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Public Law Chapter 662: An Act to Address Decibel Level Limits for Airboats Report to the 130th Legislature



Department of Inland
Fisheries and Wildlife



Submitted jointly by:
Commissioner Judith Camuso
Commissioner Patrick Keliher

Department of
Marine Resources

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Chapter Public Law 662: An Act To Address Decibel Level Limits for Airboats

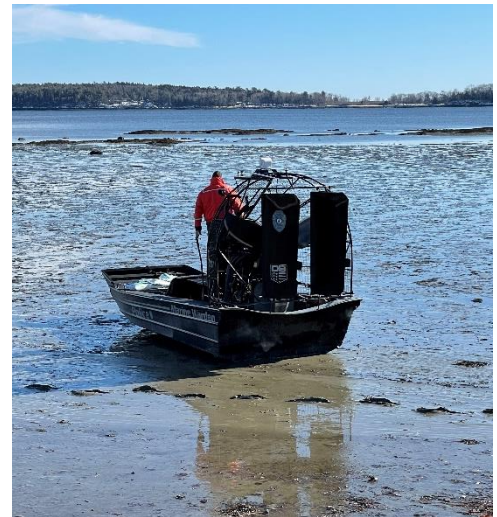
PL 662 Section 3. (enacted in 2020)

Collection of information. The Department of Inland Fisheries and Wildlife (DIFW) and the Department of Marine Resources (DMR) jointly shall solicit and collect information regarding airboats, including, but not limited to, information regarding uses of airboats, noise levels and complaints and suggestions for reducing complaints regarding the use of airboats, from interested parties, including, but not limited to, harbor masters, town clerks and residents of coastal towns and airboat users and sellers. Based on the suggestions, the Commissioner of Inland Fisheries and Wildlife and the Commissioner of Marine Resources may jointly submit recommended legislation to the joint standing committee of the Legislature having jurisdiction over inland fisheries and wildlife matters by February 1, 2021. The joint standing committee of the Legislature having jurisdiction over inland fisheries and wildlife matters may report out legislation to the First Regular Session of the 130th Legislature to implement the recommendations. As used in this section, "airboat" means a flat-bottomed watercraft propelled by an aircraft-type propeller and powered by either an aircraft engine or an automotive engine.

Overview

Airboats have been used in the commercial fishing industry along certain sections of the Maine coast and on some inland waters for over 25 years. As development along the coastline has increased, conflict has resulted in certain areas of Maine between shellfish harvesters using airboats for their work and persons residing in coastal communities. This increased conflict has resulted in challenges to state and municipal enforcement officers to address the complaints and allow for efficient shellfish harvesting in tidal areas.

Airboats are a very efficient tool to use in shallow water, no water, and thin ice situations. Airboats are uniquely loud by nature and our research has shown them to be a challenge to regulate across the country. In Maine airboat noise levels were previously included in the statute that addressed noise level limits for conventional motorboats, 12 MRS 13068-A subsection 10. The inability to separate the noise of the engine and the fan of an airboat from the noise of just the engine, resulted in a change in statutory language which removed airboats from the definition of motorboat. The objective of the 129th Legislature Public Law Chapter 662 was to define an airboat, set a maximum decibel limit in department rule, and assume a similar testing process currently used for motorboats.



Public Comment /Rulemaking

Information Gathering Meeting, January 9, 2020: DIFW conducted a public meeting in Brunswick regarding the Mere Point boat launch. Despite airboats not being an agenda topic, comments quickly arose, and staff heard from over a dozen interested individuals regarding the use of airboats at the boat launch and along the greater Brunswick coastline. There were approximately 48 people in attendance at this meeting. The focus of concern against airboats was related to noise levels during the early morning hours. The commercial shellfish harvesters at this meeting were primarily concerned about the change in land ownership along the Brunswick coastline and the lack of access to the tidal areas.

First Rulemaking Process, November 2020: In support of the directive to establish airboat decibel limits in rule the DIFW advertised a rulemaking proposal to amend Chapter 13 rules to establish airboat decibel limits and opened the period to receive comment from the public.

The following airboat decibel limits were proposed for rule based on airboat decibel level data gathered by MDIFW and DMR staff during the summer of 2020:

13.10 Airboat Noise Limits

1. In accordance with 12 M.R.S.A. §13068-A, sub-§10, ¶A-1 the Commissioner has authority to promulgate rules to establish noise level limits specific to airboats.
2. A person may not operate an airboat in such a manner as to exceed:
 - A. A maximum noise level of 90 decibels when subjected to a stationary sound level test as prescribed by the commissioner within this section; or
 - B. A maximum noise level of 100 decibels when subjected to an operational test measured as prescribed by the commissioner within this section.
3. Airboats being utilized for official duties by first responder personnel including emergency, fire, public safety, and/ or law enforcement from both state and municipal agencies are exempt from the decibel noise level limits within this section.

The Department held a public hearing via Microsoft Teams on December 1, 2020 with 35 citizens attending in addition to DIFW and DMR staff. Seventeen individuals gave oral testimony at the hearing. Although many were appreciative of the fact that airboat decibel limits were being proposed, no one testified in favor of the proposed rule as written and

vocalized their concerns and suggestions for changes. The public comment period on the proposed rule ended December 11, 2020 with over 200 written comments being received.

Summary of Public Comments: The majority of comments received were not in favor and not within the scope of the proposed rule language and many offered multiple suggestions of how they would like to see the proposal modified. Those not in favor offered suggestions including but not limited to the following:

- Limiting the time of day of operation, the most common timeframe to limit or stop operation altogether was 7 p.m. – 7 a.m.;
- Some suggested there be a lower decibel level during the restricted hours of operation;
- Prohibit operation during weekends and major holidays;
- Restrict operation in certain significant wildlife habitat areas to mitigate disturbance to wildlife;
- Find alternate boat launch sites;
- Restrict decibel levels at varying distances from shore to reduce noise impact on homeowners; and
- Prohibit all airboats

There were (4) comments in favor citing they were fine with the proposed decibel levels and did not want further restrictions on the use of airboats.

Conclusion to First Rulemaking Process: Ultimately, there was little or no support for the proposed rule and MDIFW Commissioner Camuso, with the support of the Advisory Council withdrew the proposal.

Second Rulemaking Process: The Commissioners elected for a second attempt at rulemaking and chose the consensus-based rulemaking process. The Maine Administrative Procedures Act consensus-based rulemaking allows the Department to work with a representative group of participants that have an interest in the topic that is being proposed for rulemaking, in this instance the focus was on establishing appropriate decibel levels for operating airboats in Maine.

Stakeholder Group Formed: In February 2021 the Commissioners formed a stakeholder group as part of the consensus-based process. The following is the structure of the stakeholder group:

(3) airboat owners/commercial fishermen

(1) resident from each of the following communities:

- Freeport
- Harpswell
- Brunswick

- (1) Maine Game Warden
- (1) Marine Patrol Officer
- (1) Municipal shellfish officer from Brunswick
- (1) Municipal shellfish officer from Brunswick
- (1) Town official from Brunswick
- (1) Town official from Freeport
- DIFW and DMR staff as co-chairs
- DIFW staff support

Meetings of the stakeholder group were held virtually with one in person airboat demonstration in Freeport. Meeting notices and minutes were sent via email to a list of 127 interested persons. Up to 35 people listened to the meetings via Microsoft Teams.

Stakeholder Group Meeting Dates via Microsoft Teams:

- [2/3/2021 \(2 hrs.\)](#)
- [2/10/2021 \(2 hrs.\)](#)
- [2/24/2021 \(2 hrs.\)](#)
- [3/3/2021 \(2 hrs.\)](#)
- [3/8/2021 \(3 hrs.\)](#)
- Airboat Demonstration in Freeport 2/8/2021 ([link to maps](#))

The goal of the stakeholder group was to agree on language to present to the Commissioners as a draft proposal for decibel limits for airboat operations. The group understood if consensus could not be reached, the airboat decibel level limit discussion would be taken up by the Maine Legislature.

The meetings allowed every person on the group to express their thoughts and concerns about all aspects of airboat operations and the balance between using a useful tool to harvest shellfish and being respectful to persons who live along the coast of Maine.



The group was very appreciative of having a well-organized, on the water demonstration on the Harraseeket River in Freeport and learned that airboats can operate at an acceptable decibel level without a load under ideal environmental conditions. The highest decibel level measured from the loudest airboat was 83 decibels.

The group gives special thanks to shellfish harvesters David Toothaker and Cody Gillis, and Shellfish Officer Dan Sylvain for providing their time and airboats for the demonstration.

With the demonstration data, debate and discussion several proposals were made and are part of this report.

The citizen representatives of the stakeholder group from Harpswell, Brunswick, and Freeport offered the following language as a compromise proposal at the February 23rd meeting.

First Language Proposal From Citizen Members of Stakeholder Group:

1. Airboats are subject to existing noise limits established for other watercraft in 12 MRSA §13068-A(10) from 7 pm to 7 am, and for 24 hours on Sundays and on federal holidays.

2. During the time period from 7 am to 7 pm on weekdays and Saturdays, an airboat may not be operated:

a. In such a manner as to exceed a noise level of 75 dB(A) when measured at the shoreline from a distance of 500 feet or greater in accordance with SAE J1970, or

b. Within 500 feet from shore except to go directly to and from a point of destination and then only at a course which is as close to 90 degrees to the shore as possible and at whatever decibel level is the minimum throttle setting required to move at headway speed. [LINK TO CITIZEN PROPOSAL \(1\)](#)

The Warden Service and Marine Patrol officers felt that section (1) of the proposal with the current SAE J34 test would eliminate many airboats from operating from 7pm to 7am. The shellfish harvesters felt that was not acceptable. Section (2) of the proposal from an enforcement and harvester perspective indicated that understanding how to measure 500 feet from shore when the boats are operating would be a challenge, but they were interested in learning more about the SAE J1970 shoreline test.

The shellfish harvesters/airboat operators as a follow-up, offered the following proposal prior to the March 3rd meeting in response to the demonstration information, group discussion and reaction to the referenced citizen group proposal:

Language Proposal From Shellfish Harvesters/Airboat Operators:

“From 7pm to 7am at 75 decibels and from 7am to 7pm at 90 decibels for the next year until we can get a sound study done to accurately get true working readings. Now I would like to remind everyone that this is a commercial fishing vessel and there are no standards for that, so we are setting a precedent for commercial fishing sound levels. And we would like to have this next year to educate any and all airboat operators on awareness of your surroundings and be mindful of the residents on shore. We do not agree with the Sunday and federal holidays off limits. For the harvesters of Freeport and Brunswick there is no Sunday digging already and this shouldn't be passed on to the rest of the state”... [LINK TO AIRBOAT OPERATOR PROPOSAL](#)

Language Proposal Offered by the Departments:

The following draft language was proposed to the group prior to the final meeting day of March 8, 2021 in an attempt to meet concerns of both the citizens and airboat operators.

1. Except as provided in paragraph 2 of this section, no person shall operate an airboat on the waters of this state or tidal area of the waters of this state from 7p.m. to 7a.m. Eastern Standard Time in such a manner as to exceed a noise level of 75dB(A) measured as specified in SAE J1970. Provided, that such measurement shall not preclude a stationary sound level test as prescribed by SAE J2005.
2. Notwithstanding paragraphs 1 above, a person may operate an airboat on the waters of this state or tidal area of the waters of this state at levels exceeding established limits only for a period of time necessary to provide headway speed movement when leaving a boat launch.
3. From 7a.m. to 7p.m. Eastern Standard Time an airboat shall be operated on the waters of this state or tidal areas of the waters of this state at a reasonable and prudent speed for existing conditions to avoid unreasonable noise but not to exceed a noise level of 90dB(A) measured as specified in SAE J1970. Provided, that such measurement shall not preclude a stationary sound level test as prescribed by SAE J2005.

In response to this draft language proposal the citizen members of the group indicated that they could not accept the language as presented and offered the following compromise:

Second Language Proposal From Citizens of the Stakeholder Group:

“As a result, we propose the following rule as a “stop gap” measure, and we commit to continuing to work on this issue through an ongoing workgroup”.

1. *Adopt the SAE J1970 Shoreline measuring standard for all noise measurements.*
2. *Airboats are subject to the limit of 65 dB(A) measured from the shoreline from 7 pm to 7 am.*
3. *During the time period from 7 am to 7 pm:*
 - a. *An airboat may not be operated in such a manner as to exceed a noise level of 80 dB(A) when measured at the shoreline, and a person may operate an airboat on the waters of this state or tidal area of the waters of this state at levels exceeding established limits only for a period of time necessary to provide headway speed movement when leaving a boat launch.*

We concede the prohibition of use of airboats on federal holidays. As for Sundays, we accept that whether to allow for the harvesting of clams be a municipal decision. [LINK TO CITIZEN PROPOSAL \(2\)](#)

Conclusion and Final Result of Stakeholder Group Meetings: The stakeholder group did not reach consensus on any of the language proposals, agreeing only on trying the SAE J1970 shoreline test but remained 10 db apart on both the early morning and daytime levels. The group discussed that 10 db is (twice as loud) according to logarithmic noise measuring.

The harvesters were reluctant but would accept the language that was proposed by the department until more information could be gathered. They were not willing to go below the proposed decibel level of 75 decibels during the nighttime and early morning, and 90 decibels during the day. They also expressed concern that enforcing decibel levels on airboats could potentially affect other portions of the commercial fishing industry along the coast.

The citizen representatives of the stakeholder group would not accept the proposed decibel levels citing 75 db with a shoreline test was too high for early morning relief from airboat noise. The citizens were willing to accept the current motorboat noise standard of 75 db from 50 feet or a shoreline limit of 65 db. The 90 db daytime limit was too high citing the Freeport airboat demonstration showed they could operate below 90 db and that the proposal was more in line with industrial ordinance limits rather than residential.

Stakeholder Agreement: The stakeholder group did agree on the need to continue the work of the group to better understand and answer questions related to airboat use along coastal Maine for example:

- Can airboats be maintained, fitted with equipment options, and operated in a manner that creates less noise?
- Can harvester access to tidal areas be reestablished to allow for less travel by boat?
- Is a SAEJ1970 shoreline noise test the appropriate test for airboats?
- Are municipal and state officers appropriately trained and equipped to handle complaints?

The group also agreed on the necessity to obtain more decibel data on the operation of airboats from a practical sense. The term “sound study” was used in discussion but never defined whether an engineering firm was necessary or more local data gathering would be sufficient. Many felt that establishing decibel levels without this information was not helpful to either side of the issue which led to a desire to have any decibel levels that were established in law should be temporary until more data could be obtained.

The stakeholder group meetings concluded on March 8th to allow time for this report to be established and presented to the legislature. A lot of good discussion was held by the group and I would encourage interested persons to read the minutes that are part of this report.

Airboat General Information Gathering:



Maine Warden Sgt. Mike Joy consulted with Sensenich Propeller Company in Plant City, Florida to determine if there is a way to quiet an airboat by changing to a different style/model of prop. Sensenich has attempted to quiet the noise emitted from an airboat by designing different blades with limited success. On a side note, Warden Service has two of their props on department airboats.

Sgt. Joy also consulted with Diamondback Airboat in Cocoa, Florida to determine if there is a way to quiet an airboat. We were advised by the owner of Diamondback Airboat that they have put six inch down-

sports on the through hull mufflers on large tour airboats they have built in an attempt to quiet the engine. Diamondback advised that this did not have a great effect on making an airboat quieter. On a side note, Warden Service owns two Diamondback Airboats.

Sgt. Joy contacted Captain Gary Klein from Florida Fish and Game for the purpose of getting information on the laws governing airboat use in Florida as it relates to noise. Florida F&G informed us that they only have noise laws unique to airboats as it pertains to an exhaust system. Florida law requires airboats to have an exhaust system with a motor vehicle muffler. <https://www.flsenate.gov/Laws/Statutes/2018/327.391> He also informed us that Florida does not differentiate noise levels from airboats...the noise limit for all vessels is 90 decibels at 50 feet. <https://www.flsenate.gov/Laws/Statutes/2018/327.65>.

Airboat Decibel Level Information Gathering:

In calendar year 2020 the Maine Warden Service and Maine Marine Patrol began testing a number of airboats in order to measure their noise limits. Between the two agencies there had not been any previous decibel data collection related to airboats.

Thirteen airboats were tested belonging to municipalities, government agencies and commercial fishermen. The boats ranged in age from 1984 – 2019. Decibel noise levels were measured using a calibrated TSI Quest SD-200 sound detector. Two separate tests were

performed on each boat, a modified version of the SAE J2005 stationary test and a modified version of the SAE J34 (operational) test. Both tests were conducted on land. While performing the stationary test on each boat, it was determined that the average engine noise emitted 86 decibels. The stationary test results ranged from:

- 80 db. to 96 db. (while stationary) with the average being 86 db.

The stationary test was performed approximately three feet from the rear corner of the boat, while the boat engine was idling.

The modified moving test was performed fifty feet from the boat at a seventy-degree angle from the boat. The boat was stationary during this test, which was how the test was modified from the testing procedure prescribed within current rule for conventional motorboats.

