

MAINE STATE LEGISLATURE

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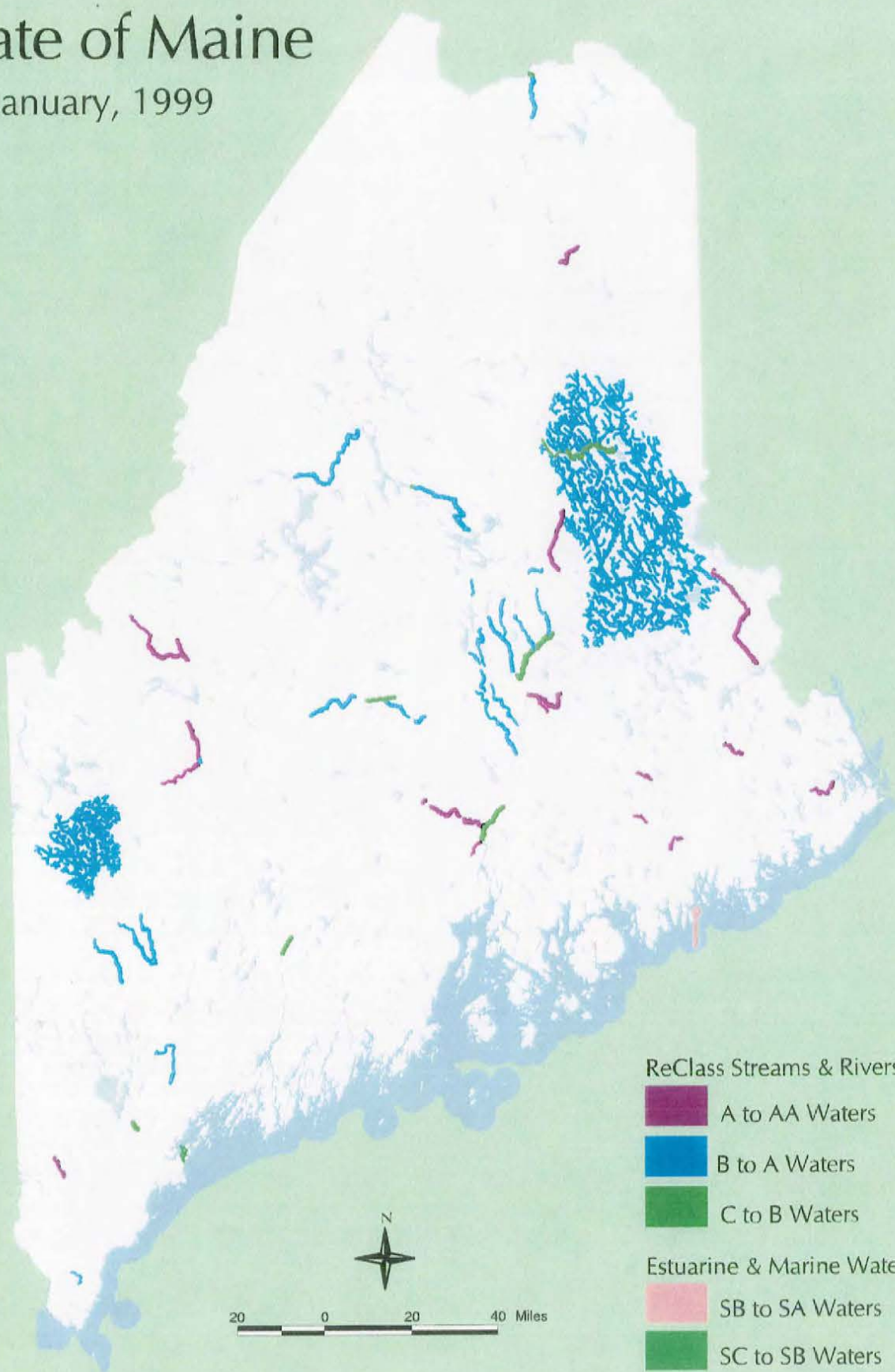
BOARD OF ENVIRONMENTAL PROTECTION
RECOMMENDATIONS TO THE
119th MAINE LEGISLATURE
FOR RECLASSIFICATION
OF SELECTED WATERS IN THE STATE

Approved by the Board on October 28, 1998



State of Maine

January, 1999



Introduction

The reclassification of waters of the State is governed by 38 MRSA Sections 464-2, 464.2-A and 464-3. This statute requires the Department of Environmental Protection to conduct water quality studies, and the Board of Environmental Protection to hold hearings and propose changes to the water classification system to the Legislature for final approval. This is to be conducted from time to time, but at least every three years. The last comprehensive review of classification occurred in 1989 and 1990 following major revisions to the standards and criteria that were made by the Legislature in 1986. Several waters have been reclassified in the interim. Since that time, water quality has changed on a number of segments and new management choices have arisen.

The Board began the process of reclassification in September 1997 by posting recommendations of the Department for hearing and public comment. Hearings were held on October 22 and 23, 1997 in Augusta and Millinocket. The hearings provided an opportunity for the public to consider those proposals made by the Department, but also to offer other reclassification proposals for consideration. Those hearings generated considerable interest and requests from the public to extend the process so that additional waters could be discussed. The Board, in response, extended the comment period until June 1, 1998 and held two additional public hearings on April 29 and 30 in Augusta and Bangor. Considerable written comment was also received. The Department has also attended numerous meetings with interested groups and individuals to discuss the process and to discuss information about specific proposals. This report contains a compilation of the comments received. The Board makes the following recommendations to the first session of the 119th Legislature. Additional hearings will be held by the Legislature. Final determination of classification is the function of the Legislature.

