STATE OF MAINE
Department of Environmental Protection

MAIN OFFICE: RAY BUILDING HOSPITAL STREET, AUGUSTA
MAIL ADDRESS: State House Station 17, Augusta, 04333

JOSEPH E. BRENNAN
GOVERNOR

HENRY E. WARREN
COMMISSIONER

MEMORANDUM

DATE: August 15, 1985

TO: Stephen W. Groves, Director Bureau of Water Quality Control

FROM: David Courtemanch, Division of Environmental Evaluation and Lake Studies, Bureau of Water Quality Control

SUBJ: L.D 1503 August 19, 1985 Meeting

** **

I believe Terry has addressed most of the points in Tim Glidden's July 31 letter. Susan's presentation on biological criteria will be quite comprehensive and should use up a large portion of the meeting time therefore I don't know how many other issues will be addressed.

Issue D has created considerable debate within this division but there are certain points which need to be made clear:

1. River impoundments are still much like rivers hydrologically. While time of travel is greater in impoundments they still resemble rivers ecologically since their ecosystems rely on organic matter passing down river rather than plankton growing within the impoundment as is the case with lakes (a reason we don't regulate phosphorus discharges to impoundments).

2. Unlike lakes, they are subject to discharges therefore it is important that a DO standard be maintained.

3. It is recognized however that certain impoundments show varying amounts of stratifications which even in the absence of discharges could result in DO going below classification standards. I believe this to be the concern and it is a fair one.

As a possible resolution we are suggesting the following amendment to Section 360 (3.) General Provisions:

P. 2, l. 35 their classification. For waters located in the deeper portions of impoundments, the board may grant a variance allowing the water quality criteria for dissolved oxygen and aquatic life to fall below the minimum standards specified in Section 363 if the board finds that those waters cannot attain those requirements due to unusual hydrologic conditions which restrict mixing of the water and that said variance will not cause the impoundment to be unsuitable for the characteristics and designated uses ascribed to the impoundment's classification. The department shall submit to

This would preserve the classification standard for the free-mixing portions of an impoundment and should not jeopardize the uses of those water bodies.

The issue of what the DO criteria will be (i.e., 5ppm vs. 6ppm) has not been addressed yet and should probably be set as a future agenda item so that D.E.P., I.F.W., and other parties can make their case.

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COMMISSIONER

MEMORANDUM

TO: Steve Groves, Water Bureau Director

FROM: TM Terry McGovern, DEELS

SUBJECT: August 12, 1985 Memorandum to S. Groves

Date: August 13, 1985

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Dave Courtemanch has called my attention to a sentence in my 8/12/85 memo to you which, upon reflection, I consider a misstatement I'd like to correct. With reference to dissolved oxygen testing procedures under item D. Impoundments, my actual perspective on the issue is:

Although some advocate a DO testing procedure for impoundments based on the average of a vertical DO profile through a water column, the biological implications of that method of attainment are significant. The average DO method would allow nearly anaerobic conditions to exist in water at the bottom of impoundments. The aquatic life on the bottom of an impoundment could be killed off due to discharges, while the impoundment is considered to be attaining classification if the average DO method is used. It is true that some lakes have periodically low DO near their bottoms due to natural conditions and that the aquatic life there is naturally impacted. To allow dischargers to induce conditions in an impoundment which parallel those found in some lakes may not meet the minimum requirements of the Federal Clean Water Act.

TM/d

cc: Dave Courtemanch
Matt Scott
Ken Young
Hank Warren

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JOSEPH E. BRENNAN
GOVERNOR

HENRY E. WARREN
COMMISSIONER

MEMORANDUM

TO: Steve Groves, Director

FROM: Tm Terry McGovern, ESS III

SUBJECT: L.D. 1503

DATE: August 12, 1985

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At the request of Dave Courtemanch, I have reviewed the letter of 7/31/85 from Tim Glidden to Commissioner Warren. To aid you and the Commissioner in the formulation of Department positions on the "Preliminary Water Reclassification Issues" specified in the 7/31/85 letter, I offer the following personal perspectives on what department positions would best protect Maine's water resources and also offer details on the factual basis of those perspectives.

A. Management Goal/Water Quality Standards

Although the Federal Clean Water Act Sec. 101(a)(2) states "it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish and wildlife and provides for recreation in ~~an~~ on the water be achieved", Sec. 303 of the Act - "Water Quality Standards and Implementation Plans" obscures the role of water quality standards in attaining the national goal due to its focus on bureaucratic considerations. Fortunately, water quality standards regulations made into final rule by EPA on 11/8/83 contain a new section (§ 131.2) which defines purpose. This section reads in part, "A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses...Such standards serve the dual purpose of establishing the water quality goals for a specific waterbody and serve as the regulatory basis for the establishment of water-quality-based treatment controls and strategies beyond the technology-based levels of treatment required by sections 301 (b) and 306 of the Act."

