned to the highest bidder, with the stipulation that the bidder had to be a Pennsylvania company and have experience in whitewater rafting.

Pennsylvania and West Virginia are similar to Maine in locating the responsibility for coordinating and implementing regulation of the industry within a department that would have knowledge of the matter being regulated (e.g. State Parks and Natural Resources, respectively) rather than in a department that has knowledge of regulation procedures in general (e.g. Maine's Department of Professional and Financial Regulation). Locating such responsibility in a non-regulatory agency was commented upon unfavorably in the Vermont Law Review analysis of Maine's whitewater legislation which was cited in the executive summary of this report.

Like Maine, Pennsylvania does not have a whitewater regulatory board, i.e. composed of outfitters and private citizens. West Virginia does have such a board. It is composed of members of the regulatory department, outfitters, industry customers and non-rafting residents.

West Virginia is similar to Maine in requiring a public hearing of proposed rules. Pennsylvania does not require such a hearing.

### III. The 1988 Rafting Season

#### A. Licenses issued

Twenty-eight licenses were issued for commercial whitewater rafting in 1988. This is one more than any previous year and three more than last year. Forty-three percent of these companies had allocations (most did not request them). There has been a consistent down trend since 1984 in the percent of licensed outfitters having allocations.

#### B. Total passengers carried

##### 1. Revision of 1987 figures

Due to late reporting by several outfitters there is a considerable change in the 1987 figures as reported in last year's report and what the Department is now considering to be the 1987 figures. This situation is shown below:

	<u>Kennebec River</u>			<u>Penobscot River</u>			<u>All Rivers</u>		
	#	% Change vs. 1986	#Change vs. 1986	#	% Change vs. 1986	#Change vs. 1986	#	% Change vs. 1986	#Change vs. 1986
Original Report	28646	+4	+1100	17044	-6	-1086	48793	+1	+ 565
Revised Report	30229	+10	+2683	18745	+3	+ 615	52118	+8	+3890

##### 2. Analysis of trend and past year.

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

	<u>Kennebec River</u>			<u>Penobscot River</u>			<u>All Rivers</u>		
	#	% Change vs. Prev. Year	#Change vs. Prev. Year	#	% Change vs. Prev. Year	#Change vs. Prev. Year	#	% Change vs. Prev. Year	#Change vs. Prev. Year
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
1987	30229	+10	+2683	18745	+ 3	+ 615	52118	+ 8	+ 3890
1988	29711	- 2	- 518	18997	+ 1	+ 252	51662	- 1	- 456

The 1988 figures are probably slightly inflated by the Court order discussed elsewhere in this report which allowed some outfitters to use the greater of their 1987 or 1988 allocations. However, the impact of this is judged to be minor and does not alter the conclusion that in terms of long-term trend the era of rapid growth of the industry appears over, particularly on the Penobscot.

While a number of reasons have been given for the leveling off in growth of the rafting industry, it is the Committee's position that it is primarily due to the maturing that most industries experience. While there have been some recent drop offs in river flow on both rivers in the last few seasons, this does not seem to correlate with the number of passengers carried. The argument that growth has slowed because outfitters have reached their allowed capacity is not supported by data on percentage of allocation use, as discussed elsewhere in this report. A history of river flow data is in Appendix Tables IX and X.

In terms of the past year, the Penobscot did not vary significantly from its recent trend of flat growth. The Kennebec went from recent moderate growth to an actual loss. This may well have been occasioned by a major decrease in raftable flow in 1988 brought on by the unusually dry spring.

### 3. -Trend in allocation days and nonallocation days.

Forty-five percent of the passengers carried on the Kennebec are carried on Saturdays, the one allocation day on that river. The next closest day is Friday with 13%. This trend has not changed over time. Interestingly, the lack of a requirement for an allocation on Friday doesn't result in any more dispersal of the available business, as shown in the chart below:

	<u>Friday</u>	<u>All Days</u>
Market Share		
Top Company	23.2%	18.3%
Top 2 Companies	37.8%	32.6%
Top 3 Companies	51.4%	42.5%
Top 4 Companies	60.0%	51.0%
Companies without allocations	1.9%	2.3%

On the Penobscot 72% of the passengers are carried on Saturday and Sunday, the two allocated days. There has been little change in that figure over time. On neither river did the number of passengers on any nonallocated day come close to the allowed capacity for that river.

#### 4. Nonallocated rivers.

The Dead River presents an unusual situation in that rafting is restricted to 2 Mondays in May when the Kennebec Water Power Company makes its only water power releases of the season sufficient for commercial rafting. Approximately 3,000 passengers were carried on the Dead River in 1988, a figure equal to 6% of total State passengers and representing a 6% decrease versus a year ago.

On each of the two rafting days of the season over 1,000 passengers were carried. This is in excess of the highest allowed figure for the State's two allocated rivers, i.e. 1,000 passengers weekdays on the Kennebec. Also, based on the data provided to the Committee, it would appear that several companies are exceeding the limit of 80 passengers per river per day. However, a study published in February, 1988 by the Bureau of Parks and Recreation found no need at that time for additional regulations of the Dead River and indicated that companies were legally getting around the 80 passenger limit by setting up affiliated companies. (Committee data shows only one affiliated company.) This study did recommend that the Whitewater Safety Committee consider additional means to assure the safety of rafters on this river and the Rapid River. The 1988 report of the Safety Committee did not cover this subject and the Advisory Committee is not aware of the status of this issue.

As shown on the following table, the Market Share situation on the Dead River is considerably different from that on the Kennebec and the Penobscot.