Purpose of Classification

Maine has had a water classification system since the 1950's. This classification system establishes water quality goals for the State. The classification system is used to direct the State in the management of its surface waters, protect the quality of those waters for their intended management purposes, and where standards are not achieved, directs the State to enhance the quality to achieve those purposes. The classification standards establish designated uses, related characteristics of those uses, and criteria necessary to protect the uses, and establish specific conditions for certain activities such as the discharge of wastewater.

While it is desirable for the actual quality of a water to achieve the standards in any proposed classification, classification assignments can and should be made where there is a reasonable expectation for higher uses and quality to occur. Upgrades to

classification are desirable where there is a social or ecological necessity to attain higher standards, and where the technological and financial capacity exists to achieve those higher standards within a reasonable time. Once a classification assignment is made, and the uses and criteria are achieved, that goal is protected by the antidegradation provisions of the water quality statute (Section 464.4.F). Thus, the law provides a mechanism for the State to continually move forward in the improvement and protection of water quality. Downgrades to classification have been infrequent and are limited to situations where existing conditions do not afford the possibility to achieve the higher class.

Water Quality Classes

The State has four classes for freshwater rivers, three classes for marine and estuarine waters, and one class for lakes and ponds. A close comparison of the standards will show that there is actually not much difference between the uses or the qualities of the various classes. All attain the minimum fishable-swimmable standards established in the federal Clean Water Act. Most support the same set of designated uses with some modest variations in their description. The classification system should be viewed as a hierarchy of risk, more than one of use or quality, the risk being the possibility of a breakdown of the ecosystem and loss of use due to either natural or human-caused events. Ecosystems that are more natural in their structure and function can be expected to be more resilient to a new stress and to show more rapid recovery. Classes AA, GPA and SA involve little risk since activities such as waste discharge and impoundment are prohibited. The expectation to achieve natural conditions is high and degradation is unlikely. Class A waters allow impoundments and very restricted discharges, so the risk of degradation while quite small, does increase since there is some small human intervention in the maintenance of the ecosystem. Classes B and SB have fewer restrictions on activities but still maintain high water quality criteria. Finally, Classes C and SC have the least restrictions on use and the lowest (but not low) water quality criteria. Classes C and SC waters are still good quality, but the margin for error before significant degradation might occur in these waters in the event of an additional stress being introduced (such as a spill or a drought) is the least.

Board Proposals

The following reclassification proposals by the Board reflect information provided in water quality studies conducted by the Department in recent years (e.g. Biennial Water Quality Assessment Reports required by Section 305b of the Clean Water Act, wasteload studies, etc.), recent remediation activities, particularly the construction of wastewater treatment facilities, and other management activities such as the acquisition of lands for recreation and conservation purposes surrounding certain waters. Additionally, numerous groups have provided water quality data and other information to support reclassification recommendations. The Board seeks to achieve a balance of water quality classes that can meet all the purposes and objectives described in the law including "promoting general welfare; in preventing disease; in promoting health; in

providing habitat for fish, shellfish and wildlife; as a source of recreational opportunity; and as a resource for commerce and industry". This balance is a particularly desirable goal for the populated areas of the State.

General public comments

The following general comments were made in the course of the public hearing process or were submitted as written comments to the Board. A list of commentors is provided at the end of this document.

During the fall hearings, many comments were received recommending a better notification process and requesting additional time to review the proposals (Behr, Bell, Bennett, Brooke, Faucher, Isaacson, Kusnierz, Reardon, Venno, Watts). The Board acted by extending the comment period to June 1, 1998 and conducting two additional hearings in the spring. Additionally, the Department conducted a number of meetings with interested parties during this time to collect and review information.

During the spring hearings, there was considerable discussion about how the Board might consider the addition of any new proposals, particularly any new downgrades that might be proposed and that had not been given full public scrutiny. Chairman Bonsey proposed that if any "significant" changes were made in the way of new segments being added to the recommendations that the Board would conduct additional hearings before acting on those recommendations.

In general, most proposed upgrades received support from the public (Bennett, Cowger, Faucher, Gendron, Reardon, Watts). Specific comments addressing particular waterbodies are included in the discussion of each segment in the following recommendation section.

RECOMMENDATIONS FOR RECLASSIFICATION

(river miles in parentheses are approximate)

ANDROSCOGGIN RIVER BASIN

Little Androscoggin River Bryant Pond to South Paris Class B to A (14 miles)
South Paris to Oxford Class C to B (10 miles)

The segment from Bryant Pond to South Paris has high water quality and generally flows through rural wooded habitat. There are some overboard discharges in West Paris. The recommendation for the segment below South Paris is a result of improvements at South Paris and Norway treatment plants. This segment does not presently meet dissolved oxygen standards all the time and may require additional investments at treatment facilities at South Paris and Norway to fully attain the standards of Class B, however, significant improvements to quality have been observed in this segment in recent years. Bacteria problems may occur due to combined sewer overflow events and overboard discharges upstream of South Paris. Aquatic life standards for Class B are attained

Comments: Further review of data for the segment below South Paris indicates that it may be difficult to expect dissolved oxygen standards of Class B to be attained. Reduced oxygen is attributed to algae growths from nonpoint source loading of nutrients. Upgrade of this segment would put a significant burden on the treatment plants for further improvements that would be costly (Barlow, Lockhart, Petrilak). Upgrade of segment below Bryant Pond will eventually require removal of some overboard discharges in the West Paris area through the Overboard Discharge Grant Program.

