

MAINE STATE LEGISLATURE

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STATE OF MAINE
LEGISLATURE

FINAL REPORT
OF THE
MAINE SPECIAL COMMISSION
ON BOATING

JANUARY, 1989

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Sen. Edgar E. Erwin
Sen. Ronald E. Usher*
Rep. Thomas A. Duffy
Rep. James Mitchell
Rep. Richard P. Ruhlin
Comm. William J. Brennan
Comm. William J. Vail
Ginette Arey
Richard Carver
David S. Greep
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**FINAL REPORT
MAINE SPECIAL COMMISSION ON BOATING**

Executive Summary

The 113th Legislature created the Maine Special Commission on Boating in 1988 to respond to the growing concern over unsafe operation of watercraft of all types throughout Maine, on both inland and coastal waters. The Commission consists of 12 members:

Senator Ronald E. Usher Commission Chair	Joint Standing Committee on Fisheries and Wildlife
Senator Edgar E. Erwin	Joint Standing Committee on Fisheries and Wildlife
Representative Thomas A. Duffy	Joint Standing Committee on Fisheries and Wildlife
Representative James Mitchell	Joint Standing Committee on Marine Resources
Representative Richard Ruhlin	Joint Standing Committee on Marine Resources
Commissioner William Brennan	Department of Marine Resources
Commissioner William Vail	Department of Inland Fisheries and Wildlife
Ginette Arey public member	Sebago Lake Sebago Lake Association
Richard Carver public member	Beals Commercial fisherman
David S. Greep public member	Raymond Sebago WaterSports
Milton F. Huntington public member	Augusta Recreational boater
Joan C. Irish public member	Yarmouth President, Congress of Lake Associations

The Commission held 2 public hearings in Portland and Bangor in August, the height of the boating season, to take public testimony about the problems with boating in Maine. The Commission also received many letters providing written testimony.

After sifting through the complaints, the suggested solutions and the other information provided, the Commission developed a set of recommendations to present to the Legislature as part of its report due January 31, 1988.

The recommendations are as follows:

Recommendation 1: Endorse recommendations of Coastal Search and Rescue Study Commission, which include a request for 15 additional Marine Patrol officers and three 25' watercraft.

Recommendation 2: Increase the Warden Service by 10 wardens who will not be assigned to districts as are the other 94 wardens; they will be sent to the areas of greatest need.

Recommendation 3: Require all persons born on or after January 1, 1973, to successfully complete an approved boating safety course before operating any motorized watercraft. The Commissioner of Inland Fisheries and Wildlife will approve appropriate courses and issue certificates to those who successfully complete the courses. Note: This Recommendation is not a unanimous recommendation; eleven members of the Commission support this Recommendation.

Recommendation 4: Revise the age limits so that no one under 10 years old can operate a motorized watercraft; and no one under the age of 16 can operate a motorized watercraft with a horsepower of more than 25. (See certificate requirement in Recommendation 5)

Recommendation 5: Enact an owner responsibility provision making it a civil violation for a watercraft owner to permit someone else to use the boat and that operator violates the law.

Recommendation 6: Give the Commissioners of IFW and DMR the power to suspend the privilege to operate a watercraft of any person who commits a boating violation. The authority would include the power to require the person to successfully complete an approved boating course before using any watercraft again in the State.

Recommendation 7: Prohibit anyone from operating at greater than headway speed within the Water Safety Zone (200' from shore on inland waters) and in marinas and approved anchorages (in inland and coastal waters).

Recommendation 8: Add restrictions to the operation of personal watercraft (such as Jet Skis): Anyone on the craft must wear the personal flotation device; personal watercraft cannot be operated at night.

Recommendation 9: (Minority) Ban personal watercraft; In the alternative: Operators must be at least 16 years old and have hands-on training
Ban personal watercraft on lakes less than 150 acres
Ban on sections of lakes less than 3 miles across
Prohibit operating within 200' of any other watercraft, swimmer or shore, except when leaving or returning to shore, in which case the operating at greater than headway speed within 200 feet of shore would be prohibited

Test noise level while bouncing over wakes, not while cruising
Prohibit use of personal watercraft which remain in motion under power without an operator
Prohibit using a personal watercraft to tow skiers, rafts, rubber tubes, etc.

Note: This Recommendation is supported by one member of the Commission.

Recommendation 10: Strengthen the OUI-boating laws to more closely track motor vehicle OUI laws. Will add the "duty to submit to a test" to determine blood-alcohol level. Penalties for first offense will not be mandatory (i.e., judge can suspend) until January 1, 1991.

Recommendation 11: Set a noise limit of 82 decibels on all motors on boats, to become effective January 1, 1991.

Recommendation 12: Expand the Commissioner's authority to set horsepower limits to include natural resource management values. The petition process triggering the rule-making would be retained. Note: One member of the Commission supports a slightly different version of the Commissioner's authority to regulate horsepower. It would require that rules be adopted for waters which meet certain criteria.

Recommendation 13: State and clarify the authority of the Bureau of Parks and Recreation to regulate "seasonal objects" on open water. Note: One member of the Commission supports a different version of regulation of seasonal objects. It would give the regulatory authority to the Bureau of Parks and Recreation only after a municipality declines to regulate seasonal objects within its borders. In addition, the harbor masters law would be revised to clearly apply to municipalities on inland waters as well as coastal waters.

Recommendation 14: (Minority) Clarify that municipalities on inland waters have the authority to hire harbor masters. Note: One member of the Commission supports this Recommendation.

Recommendation 15: Create an Advisory Committee to review the effect and success of these laws in 2 years.

Recommendation 16: Increase boat registration fees by \$11 to a total of \$15. This will pay for the additional wardens and 3 boats on trailers.

Note: Coastal Search and Rescue Study is also recommending a change in boat registration fees.

Recommendation 17:(Non-legislative) The Committee that hears the bill should be the Committee with jurisdiction over the agency that will enforce the bill.

Recommendation 18:(Non-legislative) Direct the departments to redesign the law booklet so more people will read it. Also, require it to be distributed when boat is registered.

**FINAL REPORT
MAINE SPECIAL COMMISSION ON BOATING**

Table of Contents

	page
Executive Summary	i
I Introduction	1
A. Creation of Maine Special Commission on Boating	1
B. Study Process	2
1. Organizational meeting	2
2. Public hearings	3
3. Work sessions	5
C. Participation	6
II Findings	7
A. Enforcement	7
B. Search and rescue activities	8
C. Education and training	8
D. Unsafe operation	9
E. Operating under the influence	10
F. Noise	13
G. Regulation of horsepower	14
H. Navigational aids and seasonal objects	14
1. Navigational Aids Program	14
2. Seasonal objects	15
I. Funds and funding related to boating	15
1. Federal funds	16
2. State funds	17
J. Resident and nonresident boaters	19
III Recommendations	20
A. Endorse and support recommendations of the Coastal Search and Rescue Commission	20
B. Increase the Warden Service staff	21
C. Phase in training requirements and adjust age restrictions	22

D.	Adopt several provisions to reduce unsafe operation:	24
	1. Hold the owner, in addition to the operator responsible for improper operation of the watercraft	24
	2. Give the Commissioners authority to require persons guilty of boating law violations to complete a boating safety course	25
	3. Give the Commissioners authority to suspend or revoke the privilege to operate a watercraft and certificate of registration	25
	4. Impose safety restrictions on operating within the Water Safety Zone and marinas and approved anchorages	25
	5. Regulate personal watercraft	26
	6. MINORITY recommendations concerning personal watercraft	26
E.	Strengthen Operating Under the Influence Law	28
F.	Impose a decibel limit to reduce the noise produced by boats	28
G.	Clarify the authority of the Commissioner of Inland Fisheries and Wildlife to set horsepower limits	28
	MINORITY approach	29
H.	Address the problems concerning "seasonal objects" in the water	30
	MINORITY approach	30
I.	Require an advisory report on the effect of these changes	31
J.	Funding the recommendations	31
K.	Non-legislative recommendations	32

APPENDICES

APPENDIX A:	Legislation creating the Maine Special Commission on Boating
APPENDIX B:	AN ACT Concerning the Safe and Responsible Operation of Watercraft
APPENDIX C:	AN ACT Concerning the Operation of Watercraft
APPENDIX D:	AN ACT to Amend the Laws Governing Operating a Watercraft Under the Influence
APPENDIX E:	AN ACT to Prohibit the Use of Personal Watercraft (Minority Recommendation)

- APPENDIX F: AN ACT to Regulate Personal Watercraft
(Minority Recommendation)
- APPENDIX G: AN ACT Concerning Boating and Other
Water-based Activities (Minority
Recommendation)

I Introduction

A. Creation of Maine Special Commission on Boating

Maine is experiencing an increase in the recreational use of the State's waters, both inland and coastal. A few lakes, especially Sebago Lake, have become very crowded as residents and nonresidents alike flock to the area for swimming, waterskiing and boating. More and more boaters are "discovering" less famous and more remote lakes and ponds as well. Recreational boating has also increased along the coast, and hazards from the additional traffic in harbors, Portland Harbor in particular, are becoming more apparent. No longer can Maine be considered a secluded paradise for boaters, free from the congestion plaguing the rest of the nation. The calm and tranquility sought by vacationers and property owners along the shore have been undeniably disturbed.

As if sheer numbers were not enough to spoil many boaters' Maine experiences, the increasing amount of use creates other problems as well. Especially along the coast, recreational and commercial watercraft operators are finding themselves in conflict for the same resources and facilities. The greater number of boaters translates into more potential conflicts among just recreational users as well: Swimmers are often too scared to enjoy the water because of power boats racing along the shore; fishermen's lines and waterskiers are not readily compatible; close proximity to motor boats careening across the water is not conducive to paddling a canoe. With more operators of boats of all types, the number of instances of reckless and inconsiderate boating has also increased. Many residents and nonresidents alike have voiced their concerns about the speeding boats near the shore, the increasing occurrence of boating while drunk, the fact that many operators do not have any training relating to operation or safety, the disturbance of wildlife, the noise levels of boats without adequate mufflers, and the sometimes unsafe and often annoying operation of personal watercraft, such as jet skis. With so many complaints and problems to be addressed, the Warden Service cannot adequately enforce the laws as currently staffed; in fact, lack of enforcement may be the most frequently voiced complaint.

In response to the public's demand for answers, the Second Regular Session of the 113th Legislature created this study group, the Maine Special Commission on Boating, by enacting Resolves of 1987, Chapter 111 (included as Appendix A). The Commission's charge is to study boating safety issues in general, directing particular attention to safety equipment, accident prevention, reckless operation, operation while under the influence and operation at imprudent speed. The Resolve requires the Commission to propose legislation to address the problems identified, while protecting public, private and wildlife concerns.

The Commission consists of 12 members: Five legislators; five public members; and the commissioners of the Departments of Maine Resources and Inland Fisheries and Wildlife, William Brennan and William Vail, respectively. The Legislative members are: Senator Ronald E. Usher, Commission Chair (Joint Standing Committee on Fisheries and Wildlife), Senator Edgar E. Erwin (Fisheries and Wildlife), Representative Thomas A. Duffy (Fisheries and Wildlife), Representative James Mitchell (Joint Standing Committee on Marine Resources) and Representative Richard Ruhlin (Marine Resources). The 5 public members, who were chosen for their background in commercial or recreational boating activities are: Ginette Arey, Sebago Lake (Sebago Lake Association), Richard Carver, Beals (commercial fisherman), David S. Greep, Raymond (Sebago WaterSports), Milton F. Huntington, Augusta (recreational boater), and Joan C. Irish, Yarmouth (President, Congress of Lake Associations).

B. Study Process

1. Organizational meeting

The Executive Director of the Legislative Council, Sarah C. Diamond, convened the first meeting of the Special Commission on Boating on July 12, 1988, in Augusta. Senator Ron Usher was elected to chair the Commission. The members discussed their interests in boating and their expectations for the Commission's work. The general consensus was that adequate enforcement of the current laws is a major problem, complicated by the attendant need for funds to enhance enforcement. In addition, the members expressed reluctance to add more regulation, especially if enforcement personnel numbers do not increase. Lack of adequate facilities - moorings, docks, suppliers, restrooms - was also mentioned. Also discussed were noise complaints, lack of training and education and the possibility of licensing boaters.

Commissioner Vail and Commissioner Brennan explained their exasperation with limited enforcement budgets and the effect of the U.S. Supreme Court decision in Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985), which limits the number of hours each warden can work each week before overtime pay is required. Commissioner Vail estimated that the application of the Federal Fair Labor Standards Act to the Warden Service, as required under Garcia decreased the hours the same number of wardens can perform enforcement activities by the equivalent of almost 6 full-time wardens. Enforcement resources have been cut, therefore, even though no positions have been lost. Commissioner Brennan expressed his frustration with the fact that he has only 35 Marine Patrol

officers to cover 3,500 miles of coast, and that the Marine Patrol officers are conservation officers first, leaving fewer resources for enforcement.

The Commission determined that public hearings were absolutely necessary in order to obtain the public's views on the most pressing problems. After much discussion, the Commission decided to hold two full days of public hearings, one in Portland and one in Bangor. Each hearing would be divided into two parts, one concentrating on inland waters concerns and the other on coastal issues. All members stressed the importance of gathering the public comments before the 1988 boating season unofficially ended on Labor Day. The public hearings were therefore scheduled for the 17th and 24th of August.

The suggested course of study included a review of other states' activities (New Hampshire, for example, has only 6 major lakes and yet is reported to employ 145 enforcement personnel and use 50 boats), a clarification of the state's latitude to act in relation to federal law, and information on local enforcement efforts and ability.

2. Public hearings

Portland, August 17, 1988. The Commission held its first public hearing at Deering High School in Portland on August 17, 1988. The hours between 2 and 5 p.m. were reserved for coastal issues, while issues concerning inland waters were scheduled for the evening session, 6:30 to 9:30 p.m. Seven persons presented testimony during the afternoon, while 23 spoke during the course of the evening; many more attended the hearing without adding their own testimony.

The speakers raised several concerns relating to coastal waters, including: The need for increased enforcement and increased boater education; displacement of traditional fishing sites; dune destruction; increasing numbers of boat slips for recreational boats at the expense of commercial berthing space; the presence of more sewage, trash and other floating debris; the overcrowding of Portland Harbor; speeding; noise pollution; operating while under the influence of alcohol or drugs; licensing of boaters; and lack of access. Members of the United States Power Squadron explained the current availability of their safety courses.

Richard Anderson, on behalf of the Maine Recreational Boaters Association, made the following specific recommendations for action.

- a. State government should conduct a thorough study of the benefits of consolidating all the boating functions into one bureau or division. Responsibilities are currently spread across the Departments of Conservation (builds and manages boat launching facilities and manages the navigational aids program on inland waters), Marine Resources (enforces commercial fishing laws, conservation laws and boating laws on coastal waters) and Inland Fisheries and Wildlife (enforces fish and game laws and boating laws on inland waters, plus is responsible for licensing, water safety instruction and boat registrations).
- b. The Legislature should authorize and fund a major statewide recreational boating plan, covering the adequacy of existing facilities and development of guidelines and priorities for use. The Department of Conservation should also conduct a study of the economic benefits of recreational boating to the state's economy.
- c. The Joint Standing Committee on Appropriations and Financial Affairs should conduct a thorough audit of all the funds expended from the Boating Facilities Fund and federal boating funds during the next legislative session.
- d. Boating law enforcement should be increased on all the waters, but not at the expense of the hunting and fishing public.

The evening session on inland issues was so well attended that it ran over the planned ending time. Although the issues raised were very similar to those discussed during the afternoon, certain complaints were heard more frequently than others. Although there was some support for personal watercraft, several speakers called for a complete prohibition. Overcrowding of finite areas, reckless and too fast operation, lack of enforcement and the need for education were the constant themes of the evening. Many people called for towns to use the boat excise tax collected by the municipalities for boating education and enforcement.

Current law gives the Commissioner of Inland Fisheries and Wildlife the authority to regulate the horsepower on inland waters in the interests of the safety of

persons and property if residents or towns petition for such action. Several speakers asserted that the law is too narrow to adequately protect the natural resources, the tranquility and the users of Maine's lakes and ponds. Others claimed that speed must be regulated, not just horsepower.

The Registered Maine Guides Association offered to serve as a secondary resource for enforcement.

The water pollution problems in Sebago Lake, the major drinking water source for the City of Portland, the Town of Standish and other municipalities, also drew comments. Although no one can prove that it has happened, there were several allegations that house boats in particular have emptied their holding tanks (containing untreated human wastes) into the lake.

Bangor, August 24, 1988. The Commission held its second and final public hearing at the Bangor High School Auditorium on August 24, 1988. Again, the hearing was divided into 2 sections, with the afternoon session reserved for testimony on inland waters issues while the evening hours were set aside for coastal concerns. Fourteen people presented testimony, covering basically the same topics discussed at the Portland public hearing a week earlier. In addition to speed and horsepower being regulated, some advocated the regulation of the size and weight of boats, especially in smaller or shallow lakes. At least two speakers spoke on the public health risk of increased lead levels in the water from the use of leaded fuel. Several spoke about providing more access to lakes which now have only limited access.