During the modified moving test, results ranged from:

- 72 db. to 99 db. @ 2000 RPMs with the average being 84 db.
- 83 db. to 106 db. @ 3000 RPMs with the average being 92 db.
- 91 db. to 106 db. @ 4000 RPMs with the average being 98 db.

The officers felt that their results supported two factors that intensify the noise emitted from an airboat; poor engine maintenance, specifically the exhaust system, and the pitch of the prop. The officers felt that the number of blades did not appear to be a factor.

Additional decibel information was obtained by Maine wardens and marine patrol officers testing two airboats adjacent to the Mere Point boat launch in Brunswick. The test was conducted by measuring the sound emitted as they, independently, operated past a seasonal residence. The two airboats tested were boats that have previously generated noise complaints. During the test, both airboats operated in the manner in which they would be operated when harvesting. Sound measurements were taken while standing in the complainant's front yard. The boats, independently of each other, operated to and from the boat launch. The RPMs of each boat was 4200 RPMs which is their normal operating RPMs. The actual distance between the boats testing meter was not obtained, but the distance was the actual distance in which the boats travel when harvesting.

One boat had a maximum decibel reading of 73 db. and the other boat had a maximum decibel reading of 77 db. The decibel reading from both boats was constantly in the 60s decibels until each boat spiked at the above-mentioned decibel reading. After each boat reached the maximum recorded decibel, the noise level emitted decreased rapidly.

****For full report by Maine Warden Sgt. Mike Joy [click here](#)***

Conclusion

The Departments (DIFW and DMR), along with municipal officials, coastal property owners, shellfish harvesters have put a considerable amount of work into trying to establish appropriate decibel levels and testing procedures for airboats. Everyone agrees they are a valuable tool to harvest shellfish in the tidal areas along the Maine coast but are uniquely loud when operating, thus creating the debate outlined by this report.

The Departments are requesting the legislature to consider the following:

- **Establishing a temporary decibel level for the remainder of 2021 until a date to be determined in 2022 when a permanent level will be established. Special consideration should be made to lower levels during the early morning hours.**
- **Consideration should be made to continue a stakeholder group and expand a lot of the good conversations that were held during the consensus-based rulemaking process.**
- **Having Department staff gather more local airboat decibel data in 2021 and obtain training on the use of decibel measuring equipment.**
- **Consider a more comprehensive sound study if funding and staffing becomes available. Both DIFW and DMR do not currently have staffing levels or appropriate funding to coordinate or contract such a study.**

The Departments wish to offer special thanks to the consensus rulemaking stakeholder group (listed below) who put considerable hours of their own time into trying to understand and resolve this issue:

Airboat owners/commercial fishermen:

Abden Simmons (Waldoboro)

Chris Green (Brunswick)

Dale Sawyer (Freeport)

Residents from each of the following communities:

Freeport - Daniel W. Walker

Harpswell - Spike Haible

Brunswick - Dave Cox

Daniel Devereaux, Town official from Brunswick

Peter Joseph, Town official from Freeport

Charlie Tetreau, Shellfish officer from Freeport

Dan Sylvain, Shellfish officer from Brunswick

Major Robert Beal, Maine Marine Patrol

Sergeant Mike Joy, Maine Game Warden

Becky Orff, DIFW Administrative Assistant to the Commissioner

Christl Theriault, DIFW Assistant to the Commissioner

INLAND FISHERIES & WILDLIFE
AND
DEPARTMENT OF MARINE RESOURCES
Meeting Minutes

February 3, 2021

On Airboat Decibel Level Consensus Based Rulemaking:

Roll call conducted by: Deputy Commissioner Tim Peabody IFW

- Those in attendance:
 - Deirdre Gilbert DMR Co-Chair
 - Deputy Commissioner Tim Peabody Co-Chair
 - Abden Simmons
 - Chris Green
 - Dale Sawyer
 - Dan Walker
 - Dave Cox
 - Spike Haible
 - Peter Joseph
 - Charlie Tetreau
 - Dan Deveraux
 - Dan Sylvain
 - Sgt. Mike Joy IFW
 - Major Rob Beal DMR/MP
 - Christl Theriault (IFW Support Staff)
 - Becky Orff (IFW Support Staff)

Introductions:

- Deputy Commissioner Tim Peabody co-chair to moderate
- Deirdre Gilbert DMR , Director of State Marine Policy
- Major Rob Beal DMR – Deputy Chief, in agency for 15 years, worked in this area Freeport/Brunswick for 5 years and supervised there for 3 yrs.
- Sgt. Mike Joy – with WS for 27 yrs very familiar with Freeport and Casco Bay, he has tested airboats and collected data for this rulemaking process
- Dan Sylvain, Brunswick Marine Officer,– Brunswick PD for 15 yrs he is an airboat operator and
- Charlie Tetreau – Freeport Harbor master and marine officer.
- Peter Joseph – Freeport Town Mgr

- Dan Devereaux – Coastal Resource Mgr in Brunswick, retired marine officer in Brunswick, has a lot of experience with airboats.
- David Cox – Brunswick resident and lives on Mere Point
- Spike Haible – Harpswell resident representing Town of Harpswell
- Dan Walker- Attorney, 15 yr. resident of Freeport and is working with community members on this issue
- Dale Sawyer – shellfish harvester, shellfish committee member, owner/operator of airboat and life-long resident of Freeport
- Chris Green – Brunswick Harvester, has airboat and has dug clams all his life.
- Abden Simmons – Waldoboro, shellfish harvester, has dug clams for over 40 yrs, has an airboat, lots of experience on the ocean

Introduction to Consensus Based Rulemaking Provided by Assistant Attorney General Mark Randlett

- ME Administrative Procedures Act within Title 5, allows an agency on a voluntary basis, to bring a group together to come to consensus on a matter and possibly bring it forward to rulemaking. This isn't used often and is voluntary for the department. The department can terminate process at any time, the rulemaking process afterwards is discretionary, as is the decision by the dept for any rule that is or isn't filed for rulemaking. If a rule proposal came out of this process it would still have to go before the advisory council for advice and consent by those members.
- The department has responsibility to establish a group that is representative of the various opinions. The department must attempt to notify interested parties of meetings as meetings of this group are considered public such that those not a part of the group can listen. This is a process for the representatives of the group, not a public process. If a citizen not a part of the group would like to bring an issue forward, they should reach out to a representative.
- The group will establish ground rules such as:
 - How often is the group going to meet;
 - Who is in charge of running the meetings;
 - How will the group reach consensus; and
 - How the group will vote.
- The Dept. will inform the group if there are constraints moving forward with any of the suggestions.
- Christl Theriault (IFW) is keeping notes and will provide a summary to the group and interested parties.
- Mark Randlett (Assistant Attorney General) will monitor the process and remain available to answer legal questions.
- AAG Randlett explained that the department must look at a rule proposal from a noise limitation perspective which would need to be tied to any other restrictions such as hours of operation or reduced speed or location of operation. You could limit the amount of noise generated for the benefit of the public.

- AAG Randlett must review and sign off on the final rule to be sure it is legal and appropriate.
- Dan Walker spoke and mentioned that the department seems to have broader authority under watercraft rulemaking. Mark Randlett responded and said that in terms of decibel noise levels this is specific to airboats. You couldn't exclude airboats from certain areas, instead you would have to exclude all watercraft, this was one example. Dept. could limit noise levels for a certain time of day.

Present potential timeline for next rulemaking process (Tim Peabody)

- Deputy Commissioner Peabody said he would like to see completion of this process by end of February for Commissioners to review. The rulemaking process would begin advertisement of the rule on March 17th, go to step 1 on March 23rd, April 5th for a public hearing, April 16th close comment period, April 20th would bring the rule to step 2. Group needs to keep this timeline in order to be able to move this into the legislative process before end of the session if the rulemaking process is unsuccessful.
- Dep Comm. Peabody explained that the legislature has 2 bills that they could move forward with and they have broader authority whereas the dept has limited rulemaking authority in this realm. Commissioners have communicated with IFW Committee chairs to hold the bills to see the outcome of this process.

Summary of Previous Rulemaking Process (Tim Peabody)

- On November 11, 2020 the Department advertised a rulemaking proposal to amend Chapter 13 rules to establish airboat noise limits and opened the period to receive comment from the public.
- The Department held a public hearing via Microsoft Teams on December 1, 2020 with 35 citizens attending in addition to IFW and DMR staff. Seventeen individuals gave oral testimony at the hearing. Although many were appreciative of the fact that airboat decibel limits were being proposed, no one testified in favor of the proposed rule as written and vocalized their concerns and suggestions for changes.
- On December 11, 2020 the public comment period on the proposed rule ended with over 200 written comments being received.
- Summary: The majority of comments received were not within the scope of the proposed rule language and many offered multiple suggestions of how they would like to see the proposal modified. These suggestions included but were not limited to the following:
 - Limiting the time of day of operation, the most common timeframe to limit or stop operation altogether was 7 p.m. – 7 a.m.
 - Some suggested there be a lower decibel level during the restricted hours of operation
 - Prohibit operation during weekends and major holidays
 - Restrict operation in certain significant wildlife habitat areas to mitigate disturbance to wildlife
 - Find alternate boat launch sites

- Restrict decibel levels at varying distances from shore to reduce noise impact on homeowners
- Prohibition on all airboats
- Ultimately, there was little or no support for the proposed rulemaking and the proposal was withdrawn. The decision to withdraw the proposal was also supported by the IFW Commissioner's Advisory Council.
- The consensus-based rulemaking process is now being undertaken. If consensus is not reached, the airboat decibel level limit discussion will be taken up by the Maine State Legislature.

Group Comments:

- Spike Haible brought up that how we test is going to be a major component of this process.
- Dan Deveraux 19,000 airboats that operate in FL. What is going on in the rest of the country?
- Tim Peabody mentioned that Mike Joy is a good resource to speak to this.
- Deirdre Gilbert said Jon Cornish, former Colonel of DMR looked to other states for possible statutory ways to address these issues and even then there wasn't a perfect solution which is why we haven't been able to rely on what has been done in other states.

Overview of Previous Airboat Noise Level Testing (Sgt. Mike Joy)

- Sgt. Joy stated that FL doesn't have a standard, it is 90 Db at 50 feet and they don't have a standardized way in which they test the noise.
- What the dept. has done, just a quick summary.
 - Sgt Joy has tested 13 boats with a stationary and moving test. Due to limitations of the boat, both tested were a modified SAE standard, 75 moving, 90 for stationary. On avg most of the airboats passed at stationary 90 db which is the regular watercraft noise level but for the operational test, many did not.
- Very diverse types of boats. The thing that really enhanced the noise seemed to be poor exhaust system and prop pitch. None of these tests are testing engine noise, it is the prop noise. The prop is spinning even at idle so even on stationary testing you are getting engine and prop noise still.
- 2 ways to quiet a boat are to slow the prop down, reduction gear can reduce prop spin, or prop pitch. The pitch is fitted to the boat and what the application is used for.
- Modified operational test was done but if done by SAE standards you would be in the water, in a boat testing from a distance, while the boat being tested goes by. Sgt. Joy tested the airboats from 50 feet on a trailer at a 75-degree angle but in order to do a consistent approach he did it at various RPMs and some boats didn't have RMP meters. The stationary test was also done on the trailer.
- Dan Sylvain thinks a professional sound engineer should do a study and it should be on the water, on the mud, empty and freighted to do some testing.
- Dan Walker said we need to go to the water to do both the stationary and moving limits and a shoreline test to do at whatever distance we say should be tested from. Frank Terina, expert

from the National Park Service that studied noise impact on public and wildlife could be consulted. This should be part of the testing next week and going forward.

- Abden Simmons would like to know what the decibel numbers were for the stationary test. Mike Joy said 86 dB was the average and ranged from 80-96 on stationary. The highest level had poor exhaust maintenance. He has to use high power in the water but when it is on the mud he runs lower RPMs. A test from the shore would be great. You should be 200 feet from shore anyway to be able to operate more than headway speed legally.
- Sgt. Joy said that he did test from shore but didn't know how far the airboats were from shore and the dB was in the low 70s and the wind was calm that day.
- Chris Green said he did the airboat noise test and he has one of the loudest airboats due to the pitch of the prop. He came closer to the shore than he normally does and made it more intense and it spiked at 70. He is supportive of any kind of test. Before he tries to turn or unsuction from the mud flap he gets it warmed up so he can move quickly and not do it loud for a long period. You have to keep the boat on plane and go full throttle with a full load or it is tippy and dangerous.
- Peter Joseph asked if boats with a certain number of blades or a certain pitch could be an indicator of passing the test?
- Sgt. Joy said no, just the aggressive pitched boats are louder. MWS 2018 airboat is well maintained, it is a 4-bladed prop and when he spoke with the airboat manufacturer, they had dabbled with reducing noise. The prop would cost about \$4,000. He said if you went from a 12 to an 8 pitch, the company couldn't tell him how much quieter it would be but the data he got was that the 8-degree pitch is quieter than a 12-degree pitch. He posed the other question if a minimal change in sound really mattered? A 3-bladed prop is more of the industry standard.
- Maine Warden Service airboats are used for diving and with wardens the gear they take a large load.

Group Comments:

- Spike Haible didn't realize it takes more RPM to go on the water than in the mud. He thinks the problem is we are trying to figure out a decibel level and people who live on the water and their view is subjective even if it is operated within legal parameters.
- Dale Sawyer said they are limited to one spot in town for access and it is a 10-15 min to get in or out. There are no brakes or reverse, the throttle is what controls the driving. It is a working waterfront. Some of these people are going to complain no matter what we do, and many don't want them period.
- Tim Peabody asked him what would be important to him for testing. Dale said he never uses full throttle in his boat. He doesn't think it is a one test fits all. He doesn't think it should be done in the parking lot but on the ocean where they operate.

- Dave Cox said even with the previous testing effort he is struggling to see what success will look like at the end.
- Tim Peabody said it must be enforceable, consistent and all have to agree. Next week on the water we can do some of this testing. Need to find a solution that allows others to work without being tired.
- Dan Deveraux said the noise and decibel levels are much more complicated than what Warden Service did for testing. He wants an engineer to come in and do testing that can extract noise not related to the airboat.
- Sgt. Joy did say he had to test ambient noise before testing the airboats.
- Major Beal MP doesn't field most of these complaints, the shellfish officers do. It is a time of day issue and a noise issue.
- Charlie Tetreau said he joined Sgt. Joy on the testing but thought we should test the same boat in multiple scenarios and in different areas they go through, such as open ocean vs. constricted rivers that are narrow.
- Deirdre Gilbert said she was hearing two separate issues surrounding consistency in testing, the issue of a response to a complaint in the future and the issue of testing for the sake of determining if any rules will be put forth.

Discuss on the Water Demonstration for February 10th

- Tim Peabody asked what people would like to see at the demo?
- Dan Walker wants to discuss decibels, it is a complex topic, these are exponential numbers so 70-90 is 4x as loud, 70-80 is twice as loud. In FL the boats go full tilt out away from residents whereas in Maine the boats go into clam flats and closer to neighborhoods where people live.
- On the day of the demo, high tide is at 11:38 a.m. boats need to go upriver, they should go up the Harraseeket. Many homeowners will allow the department to come on their property to test. They also have someone who can follow in another boat. If people are measuring from iPhones is that going to be ok? Who will witness this, they are hoping the Advisory Council members will witness. They want to see the different maneuvers.
- Tim Peabody wanted to hear from a harvester when an appropriate time would be to do a demo.
- Dale Sawyer said testing in the winter without foliage could be different and there shouldn't be any other boats around to create noise. You should have someone who can navigate into the flats to show the locations they actually harvest.

- Charlie Tetreau said he would like to see it done earlier in the morning when the wind is calmer too. They could wait for another day when the tide matches a little better.
- Major Beal said Wed the 10th, low water is at 4:30 p.m. maybe Mon the 8th 2:30 low tide might be best. Demo during low water wouldn't need as much power and would be more reflective of how they're actually used.
- **Monday the 8th 1 p.m.** is new proposed time for demo: Abden Simmons, Dan Walker, Dave Cox, Spike are available, but Chris Green won't be available. He could have someone replace him that owns an airboat and Dale will send partner down that owns airboat to observe.
- Dan Walker Need to do some shoreline testing and some SAE standard testing was expressed and wanted the boats to go all the way up the river into the flats, power up to get off the flats too. Would like to have some sound testing from the shorelines.
- Dave Cox asked to get a documented test plan so we can all know what is going on, he wants clarity and alignment on what the testing entails. Tim Peabody asked Dave Cox, Dan Walker and Spike Haible to work on it. He wanted a harvester on board to collaborate. Tim Peabody asked Dale Sawyer to help with this.
- Spike Haible mentioned drawing out a GPS route or use google maps to draw out what the route is to be taken and where they would maneuver around to etc.
- Charlie Tetreau said he could work with Dale to come up with a map and share it with Dan Walker, Spike Haible and Dave Cox then we can adjust it on that day if needed.
- Abden Simmons said he did a survey in Machias and mapped out where they went with the GPS with DMR. The boat that goes up in should be able to transfer that route so it would be a good representation of where the airboat has been.
- Mike Joy said Warden Service would provide the GPS devices. He will coordinate this.
- Peter Joseph stated he assumed they would start at Winslow Park, Cove Road, Little River etc. so we should set up at the launch and have other waterfront property points, maneuvers on the mud etc. Charlie and Dale can work with IFW folks to have points to monitor sound on south Freeport side and Wolfe Neck side.
- Dan Sylvain offered up town's airboat for testing, this boat is one of the loudest, is new and best of the best.