Recommendation: Upgrade segment from Bryant Pond to South Paris.
Do not upgrade segment from South Paris to Oxford

Swift River and tributaries Upstream of Mexico-Rumford town line Class B to A
(20 miles)

Scenic water along Rt. 17. No known discharges or other water quality impairment. Initial results of 1998 sampling indicate Class A water quality.

Comments: Support expressed (Brooke, Watts)

Recommendation: Upgrade

Ellis River and tributaries Rumford, Andover Class B to A (18 miles)

No known discharges or other water quality impairment. Present statute is confusing about the classification of this water. Previously intended to be grouped with other Class A tributaries of the Androscoggin such as Bear River, Sunday River and Wild River. Water quality data indicates Class A quality.

Comments: Support (Watts).

Recommendation: Upgrade

Nezinscot River, East and West Branch headwaters to Buckfield Class B to A (25 miles)

Two branches above Buckfield village have no known discharges or other water quality problems. Supports a wild brook trout fishery.

Comments: Recommended for upgrade by Watts.

Recommendation: Upgrade

EAST MACHIAS BASIN

Beaverdam Stream Wesley Class A to AA (7 miles)

Comments: Recommended (Shaw). Support (Scott). Provides significant amount of Atlantic salmon habitat (Evers).

Recommendation: Upgrade

KENNEBEC RIVER BASIN

Kennebec River Sidney to Augusta Class C to B (6 miles)

The State desires to have the Edwards Dam at Augusta removed to enhance fisheries in the river. Proposed removal of dam will allow higher quality water through improved habitat quality and reaeration without imposing added costs to upstream waste treatment facilities. Class B quality is presently achieved in the upper part of the Edwards impoundment.

Comments: Numerous commentors expressed support for this upgrade particularly for the enhanced fishery that is anticipated in this segment (Behr, Bell, Watts, Reardon). Edwards Manufacturing (Isaacson) opposed the reclassification during the fall hearings as an effort to prejudge the outcome of a water quality certification, however, since that time the company has entered into an agreement with the State to remove the dam. Several upstream dischargers support the upgrade but are concerned that if the dam is

not removed, it could affect future licensing (Taylor). Language has been recommended that would eliminate the concern in the event that the dam is not removed or that the process of removal takes many years to complete.

Recommendation: Upgrade

Carrabassett River and West Branch Carrabassett River headwaters to Kingfield
Class A to AA (35 miles)

This scenic water is located in a major recreational area of the state. High water quality, no known discharges, wastewater discharges have been removed in the Kingfield area. Water withdrawal may become an issue in the future.

Comments: Recommendation for upgrade from Bennett

Recommendation: Upgrade

Spencer and Little Spencer Streams Headwaters and Spencer Lake to Dead River
Class A to AA (23 miles)

This segment was not included with the upgrade of the Dead River to AA in previous legislation because of proposed development of a mine in the drainage. That project is no longer active.

Comments: Recommendation for upgrade from Bennett

Recommendation: Upgrade

NARRAGUAGUS RIVER BASIN
Pork Brook T22MD Class A to AA (7 miles)

Comments: Recommended (Shaw). Support (Scott). Provides significant amount of Atlantic salmon and native brook trout habitat (Evers).

Recommendation: Upgrade

Schoodic Brook Deblois Class A to AA (5 miles)

Comments: Recommended by Shaw. Support (Scott) Provides significant amount of Atlantic salmon habitat (Evers). Schoodic Lake is used as water supply for blueberry irrigation. Water withdrawal may become an issue.

Recommendation: Upgrade

Baker Brook T28MD Class A to AA (6 miles)

Comments: Recommended (Shaw). Support (Scott). Provides significant amount of Atlantic salmon habitat (Evers).

Recommendation: Upgrade

PENOBSCOT RIVER BASIN

West Branch Penobscot River Ripogenus to Ambejeus Lake Class B to A (18 miles)
Seboomook L to Chesuncook L Class B to A (24 miles)

Baxter State Park has recently acquired much of the abutting lands to the north and other conservation easements now protect this segment. This is the largest Class B river segment without a discharge in the State. Presently meets Class A quality, however, current management of river flows for hydropower and recreation purposes preclude this from being Class AA. Segment from Ripogenus to Ambejeus is listed as an 'A' river in the Maine River Study (1982) having significant natural or recreational qualities. Segment from Seboomook to Chesuncook is listed as an outstanding river in 12 MRSA Section 403 having "unparalleled natural and recreational value."

Comments: Support for upgrade (Brooke, Kusnierz, Watts). Bowater (Stetson) questions whether these segments attain Class A quality (as naturally occurs) because of effects from water regulation. Data from DEP and data presented by Bowater during relicensing indicate these are high quality waters that attain Class A. Department states that these waters presently attain natural conditions as defined in statute. Definition of "as naturally occurs" states "conditions with essentially the same physical, chemical and biological characteristics as found in situations with similar habitats free of the measurable effects of human activity" (38 MRSA Section 466.2). Department suggests amendment of the proposal to leave Class B segments immediately below the dams at Seboomook (1000') and Ripogenus (gorge area down to McKay Station) since these are areas directly impacted by water management for hydropower and recreation purposes.