	<u>Dead</u>	<u>Kennebec</u>	<u>Penobscot</u>
Market Share of:			
Largest Company	8.3%	18.3%	19.6%
2 Largest Companies	16.4%	32.6%	37.7%
3 Largest Companies	24.4%	42.5%	55.0%
4 Largest Companies	32.7%	51.0%	64.8%
Companies without allocations*	27.6%	2.3%	1.3%

\*(For Dead River = No allocations on either other river)

#### C. Market Share Analysis.

A review of data on outfitters share of market yields the following conclusions:

1. Business on the Penobscot is more concentrated than on the Kennebec.
2. Business on both rivers is less concentrated than it used to be.

3. For each river the largest company accounts for about one fifth of all passengers carried and the largest two account for about one third. On the Penobscot 3 companies account for over 50% of all passengers, while four companies are required on the Kennebec to reach the 50% level.

Support data for this section is in Appendix Table XI.

D. Allocations Issued Use

1. Number.

Sixteen outfitters requested allocations on the Kennebec for 1988. This is consistent with past years. Twelve, or 75%, were granted allocations. This is down from previous years when generally all those requesting were granted some allocation.

On the Penobscot there were 10 requests for Saturday and 11 for Sunday. This is down by 2 from 1985, the last year that allocations were reassigned. One Saturday applicant and 2 Sunday applicants did not receive allocations, which percentage of success is consistent with 1985.

2. Use.

a. -Under Use-Overall.

A major problem identified by the Committee in the past has been the emphasis which the scoring system gives to the 10 best days and the failure of outfitters to use their total allocation over the entire season. As the table below shows, this failure to use allocations over the season continues to be a problem and in 1988 extended even to the Penobscot on Sunday on the 10 best days.

	<u>% of Allocations Used-Total Season</u>				<u>% of Allocations Used-10 Best Days</u>			
	<u>1985</u>	<u>1986</u>	<u>1987*</u>	<u>1988</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
Kennebec Saturdays	73%	75%	NA	80%	94%	95%	97%	96%
Penobscot Saturdays	73	72	NA	70	94	95	96	88
Penobscot Sundays	59	54	NA	54	83	83	81	74

\*Data for 1987 was not computed

The change in 1989 to scoring based on all allocated days may create some improvement. The Department is also looking into the possibility of reducing the allocation days to those in the heart of the season. However,

allocation usage on the Penobscot, particularly on Sundays, would indicate that not even this may be the solution. The Committee is hopeful that the reworking in 1989 of the guaranteed allocations for those with minimum scoring may result in greater allocation use. If no improvements are noted in next year's data, this is a subject which needs to be addressed in a major fashion.

b. Under Use - Individual outfitters.

On the Kennebec on Saturdays, the only one of the 3 allocated days with an adequate number of small companies to allow generalization, under use of an allocation appears related to the total number of allocations held by a company, with those having the lesser number of allocations being most apt not to use them. There also seems to be consistency within a company, in that failure to use an allocation extends generally to all rivers on which that company operates. Lastly, of the companies which were in business in both years, two of the 5 companies with the poorest use record in 1985 were also among the poorest in 1988.

c. Over Use.

There were no days when the total allowed capacity of a river was exceeded. However, there were 64 days when an individual outfitter exceeded his allocation. This is out of a total of 527 outfitter days for a 12% incidence of overuse. This compares with 17% for the 1986 season, the last time this analysis was performed.

There appear to be 3 things common to a company which exceeds its allocations:

1. It has a smaller number;
2. It tends to do so on all allocation days on which it operates, i.e. Kennebec Saturdays and Penobscot Saturdays and Sundays; and
3. It tends to do so over time, i.e. the offenders in 1986 tend also the offenders in 1988.

The situation of exceeding allocations looks worse if one concentrates only on that river and that time period when the total capacity is approached, i.e. the Kennebec from July 9 to August 27. There were 8 allocation days during that period in 1988 and three companies exceeded their allocation on 4 of those 8 days.

In connection with this analysis, it should be noted that 2 years ago rules were changed which allowed an outfitter to exceed his allocation on a given day as long as his

average for the 10 best days did not exceed his allocation. Thus, it is the pattern among companies, as discussed earlier, that is of concern to the Committee, not any random incidence of exceeding allocations.

d. Non-licensed trips.

The law requires a license for commercial rafting. Neither a license nor an allocation is required for noncommercial rafting.

In 1988 there were 187 nonlicensed trips on the Kennebec, accounting for 4% of the total passengers. This is little change from 1986. On the Penobscot there were only 23 trips accounting for 148 passengers, in total. In the past, there has been a problem with commercial trips being run without a license. The Department has cracked down on this and indicates that the situation is under control in terms of direct violation of the law. There is, however, increasing circumvention of the law in terms of out-of-state individuals forming "clubs" for which the dues are the fee for the rafting trip. It is the Committee's understanding that the Department is reviewing ways to eliminate this practice.

Detailed data on allocation use is in Appendix Tables V-VIII.

E. Report of the Whitewater Safety Committee.

The law dealing with whitewater rafting sets up a Safety Committee. This committee is required to report annually to the Advisory Committee. This year's report shows that statistically, 1988 has been a very safe year for the commercial whitewater rafting industry. Based on the accident reports filed by the outfitters with the Department of Inland Fisheries and Wildlife (IF&W), and on the total number of commercial passengers run down Maine's rivers as recorded with IF&W, 1988 produced an accident rate of only 7 injuries per 10,000 passengers. The industry average for 1983-87 was 10 injuries per 10,000 passengers. The 1988 injury rate represents the lowest single year figure since these statistics have been gathered.

The raft injury rates for individual rivers show the Kennebec to be statistically safest with 5 injuries per 10,000 passengers, the Dead River with 7 per 10,000, and the Penobscot posting the highest rate of 10 per 10,000. While the Penobscot continues to be the most dangerous river, it is encouraging to note that the accident rate on this river has declined every year, posting its lowest ever figure in 1988.