The Commission used the remainder of the evening to ask questions of the Department of Conservation concerning the Boating Facilities Fund and federal funds received, as well as the system for marking of waterways (known as the navigational aids program).

3. Work sessions

The Commission met on October 11, 1988, and November 15, 1988, to discuss the information received through testimony at the public hearings, letters sent to the Commission and informal reports prepared for the Commission's use by the state agencies involved in boating activities. The Commission used these meetings to make findings and recommendations, which are discussed in detail in parts II and III of this report.

C. Participation

The Commission takes this opportunity to offer its sincere thanks to all those who helped in this study. The public response has been positive and immense and tremendously helpful. The Commission also appreciates the cooperation and time of the various state agencies who were asked or volunteered to provide information. These recommendations could not have been developed without the contribution of all the participants. Worthy of special mention are the Marine Patrol, the Warden Service and the Bureau of Parks and Recreation.

II Findings

Based on all the information provided at the public hearings and work sessions and in written form between the meetings, the Commission makes the following findings.

A. Enforcement

It has been made abundantly clear that there is insufficient enforcement capability on Maine waters. Just the knowledge that a law enforcement officer is present can dramatically improve boating behavior and decrease illegal and unsafe activities.

There are roughly 2,500 lakes at least somewhat suitable for boating and only a total of 105 wardens (90 wardens assigned to individual districts plus 15 sergeants) currently available to enforce the boating laws. (There are 94 district warden positions; 4 are currently vacant.) In addition, of the 50 approved deputy warden positions, only 29 are currently filled. Deputy wardens usually serve in a designated district along with the warden for that district. They are most often utilized on an as-needed basis, and are paid at an hourly rate for that work. Although assignment of deputy wardens is not rigid, 65 of the 94 districts in the state do not have a deputy warden readily available.

In addition to these number constraints, the wardens have many other duties to perform besides boating law enforcement activities, all of which compete for a finite number of work hours available. The Warden Service estimates that, because of all their other enforcement, management, training and administrative obligations, wardens were able to devote only 2.3% (5,287 hours for fiscal year 1988) of their time to boating law enforcement. (The proportion was about 2% [5301 hours] in 1985 before application of the Federal Fair Labor Standards Act as mandated by Garcia required a reduction in law enforcement hours per person).

The staffing shortage is also true for the Marine Patrol with only 35 officers to cover 3,500 miles of coastline. Because of the water-related nature of their responsibilities, Marine Patrol officers spend much more time on the water than the Warden Service does; due to the fact that they also have other enforcement and management obligations, the Marine Patrol has been able to concentrate on boating safety for only 29.8% of their time in 1987. (The Marine Patrol includes time devoted to search and rescue [777 hours] and public speaking on boating safety

[333 hours] in addition to boat law enforcement [26,592.25 hours] for the total percentage of time spent on boating safety. For comparison, the Warden Service estimates that 1.5% of their time is taken up by search and rescue activities, which covers non-boating related activities as well, while their total public relations figure [1.7%] is not broken down for specific areas.)

Municipalities are often at a loss to provide the law enforcement necessary on the waterbodies within their jurisdictions. Because of the cost of law enforcement in general, many Maine municipalities have no local police force at all, let alone a force capable of controlling activities on the water. Some municipalities do have constables, but such constables are usually restricted in their power to make arrests or carry weapons because of the police training requirements that accompany that authority. 25 MRSA §2805-A.

According to the Maine Municipal Association, coastal municipalities have difficulty obtaining, training and keeping good harbor masters. One cause may be the small compensation for such difficult positions. Another reason may be the burdens associated with training in order to give the harbor master the authority to make arrests or carry a weapon. Law enforcement without these powers is inadequate and potentially useless.

B. Search and rescue activities

Both the Department of Inland Fisheries and Wildlife and the Department of Marine Resources conduct search and rescue activities. The Second Regular Session of the 113th Legislature created a study commission to look at the need for additional personnel in the Bureau of Marine Patrol to conduct coastal search and rescue activities, and the feasibility of formally coordinating search and rescue operations across the State. The Commission was also directed to determine the adequacy of current funding and equipment. Public Laws of 1987, c. 814.

Because of the existence of the Study Commission on Coastal Search and Rescue, the Special Commission on Boating chose to direct its efforts toward other subject matters not already under review. See Recommendation A, Part III.

C. Education and training

Maine currently has no education or training prerequisite for boat operation. Several organizations, in addition to the Warden Service, offer various types of boating courses, most of them devoted to safe operation. There have been so many complaints about boat operators who know neither safe operation skills nor the "rules of the road" that the

public is now asking for some form of education or training requirement. There is general consensus that compliance with such a requirement will result in a decrease in accidents and injuries, as well as complaints about unsafe operation.

D. Unsafe operation

Tied to both education and enforcement are the increasing incidents of, and complaints about, unsafe operation. Proper education and training may be able to reduce the occurrence of a large portion of unsafe activities, but some of the laws regulating boating are difficult to enforce or simply insufficient to properly control dangerous behavior. Particular problems appear to be operating in inappropriate areas, such as swimming areas (which are not officially marked), operating at too high a speed for the area, the number of other boats in close proximity, operating at extremely high speeds even in uncrowded, open water, and operating while under the influence of alcohol or drugs (see section D below). The current law prohibits reckless operation of a watercraft,¹ operating a watercraft to endanger,² and

¹Reckless operation of a watercraft. A person is guilty of reckless operation of a watercraft if he operates any watercraft, water ski, surfboard or similar device in such a way as to recklessly create a substantial risk of serious bodily injury to another person. 12 MRSA §7801, sub-§8.

²Operating a watercraft to endanger. A person is guilty of operating a watercraft to endanger if he operates any watercraft, water ski, surfboard or similar device so as to endanger any person or property. 12 MRSA §7801, sub-§10.

The difference between this violation and "reckless operation" (fn 1) is apparently that "operating to endanger" includes risk to property and to the operator; "reckless operation" covers only risk to persons other than the operator.

operating a watercraft at greater than reasonable and prudent speed.³ Law enforcement officers have found that the speed restriction is too vague to be of much help in ensuring other boaters' safety and enjoyment in any particular incident; the officers would like to rely on more objective standards, rather than the subjective terms of "reasonable" and "prudent". They are not currently equipped, however, to enforce numerical speed limits.

Complaints have also been received concerning excessive horsepower. Damariscotta Lake, in particular, has reportedly been invaded by extremely high-powered boats ideally suited for coastal waters, but which are much too fast for smaller, enclosed waters. The complaints focus on the safety aspects as well as the basic annoyance they cause and the environmental degradation attributed to their size, designs and high speeds.

E. Operating under the influence

The current law prohibits operating a watercraft under the influence of intoxicating liquor or drugs.

Operating under the influence on water, and in Maine in particular, can be more dangerous than in a car. When a boat is involved in a mishap, the operator and passengers are often thrown into the water; an intoxicated boater can just as easily end up in the water without any cause other than poor operation or imbalance. A person with alcohol in his or her system almost always suffers hypothermia faster than a person who has consumed no alcohol. This is of special concern in Maine where water temperature is quite cold year round, especially in coastal waters.

³Operating a watercraft at greater than reasonable and prudent speed. A person is guilty of operating a watercraft at greater than reasonable and prudent speed if he:

- A. Operates any watercraft except at a reasonable and prudent speed for existing conditions; or
- B. Fails to regulate the speed of a watercraft so as to avoid danger, injury or unnecessary inconvenience in any manner to other watercraft and their occupants, whether anchored or under way, waterfront piers, floats or other property or shorelines, either directly or by the effect of the wash or wave created by the watercraft through its speed, or otherwise.

12 MRSA §7801, sub-§11.

Title 12, Section 7801, Subsection 9, provides:

9. Operating watercraft under the influence. A person is guilty of operating a watercraft under the influence if he operates any watercraft, water ski, surfboard or similar device while under the influence of intoxicating liquor or drugs. Standards, tests and procedures applicable in determining whether a person is under the influence within the meaning of this section shall be those applicable pursuant to Title 29, sections 1312, 1312-B and 1312-C.

Standards, tests and procedures applicable in determining whether a person is under the influence in Title 29, Sections 1312, 1312-B and 1312-C (motor vehicle OUI) include:

1. The requirement that the law enforcement officer have probable cause to believe the person is operating under the influence;
2. Breath or blood tests may be used to determine blood-alcohol concentration (BAC); and
3. It is illegal for a person to operate while having 0.08% or more by weight of alcohol in his or her blood. (Because the watercraft OUI law "piggybacks" onto the motor vehicle OUI laws, the new 0.08% alcohol blood-alcohol level for motor vehicles now also applies to boats.)

(Title 12, Section 7901, provides that operating a watercraft under the influence is a Class E crime, i.e., punishable by up to 6 months in jail and a fine of up to \$500.)

Although it is illegal to operate a watercraft under the influence, there are some problems in the law itself which make it difficult to enforce:

No incentive for taking BAC test. Perhaps the major loophole in the current OUI-boating law is that there is no incentive to take a blood or breath test because there is no punishment for refusing to take a BAC test. Although the law provides for convictions without a BAC test result, convictions are very hard to obtain when no test result is available. Field sobriety tests which work well for motor vehicle operators - walking a straight line, standing on one foot, touching the nose while eyes closed, etc. - are all useless while out on the water in a boat. For example, lack of balance can always be attributed to the inherent instability (in comparison to solid ground) of boats on water.

There is no punishment for refusal to submit to and complete a BAC test for watercraft OUI because there is no watercraft operator's license to suspend. A motor vehicle operator who refuses to take a BAC test will have his or her license suspended for 180 days, regardless of the outcome of the OUI prosecution. Losing the license to drive for 6 months is a very heavy burden for most people, and therefore compliance rates are fairly high (over 80%).

In comparison, there is no operator's license for watercraft operators. If a law enforcement officer has probable cause to believe a boater is operating under the influence and requests that the boater take a blood or breath test, there is nothing compelling the operator to take the test. In fact, it is in the boater's best interest to refuse to take a BAC test. The law enforcement officer can still arrest the person, but the outcome of an OUI case without a BAC test is uncertain at best.

No requirement that operator take BAC test. Just as there is no penalty for boaters who fail to take a BAC test, there is no specific requirement that such a test be taken. In motor vehicle laws, this requirement is referred to as "implied consent." The concept is that anyone who takes advantage of the privilege of operating a motor vehicle on the roads of a state, has, by the act of operating in that state, agreed to take BAC tests if there is probable cause to believe that the person operated (or attempted to operate) a motor vehicle while under the influence. 29 MRSA §1312. There is no similar "implied consent" provision in the boating laws.

No mandatory minimum penalties. Unlike motor vehicle OUI, there are no mandatory minimum penalties for watercraft OUI. The motor vehicle mandatory minimum penalties were enacted to ensure that any person convicted of the serious crime of OUI would not escape all penalties. No such minimums exist for boating OUI, therefore it is possible that two persons who are convicted of the same activity, except one on water and one in a motor vehicle on land, can receive very different sentences. It is possible that the boater could receive a completely suspended sentence, i.e., no fine or jail sentence, while the motor vehicle operator could receive, at the least, a \$300 fine, and a 90-day license suspension (for a first offense; 3rd offense minimums are \$750 fine, 2-year license suspension and 30 day jail sentence). There is some concern, therefore, that once a conviction is obtained for watercraft OUI, the penalties are not always appropriately severe enough. A related policy issue is that the motor vehicle laws provide for graduated penalties as the number of past convictions increase. For watercraft OUI, in contrast, the 3rd offense is punishable the same as the first. Therefore, there is no more incentive to comply with the law after many

convictions than there is before the first, while under the motor vehicle laws, because the penalties increase in severity as the noncompliant behavior continues, a motor vehicle operator has more and more reason to comply with the law.

The Joint Standing Committee on Legal Affairs examined this entire issue during the most recent regular session of the 113th Legislature. The Committee, after weeks of work, endorsed a revision of the watercraft OUI laws. Basically, the Committee Amendment (H-708) to L.D. 1935 retained the current Class E crime classification for operating a nonmotorized boat or a boat with a motor of 5 horsepower or less while under the influence or with a BAC of 0.08% or more. Operating a watercraft with a motor of over 5 h.p. while under the influence would be a Class D crime. Penalties, including mandatory minimum penalties, tracked the motor vehicle OUI laws for the proposed Class D crime. The Committee also added a provision creating "implied consent" for boaters and making it a Class E crime to refuse to submit to a BAC test. Rather than simply referencing all the relevant motor vehicle statutes, the Committee Amendment included all the information concerning tests and procedures. The Legislature voted to indefinitely postpone the bill with the understanding that that the issue of watercraft OUI would be taken up in this study.

F. Noise

There were an inordinate number of complaints about noise caused by boats, especially the "muscle" or "cigarette" boats whose purpose is to travel at high speed, and personal watercraft. Current law prohibits operating a motorboat without "an effective and suitable muffling device on its engine or engines to effectively deaden the noise of the exhaust" (except for boats in permitted regattas). 12 MRSA §7801, sub-§15. This has proved extremely difficult to enforce. The laws governing ATVs, snowmobiles and airmobiles contain decibel levels which the engines cannot legally exceed. Currently, the Wardens and Marine Patrol are not equipped to measure noise level; they rely, instead, on the Department of Environmental Protection which already tests noise levels associated with development.

Personal watercraft are an example of a noise problem that would not necessarily be solved by imposing a decibel level. Many people oppose personal watercraft, and a few smaller boats, even though the craft do not usually exceed a reasonable decibel limit; the real problem is what people describe as a "constant buzzing" that is annoying. The

sound is even more offensive when the operators are riding the personal watercraft around in circles or in other repetitive configurations in small areas.

G. Regulation of horsepower

The Commissioner of Inland Fisheries and Wildlife can, by rule, restrict the allowable horsepower of motors used to propel watercraft on all internal waters. This rule-making authority can be triggered only by municipal officers, county commissioners or 25 citizens filing a petition with the Commissioner requesting the restriction on a specific body of water. Although the Commissioner is required to take into consideration the area of the waters, the use of the waters, the depth and the amount of traffic on the water, the key to the rules is that the rule limiting horsepower must be necessary to ensure the safety of persons and property. 12 MRSA §7792, sub-§4. This has been interpreted by the Department to not authorize restrictions which would be imposed to protect wildlife, water quality, the special character of a unique site or other seemingly appropriate purposes. Under current law, as long as neither people nor property are threatened, the Commissioner cannot adopt horsepower regulations for that water body.

H. Navigational aids and seasonal objects

The Bureau of Parks and Recreation in the Department of Conservation is required to determine when marking of hazards to navigation is necessary and to carry out that marking, within the funds available, by placement of aids to navigation and regulatory markers. The Bureau also regulates the placement of "seasonal objects," such as swim and diving floats and buoys used to mark boat moorings, organized swim areas, race courses and water-ski slalom courses and jumps.

1. Navigational aids program

There are approximately 2,500 Great Ponds in Maine; however, recreational boating is concentrated on between 25 to 50 of these bodies of water, and the Bureau of Parks and Recreation, one town and several associations, mark 23 of them. The policy of the Bureau is that if a lake is to be marked, it should be marked completely or not at all. A partially-marked lake might lead boaters to think that the unmarked areas are safe when, in fact, that may not be true. An objective of the program is to have the marking buoys in place by Memorial Day for all lakes designated to be marked. In addition, the Bureau

tries to inspect all markers periodically (ideally, every 15 days) to make sure the buoys are still properly located. Placing each buoy takes 3 people as well as special boats to make sure the marker is in right spot.

2. Seasonal objects

The purposes behind the rules regulating seasonal objects are: 1) To protect the boating public by avoiding confusion with the Maine Uniform State Waterway Marking System and by eliminating seasonal objects which are themselves hazards to navigation; and 2) To avoid unsightly clutter of lakes and disturbance to shorefront property owners. The Marking System Rules adopted by the Bureau regulate seasonal objects in two categories. First, all waterfront property owners are given authority, without written permission, to place boat moorings and swim floats on the water adjacent to their property, provided it complies with the Marking System Rules, that it does not extend more than one hundred feet from the average shoreline, does not obstruct a boat channel and is not a hazard to navigation. Second, anyone who wants to place a seasonal object more than one hundred feet from shore or in an area not adjacent to their property must first obtain a permit from the Bureau

The Bureau has identified 3 reasons for having difficulties administering their seasonal objects program. First, the law does not clearly provide the authority and criteria to regulate the placement of seasonal objects. Second, the Bureau currently has inadequate staffing to conduct the program effectively. In fact, that staff consists of only one person. Third, the Bureau has no enforcement capability for the program. According to statute, placing a seasonal object without a permit is a Class E crime, which is punishable by a fine of up to \$500, a jail sentence of up to 6 months, or both. The severity of the penalty makes wardens reluctant to charge violators when other, more pressing violations easily fill the wardens' time.