Recommendation: Upgrade, with amendments

Penobscot River Cambolassee Stream to Piscataquis River Class C to B (14 miles)

Sampling indicates that this segment currently meets Class B quality. A small segment of water above the W. Enfield Dam cannot attain Class B dissolved oxygen at present loadings to the river and may require continuation as a small class C segment.

Comments: Support expressed (Kusnierz, Coffin).

Recommendation: Upgrade, with segment above the West Enfield Dam remaining as Class C

Penobscot River Bangor to Hampden Class C to B (5 miles)

Improvements have been made to Bangor POTW and CSOs in Bangor and Brewer as well as reductions in upriver loadings. Sampling in 1997 indicates that this segment currently meets Class B dissolved oxygen standards. The segment does not attain bacteria standards due to many CSOs in the segment. Aquatic life has not been monitored because the State does not have suitable criteria for tidal freshwaters, however, there are no known conditions that would cause an impairment of aquatic life. Listed as an 'A' river in the Maine Rivers Study (1982) and as an outstanding river segment in 12 MRSA Section 403. 38 MRSA Section 418-A.1 declares the restoration and preservation of the lower Penobscot River as a high priority.

Comments: City of Bangor (Ring) contends that an upgrade of this segment is premature (1) because of the presence of CSOs both in Bangor and Brewer and (2) because of low quality of Kenduskeag Stream and its effect on the Penobscot. Plans to abate the CSOs will take ten or more years to complete and, even then, it is expected that some CSO events will still occur. The Department recognizes this and has passed legislation that will provide for wet weather standards (38 MRSA Section 464.2-B). The cities of Bangor and Brewer are in position to adopt these standards as soon as rulemaking is complete. Future licenses will provide for these standards. Kenduskeag Stream is classified C and presently does not attain those standards due to both CSOs and upstream nonpoint sources. Once Kenduskeag Stream is brought into attainment, its affect on the Penobscot should be inconsequential.

Recommendation: Upgrade

Penobscot Tributaries:

Cove Brook Winterport Class B to AA (5 miles)

A recent USGS-BRD study of Atlantic salmon genetic diversity identifies a higher divergent population in Cove Brook on the lower Penobscot. Protection should be afforded to this unique breeding population.

Comments: Support (Kusnierz, Watts)

Recommendation: Upgrade

Souadabscook Stream Hampden Class A to AA (16 miles)

Change language in present law to indicate upgrade of all of the nontidal waters of this stream and remove reference to dam (which is scheduled for removal). Listed as an 'A' river in the Maine Rivers Study (1982). The tidal portion should remain as a Class B segment due to the influence of the Penobscot River and the presence of a CSO.

Comments: Support (Brooke, Watts). Dam to be removed in 1998 by Atlantic Salmon Federation (Watts). Watts recommends further upgrade to Class AA to protect anadromous fish run and to protect investments made by Atlantic Salmon Federation for dam removal and stream restoration.

Recommendation: Upgrade

Passadumkeag Stream, Ayers Brook Passadumkeag, Lowell Class A to AA (20 miles)

The section of stream below the Pumpkinhill Dam is a high quality water, fishery, recreational water and habitat for an endangered mayfly requiring free flowing conditions protected in Class AA. Portions flow through a Nature Conservancy reserve. There is a State fish hatchery discharge in Cold Stream.

Comments: Support (Kusnierz, Vickery, Watts). Exclude Cold Stream from upgrade (Hurley).

Recommendation: Upgrade, Cold Stream remain Class A.

Birch Stream Argyle Class B to A (17 miles)

Comments: Proposed by Penobscot Nation. They have provided comprehensive water quality data for this water indicating attainment of Class A conditions (Kusnierz, Coffin).

Recommendation: Upgrade

Hemlock Stream Argyle Class B to A (13 miles)

Comments: Proposed by Penobscot Nation. They have provided comprehensive water quality data for this water indicating attainment of Class A conditions (Kusnierz, Coffin).

Recommendation: Upgrade

Mattamiscontis Stream Mattamiscontis Class B to A (9 miles)

Comments: Proposed by Penobscot Nation. They have provided comprehensive water quality data for this water indicating attainment of Class A conditions (Kusnierz, Coffin).

Recommendation: Upgrade

Medunkeunk Stream Chester Class B to A (14 miles)

Comments: Proposed by Penobscot Nation. They have provided comprehensive water quality data for this water indicating attainment of Class A conditions (Kusnierz, Coffin).

Recommendation: Upgrade

Salmon Stream Medway Class B to AA (8 miles)

Recent sampling indicates that it attains Class A quality. Scenic water located along I-95.

Comments: Proposed by Penobscot Nation. They have provided comprehensive water quality data for this water indicating attainment of Class A conditions (Kusnierz, Coffin).

Recommendation: Upgrade

Rockabema Stream Medway Class B to A (5 miles)

Comments: Proposed by Penobscot Nation. They have provided comprehensive water quality data for this water indicating attainment of Class A conditions (Kusnierz, Coffin).