The analysis of specific accidents in terms of nature of injury, accident cause, and accident site conforms closely to the 1983-87 statistics. Accident rates among individual outfitters also conform to previous patterns. The major injuries are distributed throughout the industry and no single outfitter shows worryingly high accident rates.

The Advisory Committee would like to make note of the fact that 12 MRSA section 7367 sets 2 year terms for Safety Committee members, but to date there has been no action taken relative to reappointing or replacing any member since the inception of the committee. The Advisory Committee has been told that all but one member continue to serve and wish to do so in the future.

#### F. Outfitter reports

12 MRSA Section 7369, subsection 9 requires each outfitter, including those without allocations, to submit a monthly report to the Department concerning the number of passengers carried on each river on each day and provides significant penalties for not doing so. Unfortunately, no date for their receipt is included. In addition, section 8 specifies that a \$1 fee for each passenger on any river must be received by the Department by the 10th of the following month.

The Committee was not provided with final figures for the 1988 season which ended in October until January 9th. Also, at roughly the same time, it was provided with corrected figures for the 1987 season significantly different than those submitted to it a year ago. In both cases, the reasons given were lateness in outfitter filing.

The Department has indicated that they feel that on their part they have been lax in following up on missing reports. Whatever the reason may be, the Committee is most concerned about this reporting situation. This concern has been mentioned in previous annual reports and the situation appears to have worsened rather than improved. The Committee finds it difficult to properly advise the Department when figures on the industry are not available on a timely and accurate basis and feels that this same absence should, in all probability, detract from the Department's ability to properly manage the industry.

IV. 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 7-1-87		\$14,153
Revenues Fiscal 1987		\$63,967
Distributed to Agencies		\$73,313
Warden Service	\$47,653	
Parks & Recreation	\$18,328	
Counties	<u>\$ 7,331</u>	
Balance 6-30-88		\$ 4,808

12 MRSA 7370 sub-§3 requires by February 1 each year a report by Inland Fisheries and Wildlife and Parks and Recreation to the Joint Standing Committee on Fisheries and Wildlife of their "planned expenditures for the next fiscal year and the next previous year." The Advisory Committee has interpreted this as meaning the current fiscal year (FY 89) and the next fiscal year (FY 90).

The results of this report for FY 89 are shown in the following table. Department proposed expenditures for 1990 are \$25,890. The Bureau did not provide 1990 figures but merely an indication of the type of activity planned.

	<u>IF&amp;W</u>	<u>Conservation</u>
Balance July 1, 1988	NA	\$29,951
Receipts FY 1989	\$47,653	19,375
Expenditures FY 1989	42,190	16,451
Balance June 30, 1989	NA	37,309

As the table indicates, receipts for both agencies exceed expenditures. This has been the case for some time for the Bureau. Their practice has been to carry a balance, as the Committee understands it against capital expenditures that might be required in the future.

Details on expenditure plans for both agencies is in Appendix Tables XII-XIV.

This is the first report of this type from the Department that has come before the Advisory Committee. It apparently has been Department practice to use the excess of receipts over expenditures on general expenses of the Warden Service. This practice appears to be counter to section 7370 which states that all monies from the fund are to be expended for purposes related to river recreation.

7255\*

**APPENDIX**

## CRITERIA FOR ASSIGNING ALLOCATIONS

	<u>1985-1987</u>	<u>1988</u>	<u>1989</u>	
			<u>Proposed</u>	<u>Final</u>
Experience	45	45	45	40
On Maine Rivers	35	45	35	40
Allocated Rivers	25	30	25	30
Years of Operation	NA	15	NA	NA
& passengers carried				
Experience	NA	15	NA	NA
Passengers carried	NA	NA	12.5	7.5
# of trips	NA	NA	NA	7.5
Years of operation &	NA	NA	12.5	15
experience				
Other Maine Rivers	10	15	10	10
Passengers carried	NA	NA	5	5
Years of operation &	NA	NA	5	NA
experience				
Years of experience &	NA	5	NA	NA
passengers carried				
Experience	NA	5	NA	NA
# of trips	NA	NA	NA	5
Non Maine Rivers	10	0	10	0
Passengers carried	NA		5	
Years of operation &	NA		5	
experience				
Safety Record	25	25	25	25
Financial Investment	15	15	15	15
Services Promised	15	15	15	15
Performance in meeting	15	25	25	30
past allocations				
10 Best days	25	25	NA	NA
All allocated days	NA	NA	25	25
Providing promised services				5
Other factors	5	5	5	5
Orderly Business Development	NA	NA	5	5
Hardship	NA	5	NA	NA
TOTAL POINTS	130	130	130	130