I. Funds and funding related to boating

Services and facilities used by boaters in Maine are funded by the State, in part with money from the federal government.

1. Federal funds

Several boat ramps were constructed with Land and Water Conservation Fund grants, although Congress has rerouted most of the money which formerly was deposited in that fund. The major source of federal funds is now the National Aquatic Resources Fund, which consists of 2 accounts, the Boating Safety Account and the Sport Fishing Restoration Account.

The Boating Safety Account consists of \$45 million in revenue from the federal marine fuel tax. One-third, or \$15 million, is used to fund the Coast Guard; two-thirds, or \$30 million, is distributed to the states by the Coast Guard for recreational boating safety programs. The Department of Inland Fisheries and Wildlife is the recipient in Maine. How much each state is allocated is based on a three-part formula. First, each state receives an equal share. In 1988, that amount was \$120,894. Second, if a state has a federally-approved boat numbering and accident reporting program, the amount allocated is based on the percentage of boats that state registered in relation to the total number of boats registered in the country. For example, the Coast Guard records show Maine registered 155,440 boats in 1987; there were 9,837,466 boats registered in all states combined. That means Maine registered 1.2% of the total nationally; Maine therefore receives 1.2% (\$78,026) of that portion to be distributed based on the numbering of boats (\$6,649,167 for all states in 1988). Third, the Coast Guard allocates money to go towards state expenditures for its recreational boating safety program the preceding year. Maine's matching share of expenditures was \$344,683 in 1987, which was only 0.5% of the total matching expenditures by all the states. Maine, therefore, received 0.5% of the federal money available, or \$34,321. [The records show that Maine actually spent \$899, 414 on recreational boating safety, and was reimbursed only \$344,683 (Maine's "matching share"). That means the State spent over \$.5 million on recreational boating safety that was not reimbursed by federal money.] The total the Department of Inland Fisheries and Wildlife received from the Boating Safety Account in 1988 was \$233,241.

The funds allocated to the states from the Boating Safety Account can be used by the states for any one or more of the following programs: Boating safety education and law enforcement, including the purchase, operation, maintenance and repair of equipment; training personnel in law enforcement and other skills related to boating safety; providing public boating

safety education, including education programs and lectures to the public and in public schools; public access, including acquisition and construction of new facilities and repair of existing facilities; conducting boating safety inspections and marine casualty investigations; conducting search and rescue activities; providing aids to navigation; and providing boat numbering or titling programs.

The Sport Fishing Restoration Account has four major sources of funding. Any amount over \$46 million per year from the federal marine fuel tax goes into this fund. (The first \$1 million in excess of the \$45 million earmarked for the Boating Safety Account goes to the Land and Water Conservation Fund.) The three other sources are from the 10% federal manufacturers' excise tax on sport fishing equipment, the 3% federal tax on electric trolling motors and fish finders, and import duties on yachts and pleasure boats and fishing tackle.

For 1988, \$1,557,000 was apportioned to the Maine Department of Inland Fisheries and Wildlife from the Sport Fishing Restoration Account. States are required to use these funds for sport fishing management and restoration projects, such as stocking game fish, building fish hatcheries and furthering fisheries research. Each state must allocate at least 10% of its share each fiscal year (\$155,700 for 1988) toward the cost of acquiring, developing, renovating or improving public recreational boat access sites.

2. State funds

State gasoline tax. A portion of the gasoline tax collected by the State is set aside for gasoline purchases not used for travel on the highways, such as for motorboats. In 1965, the Legislature made a determination that at least 1.25% of the tax collected was attributable to purchases for motorboat use. Refunds for commercial motorboat users were deducted from that percentage of tax revenue; of the remaining sum, 20% was made available to the Department of Marine Resources for research, development and propagation activities, and 80% was allocated to the Boating Facilities Fund, administered by the Bureau of Parks and Recreation. 36 MRSA §2903-A. The Second Regular Session of the 113th Legislature increased the percentage of gasoline tax deemed collected from motorboat users to 2.00%. This amendment has resulted in a substantial increase in the amounts allocated to the Department of Marine Resources (fiscal year 1987-1988 income was \$191,189; fiscal year 1988-1989 estimated income is \$340,000) and the Boating

Facilities Fund (fiscal year 1987-1988 was \$764,757; fiscal year 1988-1989 estimated income is \$1,363,200).

The Boating Facilities Fund is used to acquire, develop and maintain boat ramps with their attendant facilities and to mark lakes with navigational and regulatory markers. For the past few years, the Bureau of Parks and Recreation has been able to acquire very little land for boat access sites, although the State was still working with lands already owned by municipalities, other state agencies and large timberland owners. Expansion of the marking program to more lakes was also put on hold for lack of funding. With the infusion of more revenue into the Boating Facilities Fund, the Bureau anticipates that land for more access sites can be acquired, more waterbodies can be marked, and more time can be spent undertaking the design, development and major repair or improvements of boat access sites.

Boat registrations. A boat must be registered in this State if it is in Maine for more than 60 consecutive days. The registration must be renewed annually; the fee is currently \$4. 12 MRSA §7794. The Department of Inland Fisheries and Wildlife collects all the fees from boat registrations (FY 1988 = \$328,583) then subtracts the administrative costs of the Watercraft Section of the Division of Licensing and Registration. One-third of the remainder is distributed to the Department of Marine Resources (used for search and rescue, safety, enforcement), and two-thirds remains with the Department of Inland Fisheries and Wildlife (used for boating search and rescue, boat law enforcement, boating safety education).

Sales tax attributable to boating equipment. Based on information collected by the National Marine Manufacturers Association, the total retail value of boats (\$29,218,000), outboard motors (\$8,782,000), boat trailers (\$994,000) and marine accessories (\$12,336,000) sold in Maine in 1986 is \$51,330,000. The State sales tax of 5% on that amount results in a benefit to the General Fund of \$2,566,500.

Fines collected for violations. The Department of Inland Fisheries and Wildlife receives all fines and penalties paid by boat law violators. That amount in FY 87-88 was \$40,939. One-third is distributed to the Department of Marine Resources, and two-thirds to the Department of Inland Fisheries and Wildlife.

Excise tax. Boat owners also pay a local excise tax to the municipality where located if the boat remains in the State for more than 75 days in any year. 36 MRSA §1504. Figures from 1987 show that municipalities collected \$1,375,692. (These funds are collected by the municipality for the municipality to use for any purpose.)

[The Commission and staff express their sincere appreciation to Richard W. Skinner of the Bureau of Parks and Recreation and Florence Carrell of the Department of Inland Fisheries and Wildlife for their generous devotion of time to collecting and verifying the information for this discussion on funding.]

J. Resident and nonresident boaters

A quick survey of many Great Ponds in Maine during the summer indicates that a large portion of the boats are not owned by Maine residents. Because boats registered in other states (which use a Coast Guard-approved numbering system) are not required to be registered in Maine unless Maine is the state of principal use (12 MRSA §7794, sub-§1, paragraph B), there is no practical method to calculate the number of out-of-state boats used in the state. Concerns have been raised that the out-of-state boaters are using the same services and facilities which in-state boaters use, but without helping to pay for those facilities and services. Out-of-state boaters usually pay no municipal excise tax or state registration fee. At least a portion of federal funds are based on the number of registered boats, not the number of boats using the state waters. Out-of-state boaters who purchase gasoline in Maine do contribute to the gasoline tax funding of the Boating Facilities Fund, although the size of that contribution is unclear.

More revenue needs to be raised to pay for the additional law enforcement services which are necessitated by the increasing numbers of boats in Maine each summer. The Commission finds that it is not preferable for in-state boaters to continue to subsidize out-of-state boaters; however, in the interests of interstate comity, no additional burdens should be placed on the free movement of boaters across State lines.

III Recommendations

A. Endorse and support recommendations of the Coastal Search and Rescue Commission

The Commission endorses the 6 recommendations presented by Representative J. Reed Coles on behalf of the Coastal Search and Rescue Commission on October 11, 1988, and recommends that the statutory, administrative and other changes necessary to carry out those recommendations be made. The recommendations are as follows.

Coastal Search and Rescue Commission Recommendations

1. Authority and Responsibility

The Department of Marine Resources is to have authority and responsibility for coastal search and rescue within the limits of any superseding federal authority (except for lost aircraft).

2. Coordination

The Department of Marine Resources is to designate one or more persons to perform the following functions:

- a. Coordinate search and rescue within the Department
- b. Coordinate search and rescue with other agencies, whether coastal or land
- c. Set-up, coordinate and oversee private search and rescue groups along the coast.

3. Personnel and Equipment

The Department of Marine Resources will be authorized 15 additional full-time staff to carry out the responsibilities given them by Recommendations 1 & 2. The Department will be provided three twenty-five foot watercraft to carry out those responsibilities.

4. Funding

Funding for the additional staffing specified in Recommendation 3 is to come from the General Fund. Should it prove necessary, the sales tax on boat purchases may be raised to help support this additional staffing. The biennial cost is estimated at \$1.6 million.

5. Planning

The Maine Emergency Management Agency is to develop a statewide Search and Rescue Plan, encompassing all areas and means of search. The Agency is to seek advice and recommendations from all currently designated federal and state search and rescue organizations and shall submit the final plan for their approval.

6. Other

- a. The Bureau of Parks and Recreation, utilizing its Boating Facilities Fund, is to conduct periodic study of the amount of gasoline and diesel fuel used by commercial and pleasure boats. (The Boating Facilities Fund is funded through the gasoline tax declared attributable to watercraft operators.)
- b. The State Auditor is to complete an audit of the Boating Safety Fund by June, 1989, to determine compliance with federal guidelines.
- c. The Emergency Management Agency is to make a recommendation to the federal government that a helicopter facility be established in Maine which will include a night rescue capability.

(For detailed explanation of these recommendations, refer to Organization, Staffing and Funding for Coastal Law Enforcement and Search and Rescue: A Report of the Commission on Coastal Search and Rescue, Maine State Legislature, 1988.)

B. Increase the Warden Service staff

Based on the recommendations of the Department of Inland Fisheries and Wildlife, the Commission recommends that 10 more warden positions be created and funded. These 10 officers would not be assigned to separate districts as other wardens are, but the territories would be large enough to allow them to be assigned wherever needed the most. Their duties would focus on the various motorized recreational vehicles. In the summer, the new wardens' time would be taken up administering and enforcing the boating laws. Although part of their hours after the boating season would be used for instructing about boating safety, they could also be used to enforce the snowmobile

and ATV laws. These 10 new wardens would be full-time employees. Although it may be cheaper in the short term to hire part-time wardens to serve just the summer months, it is often difficult to attract a full complement of law enforcement officers, and provide training, for temporary or seasonal jobs.

Currently, the Department of Inland Fisheries and Wildlife has about 50 deputy warden slots, although 21 are not filled. These deputy wardens receive training (the 100-hour reserve officer training course at the Maine Criminal Justice Academy, as well as department-specific training), and are paid \$6 per hour when called in as needed. Although several communities would like to hire deputies, the Department prefers not to see them put in the position of a "hired gun," protecting the special interests of a small group rather than the public as a whole. The Department would prefer to assign deputies where necessary as part of an overall, comprehensive scheme, and the Commission endorses that assignment system.

In addition to the 10 new wardens, the Commission recommends that the Warden Service receive the 5 additional boats requested. The boats will be brightly marked and easily identifiable as wardens' boats to increase the perceived presence of law enforcement officers on the waters. There is evidence that seeing or knowing that a law enforcement officer is in the vicinity encourages people to obey the law and practice safe boating behavior. Without making arrests or even stops, therefore, the presence of the boats on the waters will improve boating activities.

(The Commission also recognizes the inadequate staffing level of the Marine Patrol, but does not propose any new personnel in addition to the proposals by the Coastal Search and Rescue Commission (see Recommendation A), and the suggested inclusions in the Governor's budget package. The Commission believes that these additional personnel, although the bare minimum necessary, will be able to handle the increased enforcement needs.)

See Appendix B for recommended legislation implementing this recommendation.

C. Phase in training requirements and adjust age restrictions

The Commission believes that the key to improving boating safety and boating enjoyment in Maine is knowledge, and that the only way some boaters will obtain that knowledge is if they have an affirmative duty to do so. This is particularly important for young boaters to achieve, but it

is true for all boaters. The Commission would like to recommend that all boaters have at least minimal training and education in boating safety and courtesy before operating any watercraft. The Commission recognizes that such a program would be extremely impractical from many perspectives. Instead, the Commission recommends that required training be phased in over a long period of time to eventually cover all boaters. The recommendation requires that all persons, whether residents or nonresidents, born on or after January 1, 1973, successfully complete a training course prior to operating any watercraft with a motor. Such a provision would apply to all those who turn 16 in 1989, and all those younger than 16 in 1989. In 1999, it will apply to all motorboat operators who are 26 or younger. By tying the education requirement to 1973 as the year of birth, this recommendation will eventually require all power boaters to have completed the training.

The Commission envisions that training programs will be readily available. Any person or organization, such as the United States Power Squadron or the Coast Guard Auxiliary, will be able to present a qualifying course, provided the course is approved by the Commissioner of the Department of Inland Fisheries and Wildlife, with the advice of the Commissioner of the Department of Marine Resources.

In addition to requiring training for younger boaters, the Commission also recommends that a tiered age restriction system be imposed that not only provides more protection to the operators and the general public, but increases the ability of the public to comply with all the recreational vehicle laws (watercraft, snowmobiles and ATVs), as well as the game laws. Current law imposes no minimum age to operate a boat with a motor of 10 horsepower or less; if the boat has a motor of greater than 10 h.p., a person under 12 can operate it only when another person of 16 years of age or more is supervising. (Note that it is unclear what "supervision" means, whether in the same watercraft as the child, or simply observing.)

The Commission believes that the age restrictions should be adjusted. The Commission recommends that no person under 10 years of age be permitted to operate any motorized watercraft. The Commission considered the possibility that such a restriction will hinder the activities of young people engaged in fishing, and reached the conclusion that the minimum age of 10 would not be unduly burdensome.

The Department of Conservation, in its required report to the First Regular Session of the 114th Legislature, will recommend that the age restrictions for operating ATVs be 10 and 16, as proposed here concerning boating ages. The Commission recommends that all the age restrictions for all

motorized recreational vehicles - watercraft, ATVs and snowmobiles - be the same. In addition, these limits will coincide with the age limits for hunting and fishing licenses, which recognize the ability of a child to take on a certain amount of responsibility through training.

The second tier of the Commission's recommendations on age restriction is that that persons under 16 years of age but at least 10 years of age be permitted to operate motorboats, provided: 1) That they have successfully completed the training course already described; and 2) That boaters under 16 years of age can operate only boats with motors of less than 25 horsepower. This will guarantee that the young boaters will have at least basic education, while ensuring that the size of the motors will not be so large as to be beyond the capability of the majority of young boaters to handle safely. In addition, it will avoid current problems caused by young boaters operating large, fast boats at high speeds and in an unsafe manner.

See Appendix C for recommended legislation implementing this recommendation.

MINORITY REPORT Note: This Recommendation is not supported by one Commission member, Representative James Mitchell.

D. Adopt several provisions to reduce unsafe operation

The Commission recommends several short provisions (in addition to required training and the adjusted age restrictions) to address the general problem of unsafe operation.

1. Hold the owner, in addition to the operator, responsible for the improper operation of the watercraft

The Commission recommends that the concept of "owner responsibility," currently a part of the all-terrain vehicle laws, be extended to watercraft. The law would provide that, separate from the operator's responsibility, the owner of the watercraft would commit a civil violation anytime the watercraft is used in violation of the law. This would apply to any watercraft owner who permits the operator to use the watercraft. The most useful application of this law will be the ability of the law enforcement officers to cite the parents of minors recklessly operating the family watercraft.

See Appendix B for recommended legislation implementing this recommendation.

2. **Give the Commissioners authority to require persons guilty of boating law violations to complete a boating safety course**

The Commission recommends that the Commissioner of Inland Fisheries and Wildlife and the Commissioner of Marine Resources be given the authority to require convicted boat operators to complete an approved training course before operating a watercraft again.

See Appendix C for recommended legislation implementing this recommendation.

3. **Give the Commissioners authority to suspend or revoke the privilege to operate a watercraft and the certificate of registration**

The Commission recommends that the Commissioner of Inland Fisheries and Wildlife and the Commissioner of Marine Resources be given the authority to suspend the privilege of boaters to operate a watercraft in Maine based on specific criteria. The Commissioners would also have the power to suspend or revoke the registration of such a person's boat as well. This will give the Departments more weight to back up their enforcement capabilities, and will act as an incentive for boaters to observe safety requirements.

See Appendix C for recommended legislation implementing this recommendation.

4. **Impose safety restrictions on operating within the Water Safety Zone and marinas and approved anchorages**

Under current law, the Water Safety Zone (WSZ) extends from the shore out to 200 feet from shore (on inland waters). Although defined in statute, the only use of this zone under current law and regulations concerns waterskiing. No waterskiing is permitted in the WSZ, except to pick up or drop off waterskiers. (DIFW Watercraft Regulation 13.06, May 1, 1987.)