Sound Engineers:

<http://www.resourcesystemsengineering.com/>

<http://www.bodwellenviroacoustics.com/meet-r-scott-bodwell.htm>

Discuss Potential Solutions

- Other access points were a suggestion.

Schedule Follow-up Meeting

- Wed Feb 10th 1000-1200

Meeting adjourned at 5:14 p.m.

INLAND FISHERIES & WILDLIFE
AND
DEPARTMENT OF MARINE RESOURCES
Meeting Minutes
February 10, 2021

On Airboat Decibel Level Consensus Based Rulemaking:

Roll call conducted by: Deputy Commissioner Tim Peabody IFW

- Those in attendance:
 - Deirdre Gilbert DMR Co-Chair
 - Deputy Commissioner Tim Peabody Co-Chair
 - Abden Simmons
 - Chris Green
 - Dale Sawyer
 - Dan Walker
 - Dave Cox
 - Spike Haible
 - Charlie Tetreau
 - Dan Deveraux
 - Dan Sylvain
 - Sgt. Mike Joy IFW
 - Lt. White DMR/MP
 - Becky Orff (IFW Support Staff)

Deputy Commissioner Peabody did a roll call for attendance.

List of potential solutions by end of meeting.

Requested everybody provide perspective on testing.

Discuss the testing results from Monday & Potential solutions

Mike Joy – Time and day airboat noise generated. Question on testing position resolved, it was a map labeling misunderstanding. Demo was tested at 3 places. Bystanders stated collectively that it was not same noise heard in summer. Relevant, boats operated in respectful way. He is familiar with decibel limits and teaches airboat operations, has a lot of experience. David Toothaker's boat previous test was similar to results from Monday. Operation correlates to noise generated.

Spike Haible – Informative and appreciate the demo. Demo was run well. Locations appropriate and showed what it was like at different locations. Toothakers boat quieter but clarified why. Stood with Wdn. Herring on west side of Wolf's Neck. 7500ft back from water, felt like the boats were right in front of us. We got (3) cell phone sound readings. Only 1 came close to warden's decibel reading. Phones seemed to be more sensitive. Readings up to 80 or jumping up and down. Got readings and sense of what's going on. People live in area complain, not what people experience in their homes. How to get decibel rule low enough to satisfy people that live with them on daily basis. A lot involved and not sure how to justify. Highlighted that people live near mudflats have different experience despite what meters say.

Tim Peabody – Speed limit on interstate is a parallel to airboats doing what they were supposed to do. Police go after people driving way over the speed limit.

Spike Haible – windy but the boats operated as they usually would. Bogged down in water, running on mud is preferable but brings them in close to homes.

Tim Peabody – had a citizen comment “If that was the way it was, they wouldn't be complaining”. We are looking for out of the ordinary operation. Monday demonstrated ordinary operation.

Spike Haible – We need to define what ordinary is.

Dan Sylvain – He operated airboat on way out harder at 3200rpms on mud and harder on water. True accurate reading on how boat is operated and then some.

Mike Joy – Dan Sylvain's boat was one of the loudest boats tested previously.

Dan Sylvain – This process should be put on hold for professional sound engineer during all 4 seasons, water, mud and come up with accurate reading not just Freeport but other areas. That should provide the guidelines and standards for rulemaking.

Dan Walker – people monitoring from all over and around the Harraseeket River Wolfs Neck. Especially on west side if that was how normally was no prob. Realized potentially airboats could operate within reasonable decibel limit. Traditionally, harvesters took skiff on tide and park and follow the tide out and in. What's the difference in using an airboat? Demo prob not time harvesters would normally do it. 50-60db readings.

Dale Sawyer – airboats allow them to leave if no water. Leave from town dock with water. Tide goes out water goes out. Bigger window to leave and come back. Access certain areas to look around. If using a skiff could be beached there 5-6 hours. More versatility with airboats.

Tim – early morning hours? Pushing water?

Dale – Winslow park to mud flats, cross channel and go to flats again. Use airboat and launch like reg day. Running late because launch is plugged up, more flexibility.

Tim – mud available on early morning tide?

Dale - Absolutely.

Dan Devereux – Q for Dale. Skiffs land in certain spot and can't move, allows to move once land and tides out?

Dale – show up late have to push into cove. Using airboat, can scout clam flats to find a good spot to stop and dig. Valuable tool.

Dan D – impact to income w/out airboat?

Dale – Benefit to airboat, health issues, allows to go places couldn't go similar to using a snowmobile.

Dan Walker – boats allow flexibility why need to go out so early in the morning? Add couple hours to day, not crucial.

Dale – get paid to dig clams. Wouldn't spend \$70,000 on boat if wasn't useful.

Dan Walker – not beholden to the tide, can still get out.

Dale – tide 2 hrs that's all you have to make days pay. The tide doesn't work on 8hrs or punch a clock.

Tim – Important to have full tide. Always mud available any time?

Dale – not necessarily. If water can take boat don't have to walk in and walk back. Can leave in morning with or without water.

Abden Simmons – Early morning and late afternoon tides. Skiff can't get there, and if no access walking in you can't get there. Can get to places others can't get to. 1/2hr after sunset supposed to be done. Early morning and late nights invaluable. People with issues and cell phone readings misperception on how loud. Running as they normally do doesn't seem to be an issue. People going over the speed limit are the ones to look for. Ruining it for everyone else. Aging population makes work easier for us. Prefer to run mud 2200rpms. Water have to be wide open. Less friction on mud, don't waste fuel. Not shocked at readings from demo. Usually what you hear.

Tim – People operating outside what's called normal?

Abden Simmons – Don't know what solution would be. Don't see an issue other than someone being obnoxious with airboat. Don't know how to fix that without punishing everyone else that's running boat as they should be.

Dan Walker – The issue may lose an hour of clamming in the morning if create hours of operation. The group he is rep. has been an issue and not just 1 or 2 operators. Noise ordinances, etc. Create balance in society for living together and operating together. Airboats in morning not gone well for awhile. Come away with some relief. Would like much lower decibel levels. If can operate within existing confines of motorboat operation, why can't we just keep 75db limit and create some operational limits when can go over during the day. Going forward ongoing process to look at technology and access issues. Need to move discussion in a way that's effective and not say there's no problem.

David Cox – Thought it would aid process if landowners were aligned. Impressed with the effort from all involved. Echo other residents that for him the boats launched from Winslow Park was very common to what they experienced in the morning. At Freeport town dock much quieter than what experienced. Need relief. 100's impacted. Sympathetic to harvesters. Going on for years and reached a crescendo. Dan Walker - 2 part process; consensus based rulemaking, ongoing work group activity collecting data. 7:00pm-7:00am and Sundays and holidays 50db. 7am-7pm shoreline reading db70-75. Part B creating a working group, report to committee. Issues around access and work on them together and identify tech changes on boats to keep them quieter.

Spike Haible – Wasn't easy to come up with initial platform. Tried to make suggestions fit what they saw on Monday. 70db limit during daytime. 500ft from shore or leave out?

Dan Walker – Left that out.

Spike Haible – shoreline level, heard db at 700ft, etc. Limit at that distance a fair starting point from residents perspective. For the next year, or annually until resolved IFW collect data on summons, etc. Taking public comment and keep running dialogue on what's going on. IFW report to Advisory Council or whoever. Keep collecting data even after rules in place. Creating immediate relief for people to have daily time limits and decibel limits and distance from shore and also get more specific with this. Long term process, do data collection and report more serious rigorous testing procedure.

Tim – IFW limited going forward with working group. Ongoing nature.

Deirdre – Not discussed with IFW. Resource constrained. Cost for sound engineer, funding and staffing long term exercise limited. Immediate concerns addressed by time of day and sound. Access is a big issue to work on. Better use of time than fine tuning sound data, which is a moving target. Could spend a lot of time and money and not sure of outcome. Understand notion existing limit for watercraft, why not good enough? Early morning create something different for airboats that others aren't subject to, DMR concerned about impact to all other forms of watercraft. Potential for other businesses to be impacted if can't make noise before 7:00am.

Spike Haible – Agree re: access issue. Getting closed off more and more with development. Long term problem that needs to be addressed. LMF and other programs need to get more aggressive about maintaining traditional access points.

Dale – Time restriction and decibel limit can't wait for lobstermen, etc. Will affect all fishermen. Db wasn't a problem with noise 80db homeowners want 70. Monday, they said it was fine. If people don't understand, highest number reached was within a minute or less. Reading goes up and then down. How long? 80 seconds or 20 minutes? Dishwasher 70db. 100-105db skill saws running for construction. Take tides away, can't use the boat when supposed to be used.

Tim – 500ft. issue, airboats not go closer than 500 ft?

Dan Walker – More of a travel to and fro 500ft from shore. Airboats have to operate at some level on the flats. Find some limit that helps homeowners and lets clambers do their work.

Dan Devereaux – Airboats there for awhile in Brunswick. Complex issue. Being able to hit pause and conduct a study to find anomalies. Before est. rules understand where loud noises are, how long they last, etc. How does that fit in with all the activities. Working waterfront some noise associated with that. Understand need consensus but need facts to build that on.

Dan Sylvain – Spoke with propeller company. Engine noise, look at adding muffler and changing pitch. Professional sound engineer throughout the year can make changes to boat so all airboats are in conjunction with declining noise. \$30-40,000 for study cheaper than jumping into a law and its contested and fighting court battles. Talk with airboat operators to try to quiet them down. Many more things to cover than jumping in with just one test being done. Need complete full study.

Tim - proposal to look at early morning hours, working group for all issues, (access, changes to airboats, props, etc.) sound engineer full on study. Homework for next meeting.

Dan Walker – I get the issue with lobster boats going out in early morning hours. Residents concerned with decibel levels of certain boats. Rather than treat airboats differently, comply. Cannot go forward and study for another two years, the issue is now.

Dave Cox – Ref. of decibel limits. 7 airboats at different times, reawakened different times. Not ok. Not like a dishwasher its like a chainsaw. Nature of Maquoit Bay and how the sound travels, its unacceptable. Can't get up and do his job because too exhausted.

Tim – Sound from demo offensive? When they took off from landing, you said that was the sound that bothered you.

Dave Cox – When the boats took off from Winslow boat launch, one dead on match others quieter. Freeport sounded much quieter than when boats arrive in front of his house.

Dale – Inconvenient for homeowners, it's a working waterfront. Used to build ships there. Build next to shore, out in front is their job site not their property. Some won't be happy until they're not out there.

Deirdre – Not getting complaints about lobster boats...they are getting complaints. That's why perceived as something that could be detrimental to commercial fishing industry.

Lt. White – Over the course of a year they do receive complaints on other types of fishing boats. Larger number of complaints isolated to certain part of Maine. Don't have an exact number, but would hate to see this put in place it would effect the whole fishery. A lot more lobster boats leaving at 4:00am vs. airboats.

Tim – what are the types of complaints?

Lt. White – Pogy boat, steaming to fishing grounds. Exhaust. Some others were lobster boats fishing too close to shore. Rec. boats speeding up and down river. Most recently they are actually engaging in the harvest.

Tim – So they are doing what they do.

Dan Walker – Proving point there are much more complaints around a small number of airboats than a huge fleet of lobster boats. No citizens group against lobster boats. Airboat operators don't want to be treated differently. Set 7-7 not more than 75db. What is wrong with that? Consistent with others in working waterfront. Level of sound people are used to.

Abden Simmons – Familiar with lobster boats, fished out of Friendship alot. 2-3am those boats are really loud. They deal with it because they know someone is trying to make a living. 1400 hp. and use every bit of it. Outside harbor 29knots. 160 lobster boats in Friendship. Not the numbers there in Brunswick. Friendship worse than Brunswick or Freeport. They don't have the infrastructure, so they don't have the complaints so not an issue. Frustrating.

Charlie Tetreau – decibles and times, time you can and can't leave the boat launch. Decibles, don't see how that's going to be enforceable. Don't have time or resources to be responding to decibel complaints. Would-be full-time job to respond to shoreline to take readings. Summertime, short handed and will be hard to enforce.

Tim – Whatever we do it has to be enforceable and understandable by the public as to what the expectation is when they call.

Rulemaking or part of bill to Legislature homework to consider –

- Dan Walker – 7pm-7am Sundays and holidays db limit same as normal motorboat limit 75? Treat all same like lobster boats. Set specifically for airboats as part of rulemaking.
- Standing db level, doesn't matter where you are?
- Testing – law enforcement perspective
- Engineering study
- Working group (who, scope of work, changes to boats, who would pay for that, etc.)

Abden – Regs for commercial vehicles, Federal vs. recreational.

Deirdre – Standing level for watercraft, commercial not excluded.

Tim – will clarify for next meeting.

Spike Haible – Proper series of tests in conjunction with hours. Side by side with people's experience with them. More rigorous testing with a professional.

Peter Joseph – (had a meeting conflict asked that the following be submitted for the record)
I'm providing my comments in response to the proposed agenda below and would like them entered into the record, if that's appropriate.

Discuss the testing results from Monday (each person be prepared to give a perspective):

My impression was that the boats we observed appeared to be reasonably maintained and reasonably operated. While there were a few moments where the generated noise was disturbing, it was not on a level that I would consider to be a consistent nuisance.

It's important to note that the airboat volumes observed on Monday were not representative of the types of volumes that have generated numerous complaints from residents in the past in this same location. I think that the observation proves that airboats can be operated at a reasonable level and we don't need to be as concerned that setting a reasonable dB limit will put airboat operators out of business.

Discuss potential solutions: One thing that struck me is that the current testing method for other watercraft involves stationary and operational tests on the water. However, the vast majority of complaints are generated on private property (usually within homes). I would like us to at least consider a regulation something along the lines of "operation of airboats shall not generate more than XX dB, measured using a method established by the Department, observable from an occupied residential structure". Alternately instead of "occupied residential structure" we could use "property line" or "shore line" but these might be more restrictive. Where XX would be a dB limit established as part of the rulemaking process. I understand that measurement/enforcement may make a regulation like this difficult to use in practice, but I think we should at least consider whether it would be do-able.

Schedule Follow-up Meeting

2-weeks from now, Wednesday. 2/24 @ 10:00am

Talk amongst group really work through the issues. Come back to table and start to understand what consensus is. Reasonable agreement, close to something for potential rulemaking.

Meeting adjourned at: 11:45am

INLAND FISHERIES & WILDLIFE
AND
DEPARTMENT OF MARINE RESOURCES
Meeting Minutes

February 24, 2021

On Airboat Decibel Level Consensus Based Rulemaking:

Roll call conducted by: Deputy Commissioner Tim Peabody IFW

- Those in attendance:
 - Deirdre Gilbert DMR Co-Chair
 - Deputy Commissioner Tim Peabody Co-Chair
 - Abden Simmons
 - Chris Green
 - Dale Sawyer
 - Dan Walker
 - Spike Haible
 - Dave Cox
 - Dan Deveraux
 - Peter Joseph - Absent
 - Charlie Tetreau
 - Dan Sylvain
 - Sgt. Mike Joy IFW Warden Service
 - Major Robert Beal DMR/MP
 - Becky Orff (IFW Support Staff)

 - 15 citizens

Deputy Commissioner Peabody did a roll call for attendance.

Proposed rulemaking

“Coastal resident airboat proposal” was distributed by Dan Walker via email to the group the previous evening.

Dan Walker – We appreciate the work, mapping, airboat demo, etc. As a result, they came up with something they think works. Talked to 100’s in the community. Sent on behalf of Spike Haible, Dave Cox, and himself. Folks have been living and harvesting shellfish on the coast for 100’s of years. Balance

of how to work and live together. Operating under decibel levels for motorboats of test 90db stationary and 75db operational measured at 50ft. SAE J-34 standard in rule. Recently, airboats were introduced and threw balance out of whack. Loud on the waterfront and nothing else out there that generates these types of complaints. Citizens have organized around this, to bring back into balance. Think this will provide solution.

- 7pm-7am 24-hrs on Sunday, Federal holidays all boats same reg 90db & 75db. Not prohibiting harvest if can satisfy existing decibel limits.
- 7am-7pm weekdays and Saturdays, (demo showed airboats can operate within certain limits) 75db from 500ft. when measured from shoreline. SAE J-1970 shoreline measurement.
- Operational component, not operated w/in 500ft. except min throttle setting to and from shore, headway speed.

Tim Peabody – Sound level testing in Maine has been pretty close to non-existent. The current statute on the books for a long time. Early 2000's put in language for testing process. Doesn't think warden service has prosecuted for sound violation in 20 years. J-34 standard put in place because thought that's what we should do. Very complicated issue. Nationally, it is also a challenge with different decibel levels and testing procedures. May be addressed in another manner to avoid testing standards going to court. All going to have to be good citizens not going to rely on law enforcement throughout the state to solve the problem. Just because there is a law on the books is not enough, needs to be able to be enforced.