It is my perspective that if the 112th Legislature enacts L.D. 1503 as written its decision will be based on the following findings:

1. The designated uses and criteria supporting those uses for Classes C, SC and GPA represent the minimum levels of water quality acceptable to the people of Maine for any portion of their surface waters.

2. Where water quality does not meet these minimum standards, existing DEP authority and programs can attain the required quality without unreasonable socioeconomic costs; even if it takes many years to do so.

3. The biennial DEP report on attainment of classification required by § 360 (3) of L.D. 1503, will enable the Legislature to track DEP's progress in upgrading water quality to mandated standards and will also help the Legislature make decisions on reassignment of classification and DEP's authority and programs.

B. Biological Criteria

The scientific basis and degree of attainment of the biological criteria will be covered in the reports which DEP has agreed to provide the Committee by October 1, 1985. As for the issue of definitions, I agree that additional definitions may improve L.D. 1503 and facilitate subsequent development of regulations.

C. Designated Uses

The role of designated uses as defined in Federal regulation (see A.) should be useful in resolving this issue. In L.D. 1503 § 360 (3) the following two discharge/designated use relationships are established:

1. Substances discharged to the water column, may not "cause those waters to be unsuitable for the characteristics and designated uses ascribed to their class (e.g. discharge of toxics which destroy habitat, discharge of feces which causes unhealthful conditions). This provision is much less restrictive that the present Class C provision - "There shall be no disposal...which adversely affects any other water use".

2. Substances discharged to the water's surface or which settle out in the bottom of the water column may not "impair the characteristics and designated uses ascribed to their class" (e.g. sedimentation which diminishes the function of an aquatic community, scum which makes water aesthetically objectional for swimming). With regard to the example in the 7/31/85 letter, L.D. 1503 stipulates that the discharge in question could have a significant "negative" or "adverse" impact (e.g. bacteria levels go from 20/100 ml to 80/100 ml but still meet standards for safe swimming) on the water's designated uses and still be licensed if its discharge was assimilated into the water column. If the discharge floated on top of the water column, any "negative" impact on designated uses by the "floaters" would be grounds for a license denial.

D. Impoundments

Although some river impoundments are hydrologically different from undammed sections of a river, the differences in biological communities between dammed and free-flowing sections of a river are slight unless the river is impacted by high-BOD discharges. It is because discharges are allowed in Class C rivers and are prohibited in Class GPA lakes that a dissolved oxygen (DO) standard for the protection and propagation of fish is required for Class C impoundments. With regard to DO testing procedures, it is my perspective that the present Class C DO standard requires a DO level of 5 ppm for every bit of water in both dammed and free-flowing sections of a river. A more realistic DO testing procedure for impoundments may be that the average of a vertical DO profile through a water column be required to attain the Class C DO standard. To properly assess the significance of this issue, one must realize that for the Androscoggin River, most of the water there is contained by impoundments. Given current trends in hydroelectric development, those Maine rivers receiving major discharges are being transformed into a series of impoundments with one emptying into another.

E. Point Source/Non-Point Source Discharges

The intent of L.D. 1503 is to prohibit all discharges, including those from point and non-point sources which cause water quality to fall below the minimum standards (e.g. dissolved oxygen, bacteria and aquatic life) ascribed to the classification of a particular water body. This intent is required by the Federal Clean Water Act. There are also provisions in L.D. 1503 which control the location of new point source discharges. New point source discharges (domestic and industrial) would be prohibited for AA, SA and GPA waters as well as for waters with a drainage area less than 10 square miles. New domestic point source discharges would also be prohibited to tributaries of great ponds.

As for the licensing of non-point source discharges, I have long held that the Legislature should consider making additional exemptions in 38 M.R.S.A. §413(2) for various classes of non-point source discharges if they meet specified performance standards. I hope that this approach will be presented to the 113TH Legislature. At the present time, all logging operations and almost all agricultural operations in Maine are in violation of 38 M.R.S.A. §413. If a revision of §413 contained performance standards linked to maintaining water quality standards, DEP could be much more effective in controlling those non-point source discharges which cause unacceptable water quality degradation and which would not be licensed by statute under a revised §413.

F. Antidegradation

The Federal Clean Water Act and EPA's antidegradation regulation (§131.12) prohibit states from allowing degradation which would cause waters to be unsuitable for the protection and propagation of fish, shellfish and wildlife or recreation in and on the water. With reference to L.D. 1503, this means that the State of Maine has the right to assign any of the classification options to any water body and to upgrade or downgrade that classification as socioeconomic needs require change. This is because all the classifications in L.D. 1503 meet the minimum standards of the Federal Clean Water Act.