The Commission recommends that a speed limit of "headway speed only" be imposed within the WSZ, plus marinas and approved anchorages in coastal waters. "Headway speed" would be defined as the minimum speed necessary to maintain steerage and control of a watercraft. This speed will vary with the type of boat and its stability at low speeds. The "headway speed only" limit was chosen over the "no wake" restriction because some boats can travel at high

speeds and yet produce very little wake, while other, very large boats, cause a wake even at very low speeds. The "headway speed only" limit will address the hazards caused by both high speed and large wakes. Neither the public nor law enforcement officers are usually equipped to measure boat speed, so exact mile-per-hour speed limits are not practical. In addition, numerical speed limits raise the question of absolute speed or relative speed. That is, is a boat violating a 25 mph speed limit if it is approaching the shore at 25 mph, but it is operating against a 10 mph current? What is headway speed for any particular boat will remain a judgment call, but the amount of ambiguity would be greatly reduced from the current standard of "prudent speed" anywhere on the water. (The "prudent speed" standard will be retained, and will find its greatest use outside the WSZ.)

See Appendix B for recommended legislation implementing this recommendation.

5. Regulate personal watercraft

The use of personal watercraft, which include jet skis, wet bikes and surf jets, has raised a large number of complaints from reckless operation to noise pollution. The Commission recommends that operators and passengers of personal watercraft be required to wear a personal flotation device and that personal watercraft not be permitted to operate at night. The Commission recommends that the Joint Standing Committee which hears the bill should amend the legislation after determining the exact type of PFD which is appropriate for personal watercraft operators and passengers.

The Commission briefly discussed a separation requirement of 150 feet between a personal watercraft and any other watercraft, but a majority determined that measuring the 150 feet could be a problem.

See Appendix B for recommended legislation implementing this recommendation.

6. MINORITY RECOMMENDATIONS CONCERNING PERSONAL WATERCRAFT

One member of the Commission believes that there is sufficient cause to regulate personal watercraft much more stringently than other watercraft. Commission member Joan Irish believes that lakes, ponds, rivers,

coastal coves and harbors are, by their very nature, a multiple-user resource. When one use, such as personal watercraft, so severely and unquestionably conflicts with all other recreational pursuits, active as well as passive, it is clearly an inappropriate use of the public resource. In addition, the limited recreational value for a few is, according to Ms. Irish, far outweighed by the proven danger the operators of personal watercraft impose on others as well as themselves. Ms. Irish therefore recommends that personal watercraft be banned completely from the State. See Appendix E for recommended legislation implementing this recommendation. In the alternative, Ms. Irish recommends a series of restrictions on personal watercraft.

- a. Operators of personal watercraft must be at least 16 years of age and must have hands-on training in operating personal watercraft.
- b. Personal watercraft should be banned on waterbodies less than or equal to 150 acres of surface area.
- c. The same noise levels should apply to personal watercraft that apply to all boats, but personal watercraft should be measured when they are being operated at their loudest, which is when they are bouncing over waves or wakes.
- d. Personal watercraft should be banned on all sections of waterbodies which are less than 3 miles across.
- e. Personal watercraft should be prohibited from operating within 200 feet of any other watercraft, swimmer or shore, except when leaving or returning to shore, in which case the operator cannot operate the personal watercraft at greater than headway speed.
- f. No personal watercraft should be permitted to remain in motion under power without an operator.
- g. Personal watercraft should not be used to tow skiers, rafts, rubber tubes or similar conveyances.

See Appendix F for recommended legislation implementing this recommendation.

E. Strengthen Operating-Under-the-Influence Law

The Commission recommends that stronger drunk boating laws be enacted. The version recommended is that endorsed by the Joint Standing Committee on Legal Affairs during the Second Regular Session of the 113th Legislature (Committee Amendment "A" to Legislative Document 1935, filing H-708), with some modifications. The key changes from last session's legislation are: 1) Failure to take and complete a blood-alcohol test would be a civil violation, for which an operator may forfeit up to \$500, rather than a Class E crime as proposed last year; and 2) Operating any watercraft while under the influence would be a Class D crime, which would parallel motor vehicle OUI penalties, as opposed to last session's draft tying classification of the crime to the horsepower of the watercraft motor.

See Appendix D for recommended legislation implementing this recommendation.

F. Impose a decibel limit to reduce the noise produced by boats

Because sound carries so well over water, even a few loud boats can greatly disturb a major portion of a lake, pond, cove or section of coastline. The Commission recommends that a decibel limit be set by statute to reduce the noise that some boats are producing. Under current law, the only noise restriction (other than a decibel limit for airmobiles) is that all boats must be equipped with an "effective and suitable muffling device." 12 MRSA §7801, subsection 15. This requirement is apparently vague enough to provide little noise protection. However, there are statutory decibel limits for both snowmobiles and ATVs. The Commission recommends that a noise limit be set for watercraft using the same standard as the ATV law (82 decibels of sound pressure level at 50 feet). 12 MRSA §7857, subsection 15. A delayed effective date of January 1, 1991, will be beneficial in providing the opportunity for compliance. The Commission intends that this change in the law will be recognized and complied with by manufacturers, thereby making it easier for purchasers of new watercraft to comply with the noise limit.

See Appendix B for recommended legislation implementing this recommendation.

G. Clarify the authority of the Commissioner of Inland Fisheries and Wildlife to set horsepower limits

The Commissioner of Inland Fisheries and Wildlife currently has the authority to designate by rule horsepower limits on

internal water bodies when the limits are necessary to ensure the safety of persons or property. The rules can be adopted only as a result of a petition from the municipal officers, 25 citizens of the municipalities affected or, if the water body is in an unorganized territory, 25 citizens or the county commissioners. The law does not specifically allow the Commissioner to base the rules on the protection of wildlife habitat or other natural resources. The Commission recommends that the law be amended to specifically allow for the protection of natural resources. Specific criteria are listed, with the opportunity for the Commissioner, with the help of the Departments of Marine Resources, Conservation and Environmental Protection, to add additional criteria through rule-making if necessary.

The Commission also recommends that the Commissioner of Inland Fisheries and Wildlife review the problems of inappropriate watercraft size and design for inland waters and make recommendations, if needed, to address the problems in the interests of safety and resource protection. In making those recommendations, the Commissioner should consider changes needed in statutory restrictions, petition provisions or Department rules.

See Appendix B for recommended legislation implementing this recommendation.

MINORITY REPORT Note: One Commission member, Representative James Mitchell, recommends including criteria in the statute, to be clarified through rulemaking, that would automatically require the Commissioner to adopt horsepower restrictions once the petition process is followed. Rep. Mitchell finds the following criteria to be determinative: The lake or pond has been classified as a "gem lake" by the Land Use Regulation Commission; the waterbody serves a public water supply; the lake or pond is smaller than a minimum size, the minimum size to be designated by rule; and the waterbody has, as surveyed by the Department, a boat density above an appropriate use level, the level to be designated by rule.

See Appendix G for recommended legislation implementing this recommendation. (Note: The legislation recommended in Appendix G is the same as the legislation recommended in Appendix B EXCEPT for this minority recommendation and the minority recommendations under part H concerning seasonal objects and harbor masters.)

H. Address the problems concerning "seasonal objects" in the water

The Bureau of Parks and Recreation has the authority to make rules for the uniform marking of the waters of the State through the placement of aids to navigation and regulatory markers. Starting with this authority; the Bureau has adopted rules governing the placement of "seasonal objects", such as buoys used to mark boat moorings, organized swim areas, water-ski slalom courses and jumps, race courses and swim and diving floats. The statutes provide no specific authority, however, to regulate the placement of seasonal objects, although it is a Class E crime to mark a waterway contrary to the Bureau's rules.

The Commission recommends that the law be amended to specifically give authority to the Director of the Bureau of Parks and Recreation, with the Commissioner of Inland Fisheries and Wildlife, to make rules regulating the placement of seasonal objects in the waters of the State. The authority should include the power to remove illegally placed seasonal objects and the power to establish and administer a permitting system. In addition, the statute should provide criteria on which the permitting system should be based. The Commission also recommends that a violation of the rules be changed to a civil violation for which a forfeiture of no more than \$500 may be adjudged. This should help reduce the reluctance of law enforcement officers to enforce the rules.

The Commission recognizes the awkwardness of the Bureau's current position in issuing permits for seasonal objects but having neither the statutory authority nor the practical capability to enforce the rules. Currently, the Bureau must rely on the already-burdened Warden Service to enforce the rules. The Commission therefore recommends that the Bureau and the Warden Services work together to develop a mutually-acceptable plan for regulating seasonal objects, including any necessary enforcement activities.

See Appendix B for recommended legislation implementing this recommendation.

MINORITY REPORT Note: One Commission member, Representative James Mitchell, recommends that municipalities be given the first opportunity to regulate seasonal objects on waters within their borders, which authority they have under general home rule power. Only after a municipality declines to regulate swim floats, boat moorings and other seasonal objects would the Bureau of Parks and Recreation be able to apply the Bureau's rules and issue permits. Representative Mitchell recommends that the harbor master law be clarified to indicate that

municipalities on inland waters, as well as coastal municipalities, may appoint harbor masters. Where a waterbody is located within more than one municipality, the municipalities may work together to jointly hire a harbor master for all the lake or pond within the participating municipalities.

See Appendix G for recommended legislation implementing this recommendation. (Note: The legislation recommended in Appendix G is the same as the legislation recommended in Appendix B EXCEPT for these minority recommendations and the minority recommendation under part G concerning regulation of horsepower.)

I. Require an advisory report on the effect of these changes

The Commission recommends that an advisory commission be established to determine the effectiveness of these law changes and to recommend any other changes that will increase boater safety and enjoyment on Maine waters. The report should be made to the 115th Legislature no later than January 31, 1991. The commission will be modeled on the advisory commission created to review the ATV laws and which is submitting its report in January, 1989.

See Appendix B for recommended legislation implementing this recommendation.

J. Funding the recommendations

In order to finance the additional law enforcement staff recommended by this Commission and the Coastal Search and Rescue Commission, the Boating Commission recommends that the registration fee structure be reviewed, with an expectation of increasing the fee from the current level of \$4.00 to a total of \$15.00 for each motorized watercraft, an increase of \$11.00 per watercraft. In comparison, the registration fee for snowmobiles is \$16.00, of which \$5.25 goes to the Snowmobile Trail Fund, administered by the Department of Conservation, \$6.00 goes to towns, and \$4.75 goes to the Department of Inland Fisheries and Wildlife; the registration fee for all-terrain vehicles is \$12.00, of which \$3.85 is deposited into the ATV Recreational Management Fund, administered by the Department of Conservation, \$2.50 goes to the Department of Inland Fisheries and Wildlife to pay for the training and education programs, and the remaining \$5.65 goes to the general IF&W account. With approximately 114,000 boats registered every year, every one dollar increase in the fee should result in an increase of at least \$110,000 per year. This \$11 increase should result in a \$1,210,000

increase in revenue, 2/3 of which Inland Fisheries and Wildlife retains (\$866,667), and the Department of Marine Resources receives the remaining 1/3 (\$433,333).

See Appendix B for recommended legislation implementing this recommendation.

K. Non-legislative recommendations

The recommendations included in this report are numerous and far-ranging. The legislation can appropriately fall within the subject matter jurisdiction of several Joint Standing Committees. The Commission suggests that each piece of legislation be referred to the Committee which has jurisdiction over the agency that will be responsible for enforcing or administering the bulk of the changes.

The Commission recommends that the Department of Inland Fisheries and Wildlife revise the law booklet distributed to boaters to make it more readable and useful to the average boater. The Commission had the opportunity to review New Hampshire's Safe Boating pamphlet, and the members believe that a similar pamphlet for Maine should be considered. The Commission also recommends that the new boating guide be given to every person who registers a boat at the time of registration. Some boaters claim they have never even seen the current booklet, so this recommendation will make sure that they do have that opportunity. This is in furtherance of the Commission's belief that an informed boating public is a safer boating public.

6988*

APPENDIX A

LEGISLATION CREATING THE
MAINE SPECIAL COMMISSION ON BOATING

APPROVED

CHAPTER

APR 28 '88

111

BY GOVERNOR

RESOLVES

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-EIGHT

H.P. 1785 - L.D. 2446

RESOLVE, to Establish the Special
Commission on Boating.

Emergency preamble. Whereas, Acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the improper operation of boating equipment creates a hazard threatening the health and safety of residents and visitors to this State; and

Whereas, an increasing number of complaints about the operation of jet-skis and other watercraft have been received; and

Whereas, increases in the amount of lakeside construction and increases in the number of summer visitors to Maine will only lead to more conflicts between recreational users of the State's waters unless boating safety issues are addressed; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Commission established; membership. Resolved: That the Special Commission on Boating is established. The commission shall be comprised of the following 12 members:

1. The Commissioner of Inland Fisheries and Wildlife or the commissioner's designee;

2. The Commissioner of Marine Resources or the commissioner's designee;

3. Three members of the House of Representatives to be appointed by the Speaker of the House, 2 of whom shall be chosen from the Joint Standing Committee on Fisheries and Wildlife and one of whom shall be chosen from the Joint Standing Committee on Marine Resources;

4. Two Senators to be appointed by the President of the Senate, one of whom shall be chosen from the Joint Standing Committee on Fisheries and Wildlife and one of whom shall be chosen from the Joint Standing Committee on Marine Resources; and

5. Five members of the general public to be appointed by the Governor, each of whom shall have a background in boating activities either as a commercial enterprise or as a recreational interest; and be it further

Appointment; vacancies. Resolved: That all appointments shall be made within 30 days of the effective date of this resolve. The members shall select a chairman. The Chairman of the Legislative Council shall call the first meeting of the commission. Vacancies shall be filled by the authority responsible for the appointment; and be it further

Compensation. Resolved: All nonagency members of the commission shall receive reimbursement for expenses upon application to the Legislative Council; and be it further

Staff assistance. Resolved: That, if staff assistance is desired, assistance shall be requested from the Legislative Council; and be it further

Study. Resolved: That the commission shall study boating safety issues, including a study of safety equipment and the prevention of watercraft

accidents; issues concerning the operation of watercraft, including all watercraft vehicles that are currently regulated; and problems with other use conflicts, including fishing and water-related recreational activities. The commission shall also study the statutory provisions regarding operating boats in a dangerous or reckless manner, at an imprudent speed or while under the influence of intoxicating liquors or drugs to ensure that these provisions are adequate and up to date. In addition, the commission shall propose statutory changes needed to properly enforce the statutes that concern boats and boating and to provide protection to public, private and wildlife concerns; and shall study compliance with any federal regulations relating to boating safety; and be it further

Report. Resolved: That the commission shall submit its report, together with any necessary implementing legislation, to the 113th Legislature by December 1, 1988.

Appropriation. Resolved: That the following funds are appropriated from the General Fund to carry out the purposes of this resolve.

1987-88

LEGISLATURE

Special Commission on Boating

All Other \$5,100

Provides expenses for
commission members; 4
meetings, including 2
public hearings; and a
final report.

Emergency clause. In view of the emergency cited in the preamble, this resolve shall take effect when approved.

APPENDIX B

RECOMMENDED LEGISLATION:

AN ACT Concerning the Safe and Responsible
Operation of Watercraft.

FIRST REGULAR SESSION

ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY NINE

AN ACT Concerning the Safe and Responsible
Operation of Watercraft.

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

Sec. 1. 12 MRSA §7791, sub-§11-A, is enacted to read:

11-A. Personal watercraft. "Personal watercraft" means any motorized watercraft which is generally less than 13 feet in length as manufactured, is capable of exceeding a speed of 20 miles per hour and has the capacity to carry not more than the operator and one other person while in operation. The term includes but is not limited to a jet ski, wet bike, surf jet, miniature speed boat and hovercraft.

Sec. 2. 12 MRSA §7792, sub-§4, is repealed and the following enacted in its place:

4. Rules governing horsepower. The commissioner may adopt rules governing the horsepower of motors used to propel watercraft on the internal waters of the State.

A. In adopting rules, the commissioner shall take into consideration:

(1) The area of the internal waters, the use to which the internal waters are put, the depth of the water and the amount of water-borne traffic upon the waters and determine whether or not the rule is necessary to insure the safety of persons and property; and

(2) The natural resource management values of the waters and determine whether the rule is necessary to adequately protect and manage the State's natural resources.

a. Natural resource management values to be considered are:

i. Proximity to zoned backcountry recreation areas;

ii. Remoteness of water body;

iii. Marshes and wetlands;

iv. Waters identified as having significant wildlife habitat, erosion potential or rocky conditions; and

v. Other considerations concerning special natural resource character which the commissioner adopts by rule as necessary to adequately protect and manage the State's natural resources.

b. The commissioner shall consult with the commissioners of the departments of Marine Resources, Conservation and Environmental Protection in adopting rules concerning the natural resource management values to be considered and in adopting rules regulating horsepower for natural resource management purposes.