SOURCE: Department of Inland Fisheries & Wildlife

KENNEBEC SATURDAY ALLOCATION HISTORY

	1983	1984	1985	1986	1987	Requested 1988-1990 Allocations	1988-1990 Allocations 12/16/87	1988 Allocations Superior Court	Requested 1989-1990 Allocations	Proposed 1989-1990 Allocations
Magic Falls	0	0	0	0	0	40	0	0	0	0
Atlantic Outdoor Adventures	0	0	0	0	0	28	0	0	20	0
North Country Rivers	30	20	20	20	0	40	0	0	0	0
North American Whitewater	0	0	0	0	20	60	20	20	40	20
Voyagers Whitewater	20	20	20	20	20	20	0	20	20	20
All Outdoors	30	30	30	30	30	80	40	30	80	30
Rolling Thunder	40	40	40	40	40	60	80	40	80	20
Great Adventures	40	40	40	40	80	80	80	80	80	76
New England Whitewater Center	40	60	60	80	80	80	80	80	80	79
Eastern River	80	80	80	80	80	80	80	80	80	78
Crabapple Whitewater	20	30	30	40	50	80	80	80	80	80
Downeast Rafting	80	80	80	80	80	80	80	80	80	80
Maine Whitewater	80	80	80	80	80	80	80	80	80	78
Unicorn Rafting	80	80	80	80	80	80	80	80	80	80
Wilderness Rafting	60	80	80	80	80	80	80	80	80	79
Northern Outdoors	80	80	80	80	80	80	80	80	80	80
Back Country River	50	0	0	0	0	0	0	0	0	0
Rapid Transit	20	30	30	0	0	0	0	0	0	0
Whitewater Adventures	50	50	50	50	0	0	0	0	0	0
# of Outfitters by Size of Allocation										
Max (80)	5	6	6	7	8		10			4
Med (40-79)	6	4	4	4	2		1			5
Small (20-39)	5	5	5	3	3		1			4
Total # of Outfitters with Allocations	16	15	15	14	13		12			13

TABLE 11

PENOBSCOT SATURDAY ALLOCATION HISTORY

	1983	1984	1985	1986	1987	Requested 1988-1990 Allocations	1988-1990 Allocations 12/16/87	1988 Allocations Superior Court	Requested 1989-1990 Allocations	Proposed 1989-1990 Allocations
Magic Falls	0	0	0	0	0	40	0	0	0	0
Rolling Thunder	16	20	20	20	20	50	16	16	56	16
North Country Rivers	20	16	16	32	32	40	16	32	40	40
New England Whitewater	0	0	0	20	68	80	48	68	80	72
Downeast Rafting	48	56	64	64	64	80	80	78	80	80
Eastern River Expeditions	80	80	80	80	80	80	80	80	80	80
Wilderness Rafting	48	64	64	64	64	80	80	78	80	16
Maine Whitewater	60	72	72	72	72	80	80	80	80	80
Unicorn Rafting	72	80	80	80	80	80	80	80	80	80
Northern Outdoors	80	80	80	80	80	80	80	80	80	80
Wildwater Adventures	48	48	48	48	48	0	0	0	0	0
Back Country River	16	0	0	0	0	0	0	0	0	0
Great Adventures	40	0	0	0	0	0	0	0	0	0
Rapid Transit	16	20	20	0	0	0	0	0	0	0
Whitewater Adventures	16	24	16	0	0	0	0	0	0	0
Crabapple Whitewater	0	0	0	0	0	0	0	0	16	16
# of Outfitters by Size of Allocation										
Max (80)	2	3	3	3	3		6			5
Med (40-79)	6	4	4	4	5		1			2
Small (16-39)	5	4	4	3	2		2			3
Total # of Outfitters with Allocations	13	11	11	10	10		9			10

PENOBSCOT SUNDAY ALLOCATION HISTORY

	1983	1984	1985	1986	1987	Requested 1988-1990 Allocations	1988-1990 Allocations 12/16/87	1988 Allocations Superior Court	Requested 1989-1990 Allocations	Proposed 1989-1990 Allocations
Magic Falls	0	0	0	0	0	40	0	0	0	0
Great Adventures	40	0	0	0	28	28	0	28	0	0
Rolling Thunder	16	20	28	28	28	40	0	0	56	16
North Country Rivers	16	16	0	16	16	40	16	16	40	40
New England Whitewater	16	32	36	60	80	80	64	80	80	72
Maine Whitewater	56	68	72	72	72	80	80	79	80	80
Downeast Rafting	48	56	56	56	56	80	80	76	80	80
Eastern River Expeditions	80	80	80	80	80	80	80	80	80	80
Wilderness Rafting	48	32	40	40	40	80	80	73	80	16
Unicorn Rafting	72	80	80	80	80	80	80	80	80	80
Northern Outdoors	80	80	80	80	80	80	80	80	80	80
Back Country River	16	0	0	0	0	0	0	0	0	0
Rapid Transit	16	32	24	0	0	0	0	0	0	0
Whitewater Adventures	16	32	16	0	0	0	0	0	0	0
Wildwater Adventures	40	40	48	48	0	0	0	0	0	0
Crabapple Whitewater	0	0	0	0	0	0	0	0	24	16
# of Outfitters by Size										
of Allocation										
Max (80)	2	3	3	3	4		6			5
Med (40-79)	6	3	4	5	3		1			2
Small (16-39)	6	6	4	2	3		1			3
Total # of Outfitters with										
Allocations										
	14	12	11	10	10	11	8	9	10	10

TABLE IV

RANKING OF COMPANIES BASED ON % OF ALLOCATION USED  
(1 = Highest % used)

	Kennebec Saturday			Penobscot Saturday			Penobscot Sunday		
	1985	1986	1988	1985	1986	1988	1985	1986	1988
Crabapple	2	2	9	NA	NA	NA	NA	NA	NA
Downeast	7	3	7	4	5	7	7	6	7
Eastern River	6	5	5	1	1	4	2	4	3
Great Adventures	12	9	13	NA	NA	NA	NA	NA	9
Maine Whitewater	8	3	3	5	7	8	8	2	6
New England Whitewater	7	4	6	NA	9	6	3	3	5
North American	NA	NA	4	NA	NA	NA	NA	NA	NA
Northern Outdoors	1	1	1	2	3	2	1	1	1
Rolling Thunder	9	8	12	9	6	3	9	9	NA
Unicorn	11	5	2	3	2	1	5	5	2
Voyagers	10	10	10	NA	NA	NA	NA	NA	NA
Wilderness	5	7	11	6	7	9	3	6	8
All Outdoors	3	11	8	NA	NA	NA	NA	NA	NA
North Country	NA	NA	NA	7	4	5	6	8	4

SOURCE: Industry data provided by the Department of Inland Fisheries & Wildlife.