Under 38 M.R.S.A. §414-A(D) the board can grant a wastewater discharge license which lowers the quality of a water body toward the lower limits of its classification only if "the board finds that such lowering is a result of necessary economic and social development." The antidegradation statement in L.D. 1503 §360(3) creates a higher order finding necessary to cover certain water quality situations. For example, if a water body is Class C but has water quality which attains the dissolved oxygen, bacteria and aquatic life criteria of Class B, and an applicant wants to discharge wastewater which would lower the water quality below Class B standards, the board must find that in addition to being "necessary", the proposed lowering of water quality provides significant public benefits for the people of the State. This provision provides a de facto upgrade of classification unless a significant public benefit is involved and could be used to allow the Legislature time to consider a statutory upgrade of the water body in question.

With regard to downgrades, I believe that it is very important to the public interest that we overcome the illogical aversion to downgrade which currently prevails. It must be understood that the unacceptable pollution which occurred in Prestile Stream was largely due to blatant violation of a wastewater discharge license and not due to lowering of the stream's classification. The water classification statute defines socially acceptable increments of degradation for the various water resources of the State. For Class AA waters, that increment would be 0%. For Class C waters, L.D. 1503 establishes an increment which is 100% of that allowed by the Federal Clean Water Act. To best serve the changing socioeconomic needs of the people of the State, those concerned with water quality classification must strive for flexibility, pragmatism and sensitivity as well as being staunch defenders of the well-being of aquatic, estuarine and marine ecosystems.

G. Lakes

The reason for there being only one class for Great Ponds in L.D. 1503 is that it is the goal of DEP that all Great Ponds be of GPA quality. Those GPA waters which are not attaining that quality (those presently classified as GP-B) would be listed in the biennal

report to the Legislature along with a description of what measures are necessary for attainment of GPA quality. I believe that this approach will be more effective that present law in protecting and improving lake water quality.

As for the prohibition on new discharges of domestic wastewater to lake tributaries, this is necessary because of development pressures which might promote residential development in lake watersheds on sites which are unsuitable for subsurface disposal of wastewater. There are no practical methods for removing phosphorus from domestic wastewater in small-scale treatment systems. Thus, the new discharge of domestic wastewater to lake tributaries poses a threat of lake eutrophication and should be prohibited. As for allowing new industrial discharges to lake tributaries, L.D. 1503 makes approval of these discharges subject to a board finding that the discharge will not "cause water quality degradation which would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters. Presumably, an approvable industrial discharge would have extremely low phosphorus levels.

H. Bacteriological Standards

In developing a new set of bacteriological standards to protect swimmers, the goal I achieved through cooperative efforts with members of the Department of Human Services, was to develop a Class C standard which was at least as protective of the public health as the present Class B-2 bacteria standard. The epidemiological research on which this effort was based showed a high correlation between swimmer illness and the proposed bacterial indicators Enterococci and E.coli but showed no correlation between swimmer illness and the fecal coliform bacteria on which the present standards are based. Because of the lack of validity of the present standard, determining the present risk to swimmers is difficult. It can be estimated, however, through use of a model of waters which are impacted solely by human feces. In such water, one would expect to find E.coli levels to be between 80 and 85 percent of the fecal coliform levels. Thus, in this model, an E.coli standard of 160/100 ml is at least as protective of the public health as a fecal coliform standard of 200/100 ml. Since an average E.coli level of 160/100 ml corresponds to a risk level of 9 to 11 illnesses/1000 swimmers, a risk level of 10/1000 (1/100) is the maximum risk level appropriate for Maine waters.

MS/d

cc: Matt Scott
Ken Young
Hank Warren

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STATE OF MAINE

Inter-Departmental Memorandum

Date September 14, 1984

To Steve Groves, Water Bureau Director Dept.

From John Sowles, Biologist Dept.

Subject

The Division of Environmental Evaluation and Lake Studies is pleased to present our recommended Water Quality Standards. A lot of effort went into this. We considered the pros and cons of LD 1250, Terry's version and present law. While we expect that changes will be made, we feel that conceptual changes to our recommendations made by you, warrant some explanation. We suggest a more appropriate source of change be the Legislature after hearing our version and others.

We are especially proud of GP-A and biological language. I also believe that the marine classes are now worded to give the flexibility we need. Groundwater was purposely omitted as we did not feel competent to address those issues. The groundwater policy team, of which John Williams and Gary Westerman are a part, is a more appropriate source of help. They indicate a proposal will be available in time for this Legislature's consideration.

A personal comment, there has been a lot of talk by different people in the Water Bureau and elsewhere that ours was a futile effort. I do not believe so. Finally, I want to say that this truly is a group product with no one individual deserving credit over another. We all hope that our product helps you.