Recommendation: Upgrade

Piscataquis Drainage

Piscataquis River Guilford to Dover-Foxcroft Class C to B (5 miles)

This segment can be upgraded due to the construction of Guilford-Sangerville treatment plant. This segment has shown a remarkable improvement in quality since the treatment system has gone on-line and is now a highly regarded fishery. Data collected up through 1997 indicates that this segment meets Class B quality.

Comments: Support from Guilford Industries (Perry, Stakutis) and PIN (Kusnierz).

Recommendation: Upgrade

Piscataquis Tributaries:

Sebois Stream including East and West Branches Howland Class B to A (23 miles)

Comments: Proposed by Penobscot Nation. They have provided comprehensive water quality data for this water indicating attainment of Class A conditions (Kusnierz, Coffin). Support (Bennett, Watts).

Recommendation: Upgrade

Schoodic Stream Medford Class B to A (4 miles)

Comments: Proposed by Penobscot Nation. They have provided comprehensive water quality data for this water indicating attainment of Class A conditions (Kusnierz, Coffin). Support (Bennett, Watts).

Recommendation: Upgrade

Kingsbury Stream Abbot, Kingsbury Plt Class B to A (15 miles)

Comments: Proposed by Penobscot Nation. They have provided comprehensive water quality data for this water indicating attainment of Class A conditions (Kusnierz, Coffin). Support (Bennett, Watts).

Recommendation: Upgrade

Scutaze Stream Class B to A (5 miles)

Comments: Proposed by Penobscot Nation. They have provided comprehensive water quality data for this water indicating attainment of Class A conditions (Kusnierz, Coffin). Support (Bennett, Watts).

Recommendation: Upgrade

Cold Stream Medford, Lagrange Class B to A (5 miles)

Comments: Proposed by Penobscot Nation. They have provided comprehensive water quality data for this water indicating attainment of Class A conditions (Kusnierz, Coffin). Support (Bennett, Watts).

Recommendation: Upgrade

Black Stream Sangerville Class B to A (8 miles)

Comments: Proposed by Penobscot Nation. They have provided comprehensive water quality data for this water indicating attainment of Class A conditions (Kusnierz, Coffin). Support (Bennett, Watts).

Recommendation: Upgrade

Mattawamkeag Drainage

Mattawamkeag River Confluence of E and W Branch to Kingman Class B to A (30 miles)

Comments: Proposed by Penobscot Nation. They have provided comprehensive water quality data for this water indicating attainment of Class A conditions (Kusnierz, Coffin). Support (Watts).

Recommendation: Upgrade

Mattawamkeag tributaries:

East Branch and tributaries Class B to A (25 miles)

Comments: Proposed by Penobscot Nation. They have provided comprehensive water quality data for this water indicating attainment of Class A conditions (Kusnierz, Coffin). Support (Watts).

Recommendation: Upgrade

West Branch and tributaries above I-95 Hersey Twp, Dyer Brook Twp, Class B to A (12 miles)

Previously considered as a potential discharge site for mining in Mt. Chase area. Mining project is inactive. There are still discharges in Island Falls and Patten that preclude the segment downstream of I-95 and Fish Stream from being upgraded. Recent data indicates that this segment attains Class A standards.

Comments: Proposed by Penobscot Nation. They have provided comprehensive water quality data for this water indicating attainment of Class A conditions (Kusnierz, Coffin). Support (Watts).

Recommendation: Upgrade

Dyer Brook Dyer Brook Twp Class B to A (12 miles)

Comments: Proposed by Penobscot Nation. They have provided comprehensive water quality data for this water indicating attainment of Class A conditions (Kusnierz, Coffin). Support (Watts).

Recommendation: Upgrade

West Branch and tributaries below Mattawamkeag Lake T3R3, Haynesville Class B to A (10 miles)

Comments: Proposed by Penobscot Nation. They have provided comprehensive water quality data for this water indicating attainment of Class A conditions (Kusnierz, Coffin). Support (Watts).

Recommendation: Upgrade

Tributaries entering below the confluence of East and West Branches Class B to A (≈150 miles)

Comments: Proposed by Penobscot Nation. They have provided comprehensive water quality data for this water indicating attainment of Class A conditions (Kusnierz, Coffin). Support (Watts).

Recommendation: Upgrade

PRESUMPCOT RIVER BASIN

Presumpscot River Confluence with Pleasant River to Little Island Class B to A (2 miles)

Comments: This recommendation for reclassification was made at the hearings by Friends of the Presumpscot (Faucher, Plumley). This is a segment that was not upgraded in a previous reclassification proposal to the Legislature in 1994. Segment marginally attains Class A quality for dissolved oxygen and aquatic life. Recent studies by the Department indicate that there is little assimilative capacity remaining in this segment because of dams, therefore a reclassification would not affect the opportunity to discharge to this segment. Pleasant River was also initially suggested for upgrade however that proposal is no longer supported by the Friends of Presumpscot (Faucher, Tobin) since it is unlikely to attain Class A quality and there are no reasonable options for the present discharge from the high school. An existing heated water discharge by S.D. Warren would have to be removed.

Recommendation: Leave segment as Class B, however, insert additional language that prohibits any new discharges from being licensed for this segment.