KENNEBEC RIVER - SATURDAY

1988 USE OF ALLOCATION

	Crab Apple (80)	Downeast (80)	Eastern River (80)	Great Adventures (80)	Maine Whitewater (80)	New England Whitewater (80)	North American (20)	Northern Outdoors (80)	Rolling Thunder (40)	Unicorn (80)	Voyagers (20)	Wilderness (80)	All Outdoors (30)	Total (830)	%
May 21	38	31	54	41	75	37	17	75	3	64	14	33	32	514	61.9
28	34	53	10	6	18	25	20	77	12	52	0	8	0	315	38.0
30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
June 4	39	68	44	4	74	65	21	79	4	84	10	50	31	573	59.0
11	51	80	69	19	69	68	15	80	16	74	7	40	27	615	74.1
18	39	66	68	13	72	62	0	79	0	75	9	55	30	568	68.4
25	80	77	74	49	79	79	15	78	19	83	17	80	0	730	88.0
July 2	41	47	74	44	61	65	14	79	19	68	6	20	13	551	66.4
4	19	0	0	0	22	0	0	46	5	28	0	2	0	122	14.7
9	80	74	82	70	78	78	21	80	37	77	20	80	32	809	97.5
16	80	78	77	70	80	82	20	79	33	82	20	72	32	805	97.0
23	80	68	81	79	80	80	20	78	39	80	20	77	30	812	97.8
30	80	75	80	76	76	72	22	75	40	83	20	72	30	801	96.5
Aug. 6	80	78	82	80	80	76	12	77	42	67	20	80	29	803	96.7
13	79	80	74	64	77	83	20	81	42	84	21	73	32	810	97.6
20	80	81	81	75	73	76	22	79	42	80	21	75	32	817	98.4
27	80	78	64	56	79	82	20	79	41	79	20	70	25	773	93.1
Sept 3	80	55	76	16	46	40	9	81	12	60	14	20	22	531	64.0
5	28	0	0	0	0	16	0	6	0	25	0	0	0	75	9.0
10	43	49	69	16	45	53	22	69	28	71	19	16	29	529	63.7

PENOBSCOT RIVER - SATURDAY

1988 Use of Allocation

Date	Wilderness (78)	Downeast (78)	Eastern River (80)	Maine Whitewater (80)	New England Whitewater (68)	North Country (32)	Northern Outdoors (80)	Rolling Thunder (16)	Unicorn (80)	Total (592)	%
May 21	20	21	47	42	25	32	79	7	67	340	57.4
28	10	25	15	31	42	13	71	16	70	293	41.5
30 Memorial Day	0	0	0	0	0	0	0	0	0	0	0
June 4	0	70	77	50	60	32	76	16	78	459	77.5
11	57	68	74	36	60	11	75	13	78	472	79.7
18	63	26	84	44	54	15	78	19	75	458	77.4
25	62	59	78	71	66	32	80	14	82	544	91.9
July 2	6	10	27	32	17	16	74	0	51	233	39.4
4	10	0	24	0	0	0	0	0	0	34	5.7
9	27	66	76	78	50	29	72	16	67	481	81.3
16	80	79	65	81	48	14	75	14	80	536	90.5
23	77	53	62	80	67	29	80	16	82	546	92.2
30	54	75	81	0	44	34	74	16	72	450	76.0
Aug. 6	0	79	81	77	70	33	79	18	79	516	87.2
13	0	78	81	58	62	34	78	16	82	489	82.6
20	0	79	82	69	65	30	78	11	79	493	83.3
27	0	73	75	69	49	34	72	10	79	461	77.9
Sept. 3	0	21	17	20	14	20	0	18	0	110	18.6
5 Labor Day	0	0	0	0	0	0	0	0	10	10	1.7
10	0	24	43	0	32	11	35	6	52	203	34.3

PENOBSCOT RIVER - SUNDAY

1988 Use of Allocation

Date	Wilderness (73)	Downeast (76)	Eastern River (80)	Great Adventures (28)	Maine Whitewater (79)	New England Whitewater (80)	No. Country Rivers (16)	Northern Outdoors (80)	Unicorn (80)	Total (592)	%
May 22	26	17	79	0	32	10	0	70	18	252	42.6
29	75	31	67	0	70	48	0	79	66	436	73.6
30 Memorial Day	0	0	0	0	0	0	0	0	0	0	0
June 5	3	0	43	28	16	29	18	76	63	276	46.7
12	50	71	36	0	11	53	0	69	84	374	63.2
19	26	0	23	0	48	15	15	77	62	266	44.9
26	8	24	59	0	14	47	0	79	43	274	46.3
July 3	26	37	80	0	0	16	11	75	75	320	54.1
4	10	0	24	0	0	0	0	0	0	34	0.1
10	34	31	35	0	35	41	15	65	27	283	47.8
17	37	23	81	15	49	19	18	25	84	351	59.3
24	68	20	38	0	26	57	0	78	74	361	61.0
31	27	22	83	7	0	54	16	74	73	356	60.1
Aug. 7	0	66	74	15	66	80	18	78	81	478	80.7
14	4	16	67	16	74	77	13	68	80	415	70.1
21	0	46	68	21	40	58	11	79	81	368	62.2
28	0	31	62	0	48	58	14	77	76	366	61.8
Sept. 4	10	21	34	0	15	10	18	28	64	200	33.8
5 Labor Day	0	0	0	0	0	0	0	0	10	10	1.7
11	17	0	20	0	0	0	0	0	24	61	10.3

NUMBER OF HOURS OF "RAFTABLE FLOW"\*  
ON THE KENNEBEC BY DAY OF WEEK

<u>Day</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
Sunday	58	48	44	40	3
Monday	93	83	79	75	23
Tuesday	96	89	83	77	19
Wednesday	97	94	87	75	23
Thursday	91	83	79	76	18
Friday	93	86	88	73	18
Saturday	<u>79</u>	<u>84</u>	<u>74</u>	<u>59</u>	<u>12</u>
TOTAL	607	567	534	475	116

\*Hours of "raftable flow" = number of hours between 11:00 a.m. and 5:00 p.m. when flow at The Forks gaging station is between 4,000 cfs and 10,000 cfs, which is the equivalent of (447 to 674 feet).