Dan Devereaux – Dan Walker mentioned airboat usage was new along the coast. Operating since the early 90's peacefully without generating too many complaints. Reactions to the proposal – want to compare to other things before commenting.

Tim Peabody – Listen to each other's comments and discuss points and leave with homework for next week.

Deirdre Gilbert – Based on the history, how did original 75db become established?

Tim Peabody– Has been in law a long time. Sure there was some sort of national basis. Boating law administrators have been leads. Good question, research shows it varies across the country.

Deirdre Gilbert– Info. from demo, distances for those readings were taken along the different points?

Tim Peabody– Closest was around 700ft. off Wolf's Neck.

Mike Joy – 644ft. David Toothakers boat. To and from course 742 max distance for that boat. Furthest distance was 2200ft.

Deirdre Gilbert– decibel reading at 2200ft?

Mike Joy – David Toothakers boat, center of 2 tracks, 48db out 50 db.

Chris Green – Some are fortunate to buy shoreline homes, unfortunate they have to deal with them too (clammers) but they have to work. Inflate to 90db. Because mud dries out in sun turns to sandpaper. 75db going to handcuff them. We have to move and stop and dig places that haven't been dug. Harvest as you go along and find areas. Decibel limit would be tight for him.

Tim Peabody– Is 90db needed to break suction or travel?

Chris Green – sometimes travel along, scouring the flat to find the spot to dig before the tide hits you.

Dan Walker – 75db from 500ft. Current is 75db for regular motorboats from 50ft. Capture sound from the shoreline as the airboat is going by. Equivalent to low 90dbs at 50ft.

Chris Green – Maybe more testing is needed on our behalf. Some of the things didn't make sense.

Spike Haible – Agree, airboats started showing up in the 90's. There didn't seem to be very many of them but they were loud. Number of airboats and frequency has increased a lot. I get why they use airboats, makes life easier to get around on the flats. Not going back to the 90's when less people lived on the shore. If they don't do anything useful for the people complaining, they're not going to stop and it could expand. At the demo hearing Dave Toothakers boat running, that sound was doable, but the other two were not. There was a way to run them that was minimally intrusive. Offering 75db at 500ft seems reasonable. Compromise they felt was reasonable. A lot of gray area, but at least have to be conscious of people living in the area. Hope they can keep working on it.

Chris Green – 75db at 500ft, how does the math drop down if you're 200ft from shore? Closer to 90?

Spike Haible– 80+ would be his guess? It's log rhythmic. You might get into situations where you are 200ft from shore and I don't know how we deal with that. Looking to set a standard.

Tim Peabody– Outcome is that when a harvester is in that area, you're aware and back off it a little.

Major Beal – Went back to some of the mapping. Cody's airboat loudest around 83db. To give perspective, if airboat was operated consistently distance wasn't all that significant. 1762 ft. away db maxed at 79. Up to 82. 749ft max at 83.4db. Good question, but Cody would have been in violation the entire duration of the course on the field demo.

Dan Walker – Airboats can achieve that so what to strive towards something reasonable rather than legislate to what the loudest airboat is. Lower decibel rates we know are achievable.

Tim Peabody– Maybe adjustments to propellers and pitches, may be legislative things that they want to talk about. There are costs associated with that, but that's a bigger discussion than what we can deal with in this process.

Dave Cox – The spirit is compromise. 3,000 residents impacted. Constraints of decibels is not easy. Early mornings, evenings, holidays, etc. during those periods proposed don't believe airboats can

operate in that realm. Construction can't work before 7:00am same logic applies. Leverage things. Giving relief to the residents during those time periods, propose to come to the middle and have framework to start on for regular operating hours. Maybe create a table to address what Chris and Dan were saying based on distance from shore for decibel range.

Tim Peabody – Need to bear down on how a shoreline test relates to current db levels? Having J-34 test currently in rule for other watercraft, most airboats couldn't pass that test.

Dale Sawyer- Proposal isn't for everyone, fits the people on the shoreline but not the harvesters. We come and go with the tides, it's a tough business and highly regulated. Regulated by DMR and now regulated by homeowners telling us when to go and when not to go. This is not going to end. What was put forward, do not agree with it, does not work for me.

Tim Peabody– Do you see any compromise?

Dale Sawyer– My partner spent more on an airboat than his house. Been using for it for years. Why would they want an airboat if we had to follow what they're proposing? It's a commercial operation, not recreational. Take airboats away on Sunday, they don't dig in Freeport on Sunday. Noise complaints come in on airboats during red tides even when they're not being used.

Charlie Tetreau– Enforcement standpoint, the only enforceable way to regulate distance or decibels is use times of day. That's what's used in other DMR fisheries. Harvesters rely on federal holidays as they see highest prices, if you limit them consider price and how it effects their livelihood. There are local ordinances, many can't harvest shellfish on Sunday. Group should focus more on times of day.

Tim Peabody – No harvest on Sundays? Is that the same in Machias and Eastport?

Charlie Tetreau – Not sure but most up and down the coast consistent on not harvesting on Sunday.

Abden Simmons – We want guys to go to work. Some guys still harvest on Sunday. Freeport, Brunswick issue and they don't harvest on Sunday. Why are they dictating what he can do in Waldoboro? He should be allowed to go to work on Sunday. Holiday thing is ridiculous. More holidays added on the calendar each year. The time thing is possibly doable.

Tim Peabody – A time limit if decibel limit is attached to it by rule.

Abden Simmons – The Sunday thing is ridiculous, not a statewide issue. Distance from shore could be achieved at those levels but when becomes rough and nasty sometimes run mud all the way down. Could hit sandy or rocky patch and have to rev the engine more. Strain on law enforcement officers to enforce this? There hasn't been a conviction for at least 20 years. People that moved to shoreline spent a lot of money, issue caused by taking access away. The more things get built up the less access and they have to resort to other ways to get out there.

Dan Sylvain – Upset that proposal was put forth late last night with no time to consider. Are tests done on just water? or mud and water? Did they even look at what the proposal does on boat launches?

Sometimes a dozen boats launching at once. Minimum of 5 min. to move boat out of the way, now past 8:00am (with a 7am start) for last guy to launch and putting traffic into roadway. More issues for people to deal with. Safety issues. Noise, Cody Gillis and his boat would not pass, its unfair and unjust. Talked with local Assistant District Attorney for Brunswick for handling of noise complaints. Got to be another way to handle for positive outcome. Sound engineer for entire year to come out with db.

Tim Peabody – We will vote on the sound engineer study concept at some point, and potentially propose as an issue for the legislature. We will report back that what this group recommends. If something is passed in rule with this group, will can still recommend a sound study with legislature. Too challenging for law enforcement to be the only solution to the problem. We need to focus on people who are a nuisance out there, not everyone that's out there.

Dan Devereaux – Difficult to enforce rules like this. If came up multiple times no one was a sound engineer, so I would recommend that a study is done.

Tim Peabody– This pushes the issue one more year out. Citizens would like something in place as opposed to nothing and waiting one year for sound study.

Chris Green – 7pm -7am, holidays, etc. no airboat use at all? What is I can leave the landing and keep decibels at 75 or lower, could they still use them? Land at low tide and make a living use of airboats.

Tim Peabody– Airboats can't pass current test that is in rule, setting up buoys on water. What about test on the mud? What about changing testing protocol to shoreline test, they can operate reasonably and within those hours. The current testing process is at full throttle.

Chris Green – How can you tell someone they can't go to work early morning as long as they're puttering out to their place at daylight to work.

Dan Walker – Intent not to prohibit in early hours if they can satisfy the test. A lot of places in Maine with prosperous clamming flats and they don't use airboats. Understand access is an issue but committed to working on that issue. This is not a prohibition, just can't be that loud in the morning. Can your boat satisfy the current test? If it can it can go out.

Chris Green – Wouldn't be opposed to that for now. Needs to be some sort of relief now. We are limited on days because of all kinds of different things. Need to be able to go with the tides.

Tim Peabody– If you can operate below 75db early in the morning you would not be subjected to a test?

Dan Walker – If you can satisfy those standards, it needs to be consistent.

Tim Peabody– If I don't go over 75db I wouldn't be subjected to a test. We know they can't pass the test that is currently in rule, it requires full throttle.

Dan Walker – Willing to talk about it.

Tim – If enforcement gets a complaint on a boat, then they run through the test. As a follow up will focus on that more. If 75db or below, don't test them?

Dan Walker – How far away?

Tim Peabody – Look into SAE J-1970.

Dale Sawyer – If I'm being respectful, and someone calls and complains and I fail the test what does that do to me? That's not going to work.

Tim Peabody – We need to find better test that would not allow that to happen.

Spike Haible – Speed limits are in place to have something to measure against if needed. That's what we're trying for here. People are complaining and trying to come up with a standard. I hear Dan Sylvain's comments. We put a lot of work into trying to represent points of view. Trying to do what was asked as a member of the group. Unless you want the legislature to deal with it, we need to come up with something. Access is a key point. The state keeps losing ground, the tide of people is moving in along the coast. Renewed push to get access to mud flats.

Tim Peabody – the citizen proposal has given us a focal point to work from. Airboats can be operated in a reasonable manner, we learned that from the demonstration. We need a process we can understand. Look at the proposal on the table, do we change the testing process? (Dan Walker to send around to group a copy of SAE J-1970). Need to be talking to each other. Would like to hear harvesters' side of what the test would mean to them, staying within current decibels.

Dan Sylvain – Would just he and Charlie be responsible for testing? I'm the one and only guy trying to do more than one job. If I get complaints, there's no way to test that day. Peoples phones will become evidence if their using them for testing to report violations.

Tim Peabody – I would like the outcome to be that phone calls with complaints would be limited.

Deirdre Gilbert – Do we need to stay within 75db? The Department can set different limits for airboats by rule, you have the authority.

Tim Peabody – We had comments on treating them differently, we're trying to stay within that 75 decibels for all boats.

Deirdre Gilbert – Peter Joseph is not on the call. Want to understand more about Sundays and holidays, ordinances prohibit harvesting, but complaints come on Sundays and holidays? What was the rationale?

Dan Walker – We are looking for a day of rest.

Deirdre Gilbert – Examples that are used for noise and limits on hours i.e. construction, are those also prohibited on Sundays and holidays?

Dan Walker – Waiting a year before anything happens is crazy, cannot wait a year. We can work on it. 7am-7pm what's proposed may not be perfect but workable. We can try to perfect this. Clearly definable. There are clambers that don't use airboats and are still out there.

Chris Green – Low tide scenario, they're not out there. The biggest part of managing the resource is you can't go to same spot all the time. You have to spread out. Access with airboat is critical. Even before 7am or after 7pm we can go along nicely to at least to give them access.

Dan Walker – If they can satisfy existing standards, we are not trying to prohibit them. 75db according to existing standards.

Spike Haible – Airboats could be tested as if inspecting an automobile, certify in spring or whenever. Get a sticker and if you screw up you get a fine like we do if we go without a muffler. Need to meet a standard and be respectful of that standard. Maybe an annual inspection would be easier than worrying about being pulled over.

Tim Peabody – I'm not sure we can do that by department rule.

Mark Randlett – Rulemaking authority with regard to airboat noise relates to decibel levels. Nothing specific to give the Dept. authority for inspection. Probably would require legislative change to require implementation of inspection program.

Dan Devereaux – Could we have temporary standards for summer? Just by the consensus group meeting there would probably be less calls. Would there be legislative funding for an in-depth study?

Tim Peabody – For a provisional temporary rule, not sure. Will discuss with Mark Randlett.

Dan Sylvain – Having boats certified, difference when on trailer than loaded and on the water. Not going to do anything for purposes of testing when out working and at full capacity.

Dan Walker – I have two issues. Just because an airboat can make a lot of noise doesn't mean it has to. Failing test at full throttle doesn't mean it has to make that amount of noise. There's also the operational standard and what is too loud, especially before 7am. Work within the limits 7am-7pm.

Tim Peabody – We need final language for Commissioners by March 9th for the rulemaking process.

Mike Joy – Freeport/Brunswick/Harpswell is the focus of complaints. Statewide regulations will affect areas where there are not complaints. Statewide ramifications.

Tim Peabody– What is it like when you're harvesting? Drive airboat, park, dig and go home. What are the decibel levels from the shoreline when you are harvesting? Tested on mud and on water at demo. When operating close proximity to shore harvesting with airboat, do we have a good enough understanding or need another demo?

Dale Sawyer– We go point A to point B on plane and travel. Slow down to scout mud for holes for clams. Going very slow across the mud barely moving; not very loud creeping along the mud.

Tim Peabody– Work on discussing the current proposal and set time for next week?

Dan Walker – Sounds like a great idea. Circle back. Shoreline standard and how that would work. Going forward, talking about effect on humans. Airboats/wildlife/habitat. Hearing that is an issue for a working group. Not a huge outcry from other areas because not many airboats there. We need to nip this in the bud so when and if that happens coastal residents can handle it and people know how to operate.

Chris Green – Regarding wildlife, airboats are everywhere in FL and people love them.

Dan Devereaux – Take into account we don't want to legislate for quietest airboat either.

Spike Haible – Consensus, take straw poll on what is possible to work on?

Tim Peabody – If you can operate at 75db or below are you going to put a time limit on me? Is that a fair straw poll? Homework to look at that issue.

Spike Haible – Do we want to go forward with developing a professional sound testing regime with funding?

Tim – That's for legislature we want something for rulemaking. Is anyone opposed to a professional sound test?

Deirdre – Just to be clear what would the professional sound tester be hired to do, help us develop the testing process?

Spike Haible – develop protocol for testing.

Tim Peabody- We can prepare questions before next meeting and be prepared to vote next week.

Dan Walker - 75db, all in how your phrase it. Distance, standard?

Tim – Look at proposal closely before meeting next week.

Next meeting – Wednesday, March 3, 2021, 2-4pm

Meeting adjourned at: 12:00pm

INLAND FISHERIES & WILDLIFE
AND
DEPARTMENT OF MARINE RESOURCES
Meeting Minutes

March 3, 2021

On Airboat Decibel Level Consensus Based Rulemaking:

Roll call conducted by: Deputy Commissioner Tim Peabody IFW

- Those in attendance:
 - Deirdre Gilbert DMR Co-Chair
 - Deputy Commissioner Tim Peabody Co-Chair
 - Abden Simmons
 - Chris Green
 - Dale Sawyer
 - Dan Walker
 - Spike Haible
 - Dave Cox
 - Dan Deveraux
 - Peter Joseph
 - Charlie Tetreau
 - Dan Sylvain
 - Sgt. Mike Joy IFW Warden Service
 - Major Robert Beal DMR/MP
 - Becky Orff (IFW Support Staff)

Tim Peabody– Goal to have rule language to present to the Commissioners. They’re watching the process closely and want to try to get some level of consensus on rulemaking language. The public process is, we would provide proposed language for advertising to the Secretary of State and the Advisory Council would review in mid-March. A public hearing would be held to solicit comments. Once the public rule making process is complete the Commissioners would be made to determine what to do with the rule based on public comments and recommendations from the Advisory Council. We are here because the prior process was stopped based on public comment. If a rule is adopted, it can be amended at a later time. If a sound study is conducted, we could go back and amend the rule at a later time. The Department could make a rule change, or petitioners could request it. A sunset provision was suggested, but the Department could amend the rule at any time or petitioners could request that. Would like to see something agreed to today. Questions on the process?

Dan Devereaux – If rules are adopted will they go back to the Legislature?

Mark Randlett – These would be routine technical rules. The Advisory Council gives approval for the Department to adopt rules.

Dan Walker – Question, going forward with legislative reports to Committee. There may be further legislation needed, and a report is required by previous legislation.

Tim Peabody – Items will be presented to Legislature. They may choose one of the bills to direct the Department to continue with the working group or a sound study. There may be things that come out of this process that require a Legislative change. I sent a list out for items that we may or may not agree on. 75 max decibel reading for airboats – somewhat agree on. Are people absolutely opposed to that?

Dan Walker – 75db, we proposed that to be a continuation of the way the current law reads. How does a shoreline test translate from current rules. Curious to hear from harvesters on how it would affect their operations in the morning.

Dale Sawyer– Never been measured, I don't know the decibel readings for my boat. Give and take relationship. I will try to creep up in the morning, not sure what the decibels will be. Respectfully go about your business that's all you can ask, but not sure if it will be enough for homeowners.

Chris Green– 75db in the morning and at night, sounds reasonable. See if we can work something out. Have some testing and look at it. The demo at full throttle was 110db. Know they have to be mindful of throttle so they don't disturb the peace. Willing to do 75db. Hopes homeowners can be patient through the process so they can get a feel for where throttle should be.

Dan Sylvain – Not sure if harvesters agree on 75db or not, when getting off the mud I don't think they can get below 75db to get to plane on the water. Are you testing 50ft away, 100ft away?

Dave Cox – Appreciate what harvesters have said. You are going to put your best foot forward to meet 75db before 7:00am. Interpreted you expect you will be able to do that and can continue to go out before 7:00am and behave differently.