B. The adoption of rules under this subsection is governed by the Maine Administrative Procedure Act, Title 5, Part 18, except that such rules may be only adopted as a result of a petition from the municipal officers of the municipality or municipalities in which the waters exist or from 25 citizens of the municipalities in which the waters exist, by county commissioners of the county in which the waters exist if they are located in unorganized territory or 25 citizens of the unorganized townships or unorganized places in which the waters exist, requesting the issuance of such a rule for a particular body of internal water and stating the proposed horsepower limitation.

Sec. 3. 12 MRSA §7794, sub-§4, ¶A, is amended to read:

A. All watercraft requiring or requesting certificate of number \$ 4 15

Sec. 4. 12 MRSA §7801, sub-§15, is repealed and the following enacted in its place:

15. Operating a motorboat which exceeds the noise limit.

A person is guilty of operating a motorboat which exceeds the noise limit if he operates a motorboat which exceeds 82 decibels of sound pressure level at 50 feet on the 'A' scale as measured by the SAE standards J-192.

A. Each motorboat shall be equipped at all times with an effective and suitable muffling device on its engine or engines to effectively deaden or muffle the noise of the exhaust.

B. No person may modify the exhaust system of any motorboat in any manner which will increase the noise emitted above the emission standard provided in this subsection.

C. This subsection does not apply to motorboats which are operating in a regatta or race approved by the commissioner under section 7797. Such motorboats may use cutouts while on trial runs or competing in speed events, for a period not to exceed 48 hours immediately preceding or following such an authorized event.

Sec. 5. 12 MRSA §7801, sub-§30, is enacted to read:

30. Failure to comply with additional safety requirements while operating a personal watercraft. A person is guilty of failure to comply with additional safety requirements while operating a personal watercraft if he:

A. And any passenger are not wearing personal flotation devices while operating or riding on the personal watercraft; or

B. Operates the personal watercraft between the hours of sunset and sunrise.

Sec. 6. 12 MRSA §7801, sub-§31, is enacted to read:

31. Unlawfully permitting operation. A person is guilty of unlawfully permitting operation of a watercraft, if he permits another person to operate a watercraft which he owns and the operator operates that watercraft in violation of any section of this subchapter.

Sec. 7. 12 MRSA §7802 is enacted to read:

@7802. Operating within the Water Safety Zone

1. Headway speed only. No person may operate any watercraft at a speed greater than headway speed while within the Water Safety Zone or within a marina or an approved anchorage in coastal or inland waters. For the purposes of this section, "headway speed" means the minimum speed necessary to maintain steerage and control of the watercraft while moving.

2. Waterskiing. The prohibition in subsection 1 does not apply to watercraft, towing one or more waterskiers, picking up or dropping off one or more waterskiers in the Water Safety Zone if a reasonably direct course is followed through the Water Safety Zone between the point that the skiers are picked up or dropped off and the outer boundary of the Water Safety Zone.

Sec. 8. 12 MRSA §7901, sub-§13, is enacted to read:

13. Unlawfully permitting operation of watercraft. A violation of section 7801, subsection 31, is a civil violation for which a forfeiture of not less than \$100 nor more than \$500 may be adjudged.

Sec. 9. 38 MRSA §321 is amended to read:

@321. Director of the Bureau of Parks and Recreation; duties

The Director of the Bureau of Parks and Recreation, with the advice of the Bureau of Parks and Recreation, shall acquire, construct and maintain, within the funds available, public facilities for boats in the waters of the State, including but not limited to launching ramps, parking sites and access roads. Waters of the State means any waters within the territorial limits of the State, and the marginal sea adjacent to the State.

The Director of the Bureau of Parks and Recreation shall decide where the facilities shall be located and which facilities shall be constructed by the Department of Transportation.

The Director of the Bureau of Parks and Recreation shall decide when in his opinion hazards to boating exist and mark the waters of the State, within the funds available, by placement of aids to navigation and regulatory markers on the waters consistent with the rules provided in section 323.

In carrying out the purposes of this chapter, the Bureau of Parks and Recreation, its authorized agents and employees, may enter upon any lands, waters and premises in the State for the purpose of making surveys and examinations as it may deem necessary or convenient in the discharge of its duties, and such entry shall not be deemed a trespass.

The Director of the Bureau of Parks and Recreation may make rules for the uniform marking of the water areas of this State not otherwise regulated, through the placement of aids to navigation and regulatory markers. No city, county or person shall mark the waters of this State in any manner in conflict with the marking system prescribed by the Director of the Bureau of Parks and Recreation.

The Director of the Bureau of Parks and Recreation shall remove, within the funds available, minor hazards to boating when, in his opinion, removal of the minor hazard or obstacle is necessary for the safe passage of watercraft. The Bureau of Parks and Recreation, its authorized agents and employees, in carrying out the purpose of this paragraph, may enter upon any lands with the owner's permission, waters and premises in the State for the purpose of removing minor hazards or obstacles as it may deem necessary or convenient in the discharge of its duties, and such entry shall not be deemed a trespass.

The Director of the Bureau of Parks and Recreation shall regulate the placement of seasonal objects according to section 321-B.

Sec. 10. 38 MRSA §321-A, sub-§2, is amended to read:

2. Establish rules and regulations. To establish such rules and regulations as it deems necessary:

A. For the protection and preservation of public facilities acquired, constructed and maintained pursuant to this subchapter;

B. For the protection and safety of the public; ~~and~~

C. For observances of the conditions and restrictions expressed in deeds of trust or otherwise, of any such public facilities; and

D. For the purposes of controlling the placement of seasonal objects in the inland waters of the State according to section 321-B.

Sec. 11. 38 MRSA §321-B is enacted to read:

§321-B. Control of seasonal objects

1. Purposes. The Director of the Bureau of Parks and Recreation shall regulate the placement of seasonal objects in open waters of the inland waters of the State to protect rights of free navigation, public safety, fish and wildlife resources, and to maintain to the greatest extent possible the natural character of Great Ponds and rivers. "Seasonal objects" include, but are not limited to, docking floats, mooring systems, swim and dive floats, and buoys used to mark boat moorings, organized swim areas, water ski slalom course, ski jumps and race courses left in the inland waters of the State for less than 7 months.

2. Rules. The Director, together with the Commissioner of the Department of Inland Fisheries and Wildlife, shall adopt rules to govern the placement of seasonal objects to accomplish the purposes in subsection 1.

A. The rules may allow for the placement of seasonal objects by shorefront property owners, within the first 100 feet of water adjacent to their property, without obtaining a permit from the Bureau.

B. The rules shall define what is meant by the term "adjacent to shorefront property."

C. The rules shall require a permit for placement of seasonal objects in the following situations. The Bureau shall issue permits for a reasonable length of time, as determined by the Bureau. Permits shall not be assignable or transferable.

(1) Any person who is not a shorefront property owner must obtain written permission from the shorefront property owner and obtain a permit from the Bureau before placing a seasonal object adjacent to that owner's shorefront property.

(2) Any shorefront property owner proposing to place a seasonal object further than 100 feet from the normal high water mark of their shorefront property must first obtain a permit from the Bureau. Due to the hazards that may be posed to navigation or public safety, no shorefront property owner may place any seasonal object within the inland waters of the State more than 200 feet from the normal high water mark unless that owner can demonstrate to the Bureau that no other reasonable alternative exists and the Bureau determines that the placement of that object will not pose a hazard to navigation or safety.

(3) Any shorefront property owner proposing to charge a fee for the placement or use of seasonable objects adjacent to their shorefront property must first obtain a permit from the Bureau.

If a shorefront property owner proposes to charge a fee for the placement or use of 5 or more seasonal objects or for the dockage rights of 5 or more boats at any docking floats or mooring system, the Bureau may hold a public hearing in or near the jurisdiction in which the shorefront property is located to receive public comment on the permit application and shall consider these comments in its decision regarding issuance of the permit.

D. The rules shall require the payment of a reasonable fee to the Bureau for any application and permit required by this section, and for each seasonal object for which a shorefront property proposes to charge a fee.

E. The rules may provide for the removal of illegal seasonal objects by the Director or the Warden Service.

F. The Warden Service of the Department of Inland Fisheries and Wildlife shall enforce any rules adopted under this section.

3. Use of resources. The Bureau may use funds as provided by this chapter for the hiring of staff and purchase of equipment to operate and enforce the permit system.

Sec. 12. 38 MRSA §329 is amended to read:

§329. Penalties

Whoever marks waters contrary to the rules established by the Director of the Bureau of Parks and Recreation ~~shall be~~ ~~guilty of a Class E crime~~ commits a civil violation for which a forfeiture of up to \$500 may be adjudged. Each day shall be a separate violation.

Whoever moors a vessel, boat, scow or raft to any buoy, beacon or permanent structure placed by the State in any waters of this State or in any manner makes fast thereto ~~shall be~~ ~~guilty of a Class E crime~~ commits a civil violation for which a forfeiture of up to \$500 may be adjudged. Each day shall be a separate violation.

Whoever intentionally destroys, defaces, damages, moves off station or sinks any buoy, beacon or marking device either floating on the waters of the State or permanently fixed to the land or structures adjacent to the water areas of the State, placed by the State, ~~shall be~~ ~~guilty of a Class E crime~~

commits a civil violation for which a forfeiture of up to \$500 may be adjudged. Each day shall be a separate violation.

Whoever places a seasonal object in a manner inconsistent with this subchapter to the rules adopted under this subchapter commits a civil violation for which a forfeiture of up to \$500 may be adjudged. Each day shall be a separate violation.

Sec. 13. Effective date. Section 4 is effective beginning January 1, 1991.

Sec. 14. Allocation. The following funds are allocated from Inland Fisheries and Wildlife dedicated revenue to carry out the purposes of this Act:

	<u>1989-90</u>	<u>1990-91</u>
<u>INLAND FISHERIES AND WILDLIFE,</u>		
<u>DEPARTMENT OF</u>		
Enforcement Operations		
- IF&W		
Positions	(10)	(10)
Personal Services	\$204,045	\$293,730
All Other	33,750	36,500
Capital Expenditures	<u>257,480</u>	<u> </u>
TOTAL	\$459,275	\$330,230

Provides funds for
10 additional full
time wardens, general
operating expenses
and 5 new boats on
trailers.

STATEMENT OF FACT

This bill contains recommendations of the Maine Special Commission on Boating, created by Resolves 1987, Chapter 111.

Section 1 defines the term "personal watercraft" which a few states refer to as "thrill craft." Section 6 also places 2 restrictions, in addition to the restrictions which apply to all watercraft including personal watercraft, on the operation of personal watercraft. One is the requirement that the operator and any passenger must wear proper personal flotation devices while operating or riding on the watercraft. Requirements currently prescribe that the personal flotation devices simply be on board the watercraft.

The second restriction is that no personal watercraft may be operated at night. Night is determined as the time between sunset and sunrise. Night operation can be dangerous to both persons on the personal watercraft and other boaters. Because most personal watercraft have no lights, they cannot be seen at night. Even if the operator displays a light or installs lights, however, the personal watercraft, because of their size, are difficult to see at night. In addition, it is almost impossible to see a person in the water at night and persons can fall off a personal watercraft very easily.

Section 2 revises the authority of the Commissioner of Inland Fisheries and Wildlife to make rules restricting horsepower of watercraft on inland waters. Current law allows the Commissioner to consider only the safety of persons and property in regulating horsepower. This bill expands that authority to include consideration of natural resource management values and to allow those values to be the basis of rules restricting horsepower on any particular water body. The bill specifically lists certain resource values which must be considered, and allows the commissioner to adopt rules governing additional concerns which must be considered in order to adequately protect and manage the natural resources of the State. The Commission will consult with the Commissioners of the Department of Marine Resources, the Department of Environmental Protection and the Department of Conservation, which includes the Land Use Regulation Commission, the Bureau of Public Lands and the Bureau of Parks and Recreation. All these other state agencies have expertise in the protection and management of natural resources which should be included in developing regulations concerning watercraft horsepower limitations.

Section 3 of the bill raises the annual registration fee for motorized watercraft to \$15, representing an increase of \$11. Only motorized watercraft are required to be registered. In comparison, the fee to register a snowmobile is \$16, while the fee for ATVs is \$12.

Section 4 enacts a noise limit for motorboats based on the same decibel limit as currently applies to ATVs. The bill retains the exemption for boats participating in approved regatta events. To allow boaters to have sufficient time to comply with the law, Section 13 delays the effective date of the decibel limit until January 1, 1991. Until that time, the current law, which requires the use of an effective muffler, will remain in effect.

Sections 6 and 8 are modeled on a provision of the ATV laws. They provide that the owner of a watercraft commits a civil violation if he or she permits any person to operate that watercraft, and the operator commits any of the prohibited acts concerning the operation of watercraft.

These provisions are intended to apply to any situation in which the owner allows another person to use the watercraft, including, but not limited to, parents allowing their children to use the watercraft and rental agencies renting watercraft to their customers.

Section 7 prohibits high rates of speed within 200 feet of the shore on inland waters and within marinas and approved anchorages on all waters. All watercraft are limited to "headway speed" only within these areas. (The Water Safety Zone" is already defined in Title 12 to mean the area of water within 200 feet of any shoreline, whether the shoreline of the mainland or of an island.)

An exception is made for watercraft towing one or more waterskiers. Boats towing waterskiers can cross through the Water Safety Zone to drop off or pick up waterskiers on or near the shore. The exception only applies if the boat follows a reasonably direct route through the Water Safety Zone; it is not giving boats towing waterskiers free reign to travel in the Water Safety Zone.

Sections 9 through 12 clarify that the Director of the Bureau of Parks and Recreation has the power to make rules governing the placement of seasonal objects in Maine waters. That power includes the authority to remove illegally placed objects. This does not apply to ice houses used for ice fishing on frozen waters; the Department of Inland Fisheries and Wildlife regulates ice fishing. The director, with the Commissioner of Inland Fisheries and Wildlife, will adopt rules to regulate seasonal objects. Both agencies must be involved in the rule-making process as long as the Bureau of Parks and Recreation administers the seasonal objects and the Warden Service is relied upon to provide the enforcement.

Section 12 also makes violation of the rules governing marking of waters and seasonal objects a civil violation rather than a Class E crime.

This bill also funds 10 additional full-time wardens to be assigned where needed most. Their duties will focus on boating law enforcement during the boating season, and boating instruction as well as ATV and snowmobile law enforcement in the off-season. The Warden Service will purchase 5 new boats on trailers to help increase their enforcement capability. The boats will be brightly marked and easily identifiable as wardens' boats.

7353*

APPENDIX C

RECOMMENDED LEGISLATION:

AN ACT Concerning the Operation of Watercraft.

FIRST REGULAR SESSION

ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY NINE

AN ACT Concerning the Operation of Watercraft.

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

Sec. 1. 12 MRSA §7801, sub-§13, is repealed and the following enacted to read:

12. Operating a motorboat while under age; without a certificate of training. A person is guilty of operating a motorboat while under age if he:

A. Is under 10 years of age and operates a motorboat;

B. Is at least 10 years of age but less than 16 years of age, does not have a certificate showing he has successfully completed a training course approved by the department under section 7802 and operates a motorboat; or

C. Is at least 10 years of age but less than 16 years of age, has a certificate showing he has successfully completed a training course approved by the department under section 7802 and operates a motorboat with a motor of 25 horsepower or more.

Sec. 2. 12 MRSA §7801, sub-§30, is enacted to read:

30. Operating without certificate of training. A person is guilty of operating without a certificate of training if he was born on or after January 1, 1973, and operates a motorized watercraft without having a certificate showing he has successfully completed a boating safety course approved by the department under section 7802.

Sec. 3. 12 MRSA §7801, sub-§31, is enacted to read:

31. Operating after suspension. A person is guilty of operating after suspension if he operates a watercraft while his privilege to operate is revoked or suspended under section 7803.

Sec. 4. 12 MRSA §7802 is enacted to read:

§7802. Training course

1. Course approval. The Commissioner, with the advice of the Commissioner of the Department of Marine Resources, shall approve a boating safety course only if the course includes instruction on the safe operation of watercraft, the laws pertaining to watercraft, the effect of watercraft on the environment and ways to minimize that effect, courtesy to shorefront landowners and other recreationists and other materials as determined by the commissioner.

2. Certificate. After a person successfully completes a training course approved under this section, the commissioner shall issue a certificate of successful completion to that person.

3. Rules. The commissioner shall adopt rules governing the approval of courses under this section, the determination that a person has successfully completed a course approved under this section and the issuance of certificates of successful completion.

4. Course required. The commissioner and the commissioner of the Department of Marine Resources may require a boater who has violated section 7801 to successfully complete a training course approved under this section. The commissioners shall adopt rules governing when the commissioners can require boaters to complete an approved training course in response to the boater's violation of the law.