ROYAL RIVER BASIN

Royal River Sabbathday L to Collyer Brook Class B to A (24 miles)

Segment is high quality water down to the area affected by the McKin waste site

in Gray. Includes portion of river abutting public reserve lands in New Gloucester and Gray. There are no discharges in this segment.

Comments: Recommendation from Bennett.

Recommendation: Upgrade

ST. CROIX RIVER BASIN

Tomah Stream Waite and Codyville Plt Class A to AA (16 miles)

This stream maintains the largest known population of an endangered mayfly. The species is known to be vulnerable to the effects of impoundment.

Comments: Reclassification supported by Passamoquoddy Tribe (Stevens)

Recommendation: Upgrade

Hobart Stream Edmunds Class B to AA (7 miles)

This tributary to Cobscook Bay (Class SA) was omitted in the previous reclassification. Portions of the stream bisect the Moosehorn National Wildlife Refuge.

Comments: Support (Bennett)

Recommendation: Upgrade

ST. GEORGE RIVER BASIN

St. George River Liberty Davis impoundment Class AA to A (<1 mile)

This segment of the St. George River was upgraded to Class AA in 1990 by the legislature. Through 1991 Private and Special Law Chapter 40, a dam was allowed to be constructed. The segment of water impounded by the dam no longer achieves the designated use of free flowing habitat for Class AA.

Comments: Considerable comment was received regarding the proposal by the Department to downgrade the segment of river impounded by the new dam and a proposal presented by the dam owner (Davis, Goodall) to extend the Class A segment from the impounded area to a location approximately 450 feet below the new impoundment to allow for construction of a hydroelectric facility. Debate about these proposals involve three general issues: (1) the proper classification of the river, (2) the intentions of the legislature and the owner when the special legislation was passed, and (3) the appropriate process to reclassify this segment of water.

In 1990, when the DEP was reclassifying waters subsequent to changes in water standards made in 1986, the department initially recommended upgrade from Class C to B. Following a large public campaign by local interests, segments of the upper river were identified that could attain Class AA and A and these proposals were eventually presented to and approved by the Legislature. Unknown to both the staff developing

these proposals and to the Legislature, Mr. Davis was making an application to the Department to reconstruct a dam in a section of the river that was reclassified AA. In 1991, recognizing this situation, the Private and Special Law was passed by the Legislature that allowed the application to be processed as if the classification had not changed. The application was approved, the dam was built and it now creates a segment of water that cannot support the free-flowing characteristic of Class AA.

The section of water below Lake St. George is of excellent quality and certainly achieves the water quality criteria for either Class A or AA ("as naturally occurs"). Considerable public interest was expressed in 1990 to protect this quality (Bailey, Brown, Jones, Whiting). However, Class AA requires that waters be free-flowing and natural. Several commentators noted that in addition to the Davis dam, there are several other relict dams in this segment that alter the "free-flowing and natural" character (Davis, Goodall, Krueger, Liebler, Longley, Woodman). Therefore, an argument is made that this segment may not have achieved this characteristic even before construction of the Davis dam (photo documentation by Goodall). Inspection of the site showed that one of these remnant dams does partially inhibit flow, creating a small waterfall, and barrier to migration, where one presumably did not exist. The other remnant dam sites, while indicating historic alteration of flow, do not significantly alter the natural flow today. These remnant dams may or may not violate the natural habitat clause (as defined in 38 MRSA Section 466.9, "... living in, or as if in, a state of nature not measurably affected by human activity"). Title 38 MRSA Section 464.1 establishes the classification system to direct the management of waters to achieve the designated uses and characteristics of an assigned class. These remnants may or may not offer an impediment to achievement of the goals of Class AA. Maintaining the goals of Class AA established in 1990 was advocated by numerous commentators (Bailey, Brown, Jones, Lang, Quarrier, Reardon). Restoration of the alewife fishery may be inhibited by the presence of the new dam (Whiting).

Commentors also provided information about the intentions of both Mr. Davis and the Legislature when the Private and Special law was passed. Mr. Davis states that it has always been his intention to develop this site for hydro energy to power a wood products mill (Davis, Goodall, Longley). This proposal is supported by other commentators as an improvement to the river and for the town (Krueger, Liebler, McLaughlin, Woodman) and as a logical course of action (Cowger, Krueger, Liebler). Contrary to these statements, the Private and Special Law specifically states in the Emergency Preamble "Whereas, Mr. Davis' application included no proposal for development or redevelopment of hydroelectric generating or hydromechanical facilities". Therefore, it may be assumed that the Legislature was allowing the construction of a dam, but did not intend for it to have hydropower generation use (Class AA does not list hydropower as a designated use). On the other hand, the Legislature instructed the department to "... process an application by Ivan Davis if it is substantially identical to an application previously submitted ...". In fact, the application received by the Department indicated an intended purpose to "... reinstall a mechanically driven water power saw mill ..." and "... pond used for recreation and

fire protection." Therefore, it is unclear if hydromechanical generation may have been intended by the Legislature (since it was listed as a purpose in the application but not in the preamble). It was clearly intended in the application by Mr. Davis. However, hydroelectric generation was never proposed by the applicant and the Legislature clearly expressed that it did not intend for this site to be developed for that use. The applicant had previously expressed interest in developing an upstream dam (lake outlet) for hydroelectric generation and has the water rights to the lake presumably for that purpose (granted in 1985). However, that project was never developed. The lake association has expressed interest that any development for hydropower must be made with consideration for the water levels in the lake (Gendron, Krueger, Norwood).