Dale Sawyer– My boat never been tested. All they can do is try to do their best and when they have the sound study it will show where that leads. 77 or 78, all they can do is put best foot forward. Still have to move the boat and use under power. Part of it lies with the study. Be patient with harvesters they're trying to work this out.

Chris Green – when the boat is on plane and they can cut throttle back to 3,000 -3,200 rpm 50ft off aft. Maybe decibels will die down, may depend on conditions.

Dave Cox – If after we go through these efforts and for certain activities if you can't meet 75db, you won't be able to go out in that time frame.

Chris Green – We will probably get tickets because we have to go to work.

Dave Cox – We want to be part of solution. If that's all it would take, why hasn't it been done yet?

Chris Green– I have had zero complaints on me. I'm backing down to an 8 pitch prop. Less thrust but less noise. Putting my best foot forward to keep the peace.

Tim Peabody – Sometimes it takes groups getting together, peer pressure to bring resolution.

Spike Haible – I appreciate what Dale and Chris are saying. 75db, somewhere there was a proposal that it be 75 but 90 during the day. No way would I support daytime 90db. Should see what happens over the next seasons when things are really going and work on testing protocol. Good to know we can adjust rules. Airboat operators have to give it their best shot.

Tim – We will hold the 90db for later once know 75db is where to start in the morning.

Dan Devereaux – Spike brought up 75db/90db so I'm all set.

Tim Peabody– Current operational test is SAE J34. I have reviewed protocols of testing process. An airboat at full throttle with sound meter 50 ft away would not be 75db. I do not think there was an airboat that could pass that test. SAE J1970 is a shoreline test. How should we test for 75db from 7pm-7am?

Deirdre Gilbert– Could Dan explain further how test would translate?

Dan Walker – Original test in statute was 50ft test operational at 75db full throttle. Changing operational to shoreline test wanted to make sure 75db at 50 ft translated into shoreline. 50ft would carry over to the shoreline standard for the morning.

Deirdre Gilbert – If the reading was taken further than 50ft should be less than 75db?

Dan Walker – It might turn into something lower if it was further away.

Tim Peabody– The test doesn't work that way. We set the decibel level and test type in law or rule, further out you go from shore may be able to operate higher rpm and meet db level. Won't get more than 75db from where you take the sound reading, no distance involved

Spike Haible– I agree with interpretation of J1970. Going to apply to airboats and we pick standard we want to meet and that's 75db.

Major Beal – Considering some sliding scale of noise where 75db is limit on shoreline and take enforcement with complaints and then to add a layer for distance and the db levels seems complex and unenforceable.

Peter Joseph – Agree with what Major said. Concern of 75db on water translates to 60db on land should be compromising on the number. We need a fixed number on shoreline. Getting complaints from people on the shore and property owners, that's what needs to be addressed.

Dan Walker – Key point. Suggest 75db using old standard talking about from 50 ft. Willing to talk about it. A lot want to sleep in the morning. Looking at noise ordinances, can't have more than 50db before

7am. If we had a number lower than 75db for the period of time in the morning and then 75 during the day, how would that affect how the harvesters went about their business?

Chris Green – I'm trying to be mindful of everyone around. Full throttle produces highest db. Sometimes have to use that to get on plane. This is commercial not recreational. Like driving to work and then driving home. Load capacity vs. wind vs. all other elements that come into play.

Dan Devereaux – Airboats are controlled by throttle and joystick, driven by accelerator. Are various maneuvers, exceptions for those circumstances?

Tim Peabody – The exceptions should be common sense on all sides. i.e. windy day etc. We are trying not to regulate or legislate to that level. That may sort itself out within a year.

Dan Devereaux – Emergency vehicles are going to be left out? Answer: (Yes)

Dan Sylvain – I'm agreeing to 75db and now we're talking about lower numbers further away from shore. What should we do with harvesters currently louder than that? Take it away from them? Not fair to take it away from those guys. Looking out for entire shoreline, homeowners and harvesters. 75db is not fair. There may be 4 airboats that would pass at 75 right now.

Tim – Operating on the mud or minimally on water I think they can do it.

Dan Sylvain – Loading boats, Maquoit Bay, get on power to get out of the mud puddle will be over 75db. Are we at the point where can't even leave the launch? Its fine once they're moving but launching from mud puddles or water they'll be above 75db.

Mike Joy – For testing the modified moving test J34 does not work for airboats. The J1970 test only reasonable way to test airboat. Law enforcement friendly.

Peter Joseph – For launching I'm ok with exception in standard for launching. A brief interruption in decibels for that.

Spike Haible – I echo Mike Joy's comments. Temporary sound to launch boat and get headed, I have observed that. At Feb. 8th demo Toothakers boat was quieter. It shows that things can be done to modify noise. We are all subject to that in work life, "the need to upgrade". You're in a business out there, I'm in favor of preserving access. If they were told they couldn't use an airboat before 7am, what would they do?

Chris Green – Toothakers boat, he's the one they've been calling on for 2yrs. If I couldn't dig before 7am we would be hit from all sides. DMR rules, airboat rules, are how to access everything. There is no access, take us from land access and now how do I get to work.

Spike Haible – I'm curious if would use another method, skiff?

Dale Sawyer – Access is a two part thing. If you are 400-500 yards from where digging, getting to where you need to go, no better tool than airboat. Young people would rather walk, can't justify the cost. Using new tools to still get out and make a living. Testing is theory, use of boat is actual application. Its

not how loud it can be or how fast, how do I use the boat on a daily basis harvesting is what's important. People complaining its what's they're hearing, its what they project. I'm not sure how achievable 75db is but will do best. Not willing to give airboat up or go without.

Abden Simmons – Baffled that's the route we are taking, not allowing them to use them. 1 or 2 towns problem regulating for the whole state.

Tim Peabody – We're not banning airboats through this process, that would have to be Legislature. 75db 7pm-7am J1970 test. Might not be perfect but I'd to see willingness. Anyone unwilling to try this?

Abden Simmons – I'm fine with that. Need test to see if its relevant. Need to educate some with airboats so they know what's going on. That will make a huge difference.

Spike Haible – Not interested in outlawing airboats, just interested in other tools.

Dan Devereux – Agree with J1970 test being used.

Tim Peabody – Anyone opposed to 75db 7pm-7am and J1970 test.

Peter Joseph – J1970 specify the measuring area? Water or land?

Tim - Its assumed on water we need to use it on land also (mud).

Peter Joseph – I have no opposition

Dan Walker – I have to check with my group. It's different than what their proposal was. We're not trying to prohibit. We want peaceful coexistence before 7am. Before 7am if being used at a decibel level that's not going to wake people up. Moving into the J1970 test we need to work that out.

Tim Peabody- For daytime operation also. Dan Walker check with your group and report back.

Deirdre Gilbert– Keep an exception for launching? Something people can agree to?

David Cox – 8 airboats going out in course of ½ hour period. Still pondering that, not sure if I would agree to that exception.

Tim Peabody – Daytime, after 7am. J1970 test, decibel level is be higher level, proposed 90db. 75db, 1997 was first year Maine had db level for watercraft. Related to jet skis causing disturbances on inland waters. Industry standard at that time. 1999 amended that to adopt 75db was NASBLA law. Varies across country. After 7am, can set wherever we want to but has to meet goals to be reasonable to balance working waterfront with public.

Chris Green– Proposed 90db for day a lot can test 110db. Toothakers came in a little over 100 with different pitch. Adjust pitches. If we can somehow hit 90db 200 yards off shore. The base test laws are recreational, we are totally commercial. Neighbors on the shore deserve respect, hopes 90db will work. When the tides in then you have loaded boat it allows to get boat back to shore safely,

Tim Peabody– Do municipal noise ordinances, change db levels for acceptable noise?

Dale S – Lawnmower has to be an avg. of 90db. At 75db we're going down quite a bit to try to meet that. Demo, highest reading was in mid 80's and everyone said that was ok. We need education.

Tim Peabody – So shoreline test 75db during the daytime?

Dan Walker – Yes.

Tim Peabody – What about between 75 and 90db. Willing as trial to work on this to move towards middle?

Dan Sylvain – Some ordinances for construction 75db between 7am-7pm. Upwards of 70 during the day and 60 at night in Brunswick.

Peter Joseph – Freeport ordinance, officer responding has discretion for reasonable or unreasonable noise 6am-6pm, different for weekends. Exemptions for things such as power tools, refuse collection, etc.

Spike Haible – 75db during the day is not unreasonable. Can do 75db in evening hours with the exception of getting off the launch or flats need to accommodate. If you can meet at night why not use that standard in general?

Dan Devereaux – J1970 at 75db in those timeframes addresses Dan Walkers complaints early morning hours. 90db for rest of day, heavier loads may make more noise. 75db in a.m. is doable. Most complaints are coming with early morning tides.

Major Beal – Early morning hour is when there are complaints. In the modified moving test done by Mike Joy 13 airboats at 2,000 rpms only 1 under 75 db. Before 7am, distance will become friend.

Tim Peabody - Is there any way we can address the needs of the harvesters here during the daytime under certain circumstances?

Dale Sawyer– We need to get the boat on plane because it travels smoother. Once on plane, back it down. As we go that's how we drive the boat. If I'm trying to be cautious of 75db I'm probably never going to come up on plane.

Peter Joseph – Is there some kind of transient noise level for brief period of time that's acceptable? To get up on plane, if that lets the harvesters agree to a 75db level I think we should think about that.

Dan Walker – The idea of exception for brief period of time is different based on time of day. We need lower db continuous. Shots of noise will wake people up and defeats the purpose.

Dave Cox – Time of day is connected. Early morning, going to do best to meet but if not will you just get tickets and keep going?

Chris Green – 75db in morning we can putter along shore, pretty sure can come within that db level. If we have to figure something out they will. Frustrating for me as much as you.

Tim Peabody – Focusing on noncompliance is not helpful.

Mike Joy – New Hampshire has a db level, moving test 82-84db. That's a busy watercraft area and that's what they have for law. 83db at our airboat demo was highest and everyone seemed ok with that.

Dan Devereaux – 75db 7p-7a, appears doable. Would it be something the group could request and this summer study and determine reasonable noise levels. It would provide relief to shore owners.

Tim Peabody– Getting something on books they can agree to would be helpful. We can amend based on better information. Something for early morning and shoreline test. Need to find something to keep people moving and stay in compliance. We are still at 75 and 90db.

Charlie Tetreau – Agree with J1970, 75db 7p-7a. Take vote on 75 or 90. Could talk about it quite a while.

Spike Haible – Getting on plane getting off launch. 75db during day but allow for transient noise. Operators have been fairly accommodating, but we also need to be aware they need to use the throttle to get going. In favor of 75 with allowance for transient noise.

Peter Joseph – 90db during day seems high based on test they saw. Curious on noise readings in past at launch getting on plane or getting out of mud.

Chris Green - The demo test was done with empty boats, that needs to be considered. 90db should be doable with a load. Where do the exceptions become lost in translation? Emphasis on loaded boat.

Tim Peabody – Daytime limit, maybe do some homework and come back together for short time. Address reasonableness, loaded boats getting up on plane, etc.

Dan Devereux – In reality, do you feel there is some momentum to discuss and study over the summer? Maybe not set a daytime limit and monitor where operate frequently in summer and come back with those numbers. Realistic?

Tim Peabody– We need items to take back to Legislature include getting more sound information; contract with a sound engineer. How willing are people to do that? Costs money, if legislature presents a bill with a fiscal note attached it will struggle.

Dan Devereux – We could not set standard and try to work within those time and decibel windows and educate. Not a lot of experience and ways not to disrupt people. Education would certainly help in the process. Would like to monitor for a year and bring it down. At least for early morning hours. Bulk of complaints in N Casco Bay in Freeport, Brunswick and Harpswell. Offer class to mitigate noise to prevent total banning.

Tim Peabody – The rule proposal would not have to limit 7am-7pm. We could just do the night and early morning, if there is momentum to look into it further, can't speak for Commissioners how they would manage that.

Dan Walker – Not supportive of not doing anything during day. Need to put into law some things to shoot for. Still need to go back to folks. 85db during day and study at same time. Circle back and keep having this working group working. The group meeting will be an outlet for communication.

Tim Peabody – Harvesters, your thoughts on 85db during daytime?

Dale Sawyer – 85 db, no. The main problem is in the morning. 75db in morning, now that's not good enough handicap all day every tide. Willing to give during morning. Good with 90 won't support anything less.

Chris Green– Some boats tested at 110, compromise. 90 compromise gives enough leeway to learn more through summer. Educate. Strongly suggest 90 to protect bulk of us.

Tim Peabody– I will put some language together to try to finalize. Daytime is still up in the air. Think about an end game. Want something to come out of this.

- Is there willingness on both sides of the issue to continue the working group. Any opposition to continuing group? (No)
- Study – anyone opposed to any sort of study? (No)

Both important points to come together for some language. Will get language out before end of week. Commissioners will decide whether or not to move forward. Vote will give them info. on where group stands.

Next Meeting

Monday, 3/8 @ 10:00am

Meeting adjourned at: 12:00pm

INLAND FISHERIES & WILDLIFE
AND
DEPARTMENT OF MARINE RESOURCES
Meeting Minutes

March 8, 2021

On Airboat Decibel Level Consensus Based Rulemaking:

Roll call conducted by: Deputy Commissioner Tim Peabody IFW

- Those in attendance:
 - Deputy Commissioner Tim Peabody Co-Chair
 - Deirdre Gilbert DMR Co-Chair
 - Abden Simmons
 - Chris Green
 - Dale Sawyer
 - Dan Walker
 - Spike Haible
 - Dave Cox
 - Dan Deveraux
 - Peter Joseph
 - Charlie Tetreau - absent
 - Dan Sylvain
 - Sgt. Mike Joy IFW Warden Service
 - Major Robert Beal DMR/MP
 - Becky Orff (IFW Support Staff)

Tim – Mark Randlett will give opening comments.

Mark Randlett – Consensus based rulemaking process designed for discussion of members of the group that represent all interests out there. Group members can bring to the table what they hear outside of meetings, there are a lot of emails going around outside of consensus group. Caution this is not a process that anticipates public comment. We need to follow procedures in statute. I have advised the Department that anything submitted by public is not part of the public record of this consensus rulemaking discussion. Members of the group can bring to table what they hear outside the process. Not fair to other members of groups that did not have opportunity to put information before group. Everyone must have an equal opportunity. Outside meetings with Commissioners, or anyone with final say encourage not to engage in any discussions with anyone, members of public or members of group. Don't want to create unfairness in process. Members of public welcome to listen and be advised of

what is going on and have conversations with group representatives. If, and when, the Departments go forward with a proposed rule the usual rule making process will be followed with comment period and public comment accepted on the record.

Tim Peabody – Do we need 100% consensus? If we do not reach consensus what is available to Commissioners?

Mark Randlett – For a rule for consideration by Commissioners to be put forward. 100% of people involved in this process would have to be in agreement for consensus-based proposal. If not successful, commissioner could take portions of proposal and move forward. They have ultimate final discretion. Focus on rule language not various types of studies that you would like. This is a process to develop language for consideration by Commissioners.

Tim Peabody – The Departments will be reporting back to the Legislature, that was part of the process outlined in statute. We need consensus on language to propose for rule. Other items discussed, sound study, etc. will be part of report back to Legislature. Proposal sent out on Friday was my attempt to get some language out for today for something we could perhaps reach consensus on. Read the first part of proposal 7pm-7am, 75db measured by SAE J1970. The 75db discussed is to be consistent with other watercraft. I'd like comments on this portion. Paragraph 2 allows for leaving a boat launch.

Dan Walker – Appreciate hard work. 1st paragraph technical question, does the exception for transient extra noise apply to both morning and evening or just daytime?

Tim Peabody – All of the above 7p-7a early morning allows launching of boats and go above 75db to reach headway speed and leave launch. This was brought up last week as an issue.

Dan Walker – Our group does not support 75db using shoreline standard. We propose 65db using shoreline test. We are not going to discriminate against airboats in the morning we are trying to set same level. 75db is higher than that from shoreline standard and not include any exception to move out. Would include exception for daytime leaving boat launch but not during morning hours. 75db too loud during morning hours. Not enough level to get folks moving in the right direction. Recommend 65db for morning.

Tim Peabody – You're speaking on behalf of Spike and Dave?

Dan Walker- (Yes)

Chris Green – We tested at 110db so to bring down to max of 75 to get to work I'm absolutely sure that we made our good faith step in recognizing the opposition to us. 35db stretch to meet in middle shows our willingness to work with everybody. There's only one group moving to meet in middle. This is all their way, they're not giving up anything just taking. Going too far.

Tim Peabody – Do you accept 75db as currently written?

Chris Green – 75db is good, with the working group to look at this through the year and modify.

Dale Sawyer – I reiterate what Chris said. We're the ones conceding. Don't want to put us out of work but you keep putting decibel levels down so can't work. 100% won't support if you keep chiseling it down. We're giving up too much as it is and where does it end? They don't want to work with us they want to take from us.

Chris Green – Concerns of operators, the db levels you're trying to get us to agree with set us up for failure. We're trying to reach db levels and show commitment to appease everyone. Tough on us, responsibility to maintain working waterfront and happiness of homeowners. Need to take that into account.