Sec. 5. 12 MRSA §7803 is enacted to read:

§7803. Suspension or revocation of registration or privilege to operate

1. Suspension or revocation. The Commissioner of Inland Fisheries and Wildlife or the Commissioner of Marine Resources may suspend or revoke any certificate of registration issued under section 7794 or privilege to operate a watercraft after hearing for any cause which he deems sufficient. He is also authorized to suspend or revoke any certificate of registration issued to any person without preliminary hearing upon showing by his records or other sufficient evidence that the operator:

A. Has been convicted or adjudicated with such frequency of violating this subchapter as to indicate a disrespect for watercraft laws and disregard for the safety of other persons on the waters of the state;

B. Is a reckless or negligent watercraft operator, such fact being established by a record of accidents or by other evidence;

C. Is incompetent to operate a watercraft;

D. Has committed an offense in another state which, if committed in this State, would be grounds for suspension or revocation;

E. Has been convicted of failing or refusing to stop upon request or signal of an officer in uniform, as defined in section 6953 or 7060; or

F. Has been convicted of reckless operation or operating to endanger, as defined in section 7801, subsection 8 or 10, respectively.

2. Hearing. Upon suspending or revoking a certificate of registration or privilege to operate of any person without preliminary hearing, the Commissioner of Inland Fisheries and Wildlife or the Commissioner of Marine Resources shall notify that person as provided in Title 5, section 9052, subsection 1, that an opportunity for hearing shall be provided without undue delay, after receipt of a request.

If a hearing is held to determine whether a person's privilege to operate or registration should be restored, the hearing shall be conducted as provided in Title 5, chapter 375, subchapter IV. Upon the hearing, the Commissioner of Inland Fisheries and Wildlife or the Commissioner of Marine Resources shall either rescind his order of suspension or, for good cause, may continue, modify or extend the suspension of the privilege to operate or registration.

Notice of any hearing held by the Commissioner of Inland Fisheries and Wildlife or the Commissioner of Marine Resources under this Title shall be consistent with Title 5, section 9052, and shall notify the operator or registrant that he may then and there appear, in person or through counsel, to show cause why the privilege to operate or the certificate of registration should not be suspended or revoked. Service of that notice shall be sufficient if sent by regular mail to the address given by the operator or registrant at least 10 days before the date set for the hearing. The date of birth and name on the notification of suspension or revocation document shall be prima facie evidence that the named person is the same person as the defendant of the same name and birthday.

Any person who, after notice of suspension or revocation, fails or refuses to obey any order of the Commissioner of Inland Fisheries and Wildlife or Commissioner of Marine Resources under this section or fails or refuses to surrender to the Commissioner of Inland Fisheries and Wildlife or Commissioner of Marine Resources upon demand any watercraft registration issued in this State or any other state which has been suspended, canceled or revoked by proper authority in this State or any other state, as provided by law shall be guilty of a Class E crime.

3. Conditions on restoration of registration or privilege to operate. The Commissioner of Inland Fisheries and Wildlife or the Commissioner of Marine Resources may require that a person successfully complete an approved training course under section 7802 as a prerequisite to restoration of the certificate of registration or the privilege to operate.

Sec. 6. 12 MRSA §7901, sub-§13, is enacted to read:

13. Operating after suspension. A violation of section 7801, subsection 31, is a civil violation for which a forfeiture not to exceed \$500 may be adjudged.

Sec. 7. **Advisory Report.** The Department of Marine Resources and the Department of Inland Fisheries and Wildlife shall jointly monitor the effects of this Act. The Department of Inland Fisheries and Wildlife shall serve as the lead agency. These departments shall make a report to the Legislature no later than January 31, 1991, in which they document the results of their monitoring, present recommendations concerning all important issues and submit any required legislation approved by the Attorney General covering all important issues. The departments shall obtain input from the Attorney General and district attorneys, representatives of the judicial system, representatives of lake associations, and representatives of state, county and municipal law enforcement agencies.

By January 31, 1990, the departments shall submit to the joint standing committees of the Legislature having jurisdiction over boating laws a plan for this report including deadlines for each phase, cost and objectives against which the success of this legislature will be measured. To the extent possible, these objectives shall be statistically measurable.

STATEMENT OF FACT

This bill contains recommendations of the Maine Special Commission on Boating, created by Resolves 1987, Chapter 111.

Section 1 of the bill changes the age restrictions for operating a motorized watercraft. No one under 10 years of age may operate a motorized watercraft. No one under 16 years of age may operate a watercraft of 25 horsepower or more, plus anyone operating a motorized watercraft must successfully complete an approved training course if the operator is under 16.

Closely related to the age restrictions is the training requirement. Section 2 of the bill requires all persons born on or after January 1, 1973, to complete a boating safety course approved by the Commissioner of Inland Fisheries and Wildlife before operating any motorized watercraft. Many boating mishaps and close calls are caused by lack of boating safety and operating knowledge. Through the gradual phase-in of this education requirement, the boating public will be better and safer boaters.

Section 5 gives the Commissioners of Inland Fisheries and Wildlife and Marine Resources the power to suspend boat registrations and the privilege to operate a watercraft for specified reasons. This authority is based on the Secretary of State's power to suspend and revoke motor vehicle registrations, driver's licenses and privilege to operate. Section 3 makes it illegal to operate while the privilege to operate is suspended. Section 6 makes the violation a civil violation rather than a Class E crime.

Section 4 outlines the minimum requirements for the approval of training courses by the Commissioner of Inland Fisheries and Wildlife, with the advice of the Commissioner of Marine Resources. The Commissioner must approve the course if it meets the criteria.

Section 7 requires the Departments of Inland Fisheries and Wildlife and Marine Resources to report back to the Legislature by January 31, 1992, concerning the success of this Act. The format for the study is based on the study recently completed concerning all-terrain vehicles.

7356*

APPENDIX D

RECOMMENDED LEGISLATION:

AN ACT to Amend the Laws Governing Operating a
Watercraft Under the Influence.

FIRST REGULAR SESSION

ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY NINE

AN ACT to Amend the Laws Governing Operating a
Watercraft Under the Influence.

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

Sec. 1. 15 MRSA §3301, sub-§7, is amended to read:

7. **Nonapplication of section.** The provisions of this section do not apply to a juvenile charged with either of the juvenile crimes defined in section 3103, subsection 1, paragraph E or F, and a petition may be filed without recommendation by a juvenile caseworker. The provisions of section 3203-A apply in the case of a juvenile charged with either of the juvenile crimes defined in section 3103, subsection 1, paragraph E or F.

Sec. 2. 15 MRSA §3103, sub-§1, ~~¶E~~, is amended to read:

E. Offenses involving the operation of a ~~snowmobile~~ or snowmobile while under the influence of intoxicating liquor or drugs, as defined in Title 12, section 7801, subsection 9, and section 7827, subsection 9, respectively, and offenses involving failing to aid an injured person or to report a hunting accident as defined in Title 12, section 7406, subsection 15; and

Sec. 3. 15 MRSA §3314, sub-§3, is repealed and the following enacted in its place:

3. Disposition for violation of section 3103, subsection 1, paragraph E or F. When a juvenile has been adjudicated as having committed the juvenile crime under section 3103, subsection 1, paragraph E or F, the court may impose any of the dispositional alternatives contained in subsection 1. Any incarceration which is imposed may be part of a disposition pursuant to subsection 1, paragraph F or H. Any incarceration in a county jail shall be in a county jail designated by the Department of Corrections as a place for the secure detention of juveniles.

A. For an adjudication under section 3103, subsection 1, paragraph F, the juvenile's license or permit to operate a motor vehicle, right to operate a motor vehicle or right to apply for or obtain a license shall be suspended by the court for a period of 180 days. The period of suspension shall not be suspended by the court. The court shall give notice of the suspension and take physical custody of an operator's license or permit as provided in Title 29, section 2241-H. The court shall immediately transmit a certified abstract of the suspension to the Secretary of State. A further suspension may be imposed by the Secretary of State pursuant to Title 29, section 1312-D, subsection 1-A.

Sec. 4. 12 MRSA §7801, sub-§9, is repealed and the following enacted in its place

9. Operating watercraft under the influence or with excessive blood-alcohol level. A person is guilty of a criminal violation if he operates or attempts to operate any watercraft:

A. While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs; or

B. While having 0.08% or more by weight of alcohol in his blood.

Sec. 5. 12 MRSA §7801, sub-§9-A, is enacted to read:

9-A. Failure to comply with duty to submit. A person is guilty of failing to comply with the duty to submit to and complete a blood-alcohol test under section 7802 if he refuses to submit to or fails to complete a blood-alcohol test when requested to do so by a law enforcement officer:

A. Who has probable cause to believe that the person has operated or attempted to operate a watercraft under the influence of intoxicating liquor; or

B. When the person was the operator of a watercraft involved in a watercraft accident which results in the death of any person, as provided in section 7912, subsection 11.

Sec. 6. 12 MRSA §7802 is enacted to read:

§7802. Implied consent to chemical tests

Any person who operates or attempts to operate a watercraft within this State shall have the duty to submit to a test to determine his blood-alcohol level by analysis of his blood or breath, if there is probable cause to believe he has operated or attempted to operate a watercraft while under the influence of intoxicating liquor. The duty to submit to a blood-alcohol test includes the duty to complete either a blood or breath test. Tests and procedures applicable in determining whether a person is under the influence are governed by section 7912.

Sec. 7. 12 MRSA §7901, sub-§13, is enacted to read:

13. Penalties for operating or attempting to operate a watercraft under the influence or with an excessive blood-alcohol level. The offense defined in section 7801, subsection 9, is a Class D crime. In the determination of an appropriate sentence, refusal to submit to a chemical test shall in every case be an aggravating factor. In the following cases the following minimum penalties shall apply.

A. Except as provided in paragraph B, in the case of a person having no previous convictions of a violation of section 7801, subsection 9, and having no previous adjudications of failing to comply with the duty to submit to and complete a blood-alcohol test under section 7802, within a 6-year period, the fine shall not be less than \$300. Beginning July 1, 1990, the penalties provided in this paragraph may not be suspended.

B. In the case of a person having no previous convictions of a violation of section 7801, subsection 9, and having no previous adjudications of failing to comply with the duty to submit to and complete a blood-alcohol test under section 7802, within a 6-year period, the fine shall not be less than \$300 and the sentence shall include a period of incarceration of not less than 48 hours, which penalties may not be suspended, when the person:

(1) Was tested as having a blood-alcohol level of 0.15% or more;

(2) Failed or refused to stop upon request or signal of an officer in uniform, as defined in section 6953 or 7060, during the operation which resulted in prosecution for operating under the influence or with a blood-alcohol level of 0.08% or more; or

(3) Failed to submit to a chemical test for the determination of that person's blood-alcohol level, at the request of a law enforcement officer on the occasion which resulted in the conviction.

C. In the case of a person having one previous conviction of a violation of section 7801, subsection 9, or one previous adjudication of failing to comply with the duty to submit to and complete a blood-alcohol test under section 7802, within a 6-year period, the fine shall not be less than \$500 and the sentence shall include a period of incarceration of not less than 7 days, which penalties may not be suspended.

D. In the case of a person having 2 or more previous convictions of violations of section 7801, subsection 9, or adjudications of failing to comply with the duty to submit to and complete a blood-alcohol test under section 7802, within a 6-year period, the fine shall not be less than \$750 and the sentence shall include a period of incarceration of not less than 30 days, which penalties may not be suspended.

E. In addition to the penalties provided under paragraphs C and D, the court may order the defendant to participate in the alcohol and other drug education, evaluation and treatment program for multiple offenders administered by the Department of Human Services, as defined in Title 22, chapter 1602.

F. The penalties provided under paragraphs B, C, D and, beginning July 1, 1990, A shall not be suspended by the court.

G. If the State pleads and proves that, while operating a watercraft in violation of this section, the actor in fact caused serious bodily injury as defined in Title 17-A, section 2, subsection 23, to another person or in fact caused the death of another person, the sentencing class for the offense in section 7801, subsection 9, is a Class C crime. The minimum penalties specified in this subsection shall apply, but the minimum period of suspension shall be 18 months unless a longer minimum period otherwise applies.

The alternatives defined in section 7801, subsection 9, paragraphs A and B may be pleaded in the alternative. The State may, but shall not be required to, elect prior to submission of the fact finder.

For purposes of this section, a prior conviction has occurred within the 6-year period provided if the date of docket entry by the clerk of a judgment of conviction or adjudication is 6 years or less from the date of the new conduct which is penalized or for which the penalty is or may be enhanced.

In determining the appropriate sentence, the court shall consider the defendant's record of convictions for operating under the influence and for failure to comply with the duty to submit. The court may rely upon oral representations based on records maintained by the courts, by the State Bureau of Identification, by the Secretary of State, including telecommunications of records maintained by the Secretary of State, or by the Department of Inland Fisheries and Wildlife. If the defendant disputes the accuracy of any representation concerning a conviction or adjudication the court shall grant a continuance for the purposes of determining the accuracy of the record.

References in this Title to this section shall be deemed also to refer to the juvenile crime stated in Title 15, section 3103, subsection 1, paragraph E, and to the disposition, including a suspension, for that juvenile crime as provided in Title 15, section 3314, subsection 3, except as otherwise provided or except where the context clearly requires otherwise.

Sec. 8. 12 MRSA §7901, sub-§14, is enacted to read:

14. Penalties for failure to comply with duty to submit. The offense defined in section 7801, subsection 9-A is a civil violation for which a forfeiture of up to \$500 may be adjudged.

Sec. 9. 12 MRSA §7912 is enacted to read:

§7912. Tests and procedures for operating under the influence or with an excessive blood-alcohol level

1. Blood or breath test. The law enforcement officer shall inform the person whom there is probable cause to believe has operated or attempted to operate a watercraft while under the influence of intoxicating liquor that a breath test will be administered, unless, in the determination of the law enforcement officer, it is unreasonable for a breath test to be administered, in which case a blood test shall be administered. When a blood test is required, the test may be administered by a physician of the accused's choice, at the request of the accused and if reasonably available. The law enforcement officer may determine which type of breath test, as described in subsection 5, is to be administered.

2. Prerequisites to tests. Before any test specified is given, the law enforcement officer shall inform the person whom there is probable cause to believe has operated or attempted to operate a watercraft while under the influence of intoxicating liquor that, if he fails to comply with the duty to submit to and complete a blood-alcohol test to determine the level of blood-alcohol at the direction of the law enforcement officer, he will be committing a civil violation for which he may be required to pay a civil forfeiture of up to \$500. The officer should also inform the person that the failure to comply with

the duty to submit to a blood-alcohol test shall be admissible in evidence against him at any trial for operating under the influence of intoxicating liquor.

No test results may be excluded as evidence in any proceeding before any administrative officer or court of this State as a result of the failure of the law enforcement officer to comply with this prerequisite. The only effects of the failure of the officer to comply with the prerequisite shall be as provided in subsection 7.

3. Results of test. Upon the request of the person who submits to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney by the law enforcement officer.

4. Blood-alcohol level.

A. If there was, at the time alleged, 0.05% or less by weight of alcohol in the defendant's blood, it is prima facie evidence that the defendant was not under the influence of intoxicating liquor.

B. If there was, at the time alleged, in excess of 0.05%, but less than 0.08% by weight of alcohol in the defendant's blood, it is relevant evidence, but it is not to be given prima facie effect in indicating whether or not the defendant was under the influence of intoxicating liquor within the meaning of this section, but such fact may be considered with other competent evidence in determining whether or not the defendant was under the influence of intoxicating liquor.

C. For purposes of evidence in proceedings other than those arising under section 7801, subsection 9, it shall be presumed that a person was under the influence of intoxicating liquor when he has a blood-alcohol level of 0.08% or more by weight.

D. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred milliliters of blood.

5. Administration of tests. Persons conducting analysis of blood or breath for the purpose of determining the blood-alcohol level shall be certified for this purpose by the Department of Human Services under certification standards to be set by that department.

Only a duly licensed physician, registered physician's assistant, registered nurse or a person certified by the Department of Human Services under certification standards to be set by that department, acting at the request of a law

enforcement officer, may draw a specimen of blood for the purpose of determining the blood-alcohol level of a person who is complying with the duty to submit to a blood-alcohol test. This limitation shall not apply to the taking of breath specimens. When a person draws a specimen of blood at the request of a law enforcement officer, that person may issue a certificate which states that the person is in fact a duly licensed or certified person as required by this paragraph and that the person followed the proper procedure for drawing a specimen of blood for the purpose of determining the blood-alcohol level. That certificate, when duly signed and sworn to by the person, shall be admissible in evidence in any court of the State. It is prima facie evidence that the person was duly licensed or certified and that the person followed the proper procedure for drawing a specimen of blood for the purpose of determining the blood-alcohol level, unless, with 10-days' written notice to the prosecution, the defendant requests that the person testify as to licensure or certification, or the procedure for drawing the specimen of blood.