# Great Northern Paper

a company of  
Great Northern Nekoosa Corporation

December 12, 1988

Mr. John Knox  
Office of Policy and Legal Analysis  
State House Station 13  
Augusta, Maine 04330

Ref: Flows in West Branch of Penobscot River

Dear Mr. Knox:

The average monthly water flow information you requested below McKay Station on the West Branch of the Penobscot River in cubic feet per second (cfs) is as follows:

<u>MONTH</u>	<u>YEARS</u>				
	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
May -	3389	1922	1963	2361	1671
June	5630	1926	2149	2563	1964
July	3437	1941	2051	2106	1830
August	3316	2163	1408	2221	2104
September	2982	1613	1907	1662	2321

If we can be of more assistance please call.

Sincerely,  
  
 Paul I. Firiotte  
 Power Systems Manager

**SHARE OF MARKET**  
**(Outfitters Currently in Business)**

	Kennebec						Penobscot					
	1983	1984	1985	1986	1987	1988	1983	1984	1985	1986	1987	1988
All Outdoors Adventure	1.7%	3.5%	5.0%	2.9%	3.6%	3.6	0%	0%	0%	0%	0%	0%
Atlantic Outdoor	0	0	0	.1	.4	.1	0	0	0	0	0	0
Crabapple Whitewater	3.9	5.1	5.3	6.1	6.0	8.0	0	0	0	0	0	0
Downeast Rafting	12.9	14.7	12.4	11.4	9.8	8.4	6.4	7.4	8.7	9.8	5.8	7.9
Eastern River	10.4	7.2	9.5	8.7	7.6	9.9	28.5	27.2	22.0	17.6	20.0	19.6
Great Adventures	3.7	3.3	2.5	2.3	3.9	3.9	1.0	1.3	.4	.6	.8	.6
Maine Whitewater	11.2	9.7	7.9	7.3	7.6	8.5	6.2	8.3	8.0	9.7	7.4	8.0
New England Whitewater	4.3	5.0	6.2	9.4	8.4	8.1	.7	1.7	2.7	5.7	8.1	9.8
North American Whitewater	0	0	0	.6	2.0	1.9	0	0	0	.2		.3
North Country Rivers	.9	2.2	2.4	1.9	1.0	1.1	.81	1.0	2.9	4.3	4.2	4.8
Northern Outdoors	23.5	20.9	20.2	19.3	19.5	18.3	16.5	16.6	17.6	16.6	17.4	17.3
Rolling Thunder	2.5	3.8	.4	5.3	5.6	3.9	1.5	2.7	2.9	3.9	2.8	3.3
Unicorn Rafting	11.8	8.8	10.6	11.4	12.3	14.3	15.6	15.8	17.8	19.5	19.6	18.1
Voyagers Whitewater	1.9	2.3	2.2	1.8	2.5	2.1	.2	0	0	.5	.8	.2
Wilderness Rafting	5.2	6.5	7.3	7.5	8.4	7.5	8.4	8.3	9.2	6.9	8.1	9.3
TOP 1	23.5	20.9	20.2	19.3	19.5	18.3	28.5	27.2	22.0	19.5	20.0	19.6
TOP 2	36.4	35.7	32.6	30.8	31.8	32.6	45.1	43.9	39.8	37.1	39.6	37.7
TOP 3	48.3	44.9	43.3	42.2	41.6	42.5	60.7	59.2	57.4	53.8	57.0	55.0
TOP 4	59.5	53.8	52.8	51.6	50.0	51.0	69.1	67.6	66.6	63.7	65.1	64.8

Source: Industry data provided by the Department of Inland Fisheries & Wildlife.

DEPARTMENT OF INLAND FISHERIES AND WILDLIFE  
Whitewater Hours, Costs and Activities  
FY89 and FY90

TABLE XII

FY89

Commissioner's Office and  
Administration:

Personnel:	1,182 Hours	\$23,335
All-Other:	Hearing Rooms	525
	Advertising	600
	Printing, Mailing	<u>300</u>
Subtotal		<u>\$24,760</u>

Warden Service:

Personnel:	854 Hours	\$11,050
All-Other:	Mileage (11,500 miles @ .22¢)	2,530
	Lodging, Travel, Meals	1,850
	Printing, Mailing	300
	Confrence Room-Civic Center	<u>1,700</u>
	Subtotal	

FY89 Department Total

\$42,190

FY89 Activities:

1. Allocation system rule-making
2. Complete allocation process
3. Compiling and providing information
4. Conducting examination boards
5. Enforcement
6. Program administration

## DEPARTMENT OF INLAND FISHERIES AND WILDLIFE

TABLE XIII

## Whitewater Hours, Costs and Activities

FY90Commissioner's Office and  
Administration:

Personnel:	100 Hours	\$2,500
All-Other:	Printing, Mailing	<u>300</u>
	Subtotal	\$2,800

## Warden Service:

Personnel:	1,150 Hours	\$15,720
All-Other:	Mileage (16,000 miles @ .22¢)	3,520
	Lodging, Travel, Meals	1,850
	Printing, Mailing	300
	Conference Room-Civic Center	<u>1,700</u>
	Subtotal	\$23,090