Dan Sylvain – Even at 75db that is very unreasonable for operators. The test that Mike Joy did all boats can't even do 75 at idle on a trailer. How can do with more people and more weight on boats? Unfair. Trying to put recreational sound level on commercial harvesting boat, shouldn't be done. No limits set until we have a sound test done so everyone has a fair deal. No way that boats can run at 75 let alone 65db.

Tim Peabody– From our testing, we had decibels below 75 while traveling.

Dan Sylvain – Mike Joy tested only stationary while on trailer. Wasn't part of moving test.

Tim Peabody– From our testing information, a lot of the trips were at 75db or sometimes below that. I think the highest was 82 or 83. That's why we put 75db in place.

Dan Walker – This is not about lobstering or working waterfront. I support working waterfront, this is about really loud airboats, too loud. We are trying to work out something for the day but early morning there is no sovereign right. This is not a slippery slope this is solely about airboats. Is there a right to use whatever you come up with out there? They are useful tools and we're looking to technology to try to work with those. We're looking for some relief in early morning hours. There are 50db ordinance levels out there. May have to make serious alterations to airboats if want to use early in the morning. This focus is on really loud new tools being used early in the morning.

Peter Joseph – Until last year we had a statutory decibel level for operation of all watercraft in Maine. There should be no reasonable expectation of someone that bought a boat that ran at 110db that would be acceptable. It sounds like what we're arguing about is a small distance. 75db, 65db attempt to compensate for 2 measuring levels. Seems like there's some ground here to be considered.

Dan Devereaux. – I went to each of Brunswick's launches. This is not a new method. Clammers have been using airboats for quite some time now. Seeing more airboats because loss of access is big issue. New land ownership, a lot of complexity. Town officials have submitted some change. 75db is appropriate. I live near Maquoit Bay its just as loud. Two circumstances which boats should be exempted from 75db, powering up. Exemption in Tim's proposal recommend exemption from operational movements when underway. Technology moving quickly, clammers are out there to go to work not aggravate people.

Tim Peabody – We are working on whether we can accept 75db or 65db. If can't accept no need to move forward.

Spike Haible – I'd like to speak to Chris Greens comments. He is most interested in finding a way to run as quiet as possible. I appreciate that mentality. Business depends on fitting in with society. The conflict is that there are a lot of people out there that object to airboat noise when otherwise wouldn't have to be in conflict, the Portland noise ordinance is used as example. The coast is becoming more dense, makes it more difficult. Dale has also said he would try but its tough, that's how we make our living. I've agreed with Dave Cox and Dan Walker based on their conversations that 75db seems like an upper limit and some wont' accept that so that's why 65db. Boats are really loud up in some areas. You're using a machine that is uniquely loud in our world. Technology for airboats is being looked at. Keep looking at that stuff. Kudos to Chris for changing pitch of the prop. People have right to peaceful enjoyment of their property, more and more people. 65db is the best we can do in these circumstances. I recognize have to fire up to get away from launch. Stop to dig and move on to another area, that's transient noise and can't get around that. Change practices? Transient has to be included.

Chris Green – Technology, I'm putting my airboat together. Back down to 8 pitch torque prop, like weedwacker on steroids. Db test done 83 at 3,000rpm. 73db on cars on road passing by house. Sound engineering research needs to be done. We are trying to appease everybody.

David Cox – I'm echoing Dan and Spike. 3,000 people who need to be able to sleep in early morning hours. 75db doesn't do it 65db does. Looking at sound ordinances. Impactful to read Portland noise ordinance elements, some apply very closely to us. Want to continue to work with the harvesters. Trying to thread a needle that is very difficult to thread. Maybe neither side is particularly happy with outcome, but something to work on.

Tim Peabody– 65db vs. 75db trying to reach consensus. If we can't, nothing wrong with that. This process is to agree on language for rulemaking. It's not worth going out on our own with proposal that no one here fully agrees on and have failed rule process. This is great work to present to Legislature and can do that and see what they can do. Legislature has more ability to work on statewide issue or even regional ones, much better than we can as a Department.

Dale Sawyer– The Portland ordinances for sound, using something they have doesn't make sense. Noise applies to a working waterfront. Homeowners will find it offensive anytime of day. Won't be happy until we're not using the boat as intended. We are giving up quite a bit. No regulations before. 100% against 65db.

Tim – What about 70db?

Dale - No. Want to go to work and we're trying to do what we can. This isn't something that will fix itself overnight. It's not worth using the airboat, it's a big financial investment. I'm willing to give some, but they want to take and take a lot. We're all offended by something, the same people that took the access want to shut us down.

Dan Walker – Unregulated before this process is not true. Watercraft limits have been on books for long time including airboats. In the morning hours follow same levels other watercraft have to follow. Exception during the day, is not accurate. A difference of 10db is exponential. 65 to 75 is twice as loud. Set something all other boats have to follow and then exception for during the day. Set something up for a year. Continue to talk and respond. Set an aspirational goal that people have to strive to meet and see how it goes. Have enforcement understand.

Tim Peabody– Perhaps this is a better package to take to Legislature. Consider sound studies, direct state agencies to continue working group, etc.

Deirdre Gilbert – It's difficult to use existing law to say that's a standard that everyone has been subject to. Haven't been any tests or tickets written in decades on the existing standard. I struggle to see that's working if that hasn't been applied. Everybody has acknowledged they don't know how it's going to work. Airboats don't know if they can comply. If we put it in motion is it going to work? Establish a standard that's never been applied in the past as a first pass? We have a lot to learn. Makes sense to do something for a year and see how it works. We need to be careful on decibel number set.

Tim Peabody – It's not just airboats, sound level enforcement in general is a challenge for law enforcement. Its situation oriented with set db level. It's a struggle for law enforcement nationwide.

Major Beal – I reviewed testing data from the demo day and Sgt. Joy's work prior to group being formed. The stationary measurement on trailer, 13 airboats at idle, 9 in excess of 65db. At 2,000rpms, 2 airboats exceeded 75db. Fine tuning 65 or 75 limitation will be restricting use of majority of airboats prior to 7am. The current standard is specific to noise from motorboat engines. Airboat noise is from the prop. Language should be required to prove individual operated in a manner to exceed db level. Good if officers are at the spot where the complaint occurs, but if not it presents challenges.

Mike Joy – 75db on shoreline, I don't know if they can do that. The day of demo, no one thought 83 was offensive. 75 now yet 83 didn't bother anybody. It has to be practical operation. The sound limit has to be practical as well or doesn't matter.

Dan Walker – 83db was an issue if you were on Wolfs Neck side, very loud. Could probably handle during the day but not 4am. Have an amount of time folks can do what they do. Take 2 hrs off morning and increase the daytime limit until 9pm. Keep at 75db at 7pm would lower limits in morning add 2 hrs till 9pm?

Peter Joseph – 9pm, that's more consistent with noise ordinances in general. Complaints came in at the 90db range, people sending in videos, etc. Complaints haven't been generated by people using their airboats in a reasonable manner. If don't reach consensus, Spike, Dave, Dan Walker would residents consider higher limit for interim rule for 1yr to account for loud boats and come back to this. If really offensive in the end come back to it. No consensus right now and if not there won't be a rule to come out of this unless separate by Commissioners. Going to lose opportunity to quiet down the really loud boats.

Tim Peabody – Can we focus to have a time period, sunset rule?

Peter Joseph– could be? Then meet again for investigation if it's effective. Sunset or review with existing rule remaining.

Mark Randlett – Wouldn't recommend a rule with provisions of a revisit. If the rule sunsets would have to have new rule to take place when it expires or be prepared to go out with amendments.

Tim Peabody – with a sunset proposal, are we still at 65db?

Spike Haible – The notion of a sunset provision, what about if we had a 75db limit for 1yr as sunset no tickets but random testing and responding to noise complaints. Harvesters are running their boats to see what can meet. Get a chance to observe and at the end of time period we may have to get something different. Consensus is good idea.

Dan Walker – I have to bring back to folks. 75db in morning for 1yr and move to 65 after year automatically. We should work on getting to 65db. It's a stretch to get to 75, year to figure it out and strive to 65 for morning.

Tim Peabody– I struggle with appropriate place for this issue. We are talking to many complexities to go to rulemaking. The Legislature is a better place to address what is coming out of this. This discussion would be part of a report that we are to present to Representatives. The rulemaking process is narrow.

Mark Randlett – Keep the rule as simple as possible without building in too many conditions or possibilities. It's a policy decision where to go from here.

Tim Peabody– 75db. We need to determine whether to go to Legislature or have consensus here. If don't meet the timeline it pushes into May with Advisory Council to pass the rule if public comments went in a positive manner. This pushes it too far out with the Legislature process. If we can't be successful in this process we will make recommendations to Commissioners for Legislative route.

Dan Walker – We can't support 75db in am. The way its written can't accept. Very much want relief for summer. Would need emergency legislative bill to get in place prior to summer. Unregulated right now. I haven't sensed any movement from harvesters. I need to circle back with folks.

Tim – Let's try to get through point #1. During day harvesters proposed 90db. Going back to consider 90 during the daytime. Consider operating safely, wind conditions, etc. 90 is to try to take consideration of variables. Deadline is tomorrow to submit rulemaking language for timeline April meeting timeline. Can we communicate by email?

Mark Randlett – You should take a break and consult with your groups. Set time to reconvene so everyone participating can rejoin. Email may exclude someone with interest in listening in. Reconvene later today.

Dan Walker – I need to check willingness to stomach a slightly higher one if you add a sunset and can get back at it. Need to discuss.

Spike Haible – Skeptical can get where need to go. Principles involved, don't hear anything from harvesters side. Throwing things around. Don't want to waste time, running out of ideas.

Dale Sawyer - To think we're not trying is wrong. Homeowners want to regulate us out of this and its wrong.

Chris Green– The morning tide is most productive. Cart being put before horse with no real research. Have the bosses put out some language and see where cards fall.

Abden Simmons – Morning tides are a big deal to us. When tide is out we need opportunity to get where we need to, our access is gone. Airboats in the early morning are key factor. Not going to be airboats only involved, others that commercially fish. Where does it stop. Rather go to Legislature and have that fight rather than try to make adjustments here. Regulate for something never been done before.

Tim Peabody– Do harvesters agree with what sent on Friday?

Chris Green– Reasonable start.

Tim – Let’s leave and come back but at least I want to know if harvesters agree with what was sent on Friday.

Dale Sawyer– Numbers achievable? Willing to try.

Abden Simmons – ok with it.

Tim Peabody – Sunset the rule would be the proposal.

Dan Walker – Need to circle back about sunset. Can we drop back 5db? Meet in middle and sunset after year to see if it worked?

Dale Sawyer– To ask us to go below 75db is unacceptable.

Tim Peabody – Use the proposal sent out on Friday, put that in place and sunset that. Maybe some language adjustments those would be the basic principles. 75db in morning 90db during day with sunset whenever we choose.

Discuss reconvening at 3:00pm.

Dan Walker – Meet in middle so everyone feels a little pain. Twice as loud going from 75 to 85 so consider that.

Chris Green – Go with #'s proposed at this time and come back after studied. We may be setting unachievable goals for coworkers don’t want to set up for failure. Don’t want to waste time. Very firm on what proposal is.

Tim – This a learning experience for law enforcement also.

Meeting reconvened at 3:00pm

- Those in attendance:
 - Deputy Commissioner Tim Peabody Co-Chair
 - Deirdre Gilbert DMR Co-Chair
 - Abden Simmons
 - Chris Green -
 - Dale Sawyer-

- Dan Walker -
- Spike Haible -
- Dave Cox -
- Dan Deveraux -
- Peter Joseph -
- Charlie Tetreau - absent
- Dan Sylvain -
- Sgt. Mike Joy IFW Warden Service -
- Major Robert Beal DMR/MP -
- Becky Orff (IFW Support Staff)

Tim Peabody – Start with citizen side.

Dan Walker – 90db is no better than what they have now, not practical, we need aspirational limits. The demo met criteria and encourage boats to meet lower limits. Recommend there be no enforcement in first year period. Reports created if a complaint or incident then go through enforcement action but no fine. Recommend 70db in morning with exceptions discussed previously. 80db in afternoon with exceptions talked about to leave launch to get going, rough water, etc. Going forward professional study conducted to incorporate what makes airboats quieter, gather data on sound regulation. Looking at levels of tolerability for coastal residents and wildlife. 70 and 80db would have sunset provision.

Mark Randlett – No problem with state using enforcement discretion re: a rule that is charged with enforcement. Wouldn't recommend the rule say this would not be enforced. If the rule is there and the dept is going to get complaints justify why not enforcing and using its discretion.

Tim Peabody– The complexities are for the report back to Legislature. We need to focus on language for the rule. What are the harvesters thoughts on what Dan Walker put forward?

Chris Green– 90db gives us wiggle room with 83 coming back from demo test. Feels like we've moved the mark a great deal away. We should have an educational process while research being done. It's an unreasonable request.

Dale Sawyer– I'm with Chris. What we put forward was quite a bit. If you're going to have a study and make a law do the study and take the information and then make the laws. Homeowners want a law in place but not enforce it, but then start enforcing it. Leaves us out to dry. Not in favor of going that route. Giving quite a bit, if that's not good enough don't know what to say.

Abden Simmons– Dropping to 70db in the morning is probably not going to happen for us. I don't want to move without having the study. Saw numbers in the mid-80's at the demo. That's why we stayed at 90. To have a rule in place and not enforce it, doesn't work for them. Stay at 90 and 75 for the simple fact that we don't know.

Tim Peabody – Any law that passes either legislatively or by rule, there's always an educational period for public. We look for people that are intentionally violating the law. Take action on people we know are out there intentionally violating the law. I don't see this being any different. Outside a reasonable number of decibels above and beyond, this is natural protocol that most enforcement agencies take on.

Major Beal – With any change in regulation or law we're always committed to a healthy educational period. Goal is to target intentional violators. Mr. Walker's recommendation in reduction in db levels but no enforcement action, just a study for calendar year. I don't feel like we have a decent opportunity to hold the extreme outlier accountable and feel we should. There are a few that don't demonstrate the level of concern that Chris Green has over the calls. Those people are operating with 90db we would be able to hold them accountable. To not have that opportunity is disappointing to me. Marine Patrol goal isn't that we have these levels in place and run around with sound meters and write tickets is not the goal.

Dan Devereux – Don't establish the rule, look at it over the summer and continue this group. 20+ airboats in Brunswick not a lot to keep track of. Create rule with numbers puts the cart before the horse. Hope that as we look at this we can address outliers and educate. Hate to have laws on the books we can't enforce.

Dan Walker – Then enforce it. Want something people are working towards. 90 and 75 to high. Push towards being quieter.

Spike Haible – Chris Green has said he will do whatever he can do. Used the word aspirational, try and meet goals. Have to combine enforcement concept with aspiration of being quiet. There's got to be a way to have enforcement and aspirational in people's mind. People would like to be better neighbors, but not anything to measure that by.

Tim Peabody– We went with 75db with this group for quite a while because that's what other motorboats were subjected to.

Dan Walker- 75db at 50 feet, 60 from shoreline.

Dave Cox – The exceptions we're agreeing to have no limits. That's a huge consent.

Tim Peabody– We're better off having to do it this way then not be successful in rulemaking again. I keep hearing that we don't have good data. Harvesters are not sure if can operate safely on the water with a load of clams and meet recommendations. There is some leap of faith on both sides. We can go for the summer without a decibel level involved and ask Legislature to continue with study.

Dan Sylvain – Instead of making decibel level until study done, use Motor Vehicle law 29A unnecessary noise. Easier to make law going off something like that rather than specific number. General rule that puts it on officer discretion would probably be better and easier and stronger.

Tim Peabody - We're trying to come to consensus here, but I understand if we can't reach consensus.

Dan Devereux – The situation in Freeport with boat that was unreasonably loud, what was the resolution?

Major Beal – There was an operational component to that as well. Not sure if disorderly conduct was charged or not. Can't speak specifically to it.

Tim Peabody- We can use the sunset provision, if we did do something, we select a date when rule would end. The department does rulemaking year-round. Could sunset something in December and go back to rulemaking or Legislature in January.

Spike Haible – What’s the point of a sunset if we can’t agree on a number?

Tim Peabody – It’s a guarantee we have to come back to the table. Puts something into law use discretion with enforcement, potential sound study with legislature. This conversation is going back to Legislature in a report if can’t agree today.

Spike Haible – Is the only relief property owners will get out of this process is the good will of several harvesters and nothing else?

Tim Peabody – Yes, if we do nothing. Legislature is anxious to see report back we will present all this. This is not going away I think we all know that. Public Law 662, this is our second attempt at rulemaking. Good effort but I accept where we’re ending.

Dan Walker – We’re not afraid to go to Legislature to seek resolution. Would be nice to set something up here and have something to aspire to and work on throughout the year. Harvesters happy where they are, but not where we want them to be. Can the department help to bridge the gap? Good resolution is where no one is happy. Need to get to point where everyone is not happy.

Chris Green – I’m not happy but have to make it work. Even 90db with full load some can’t meet.