Since the Davis dam was constructed, the Department has assumed that the impoundment, where flow is inhibited, should be reclassified to Class A to recognize that condition and that this would be a correction to the 1990 reclassification intended by the Legislature. Several commentors noted that the Legislature's action in 1991 was in conflict with the federal Clean Water Act and set a poor precedent when they allowed the application for a dam in a Class AA water. They recommended that the Board should not ratify or follow that precedent (Behr, Bennett, Jones, Watts). The USEPA (Silva) states that a Use Attainability Analysis (UAA) will be required for any segment of the St. George River to be lowered. Title 38 MRSA Section 464, 2-A, A, 2 unambiguously states that a use attainability analysis must be conducted "(p)rior to proposing to the Legislature the removal of a designated use". This process is supported in statements by many commentors (Bennett, Brooke, Cowger, Longley, Reardon). The UAA process will take additional time to obtain needed information and an opportunity for a public hearing, therefore, it is unlikely that it could be accomplished in the time remaining for this group of reclassification recommendations to be considered by the Legislature. Some of the commentors (Davis, Goodall, Liebler, Longley), however, would like an immediate reclassification of this segment so that the hydro facility can be constructed soon.

Recommendation: No recommendation at this time, proceed with use attainability analysis as provided in 38 MRSA Section 464.2-A considering both the segments above and below the Davis dam that have been proposed for downgrade.

ST. JOHN RIVER BASIN

Aroostook River Machias R to Rt 11 Class B to AA (1 mile)

Removal of the Ashland Water District discharge allows this segment to be upgraded consistently with the upstream reach. Listed as an outstanding river segment in 12 MRSA Section 403. Upgrade should also include small remaining segment of Machias River where it enters the Aroostook River.

Comments: None

Recommendation: Upgrade

Fish River Soldier Pond to Perley Bk (Ft Kent) Class B to A (9 miles)

Construction of treatment facilities at Soldier Pond using land treatment of wastewater allows this segment to be upgraded to Class A.

Comments: It was noted that this proposal should be modified to include the entire river from Eagle Lake to Ft. Kent (Bennett, Gendron, Watts). There are no longer any known discharges in this segment.

Recommendation: Upgrade from Eagle Lake to Ft. Kent

SACO RIVER BASIN

Buff Brook Waterboro Class B to AA (5 miles)

This stream bisects a Nature Conservancy reserve in Waterboro.

Comments: TNC support (Vickery)

Recommendation: Upgrade

SALMON FALLS RIVER BASIN

Chicks Brook South Berwick Class B to A (3 miles)

Stream drains important aquatic habitat owned or managed by the Dept of Inland Fisheries and Wildlife and The Nature Conservancy.

Comments: Recommended by TNC. (Vickery)

Recommendation: Upgrade

COASTAL WATERS

Casco Bay Cape Elizabeth, Portland Class SC to SB (≈4 sq. miles)

Dissolved oxygen data from Friends of Casco Bay indicates that the segment of bay east of a line from Mackworth Is to Portland Pipeline pier can be expected to attain Class SB. Discharge at Peaks Island recently upgraded to secondary. Some OBDs present in this segment.

Comments: Support (Payne, Werner). Department recommends that the SB segment begin east of a line from Spring Point to Ft. Gorges to Mackworth Island to avoid possible habitat effects in the area of the Portland Pipeline that could not attain "unimpaired" criteria of Class SB.

Recommendation: Upgrade

Somes Sound Mt. Desert Class SB to SA (≈8 sq miles)

As the only fjord on western Atlantic coast, this is an ecologically unique waterbody vulnerable to waste loading. It is also a high use recreational resource situated in one of the busiest tourist areas of the country, therefore its long term protection is critical. Portions abutting Acadia National Park are currently classified SA. This classification would establish a goal for this water to remove two existing overboard discharges and a small municipal treatment system at Somesville. A small zone of Class SB water should be established around the Somesville treatment plant to allow that facility to continue.

Comments: Support expressed (Brushwine, Chipman, Lockhart) provided that an area of Class SB is defined that would allow the Somesville treatment facility to continue to discharge.

Recommendation: Upgrade to SA, except for Broad Cove.

Waters around Pond and Douglas Islands Milbridge Class SB to SA (≈4 sq miles)

Extend the present Class SA designation around the Petit Manan NWR easterly to include the waters around Pond Is. Area includes important habitat for eagles, ospreys and seabirds. The proposal for this upgrade was made several years ago by the island owners.

Comments: Cary (representing the island owners) and Skutek (Petit Manan NWR) support upgrade. There are no discharges in the area and no proposed or expected aquaculture leases for this area according to DMR.

Recommend: Upgrade

Proposals received from the public that are not being recommended for reclassification at this time.

Bond Brook Augusta

Proposed for upgrade to Class A (Watts). Does not attain Class A quality. Stormwater and other nonpoint sources of pollution from existing development may make goal unattainable.

Eaton Bk, Felts Bk Brewer

Proposed for upgrade to Class AA (Watts). Present quality and use is unknown at this time that would identify these waters as outstanding.

Kennebec River Augusta to Abagadasset Pt.

Proposed for upgrade to Class B (Friedman, Hammond). Water quality studies by the department indicate that this segment cannot be expected to achieve dissolved oxygen standards for Class B without significant reductions of BOD at upstream discharges. Segment does not achieve bacteria standards due to many CSOs in the segment.