A law enforcement officer may take a sample specimen of the breath of any person whom the officer has probable cause to believe has operated or attempted to operate a watercraft while under the influence of intoxicating liquor and who is complying with the duty to submit to and complete a blood-alcohol test, the sample specimen to be submitted to the Department of Human Services or a person certified by the Department of Human Services for the purpose of conducting chemical tests of the sample specimen to determine the blood-alcohol level of that sample.

Only such equipment as is approved by the Department of Human Services shall be used by a law enforcement officer to take a sample specimen of the defendant's breath for submission to the Department of Human Services or a person certified by the Department of Human Services for the purpose of conducting tests of the sample specimen to determine the blood-alcohol level thereof. Approved equipment shall have a stamp of approval affixed by the Department of Human Services. Evidence that the equipment was in a sealed carton bearing the stamp of approval shall be accepted in court as prima facie evidence that the equipment was approved by the Department of Human Services for use by the law enforcement officer to take the sample specimen of the defendant's breath.

As an alternative to the method of breath testing described in this subsection, a law enforcement officer may test the breath of any person whom there is probable cause to believe has operated or attempted to operate a watercraft while under the influence of intoxicating liquor by use of a self-contained, breath-alcohol testing apparatus to determine the blood-alcohol level, provided the testing apparatus is reasonably available. The procedures for the operation and testing of

self-contained breath-alcohol testing apparatuses shall be as provided by rule adopted by the Department of Human Services. The result of any such test shall be accepted as prima facie evidence of the blood-alcohol level in any court.

Approved self-contained, breath-alcohol testing apparatus shall have a stamp of approval affixed by the Department of Human Services after periodic testing. That stamp of approval shall be valid for a limited period of no more than one year. Testimony or other evidence that the equipment was bearing the stamp of approval shall be accepted in court as prima facie evidence that the equipment was approved by the Department of Human Services for use by the law enforcement officer to collect and analyze a sample specimen of the defendant's breath.

Failure to comply with any provisions of this subsection or with any rules adopted under this subsection shall not, by itself, result in the exclusion of evidence of blood-alcohol level, unless the evidence is determined to be not sufficiently reliable.

Testimony or other evidence that any materials used in operating or checking the operation of the equipment were bearing a statement of the manufacturer or of the Department of Human Services shall be accepted in court as prima facie evidence that the materials were of a composition and quality as stated.

A person certified by the Maine Criminal Justice Academy, under certification standards to be set by the academy, as qualified to operate approved self-contained, breath-alcohol testing apparatuses may operate those apparatuses for the purpose of collecting and analyzing a sample specimen of defendants' breath.

6. Liability. No physician, physician's assistant, registered nurse, person certified by the Department of Human Services or hospital or other health care provider in the exercise of due care may be liable in damages or otherwise for any act done or omitted to be done in performing the act of collecting or withdrawing specimens of blood at the request of a law enforcement officer pursuant to this section.

7. Evidence. The percentage by weight of alcohol in the defendant's blood at the time alleged, as shown by the chemical analysis of his blood or breath, or by results of a self-contained, breath-alcohol testing apparatus authorized by subsection 5, shall be admissible in evidence.

When a person, certified under subsection 5, conducts a chemical analysis of blood or breath for the purpose of determining blood-alcohol level, he may issue a certificate stating the results of the analysis. That certificate, when

duly signed and sworn to by the certified person, shall be admissible in evidence in any court of the State. It shall be prima facie evidence that the person taking a specimen of blood was a person authorized by subsection 5, that the equipment, chemicals and other materials used in the taking of the blood specimen or a breath sample were of a quality appropriate for the purpose of producing reliable test results, that any equipment, chemicals or materials required by subsection 5 to be approved by the Department of Human Services were in fact approved, that the sample tested by the person certified under subsection 5 was in fact the same sample taken from the defendant and that the percentage by weight of alcohol in the blood of the defendant was, at the time the blood or breath sample was taken, as stated in the certificate, unless with 10-days' written notice to the prosecution, the defendant requests that a qualified witness testify as to any of the matters as to which the certificate constitutes prima facie evidence. The notice shall specify those matters concerning which the defendant requests testimony.

A person certified under subsection 5, as qualified to operate a self-contained, breath-alcohol testing apparatus for the purpose of determining blood-alcohol level, may issue a certificate stating the results of the analysis. That certificate, when duly signed and sworn to by the certified person, shall be admissible in evidence in any court of the State. It shall be prima facie evidence that the percentage by weight of alcohol in the blood of the defendant was, at the time the breath sample was taken, as stated in the certificate, unless, with 10-days' written notice to the prosecution, the defendant requests that the operator or other qualified witness testify as to the results of the analysis.

Transfer of sample specimens to and from a laboratory for purposes of analysis may be by certified or registered mail, and when so made shall be deemed to comply with all requirements regarding the continuity of custody of physical evidence.

The failure of a person to comply with the duty to submit to and complete a blood-alcohol test under section 7802 shall be admissible in evidence on the issue of whether that person was under the influence of intoxicating liquor. If the law enforcement officer having probable cause to believe that the person operated or attempted to operate a watercraft under the influence of intoxicating liquor fails to give either of the warnings required under subsection 2, the failure of the person to comply with the duty to submit to a blood-alcohol test shall not be admissible, except where a test was required pursuant to subsection 11. If a failure to submit to and complete a blood-alcohol test is not admitted into evidence, the court may inform the jury of the fact that no test result is available.

If a test result is not available for a reason other than failing to comply with the duty to submit to and complete a blood-alcohol test, the unavailability and the reason shall be admissible in evidence.

8. Statements by accused. Any statement by a defendant that he was the operator of a watercraft, which he is accused of operating in violation of section 7801, subsection 9, shall be admissible if it was made voluntarily and is otherwise admissible under the United States Constitution or the Constitution of Maine. The statement may constitute sufficient proof by itself, without further proof of corpus delicti, that the watercraft was operated and was operated by the defendant.

9. Payment for tests. Persons authorized to take specimens of blood at the direction of a law enforcement officer and persons authorized to perform chemical tests of specimens of blood or breath shall be paid from the General Fund.

10. Accidents and officer's duties.

A. After a person has been charged with operating or attempting to operate a watercraft under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level, the investigating or arresting officer shall investigate to determine whether the charged person has any previous convictions of a violation of section 7801, subsection 9, or adjudications for failing to comply with the duty to submit to and complete a blood-alcohol test under section 7802. As part of his investigation, the officer shall review the records maintained by the courts, by the State Bureau of Identification, by the Secretary of State, including telecommunications of records maintained by the Secretary of State, or by the Department of Inland Fisheries and Wildlife.

B. A law enforcement officer may arrest, without a warrant, any person whom the officer has probable cause to believe has operated or attempted to operate a watercraft while under the influence of intoxicating liquor or drugs if the arrest occurs within a period following the offense reasonably likely to result in the obtaining of probative evidence of blood-alcohol level.

11. Watercraft fatality. Notwithstanding any other provision of this section, each operator of a watercraft involved in a watercraft accident which results in the death of any person shall submit to and complete a test to determine that person's blood-alcohol level by analysis of such blood or breath. A law enforcement officer may determine which type of test shall be administered. The result of a test taken pursuant to this paragraph is not admissible at trial unless the court is satisfied that probable cause exists, independent

of such test result, to believe that the operator was under the influence of intoxicating liquor or drugs or had excessive blood-alcohol level.

Sec. 10. Report. The Commissioner of Inland Fisheries and Wildlife shall report to the Legislature on the effectiveness of the law governing operating a watercraft under the influence by February 1, 1991.

STATEMENT OF FACT

This bill contains recommendations of the Maine Special Commission on Boating, created by Resolves 1987, Chapter 111.

This bill amends the offense of operating a watercraft under the influence of liquor or drugs. Operating a watercraft under the influence, regardless of whether or not it is motorized, is raised from a Class E crime to a Class D crime, tracking the motor vehicle operating under the influence law.

Sections 1, 2 and 3 make the adjudication procedure of the juvenile crime of operating a watercraft under the influence the same as for the juvenile crime concerning motor vehicles. This eliminates the necessity of going through the informal adjustment process, and the arresting officer can go directly to the district attorney for a juvenile petition. Section 8 corrects references to operating a watercraft under the influence in the juvenile code.

Section 4 of the bill repeals and replaces the current offense by making it the same as the motor vehicle offense. It is a 2-prong offense, making it illegal to operate or attempt to operate under the influence or with a blood-alcohol level of 0.08% or more, as was recently enacted by the Legislature for motor vehicles.

Sections 5 and 6 of the bill establish the concept of implied consent to chemical tests and make it a civil violation (with a forfeiture of up to \$500) for a person to fail to comply with the duty to submit to a test. The concept of implied consent is the same as in the motor vehicle laws: Any person who operates or attempts to operate a watercraft within Maine implicitly gives his or her consent to submit to a chemical test to determine if he or she is operating under the influence of alcohol or drugs. This implied consent is referred to as the duty to submit to, and complete, a chemical test. Section 2 makes it illegal to fail to submit to and complete the test when asked to do so by a law enforcement officer who has probable cause to believe that the person operated or attempted to operate a watercraft under the influence of intoxicating liquor.

"Probable cause" as used in this bill is the same as for all other crimes, including the motor vehicle offense of operating under the influence. The law enforcement officer must have, based on observations, sufficient evidence to believe the operator is in violation of the law.

Sections 7 and 8 of the bill create 2 new subsections in the penalty section concerning watercraft. New subsection 12 makes operating a watercraft while under the influence of intoxicating liquor or drugs, or both, a Class D crime and imposes the same minimum mandatory penalties as the current law imposes for operating a motor vehicle under the influence, with a few exceptions. The penalty for a first offender will not be mandatory until July 1, 1990. This will provide sufficient time for all persons to realize the seriousness of the offense and to understand the penalty which may be imposed before July, 1990, and which will be imposed after that. This will also provide sufficient time to notify out-of-state visitors who otherwise may not know in advance about the seriousness of the offense and its penalties. By delaying the mandatory nature of the penalties for a first offense, this bill is not impinging on judges' discretion to impose any penalty available for a Class D crime. There are 2 aggravating circumstances which will require the imposition of mandatory minimum penalties for a first offense. One is to be operating with a blood-alcohol level of 0.15% or more. The other is failing or refusing to stop for a uniformed law enforcement officer when requested to do so, which is already an offense.

For second and subsequent offenders, this bill specifically authorizes judges to order the operator to participate in education, evaluation and treatment for multiple offenders administered by the Department of Human Services. Because the programs are supported by the fees paid by participants, there should be no appreciable cost to the State no matter how many multiple offenders the judges choose to order through the programs.

This bill requires the court to consider the operator's record concerning all operating under the influence convictions and adjudications for failing to comply with the duty to submit. These records will include court records and the records of the State Bureau of Investigation, the Secretary of State and the Department of Inland Fisheries and Wildlife.

New subsection 14 makes failure to comply with the duty to submit to a chemical test a civil violation for which, if adjudicated as having violated the statute, the person may have to pay a forfeiture of up to \$500. This is necessary because there is no watercraft operator's license to suspend for failing to take a test, so the only incentive for an operator to take a test is make it illegal to fail to take the chemical test.

Section 9 inserts all the same provisions and procedures governing motor vehicle tests into the law governing operating a watercraft under the influence. When a law enforcement officer has probable cause to believe a person is operating a watercraft under the influence, the officer must warn the person that failure to comply with the duty to submit to and complete a test is a civil violation and what the consequences are for failing to comply with that duty. If the warning is not given, evidence that the operator failed to take the test will not be admissible in the operating under the influence trial.

Section 10 requires the Department of Inland Fisheries and Wildlife to report to the Legislature next year on the effect of this new law.

This bill is not intended to change the law regarding persons who are on watercraft which are not in public areas or on open water, such as boats tied up to a rented boat slip. These changes do not apply to persons who are not operating or attempting to operate watercraft. This bill will not affect the public drinking law.

7354*

APPENDIX E

MINORITY RECOMMENDATION

RECOMMENDED LEGISLATION:

AN ACT to Prohibit the Use of
Personal Watercraft.

MINORITY REPORT

Joan Irish

FIRST REGULAR SESSION

ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY NINE

AN ACT to Prohibit the Use of
Personal Watercraft.

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

12 MRSA §7801, sub-§30, is enacted to read:

30. Operating a personal watercraft. A person is guilty of operating a personal watercraft if he operates or attempts to operate a personal watercraft on any waters in the State.

STATEMENT OF FACT

This bill contains the minority recommendation of the Maine Special Commission on Boating, created by Resolves 1987, Chapter 111.

This bill makes it a Class E crime for any person to operate or attempt to operate a personal watercraft, such as a Jet Ski, in Maine.

7361*

APPENDIX F

MINORITY RECOMMENDATION

RECOMMENDED LEGISLATION:

AN ACT to Regulate Personal Watercraft.

FIRST REGULAR SESSION

ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY NINE

AN ACT to Regulate Personal Watercraft.

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

Sec. 6. 12 MRSA §7801, sub-§30, is enacted to read:

30. Failure to comply with additional safety requirements while operating a personal watercraft. A person is guilty of failure to comply with additional safety requirements while operating a personal watercraft if he:

A. And any passenger are not wearing personal flotation devices while operating or riding on the personal watercraft;

B. Operates the personal watercraft between the hours of sunset and sunrise;

C. Operates a personal watercraft before attaining the age of 16 years;

D. Operates a personal watercraft without having completed hands-on training to operate a personal watercraft;

E. Operates a personal watercraft on any Great Pond less than or equal to 150 acres in surface area;

F. Operates a personal watercraft which is louder than the noise limit established for all watercraft, measured as the personal watercraft impacts the water at high speed;

G. Operates a personal watercraft on a section of a river, Great Pond or coastal waters which is less than 3 miles across;

H. Operates a personal watercraft within 200 feet of another watercraft, a swimmer or shore, except when leaving or returning to shore;

I. Allows a personal watercraft which he was operating to continue to remain in motion under power without an operator; or

J. Uses a personal watercraft to tow one or more skiers, rafts, rubber tubes or similar conveyances.

STATEMENT OF FACT

This bill contains the minority recommendations of the Maine Special Commission on Boating, created by Resolves 1987, Chapter 111.

This bill adds additional restrictions on the use of personal watercraft, such as Jet Skis. Personal watercraft could be used only on coastal waters and on Great Ponds greater than 150 acres in surface area, except that personal watercraft would be banned on any section which is less than 3 miles across. Any operator must have completed hands-on training before operating. The noise level should be tested at the peak sound emission, which is when the personal watercraft is bouncing over the water. No operator would be permitted to operate at any speed within 200 feet of any other watercraft, including rafts, any swimmer or the shore. The exception is when the operator is leaving the shore to reach the area at least 200 feet from the shore, or returning to shore, in which case the personal watercraft may be operated within 200 feet of another watercraft, a swimmer or, of course, the shore. Within 200 feet of shore, however, the Water Safety Zone restrictions would require that the operator operate at no greater than headway speed within 200 feet of shore. An operator could not allow the personal watercraft to continue to move if no one is operating it. Personal watercraft will not be used to tow skiers, rafts, rubber tube or other similar conveyances.

Just as for most other boating law violations, anyone who violates this law commits a Class E crime.

7362*

APPENDIX G

MINORITY RECOMMENDATION

RECOMMENDED LEGISLATION:

AN ACT Concerning Boating and Other Water-based
Activities.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY NINE

AN ACT Concerning Boating and Other Water-based
Activities.

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

Sec. 1. 12 MRSA §7791, sub-§11-A, is enacted to read:

11-A. Personal watercraft. "Personal watercraft" means any motorized watercraft which is generally less than 13 feet in length as manufactured, is capable of exceeding a speed of 20 miles per hour and has the capacity to carry not more than the operator and one other person while in operation. The term includes but is not limited to a jet ski, wet bike, surf jet, miniature speed boat and hovercraft.

Sec. 2. 12 MRSA §7792, sub-§4, is repealed and the following enacted in its place:

4. Rules governing horsepower. The commissioner may adopt rules governing the horsepower of motors used to propel watercraft on the internal waters of the State.

A. In adopting rules, the commissioner shall take into consideration:

(1) The area of the internal waters, the use to which the internal waters are put, the depth of the water and the amount of water-borne traffic upon the waters and determine whether or not the rule is necessary to insure the safety of persons and property; and

(2) The natural resource management values of the waters and determine whether the rule is necessary to adequately protect and manage the State's natural resources.

a. Natural resource management values to be considered are:

i. Proximity to zoned backcountry recreation areas;

ii. Remoteness of water body;

iii. Marshes and wetlands;

iv. Waters identified as having significant wildlife habitat, erosion potential or rocky conditions; and

v. Other considerations concerning special natural resource character which the commissioner adopts by rule as necessary to adequately protect and manage the State's natural resources.

b. The commissioner shall consult with the commissioners of the departments of Marine Resources, Conservation and Environmental Protection in adopting rules concerning the natural resource management values to be considered and in adopting rules regulating horsepower for natural resource management purposes.

c. Notwithstanding subparagraph a, the commissioner shall adopt rules restricting the horsepower on waters where the following requirements apply:

i. The waters are classified as a "gem lake" by the Land Use Regulation Commission;

ii. The surface area of the waters is less than the minimum size established by the commissioner by rule;

iii. The ratio of watercraft to surface area of the waters is greater than the appropriate use level established by the commission by rule; or

iv. The waters are used as a public water supply.