FY90 Department Total

\$25,890

## FY90 Activities:

1. Compiling and providing information
2. Conducting examination boards
3. Enforcement (Increased by adding 2 Assistant Wardens in FY90)
4. Program Administration

November 14, 1988

DEPARTMENT OF CONSERVATION  
BUREAU OF PARKS AND RECREATION  
WHITE WATER RAFTING REPORT

Fiscal Year 1988

Remaining unexpended funds from previous years	24,392.57
Funds received from IF & W - June, 1988	17,752.33
TOTAL:	<u>42,144.90</u>
Total expenditures for Fiscal Year 1988	12,194.35
Amount available for Fiscal Year 1989	29,950.55

Expenditures in Fiscal Year 1989 through September 1988

Gas, oil, grease	386.18
Misc. auto expense	471.56
Repairs - buildings, roads, grounds	195.30
Capital Equipment	2,996.40
Misc. Operating Expense	252.41
Misc. Supplies	92.92
Di-Cap	39.84
TOTAL:	<u>4,434.61</u>

## Anticipated expenditures through June 30, 1989

Rent of Land - GNP	\$3,176.00
Gasoline, oil & grease	600.00
Vehicle Insurance	240.00
Repair Canoes	100.00
Capital Equipment (repeater)	4,000.00
Site Evaluations	<u>600.00</u>
MCC	1,000.00
Miscellaneous Expenses	1,500.00
Di/Sta Cap	800.00
TOTAL:	<u>12,016.00</u>

Projected total expenditures - FY89	16,450.61
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Anticipated revenue from IF & W - April 1989	19,375.00
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Anticipated funds as of July 1, 1989	37,308.94
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Expenditures for FY90 will include the usual leases for commercial sites on the Penobscot River, insurances and general operating expenses. General site repair and the purchase of several capital items such as: a canoe, outboard motor and portable radios.

October 28, 1988

Mr. John Knox  
Office of Legislative Assistance  
State House Station  
Augusta, Maine 04333

Dear Mr. Knox,

The commercial whitewater rafting act was passed into law, in part, "to encourage a wide diversity of whitewater trip experiences and services, to maximize competition and to provide a system of allocating river use that is simple and fair". This act is a good one, and stands as the foundation of this strong and prosperous industry. It is my belief, however, that the interpretation of the scoring criteria, from the law to sound rule making, has not been correctly implemented to reflect the intent of the legislation, and as a result, threatens the survival of the small and medium size whitewater outfitters. If the rafting industry is to develop to its full potential, these unsound rules must be challenged, and I respectfully request that public meetings be held to correct these improprieties before the 1989 and 1990 allocations are awarded.

Allocations are used to regulate the number of passengers that an outfitter can carry on weekend and holiday dates during the busy spring and summer months. Some outfitters can run as many as 240 guests per weekend and some as few as 20. Misdirected scoring criteria now used to reallocate weekend dates, award outfitters "experience points" based on the number of passengers carried over a season. Based on a 16 week season, an outfitter with the maximum allocation has the opportunity to run as many as 3840 guests and the potential to gain as many as 3840 additional "experience points" (16 weekends X 240 allocated spaces) and a company restricted to running just 20 guests, has the opportunity to gain just 320 "experience points" (16 weekends X 20 allocated spaces). A "allocation opportunity factor" is built into this system and creates a huge numerical bias in the awards system, greatly favoring those companies with large allocations, and acts as a extreme disadvantage to companies that have a small number of allocations.

The allocation system also awards points for the experience of its staff. Outfitters with large weekend allocations must employ a large staff, and thus are awarded a large number of points for staff experience. Small and medium size outfitters that hold just a fraction of the allocations given to large outfitters, will employ proportionately smaller staffs, and thus receive fewer experience points. The "allocation opportunity factor" directly effects the number of points that a outfit has the potential to collect.

A scoring criteria called for in the Whitewater Act, but ignored in the scoring criteria, is to evaluate a rafting companies commitment to serve the public, by counting the number of trips run during a season. The law recognizes river outfitters that run trips day in and day out, providing jobs and income for the surrounding communities during on-peak and off-peak days. Those companies that choose to work just the high profit weekends and fold up shop during the less profitable weekdays are not providing a service, and justly, should not be granted additional service or experience points. This criteria is a good indicator of an outfitters dedication to serve the public and work the rivers, and should be a factor used in the allocation scoring criteria.

The scoring criteria awards points based on financial commitment to the rafting industry. The more dollars a company has invested in rafting, the more points awarded. This scoring criteria also has a numerical bias built into the system. The number of allocations held by an outfitter is the single most decisive factor in determining the amount of money a company must invest. A company with the maximum allocation, 240 guests per weekend, must have the gear to safely service 240 guests, including rafts, paddles, busses, base camp facilities, etc.. Companies that are restricted to running just a small fraction of that maximum are at an extreme disadvantage trying to match the large companies dollar for dollar.

In the financial commitment criteria of the whitewater act it is written that "the financial investment of the outfitter in equipment, training, insurance, facilities and services directly related to commercial whitewater rafting trips" be considered when evaluating proposals. Over the years we have been seeing a "Howard Johnson Effect" distort this criteria rating, where restaurants, hot tubs, wind surfers, satellite dishes, etc., are being added under the service and facility portion of this formula. While these amenities are nice to attract additional business, and to garner additional income from a rafting client, these extras have no part in evaluating the competence of a commercial whitewater outfitter and are not intended to be included as goals that satisfy the river management objectives. A more valid criteria for rating outfitters who meet the river management objectives of "providing a quality wilderness experience and a diversity of whitewater experiences and services", is to look closely at the river trip these outfitters provide. Does the outfitter take the extra effort to pack a lunch and serve it on the river away from road traffic, parking lots and base camps? Does the outfitter bus from miles and miles away, or do they meet their guests close by the river? Does the outfitter spend less time on the river and more time hawking T-shirts and alcohol? Does the outfitter provide a price discount to families with young children and young adults to make rafting more advantageous and more accessible to more people? The allocation system, as called for in the Commercial Whitewater Act, is to evaluate the "ability of the outfitter to serve the interests of the consuming public by providing a type of

trip experience that is in the public interest..." When evaluating the financial investment and service criteria categories, we should focus on the rafting trip experience, and not the "Howard Johnson" experience.