Tim Peabody– It’s challenging, we haven’t tested enough under all conditions harvesters work under. We don’t completely know what that looks like. From demo can stay at certain times 75 or below.

Dan Walker – Moving along the plane of what can airboats do right now and ignoring what is 90db in a tiny bay with houses right along the edge and the effect of that. Need to get to what should be the sound level in a tiny bay. We need to move to what should be the sound level to coexist. Push limits to get sound levels to point where satisfactory.

Tim Peabody–IFW doesn’t do much enforcement along the coast. Resolution will be a good solid report back to IFW and Marine Resource Committees. Too many complexities as hard as we try to resolve.

Deirdre Gilbert – Agree. For both agencies we’re normally relying on resource information to make decisions to protect the resource not mediate between groups of people. With the lack of information probably appropriate to give info to Legislature. Uncomfortable with regulation not to be enforced. Regulation on the books and when get complaints the answer is not enforcing that, don’t think that would be satisfactory to people. Goes beyond notion of discretion.

Tim Peabody– Resource managers provide science to us for rulemaking decisions. We present before Legislature and implement after they make the law or give us direction. We’ll put it together in a report.

Dale Sawyer– Not happy about the situation either. Noise situation is going on, we’re trying to address that. Criminalize us for something we’ve been doing last 10-20 years and don’t have the study yet.

Some might be able to meet it, some might not. Harvesters deserve credit for putting best foot forward and see where comes out.

Spike Haible – times have changed. Maybe 20 years ago they didn't care about noise because there weren't as many people there, but people have a right to peaceful enjoyment of their property. People will have to adapt.

Tim Peabody – The issues are out on the table. Good discussion.

Dan Sylvain – There are ways to quiet airboats, cost thousands of dollars to pay for modifications. Are the owners going to pay for that or state?

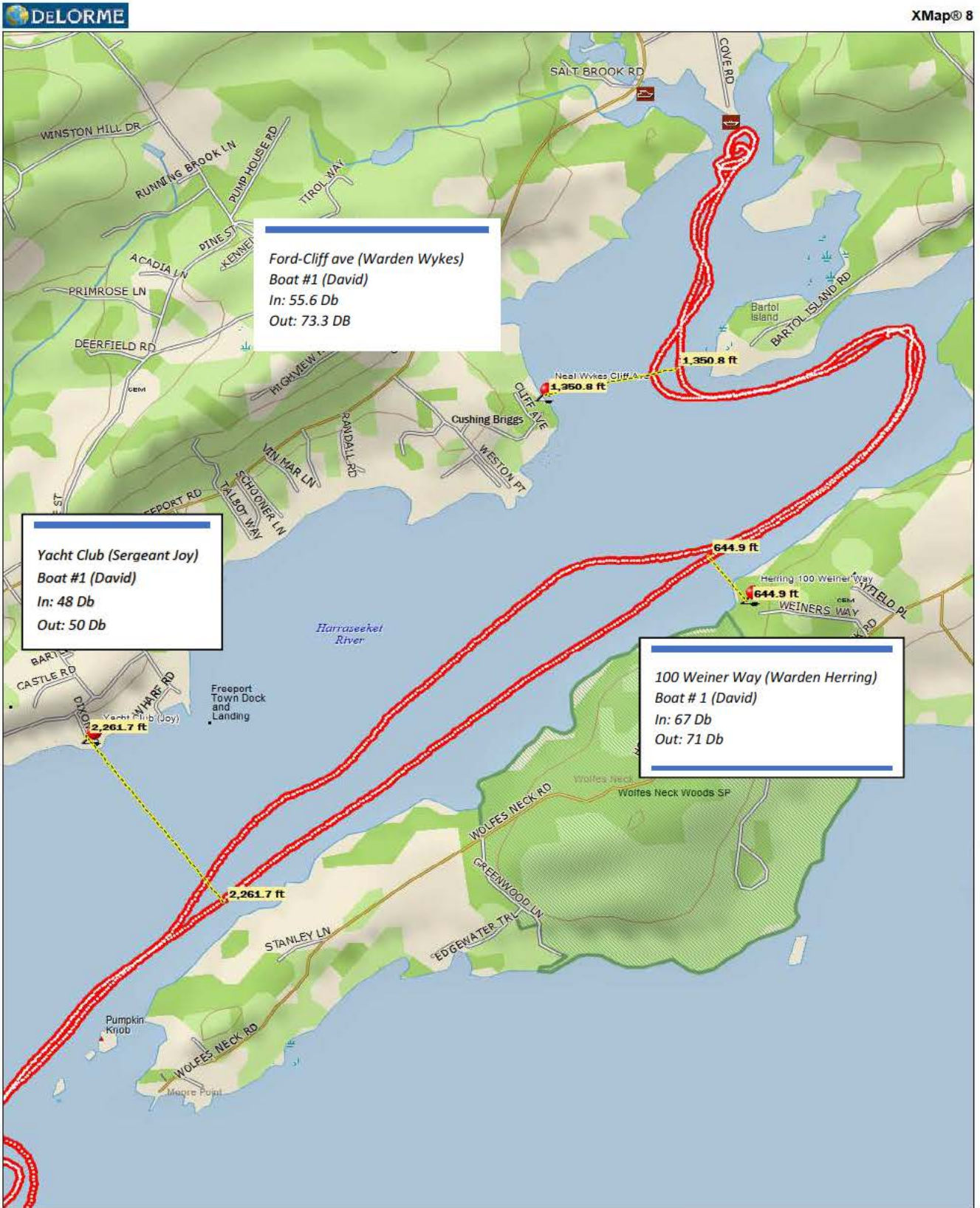
Tim Peabody – The Legislature can considers those kinds of things.

Abden Simmons – There is a Facebook airboat group. Props \$2500 to \$6000. To say try a prop is expensive just to experiment.

Tim – Appreciate the effort made on both sides going through these meetings. Learning experience; will be working on report with DMR to report back to IFW Committee. Rep McCreight has bill. Options to move forward and better suited for resolution.

Meeting adjourned at: 3:50pm

FREPORT DEMO AIRBOAT TEST #1



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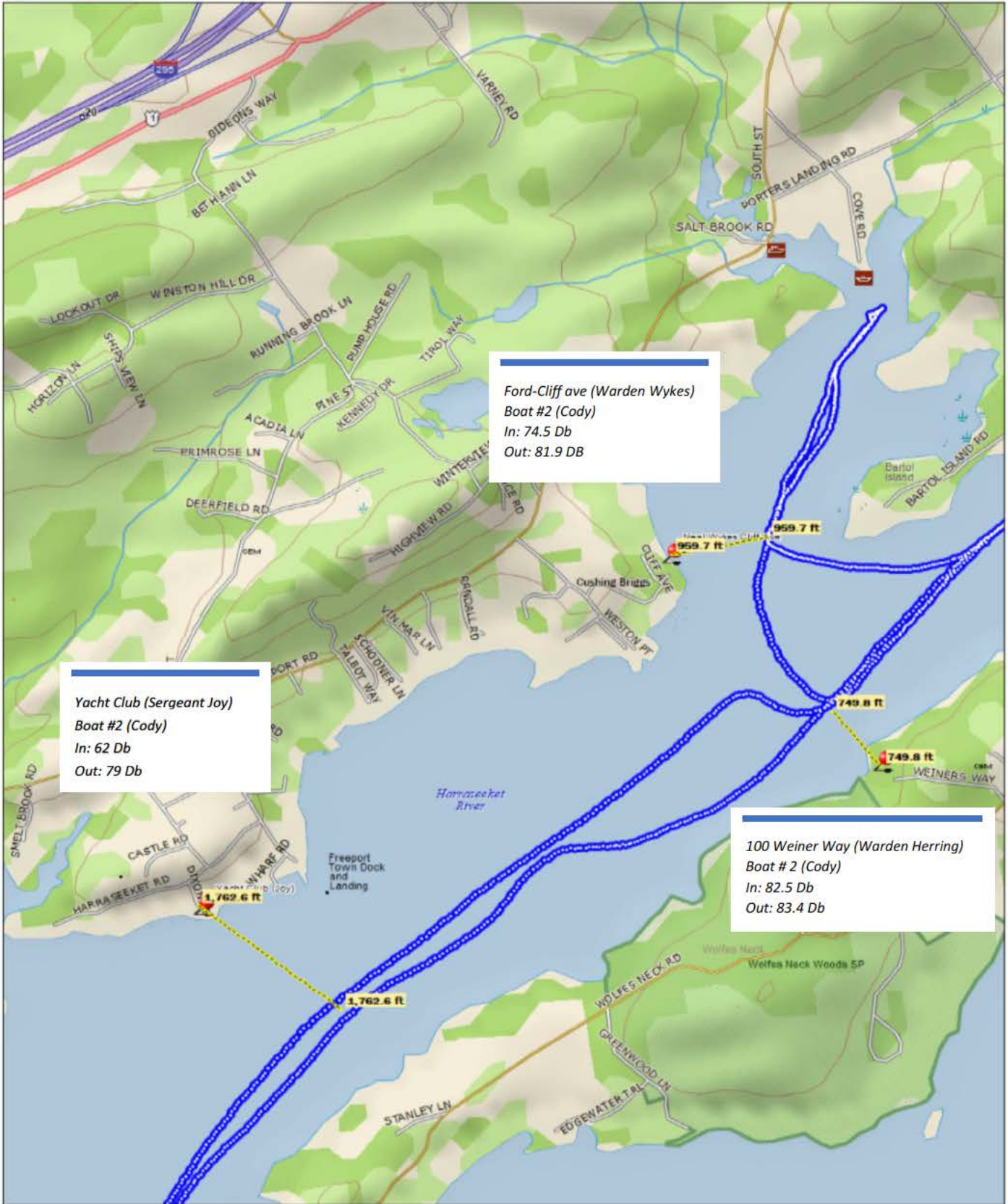


Data Zoom 13-6

FREEMPORT DEMO AIRBOAT TEST #2



XMap® 8



Ford-Cliff ave (Warden Wykes)
Boat #2 (Cody)
In: 74.5 Db
Out: 81.9 DB

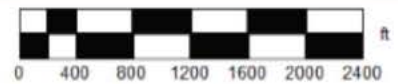
Yacht Club (Sergeant Joy)
Boat #2 (Cody)
In: 62 Db
Out: 79 Db

100 Weiner Way (Warden Herring)
Boat #2 (Cody)
In: 82.5 Db
Out: 83.4 Db

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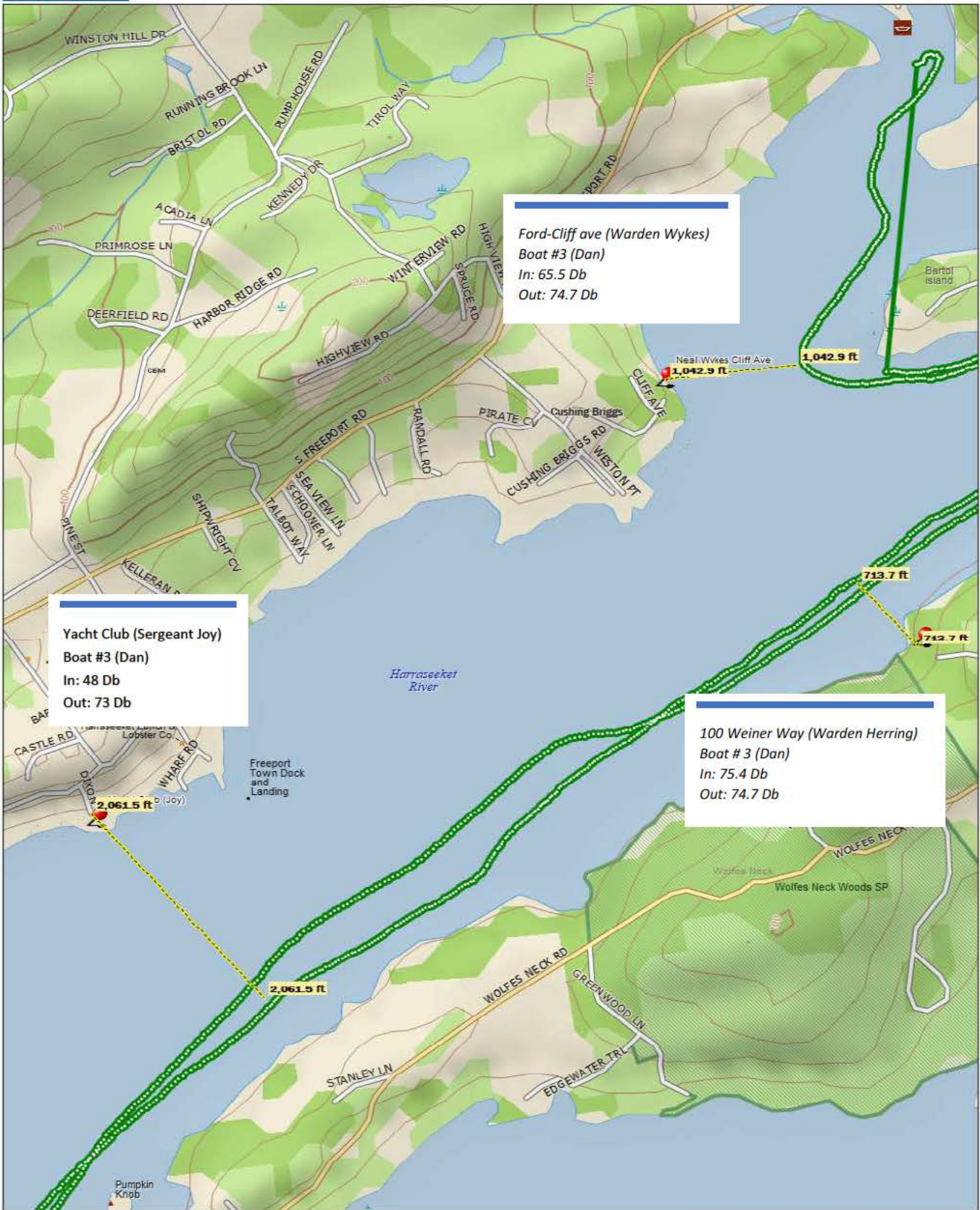


Data Zoom 13-6

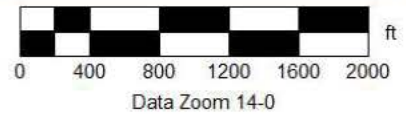
FREEMPORT DEMO AIRBOAT TEST #3



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MEMORANDUM

TO: IFW Airboat Consensus Based Rulemaking Workgroup

FROM: Daniel W. Walker, David Cox, and Spike Haible

DATE: February 23, 2021

RE: **Compromise Solution**

- Maine residents have been harvesting clams and using Maine's waters and flats for hundreds of years, and for nearly all of those years using tools that were not offensive to folks living near the coast.
- The use of motorboats with potentially loud engines prompted the existing laws regulating the decibel levels of motorboats, 12 MRSA §13068-A(10) which have been on the books for decades:
 - o A. A person may not operate a motorboat in such a manner as to exceed (according to SAE J34):
 - (1) A noise level of 90 decibels when subjected to a stationary sound level test with and without cutouts engaged and as prescribed by the commissioner; or
 - (2) A noise level of 75 decibels when subjected to an operational test measured with and without cutouts engaged and as prescribed by the commissioner.
 - (When taken from 50 feet per rule, DIFW Watercraft Rules, 09-137 ch. 13, §13.09)
- The very recent use of airboats with engines and propeller fans have created a situation that is often in violation of the existing motorboat laws and regulations. Airboats are uniquely loud. There is no other piece of equipment in use like them on the working waterfront. No other equipment has generated this volume of complaints.
- People have been living on the coast of Maine for hundreds of years, in balance with those who harvest from the sea. The new introduction of airboats has destroyed this balance.
- As the local citizens representing the property owners near and on the coast in Freeport, Brunswick, and Harpswell, we represent over 3,000 people across 1,200 properties in our region and many in the State of Maine who are negatively affected and injured by this

airboat noise. Additionally, within Freeport alone, there are two large campgrounds with over 200 campsites directly on the coast.

- Our solution attempts to re-create a balance between the harvesters and the coastal property owners, those who live near the coast, and visitors to the coast who use our waters for recreation (fishing, boating, camping, etc.).
- Even though we find these newly introduced airboats offensive at any time of day, we are willing to negotiate in good faith to create a necessary exception to long standing coastal boat decibel limits and allow the airboats to continue to operate, but only in a way that is minimally offensive to mitigate their effects.
- Our proposed solution is:
 - o For the existing motorboat regulations to be maintained during the evening and early morning. If an airboat cannot satisfy existing regulations during this period, then a clam harvester may utilize other watercraft that does satisfy those existing regulations. There is no prohibition during these hours.
 - o We concede that during the daytime hours, the decibel limits for airboats be set at a level consistent with a level that was demonstrated during the Freeport February 8, 2021 demonstration, as recorded, mapped, and reported by IFW.