B. The adoption of rules under this subsection is governed by the Maine Administrative Procedure Act, Title 5, Part 18, except that such rules may be only adopted as a result of a petition from the municipal officers of the municipality or municipalities in which the waters exist or from 25 citizens of the municipalities in which the waters exist, by county commissioners of the county in which the waters exist if they are located in unorganized territory or 25 citizens of the unorganized townships or unorganized places in which the waters exist, requesting the issuance of such a rule for a particular body of internal water and stating the proposed horsepower limitation.

Sec. 3. 12 MRSA § 7794, sub-§4, ~~ø~~A, is amended to read:

A. All watercraft requiring or requesting certificate of number \$ ~~4~~ 15

Sec. 4. 12 MRSA §7801, sub-§15, is repealed and the following enacted in its place:

15. Operating a motorboat which exceeds the noise limit. A person is guilty of operating a motorboat which exceeds the noise limit if he operates a motorboat which exceeds 82 decibels of sound pressure level at 50 feet on the 'A' scale as measured by the SAE standards J-192.

A. Each motorboat shall be equipped at all times with an effective and suitable muffling device on its engine or engines to effectively deaden or muffle the noise of the exhaust.

B. No person may modify the exhaust system of any motorboat in any manner which will increase the noise emitted above the emission standard provided in this subsection.

C. This subsection does not apply to motorboats which are operating in a regatta or race approved by the commissioner under section 7797. Such motorboats may use cutouts while on trial runs or competing in speed events, for a period not to exceed 48 hours immediately preceding or following such an authorized event.

Sec. 5. 12 MRSA §7801, sub-§30, is enacted to read:

30. Failure to comply with additional safety requirements while operating a personal watercraft. A person is guilty of failure to comply with additional safety requirements while operating a personal watercraft if he:

A. And any passenger are not wearing personal flotation devices while operating or riding on the personal watercraft; or

B. Operates the personal watercraft between the hours of sunset and sunrise.

Sec. 6. 12 MRSA §7801, sub-§31, is enacted to read:

31. Unlawfully permitting operation. A person is guilty of unlawfully permitting operation of a watercraft, if he permits another person to operate a watercraft which he owns and the operator operates that watercraft in violation of any section of this subchapter.

Sec. 7. 12 MRSA §7802 is enacted to read:

§7802. Operating within the Water Safety Zone

1. Headway speed only. No person may operate any watercraft at a speed greater than headway speed while within the Water Safety Zone or within a marina or an approved anchorage in coastal or inland waters. For the purposes of this section, "headway speed" means the minimum speed necessary to maintain steerage and control of the watercraft while moving.

2. Waterskiing. The prohibition in subsection 1 does not apply to watercraft, towing one or more waterskiers, picking up or dropping off one or more waterskiers in the Water Safety Zone if a reasonably direct course is followed through the Water Safety Zone between the point that the skiers are picked up or dropped off and the outer boundary of the Water Safety Zone.

Sec. 8. 12 MRSA §7901, sub-§13, is enacted to read:

13. Unlawfully permitting operation of watercraft. A violation of section 7801, subsection 31, is a civil violation for which a forfeiture of not less than \$100 nor more than \$500 may be adjudged.

Sec. 9. 38 MRSA §13 is enacted to read:

§13. Applicable in all municipalities and plantations

This subchapter applies to all municipalities and plantations with water located within their borders, regardless of whether the municipality or plantation is located on coastal waters or inland waters.

The municipal officers of 2 or more municipalities which border on the same inland waters may jointly appoint a single harbor master to carry out this subchapter within the jurisdictions of the participating municipalities.

Sec. 10. 38 MRSA §321 is amended to read:

§321. Director of the Bureau of Parks and Recreation; duties

The Director of the Bureau of Parks and Recreation, with the advice of the Bureau of Parks and Recreation, shall acquire, construct and maintain, within the funds available, public facilities for boats in the waters of the State, including but not limited to launching ramps, parking sites and access roads. Waters of the State means any waters within the territorial limits of the State, and the marginal sea adjacent to the State.

The Director of the Bureau of Parks and Recreation shall decide where the facilities shall be located and which facilities shall be constructed by the Department of Transportation.

The Director of the Bureau of Parks and Recreation shall decide when in his opinion hazards to boating exist and mark the waters of the State, within the funds available, by placement of aids to navigation and regulatory markers on the waters consistent with the rules provided in section 323.

In carrying out the purposes of this chapter, the Bureau of Parks and Recreation, its authorized agents and employees, may enter upon any lands, waters and premises in the State for the purpose of making surveys and examinations as it may deem necessary or convenient in the discharge of its duties, and such entry shall not be deemed a trespass.

The Director of the Bureau of Parks and Recreation may make rules for the uniform marking of the water areas of this State not otherwise regulated, through the placement of aids to navigation and regulatory markers. No city, county or person shall mark the waters of this State in any manner in conflict with the marking system prescribed by the Director of the Bureau of Parks and Recreation.

The Director of the Bureau of Parks and Recreation shall remove, within the funds available, minor hazards to boating when; in his opinion, removal of the minor hazard or obstacle is necessary for the safe passage of watercraft. The Bureau of Parks and Recreation, its authorized agents and employees, in carrying out the purpose of this paragraph, may enter upon any lands with the owner's permission, waters and premises in the State for the purpose of removing minor hazards or obstacles as it may deem necessary or convenient in the discharge of its duties, and such entry shall not be deemed a trespass.

The Director of the Bureau of Parks and Recreation shall regulate the placement of seasonal objects according to section 321-B.

Sec. 11. 38 MRSA §321-A, sub-§2, is amended to read:

2. Establish rules and regulations. To establish such rules and regulations as it deems necessary:

A. For the protection and preservation of public facilities acquired, constructed and maintained pursuant to this subchapter;

B. For the protection and safety of the public; ~~and~~

C. For observances of the conditions and restrictions expressed in deeds of trust or otherwise, of any such public facilities; and

D. For the purposes of controlling the placement of seasonal objects in the inland waters of the State according to section 321-B.

Sec. 12. 38 MRSA §321-B is enacted to read:

§321-B. Control of seasonal objects

1. Purposes. It is in the best interests of the people of the State of Maine that the placement of seasonal objects in open waters of the inland waters of the State be regulated to protect rights of free navigation, public safety, fish and wildlife resources, and to maintain to the greatest extent possible the natural character of Great Ponds and rivers. "Seasonal objects" include, but are not limited to, docking floats, mooring systems, swim and dive floats, and buoys used to mark boat moorings, organized swim areas, water ski slalom course, ski jumps and race courses left in the inland waters of the State for less than 7 months. Except in municipalities which regulate seasonal objects under their home rule authority under the Constitution of Maine, Article 8, part 2, section 1, and Title 30, section 1911 et seq. (Title 30-A, section 2001), the Director of the Bureau of Parks and Recreation shall regulate the placement of seasonal objects.

2. Rules. The Director, together with the Commissioner of the Department of Inland Fisheries and Wildlife, shall adopt rules to govern the placement of seasonal objects to accomplish the purposes in subsection 1.

A. The rules may allow for the placement of seasonal objects by shorefront property owners, within the first 100 feet of water adjacent to their property, without obtaining a permit from the Bureau.

B. The rules shall define what is meant by the term "adjacent to shorefront property."

C. The rules shall require a permit for placement of seasonal objects in the following situations. The Bureau shall issue permits for a reasonable length of time, as determined by the Bureau. Permits shall not be assignable or transferable.

(1) Any person who is not a shorefront property owner must obtain written permission from the shorefront property owner and obtain a permit from the Bureau before placing a seasonal object adjacent to that owner's shorefront property.

(2) Any shorefront property owner proposing to place a seasonal object further than 100 feet from the normal high water mark of their shorefront property must first obtain a permit from the Bureau. Due to the hazards that may be posed to navigation or public safety, no shorefront property owner may place any seasonal object within the inland waters of the State more than 200 feet from the normal high water mark unless that owner can demonstrate to the Bureau that no other reasonable alternative exists and the Bureau determines that the placement of that object will not pose a hazard to navigation or safety.

(3) Any shorefront property owner proposing to charge a fee for the placement or use of seasonable objects adjacent to their shorefront property must first obtain a permit from the Bureau.

If a shorefront property owner proposes to charge a fee for the placement or use of 5 or more seasonal objects or for the dockage rights of 5 or more boats at any docking floats or mooring system, the Bureau may hold a public hearing in or near the jurisdiction in which the shorefront property is located to receive public comment on the permit application and shall consider these comments in its decision regarding issuance of the permit.

D. The rules shall require the payment of a reasonable fee to the Bureau for any application and permit required by this section, and for each seasonal object for which a shorefront property proposes to charge a fee.

E. The rules may provide for the removal of illegal seasonal objects by the Director or the Warden Service.

F. The Warden Service of the Department of Inland Fisheries and Wildlife shall enforce any rules adopted under this section.

3. Use of resources. The Bureau may use funds as provided by this chapter for the hiring of staff and purchase of equipment to operate and enforce the permit system.

Sec. 13. 38 MRSA §329 is amended to read:

§329. Penalties

Whoever marks waters contrary to the rules established by the Director of the Bureau of Parks and Recreation ~~shall be guilty of a Class E crime~~ commits a civil violation for which a forfeiture of up to \$500 may be adjudged. Each day shall be a separate violation.

Whoever moors a vessel, boat, scow or raft to any buoy, beacon or permanent structure placed by the State in any waters of this State or in any manner makes fast thereto ~~shall be guilty of a Class E crime~~ commits a civil violation for which a forfeiture of up to \$500 may be adjudged. Each day shall be a separate violation.

Whoever intentionally destroys, defaces, damages, moves off station or sinks any buoy, beacon or marking device either floating on the waters of the State or permanently fixed to the land or structures adjacent to the water areas of the State, placed by the State, ~~shall be guilty of a Class E crime~~ commits a civil violation for which a forfeiture of up to \$500 may be adjudged. Each day shall be a separate violation.

Whoever places a seasonal object in a manner inconsistent with this subchapter or the rules adopted under this subchapter commits a civil violation for which a forfeiture of up to \$500 may be adjudged. Each day shall be a separate violation.

Sec. 14. Effective date. Section 4 is effective beginning January 1, 1991.

Sec. 15. Allocation. The following funds are allocated from Inland Fisheries and Wildlife dedicated revenue to carry out the purposes of this Act:

	<u>1989-90</u>	<u>1990-91</u>
<u>INLAND FISHERIES AND WILDLIFE,</u>		
<u>DEPARTMENT OF</u>		
Enforcement Operations		
- IF&W		
Positions	(10)	(10)
Personal Services	\$204,045	\$293,730
All Other	33,750	36,500
Capital Expenditures	<u>257,480</u>	
TOTAL	\$459,275	\$330,230

Provides funds for
10 additional full
time wardens, general
operating expenses
and 5 new boats on
trailers.

STATEMENT OF FACT

This bill contains recommendations of the Maine Special Commission on Boating, created by Resolves 1987, Chapter 111, and serves as a Minority Report of one member of the Commission. Sections 2 and 11 of this bill represent minority positions, while the remaining sections are unanimous recommendations of the Commission.

Section 1 defines the term "personal watercraft" which a few states refer to as "thrill craft." Section 6 also places 2 restrictions, in addition to the restrictions which apply to all watercraft including personal watercraft, on the operation of personal watercraft. One is the requirement that the operator and any passenger must wear proper personal flotation devices while operating or riding on the watercraft. Requirements currently prescribe that the personal flotation devices simply be on board the watercraft.

The second restriction is that no personal watercraft may be operated at night. Night is determined as the time between sunset and sunrise. Night operation can be dangerous to both persons on the personal watercraft and other boaters. Because most personal watercraft have no lights, they cannot be seen at night. Even if the operator displays a light or installs lights, however, the personal watercraft, because of their size, are difficult to see at night. In addition, it is almost impossible to see a person in the water at night and persons can fall off a personal watercraft very easily.

Section 2 revises the authority of the Commissioner of Inland Fisheries and Wildlife to make rules restricting horsepower of watercraft on inland waters. Current law allows the Commissioner to consider only the safety of persons and property in regulating horsepower. This bill expands that authority to include consideration of natural resource management values and to allow those values to be the basis of rules restricting horsepower on any particular water body. The bill specifically lists certain resource values which must be considered, and allows the commissioner to adopt rules governing additional concerns which must be considered in order to adequately protect and manage the natural resources of the State. The Commission will consult with the Commissioners of the Department of Marine Resources, the Department of Environmental Protection and the Department of Conservation, which includes the Land Use Regulation Commission, the Bureau of Public Lands and the Bureau of Parks and Recreation. All these other state agencies have expertise in the protection and management of natural resources which should be included in developing regulations concerning watercraft horsepower limitations.

This bill differs from the majority recommendations in that it requires the Commissioner to adopt rules regulating horsepower on waters that meet certain criteria. Once the petition process is completed for waters which meet these criteria, the Commissioner shall limit the horsepower. If the Land Use Regulation Commission has classified a lake or pond as a "gem lake" the Commissioner adopt rules limiting the horsepower. The Commissioner must adopt general rules which determine appropriate minimum size or sizes for different levels of horsepower. The Commissioner must adopt a horsepower limitation for waterbodies which meet the size restrictions of those general rules. The Commissioner must adopt a horsepower limitation rule for any waterbody which is used as a public water supply. The Commissioner must also adopt general rules which establish one or more appropriate watercraft-to-surface area ratios for the safety and enjoyment of boaters. If requested in the petition process, the Department of Inland Fisheries and Wildlife must conduct a survey of the waterbody to determine the ratio of boats to surface area. If that boating density is higher than the ratio established by rule, the Commissioner must adopt a horsepower limitation on that waterbody.

Section 3 of the bill raises the annual registration fee for motorized watercraft to \$15, representing an increase of \$11. Only motorized watercraft are required to be registered. In comparison, the fee to register a snowmobile is \$16, while the fee for ATVs is \$12.

Section 4 enacts a noise limit for motorboats based on the same decibel limit as currently applies to ATVs. The bill retains the exemption for boats participating in approved

regatta events. To allow boaters to have sufficient time to comply with the law, Section 14 delays the effective date of the decibel limit until January 1, 1991. Until that time, the current law, which requires the use of an effective muffler, will remain in effect.

Sections 6 and 8 are modeled on a provision of the ATV laws. They provide that the owner of a watercraft commits a civil violation if he or she permits any person to operate that watercraft, and the operator commits any of the prohibited acts concerning the operation of watercraft.

These provisions are intended to apply to any situation in which the owner allows another person to use the watercraft, including, but not limited to, parents allowing their children to use the watercraft and rental agencies renting watercraft to their customers.

Section 7 prohibits high rates of speed within 200 feet of the shore on inland waters and within marinas and approved anchorages on all waters. All watercraft are limited to "headway speed" only within these areas. (The Water Safety Zone" is already defined in Title 12 to mean the area of water within 200 feet of any shoreline, whether the shoreline of the mainland or of an island.)

An exception is made for watercraft towing one or more waterskiers. Boats towing waterskiers can cross through the Water Safety Zone to drop off or pick up waterskiers on or near the shore. The exception only applies if the boat follows a reasonably direct route through the Water Safety Zone; it is not giving boats towing waterskiers free reign to travel in the Water Safety Zone.

Section 9 is a minority recommendation that extends the authority to hire harbor masters to all municipalities and plantations located on water, not just those on coastal waters.

Sections 10 through 13 clarify that the Director of the Bureau of Parks and Recreation has the power to make rules governing the placement of seasonal objects in Maine waters. That power includes the authority to remove illegally placed objects. This does not apply to ice houses used for ice fishing on frozen waters; the Department of Inland Fisheries and Wildlife regulates ice fishing. The director, with the Commissioner of Inland Fisheries and Wildlife, will adopt rules to regulate seasonal objects. Both agencies must be involved in the rule-making process as long as the Bureau of Parks and Recreation administers the seasonal objects and the Warden Service is relied upon to provide the enforcement.

Section 12 of this bill contains an additional minority recommendation. It limits the authority of the Director of Parks and Recreation to regulate seasonal objects in

municipalities. If a municipality adopts its own regulations governing seasonal objects, the Director has no jurisdiction within that municipality to regulate seasonal objects.

Section 13 also makes violation of the rules governing marking of waters and seasonal objects a civil violation rather than a Class E crime.

This bill also funds 10 additional full-time wardens to be assigned where needed most. Their duties will focus on boating law enforcement during the boating season, and boating instruction as well as ATV and snowmobile law enforcement in the off-season. The Warden Service will purchase 5 new boats on trailers to help increase their enforcement capability. The boats will be brightly marked and easily identifiable as wardens' boats.

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