The Whitewater Rafting Act is written to recognize companies that "provide...economical...whitewater trips". Rafting companies that employ sound business practices and watch their financial exposure can offer a less expensive, high quality product. The law calls to award companies that provide a quality product at a good price, yet in the allocation scoring criteria, this objective has been ignored. It will be good for the rafting industry and good for the welfare of the public if the competitive pricing criteria is placed back into the scoring process.

The goals of the allocation system call for "maximized competition, efficient use of allocations and prevention of evasion of the system". The scoring criteria used in evaluating "performance meeting past allocations" is now set up to consider only the ten best days, not the whole allocated season. This misdirection of legislative intent should be corrected to reflect how many allocated spaces went unused, and award points to those outfits who, over the whole allocation period are working the rivers and filling their allocated spaces.

The foundation of our industry is based on the Commercial Whitewater Rafting Act. My hopes are that by holding public meetings, directed toward correcting the improprieties in the scoring system, and reflecting the river management objectives and goals of the Whitewater Rafting Act, the allocation scoring criteria can get back on track, and provide a system of allocating our public river resources that reflects the intent of our laws.

Very sincerely yours,

  
Charles R. Dunn  
Rolling Thunder, Inc.  
The Forks, Maine

Pine Tree Whitewater  
Box 437, Moosehead Lake  
Greenville, Maine 04441

November 17, 1988

John Knox, Legislative Analyst  
State House Station 13  
Office of Policy and Legal Analysis  
Augusta, Maine 04333

Dear Mr. Knox:

Due to prior business commitments and short notification in regard to the Whitewater Advisory Committee Meeting on November 22, we are unable to personally participate at that time. Therefore, we are submitting the following issues that need your consideration and determination for appropriate distribution.

The first issue is how certain companies fulfill their allocations by reservation agreements or booking agreements with other companies. We feel that companies which must resort to that type of business could not sustain their allocations on their own and therefore would not deserve them upon review. There have been specific cases this summer when one large company who was fully booked took bookings and lodging reservations for another large company who had plenty of room. We are not referring to ten or fifteen customers, but to forty at a time during the peak August season. This is similar to the "sister company" and "affiliated outfitter" banned in the legislation controlling outfitters. We hope that a rule will be proposed to eliminate this monopolistic practice once and for all.

The second issue also concerns how companies fulfill their allocations by selling trips at vastly reduced rates. If a company must do that to get business, then business can't be that good. A simple discount for groups is not what we are referring to. When a company's performance is measured against how many allocated slots it filled, then the manner in which those slots are filled is critical. And it is critical that all allocated slots be charged the standard price with an exception for discounts allowed for groups to be no more than 5%. Large discounted trips greater than that should go on weekdays. It just might remove some of the crowding we now see. We are not looking for protection against price wars. But we are looking for equal treatment and representation within the allocation process.

The third issue which concerns us is the rate at which allocation fulfillment is measured. Some larger companies do not make good use of their allocations on a seasonal basis. Measured against all allocated days, it appears that 70 or 80 percent might be an accurate picture rather than 100% on ten best days. Looking at the numbers of rafters on the river this season, it seems that the maximum recreational limit on the Penobscot was not met until well into July, dropping off dramatically following Labor Day. There should be no allocated days during the month of June and following Labor Day weekend. There just isn't the business out there to crowd the river and allocated companies are not using the allocations given to them at those times. This could be reviewed on an annual basis.

One issue that has us confused is the number by which the allocation is increased or issued. Our rafts hold a total of fourteen guests. Our bus has seats for fourteen. If we were to have an allocation any greater than that, we would have to double our investment in transportation and river equipment since we refuse to overcrowd our boats or our bus. Some companies don't mind doing that, but we feel it isn't a safe thing to do. We hope that allocations will be awarded in multiples that are actually useful to the company that receives them. Otherwise, those might be spaces that another company could use.

One minor issue is that some companies throw their lifejackets on their own trainees to make the count higher. We have no specific suggestions about how to curb the practice. Notarized monthly statements cost companies \$1 per false guest. These figures could be reconciled with those of CMP and GNP if that would help.

The final issue is the length of time for which the allocation is granted. Abuses and inconsistencies can abound within the present three year period. When a company performs at a percentage of allocation during the third year, then that should be the allocation awarded for the following period of time unless fewer spaces are requested. I feel that three years is too long and that two years is more realistic in terms of marketing growth.

We are a small company, just starting this year. I've been guiding for three years and my husband has been guiding for seven. Our goal is to give the best quality service we can. Everything we do is a reflection of the Maine vacation experience, and that's why we chose the name "Pine Tree Whitewater." Our customers are doctors, dentists, lawyers, bankers and people who seek and recognize quality. They go first class. We want to stay small to offer this quality experience.

I want to thank you for your time and assistance on November 7. We appreciate your consideration and any further assistance in the future. If you have any questions, please do not hesitate to contact us at your convenience.

Sincerely,

*Priscilla Edwards & Brad Edwards*  
Priscilla and Brad Edwards 

PE/BE

cc

enc: Brochure