Our proposed regulatory language is the following

1. *Airboats are subject to existing noise limits established for other watercraft in 12 MRSA §13068-A(10) from 7 pm to 7 am, and for 24 hours on Sundays and on federal holidays.*
2. *During the time period from 7 am to 7 pm on weekdays and Saturdays, an airboat may not be operated:*
 - a. *In such a manner as to exceed a noise level of 75 dB(A) when measured at the shoreline from a distance of 500 feet or greater in accordance with SAE J1970, or*
 - b. *Within 500 feet from shore except to go directly to and from a point of destination and then only at a course which is as close to 90 degrees to the shore as possible and at whatever decibel level is the minimum throttle setting required to move at headway speed.*

###

MEMORANDUM

TO: IFW Airboat Consensus Based Rulemaking Workgroup

FROM: Daniel W. Walker, David Cox, and Spike Haible

DATE: March 6, 2021

RE: **Compromise Solution in Response to Deputy Commissioner Peabody's Airboat Decibel Limitation Proposal**

We provide the below compromise solution in response to Deputy Commissioner Peabody's proposal, as measured from the shoreline as specified in SAE J1970, of a 75 dB(A) limitation on the operation of airboats from 7 p.m. to 7 a.m., and a limitation of 90 dB(A) from 7 a.m. to 7 p.m. We cannot accept this most recent proposal, as we have heard from many members of our constituency, and all are strongly opposed.

Our group cannot support a morning standard of 75 db(A), as it will continue to be disruptive to the sleep patterns of thousands of coastal residents. This decibel level is far above municipal noise ordinance limits for the early morning hours. For example, the Portland Noise Ordinance prohibits construction noise abutting a residential zone above 50 db(A). As for the daytime standard, our group cannot accept a sound level of 90 db(A) that is legal in no residential areas and only in industrial zones. Additionally, the Freeport Airboat Demonstration on February 8th showed that airboats can operate at 80 db(A) or below, measured from the shoreline.

As a result, we propose the following rule as a "stop gap" measure, and we commit to continuing to work on this issue through an ongoing workgroup.

1. *Adopt the SAE J1970 Shoreline measuring standard for all noise measurements.*
2. *Airboats are subject to the limit of 65 dB(A) measured from the shoreline from 7 pm to 7 am.*
3. *During the time period from 7 am to 7 pm:*
 - a. *An airboat may not be operated in such a manner as to exceed a noise level of 80 dB(A) when measured at the shoreline, and*
 - b. *A person may operate an airboat on the waters of this state or tidal area of the waters of this state at levels exceeding established limits only for a period of time necessary to provide headway speed movement when leaving a boat launch.*

4. *We concede the prohibition of use of airboats on federal holidays. As for Sundays, we accept that whether to allow for the harvesting of clams be a municipal decision.*

We hope that our counterproposal brings consensus to our group, and if adopted we will not take this issue to the Legislature. We commit to continuing to work closely with the harvesters who use airboats through the establishment of an ongoing work group that will allow ready communication between our groups. However, we are prepared to go to the Legislature if this does not bring agreement.

###

Peabody, Timothy E

From: Peabody, Timothy E
Sent: Tuesday, March 2, 2021 4:51 PM
To: 'Walker, Daniel W.'; dsylvain@brunswickpd.org; 'Cox, David'; 'Charles Tetreau'; 'Daniel Devereaux'; Joy, Mike; Orff, Becky; Beal, Robert L; Gilbert, Deirdre; 'Green, Chris'; 'Haible, Spike'; 'Peter Joseph'; 'Sawyer, Dale'; 'Simmons, Abden'; Theriault, Christl F.; 'Nate Goodman'
Cc: Keliher, Patrick; Camuso, Judy; Abello, Thomas; 'Jay McCreight'; Sachs, Melanie; 'Thurston, Matt'; Randlett, Mark
Subject: RE: airboats

Good afternoon everyone,

I am forwarding the email below from Abden Simmons as a proposal to consider on behalf of all the harvesters in our group. In preparation for our meeting tomorrow please come prepared to discuss the merits of this proposal, the citizen proposal from last week, and the ideas that I sent last Friday.

Our agenda for tomorrow will be to attempt reaching consensus on ideas that we can present to Commissioner's Camuso and Keliher to consider for rulemaking. As I mentioned in our first meeting any proposed language would need to be reviewed by Assistant Attorney General Mark Randlett prior to the Department submitting the proposed rule to the Secretary of State to begin the public rule making process. To meet the deadline for our next Advisory Council meeting we would need to finalize this by March 9th.

Email from Abden Simmons:

Good afternoon Tim,

The harvesters in the group have been talking over the weekend and have come up with a proposal of our own. We would like to see 7pm to 7 am at 75 decibels and from 7am to 7pm at 90 decibels for the next year as we can get a sound study done to accurately get true working readings. Now I would like to remind everyone that this is a commercial fishing vessel and there are no standards for that so we are setting a precedent for commercial fishing sound levels. And we would like to have this next year to educate any and all airboat operators on awareness of your surroundings and be mindful of the residents on shore. We do not agree with the Sunday and federal holidays off limits. For the harvesters of Freeport and Brunswick there is no Sunday digging already and this shouldn't be passed on to the rest of the state to deal with.

Thank you
Abden Simmons

Airboat Noise Testing Report
Submitted by Sgt Michael W Joy
July 31, 2020

Summary

I tested the noise level emitted from thirteen airboats using a certified decibel meter. I performed two different kinds of tests on each boat, the stationary test and a modified version of the moving test. While performing the stationary test on each boat, I determined that the average engine noise emitted was below the legal limit of 90 decibels. The stationary test results ranged from 80 db. to 96 db. with the average being 86 db. However, each boat while performing the modified moving test emitted engine noise exceeding the legal limit of 75 decibels. The moving test results ranged from:

- 72 db. to 99 db. @ 2000 RPMs with the average being 84 db.*
- 83 db. to 106 db. @ 3000 RPMs with the average being 92 db.
- 91 db. to 106 db. @ 4000 RPMs with the average being 98 db.

*One of the boats tested at 2000 RPMs tested below (72 db.) the maximum decibel limit of 75 db. **

Airboats Tested

The boats tested consisted of five department owned airboats, one airboat owned by the Brunswick Police Department, and seven airboats owned by commercial harvesters.

- 1) Twenty-foot, 2018 Diamondback with a four bladed prop (unk pitch) powered by a 6.2-liter supercharged engine (Warden Service Division E)
- 2) Sixteen-foot, 1999 Combee with a two bladed prop (approximately 8-10 degree) powered by a 1973 500 horse vehicle engine (Cody Gillis, Harvester)
- 3) Sixteen-foot, 1985 Yankee with a two bladed prop (unk pitch) powered by a Chevy 350 engine (Warden Service Division B)
- 4) Twenty-four foot, 2018 Alumitech with a three bladed prop (12-degree pitch) powered by a Chevy 454 engine (Chris Greene, Harvester)
- 5) Twenty-foot, 1988 Yankee with a two bladed prop (unk pitch) powered by a Chevy 350 engine (Warden Service Division D)
- 6) Eighteen-foot, 2019 Diamondback with a three bladed prop (12-degree pitch) powered by a 6.0-liter engine (Brunswick Police Department)
- 7) Eighteen-foot, 2005 Yankee with a three bladed prop (unk pitch) powered by a Chevy 350 engine (Warden Service Division A)
- 8) Twenty-foot, 2017 Floral City with a three bladed prop (8-degree pitch) powered by a 6.2-liter engine (David Toothacker, Harvester)
- 9) Twenty-foot, 2013 Diamondback with a four bladed prop (unk pitch) powered by a 6.2-liter engine (Warden Service Division C)

- 10) Twelve-foot, 1985 Yankee with a two bladed prop (unk pitch) powered by a 150-horse airplane engine (Andre Lopez, Harvester)
- 11) Fifteen-foot, 1984 Panther with a two bladed prop (unk pitch) powered by a Chevy 350 engine (Andy Dodson, Harvester)
- 12) Twelve-foot, 1985 Yankee with a two bladed prop (unk pitch) powered by a 150-horse airplane engine (Keith Bouchard, Harvester)
- 13) Twelve-foot, 1985 Yankee with a two bladed prop (unk pitch) powered by a 4.3- liter (V6) engine (Dan Fortin, Harvester)

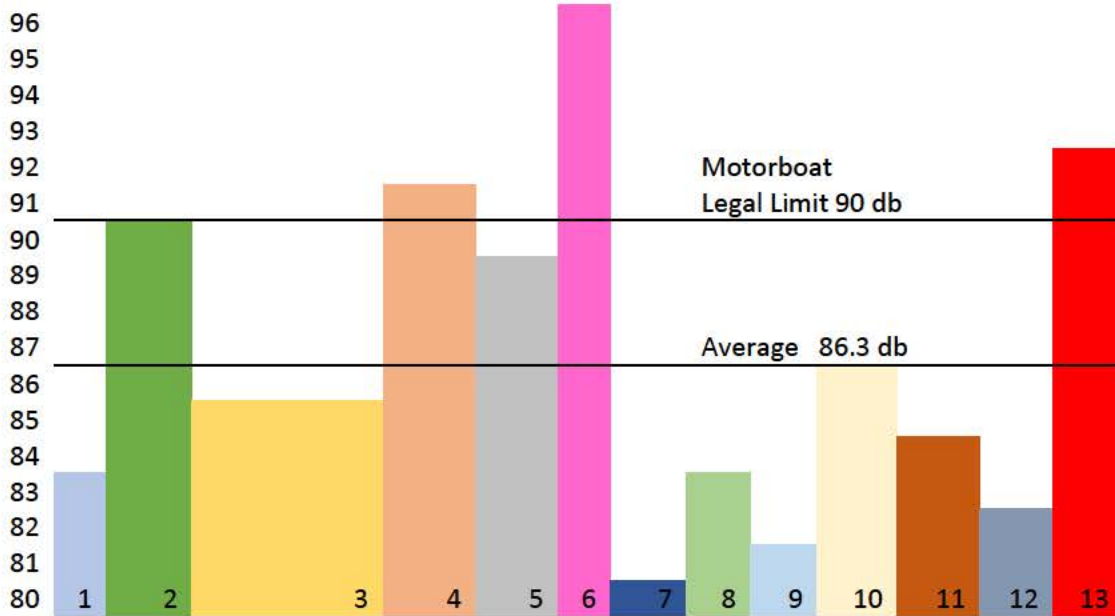
Tests Performed

The noise emitted from the above-mentioned airboats was tested by performing a stationary test as well as a modified version of the moving test. The moving test had to be modified due to safety limitations of operating the boats as well as being able to conduct consistent noise testing on each boat. The stationary test was performed approximately three feet from the aft corner of the boat, while the boat engine was idling. The modified moving test was performed fifty feet from the boat at a seventy-degree angle from the boat. The boat was stationary during this test.

Stationary Test Results

The thirteen boats tested ranged from 80 db. to 96 db. with the average being 86 db.

STATIONARY TEST RESULTS:



Airboats		Rpms @ idle db
1	2018 Diamondback <i>Warden Service Division E</i>	700 RPMs @ 83 db
2	1999 Combee <i>Cody Gillis (Harvester)</i>	500 RPMs @ 90 db
3	1985 Yankee <i>Warden Service Division B</i>	500 RPMs @ 85 db
4	2018 Alumitech <i>Chris Greene (Harvester)</i>	600 RPMs @ 91 db
5	1988 Yankee <i>Warden Service Division D</i>	800 RPMs @ 89 db
6	2019 Diamondback <i>Brunswick PD</i>	850 RPMs @ 96 db
7	2005 Yankee <i>Warden Service Division A</i>	1000 RPMs @ 80 db
8	2017 Floral City <i>David Toothacker (Harvester)</i>	1000 RPMs @ 83 db

Modified Moving Test Results

The moving test results ranged from:

- 72 db. to 99 db. @ 2000 RPMs with the average being 84 db.
- 83 db. to 106 db. @ 3000 RPMs with the average being 92 db.
- 91 db. to 106 db. @ 4000 RPMs with the average being 98 db.

Airboats	Idle	RPMs	2000 RPMs	3000 RPMs	4000 RPMs	
1 2018 Diamondback Warden Service Division E	63 db @ 700 RPMs		79 db	88 db	97 db	
2 1999 Combee Cody Gillis (Harvester)	63 db @ 500 RPMs		99 db	106 db	N/A	
3 1985 Yankee Warden Service Division B	57 db @ 500 RPMs		81 db	91db	100db	
4 2018 Alumitech Chris Greene (Harvester)	69 db @ 600 RPMs		86 db	97 db	106 db	
5 1988 Yankee Warden Service Division D	70 db @ 800 RPMs		83 db	90 db	97 db @ 3800 RPMs	
6 2019 Diamondback Brunswick PD	74 db @ 850 RPMs		89 db	98 db	106 db	
7 2005 Yankee Warden Service Division A	69 db @ 1 000 RPMs		86 db	93 db	91 db	
8 2017 Floral City David Toothacker (Harvester)	65 db @ 1000 RPMs		72 db	83 db	91 db	
9 2013 Diamondback Warden Service Division C	62 db@600 RPMs		78 db	92db	98 db	
10 1985 Yankee Andre Lopez (Harvester)	71 db @ idle		87 db @half throttle	NA	100 db @full throttle	No RPM Gauge
11 1984 Panther Andy Dodson (Harvester)	78 db @ 1280 RPMS		77 db	85 db	97 db	RPM Gauge Not Accurate
12 1985 Yankee Keith Bouchard (Harvester)	67 db @ idle		87 db @half throttle	NA	96 db @ full throttle	No RPM Gauge
13 1985 Yankee Dan Fortin (Harvester)	79db @ idle		88 db @ half throttle	NA	99 db @ full throttle	No RPM Gauge

General Information Obtained

- I contacted Sensenich Propeller Company in Plant City, Florida to determine if there is a way to quiet an airboat by changing to a different style/kind of prop. I was advised that the noise emitted from an airboat is only controlled by two things; RPMs and the speed of the tip of the blade(s) of the prop. Sensenich has attempted to quiet the noise emitted from an airboat by designing different blades but have not had any success. On a side note, Warden Service has two of their props on our boats.
- I contacted Diamondback Airboat in Cocoa, Florida to determine if there is a way to quiet an airboat. I was advised by the owner of Diamondback Airboat that they have put six inch down spouts on the through hull mufflers on large tour airboats they have built in an attempt to quiet the engine. She advised me that this did not have a great effect on making an airboat quieter. On a side note, Warden Service owns two Diamondback Airboats.
- I contacted Captain Gary Klein from Florida Fish and Game for the purpose of getting information on the laws governing airboat use in Florida as it relates to noise. I was informed that they only have noise laws unique to airboats as it pertains to an exhaust system. Florida law requires airboats to have an exhaust system with a motor vehicle muffler. He also informed me that Florida does not noise discriminate against airboats and that the noise limit for all vessels is 90 decibels @ fifty feet. I was provided a copy of their law as it relates to airboats as well as their sound limits.

Practical Test

MPO Clint Thompson informed me that there is a complainant that seasonally lives next to the Mere Pont Boat Launch in Brunswick. He advised that he has received numerous noise complaints from her in the past regarding airboat noise from airboats operating to and from the boat launch past her seasonal residence.

On February 2, with the assistance of MPO Clint Thompson and Wdn Pete Herring, I performed a noise test to determine the noise levels which are being reported. The test was conducted by measuring the sound emitted from two airboats as they, independently of each other, operated past her seasonal residence. The two airboats (David Toothacker and Chris Greene) tested were two of the boats that have generated the noise complaints. During the test, both airboats operated in the manner in which they would be operated when harvesting. I recorded the sound measurements while standing in the complainant's front yard. The boats, independently of each other, operated to and from the boat launch. The RPMs of each boat was 4200 RPMs which is their normal operating RPMs. I am unsure of the actual distance the boats were from my location as I recorded the noise emitted from them, but the distance was the actual distance in which the boats travel when harvesting.

The boat owned by David Toothacker had a maximum decibel reading of 73 db. and the boat owned by Chris Greene had a maximum decibel reading of 77 db. The decibel reading from both boats was constantly in the 60s decibels until each boat spiked at the above-mentioned decibel reading. After each boat reached the maximum recorded decibel, the noise level emitted decreased rapidly.

Conclusion

After conducting the above-mentioned tests, I feel that there is a baseline which has been identified on what is normal/ reasonable airboat noise levels. The test results support that there are two things that dramatically enhance the noise emitted from an airboat; poor engine maintenance, specifically the exhaust system, and the pitch of the prop. The number of blades does not appear to be a factor.

The greater the degree of pitch the more noise emitted. I was unable to determine what degree pitch that all the boats tested had. However, the boats that have a twelve-degree pitch are easily recognized as the blades have a noticeable aggressive angle to them. The boats that I was unable to determine the degree pitch as well as the boats that have an eight-degree pitch have blades that are noticeably less aggressive than the twelve-degree boats.

During the stationary test, the four boats (boat # 2, 4, 6, and 13) that tested over the legal limit of 90 decibels had either an inadequate muffler or a twelve-degree pitch. The other nine boats that tested below the 90 decibels had a well-maintained muffler and a smaller degree pitch (eight degree).

During the modified moving test, the noise emitted from an airboat while under power exceeds the legal limit of 75 decibels. The test results were similar to the stationary test results, in that the boats with an inadequate exhaust system and a twelve-degree pitch emitted higher decibel readings.