Little Ossippee River

Proposed for upgrade to Class A (Bennett). Discharge from Town of Limerick in this segment.

Marsh River Frankfort, Prospect

South Branch proposed for upgrade to Class AA, North Branch to Class A (Watts). Department presently does not have sufficient information about the quality of this water or the outstanding characters that would warrant the classification.

Mousam River above Springvale

Proposed for upgrade to Class A (Bennett). Segment does not presently attain Class B quality.

Penobscot River, North and South Branch

Proposed for upgrade to Class AA (Watts). Present quality and use is unknown at this time that would identify these waters as outstanding. Currently Class A.

Headwaters of Pushaw Lake and Kenduskeag Stream

Proposed for upgrade to Class A (Bennett). Quality and use of these waters is unknown.

Tributaries to Rachel Carson NWR

Proposed for upgrade to Class A (Bennett). Larger tributaries are Class A. Quality and use of smaller tributaries is unknown at this time.

Tributaries to Washington County salmon rivers.

Proposed for upgrade to Class AA (Shaw). Five of the waters proposed are already Class AA. Four additional waters were selected from the list for upgrade to Class AA based on information from the Atlantic Salmon Authority that indicated that they provided significant amounts of salmon habitat.

Tributaries of Flagstaff Lake

Proposed for upgrade to Class AA (Bennett, Watts). North Branch of Dead River has flow regulation for hydroelectric generation. No information on outstanding qualities of South Branch of Dead River.

Tributaries of Allagash River

Proposed for upgrade to Class AA (Bennett). Larger tributaries are already Class AA. No information on outstanding qualities of the smaller tributaries, "10 square mile" law presently prevents discharges.

Blue Hill Bay

Proposed for upgrade to Class SA (Rendall). Little water quality data available but it is assumed that quality is high. Additional information needed regarding OBDs to these water (elimination would be required) or possible conflicts with aquaculture.

Commentors

The following individuals provided either oral (at one of the hearings) or written testimony during the comment period. Parentheses following a name indicate if they were representing an organization, business or government agency.

Eliza Bailey (Georges River Land Trust)	correspondence
John Barlow (Paris Utility District)	correspondence
Richard Behr	Augusta
William Bell	Augusta
Nick Bennett (Natural Resources Council of ME)	Augusta, correspondence
Steve Brooke	Augusta
Kathie Brown (Union Conservation Comm.)	correspondence
John Brushwine (Town of Mt. Desert)	Bangor
Campbell Cary	Augusta, correspondence
Del Chipman	Bangor
Tammis Coffin (Penobscot Indian Nation)	Bangor
Representative Scott Cowger	Augusta
Ivan Davis	Bangor
Melissa Evers (Atlantic Salmon Authority)	correspondence
Dusti Faucher (Friends of Presumpscot River)	Augusta, correspondence
Ed Friedman (Friends of Merrymeeting Bay)	correspondence
Barbara Gendron	correspondence
Gene Gendron	Augusta, correspondence
Clif Goodall (Davis family)	Augusta, Bangor, correspondence
Anne Hammond (Friends of Merrymeeting Bay)	Augusta, correspondence
Fred Hurley (Dept. of Inland Fish and Wildlife)	correspondence
Mark Isaacson (Edwards Manufacturing)	Augusta
Austin Jones (Georges River Land Trust)	Augusta
John Krueger (Town of Liberty)	correspondence
Dan Kusnierz (Penobscot Indian Nation)	Millinocket, correspondence
Lucinda Lang	correspondence
Sarason Liebler	Augusta, correspondence
Linda Lockhart (Maine Municipal Assoc.)	Bangor
Senator Susan Longley	Augusta
David McLaughlin	Bangor
Bernard Norwood (Citizen's Assoc Liberty Lakes)	correspondence
Joseph Payne (Friends of Casco Bay)	correspondence
Wil Plumley (Friends of Presumpscot River)	Augusta, correspondence
Sid Quarrier	Augusta
Sandra Perry (Guilford of Maine)	Bangor
Ed Petrilak (Town of Norway)	Augusta, correspondence
Jeff Reardon (Trout Unlimited, St. George R.)	Augusta, correspondence
Ned Rendall	correspondence

James Ring (City of Bangor)	correspondence
Matthew Scott (S.H.A.R.E.)	correspondence
Dwayne Shaw (Downeast Salmon Federation)	correspondence
Stephen Silva (U.S.E.P.A.)	correspondence
Stan Skutek (Petit Manan N.W.R.)	correspondence
Vince Stakutis (Guilford of Maine)	correspondence
Brian Stetson (Bowater)	Bangor, correspondence
John Stevens (Passamaquoddy Tribal Government)	correspondence
William Taylor (dischargers on Kennebec River)	Augusta, correspondence
Steve Timpano (Dept. Inland Fish and Wildlife)	correspondence
David Tobin	correspondence
Sharri Venno (Houlton Band of Maliseets)	Millinocket
Barbara Vickery (The Nature Conservancy)	correspondence
Douglas Watts (ME Council Atlantic Salmon Fed.)	Augusta, correspondence
Sarah Rose Werner (Friends of Casco Bay)	correspondence
Tom Whiting	Augusta, Bangor
Charles Woodman	Augusta