Good luck

d/

§360 Classification of Maine Waters

1. Findings; purpose

The Legislature finds that the protection of Maine's higher quality waters and the improvement of its lower quality waters is in the best interests of the State, not only in terms of the health of its citizens, but also in terms of their economic and social well-being. Accordingly, the Legislature declares that the purpose of these water quality classifications shall be to: 1) establish water quality goals for Maine's waters, 2) establish physical, chemical, and biological standards against which to measure progress toward these goals, 3) establish policies and procedures for the management by the State of water uses in a manner consistent with its water quality goals and 4) clarify and reinforce Maine's provisions against the degradation of the quality of its waters. 5) meet the goals of the Federal Clean Water Act.

So that it may be kept informed of Maine's progress toward meeting water quality goals established pursuant to this statute, the Legislature hereby directs the Department of Environmental Protection to prepare and biennally publish a report on the quality of Maire's waters, including lakes and ponds, that identifies existing water quality, remaining problems, and actions needed to resolve those problems.

2. Procedures for Reclassification of Maire Waters

a. Data Collection. ~~Following public notice~~, the board shall conduct classification studies and investigations. Information collected during these studies and investigations shall be made available to the public in an expeditious manner. After consultation with other State agencies and, as appropriate, individuals, citizen groups, industries, municipalities and federal and interstate water pollution control agencies, the board may propose changes in water quality classifications.

b. Public Hearings. The board shall call public hearings in the affected area or reasonably adjacent thereto, for the purpose of presenting to all interested persons the proposed classification for each particular water body and obtaining public input.

c. Recommendations to the Legislature. In accordance with this section, the board shall recommend changes in classification to the Legislature.

3. General Provisions

a. Minimum Uses. All waters of the State of Maine shall, ~~where attainable,~~ have water quality which will provide for the protection of fish, shellfish, wildlife and recreation in and on the waters.

b. Discharge assimilation. There shall be no discharge which impairs any use or characteristic designated in the classification of any downstream receiving water.

c. Discharge prohibited. There shall be no new discharge of sewage or industrial waste, with the exception of uncontaminated, noncontact cooling water, to waters having a drainage area of less than 10 square miles. Discharges to waters of the State shall not: 1) contain settled substances such as sludge deposits and sediment banks or floating substances such as oil, grease, foam and scum, except as naturally occur, in amounts which would impair the uses ascribed to their class. 2) cause the pH of the receiving water to fall outside the 6.0 to 8.5 range. 3) cause any plant or animal to be unsuitable for human consumption. 4) cause fish kills or pose a public health hazard.

e. Anti-degradation policy. Levels of water quality necessary to protect the existing uses and characteristics shall be maintained. Where the quality of waters generally exceeds the minimum standards necessary to support any characteristic or use of the class, that higher water quality shall be maintained unless it is shown that a lowering of water quality is necessary for economic or social development which provides important public benefits for the State of Maine. In any event, the level of water quality necessary to protect any existing use or characteristic shall be maintained and any new discharge shall comply with the minimum requirements of all applicable water quality criteria and standards.

§363. Standards for classification of fresh waters

The board shall have 4 standards for the classification of fresh surface waters which are not classified as lakes and ponds.

Class AA shall be the highest classification and shall be waters which are outstanding resources for reasons of ecological, social, scenic or recreational importance. Class AA waters shall be free flowing and natural waters of such quality that they provide a natural habitat for aquatic life and wildlife, and are suitable for drinking water after disinfection, water contact recreation, fishing, navigation and other recreational activities.

The aquatic life, dissolved oxygen and bacteria content of Class AA waters shall be as naturally occurs.

The discharge of pollutants, other than those exempt from licensing as specified in section 413(4), shall be prohibited. Discharges to tributaries of Class AA waters will be permitted only if the applicant objectively demonstrates to the Board's satisfaction that sufficient safeguards will be instituted to assure protection of the downstream Class AA receiving water in the event of accident, spill, or malfunction.

Class A shall be the 2nd highest classification and these waters shall be of such quality that they provide natural habitat for aquatic life and wildlife and are suitable for drinking water after disinfection, water contact recreation, fishing, navigation and other recreational activities.

The aquatic life, dissolved oxygen and bacteria content of Class A waters shall be as naturally occurs.

New discharges to these waters, other than those exempt from licensing as specified in section 413(4), will be permitted only if, in addition to satisfying all the requirements of this chapter, the discharged effluent will be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the biological community. Discharges to these waters shall not cause deposition of materials to the bottom of the waterbody which will cause detrimental effects to the aquatic life. Prior to issuing a discharge license, the Board shall require the applicant to objectively demonstrate to the Board's satisfaction that the discharge is necessary and that no other reasonable alternatives are available.

Existing licensed discharges to these waters with a discharged effluent which does not meet the requirements for new discharges to Class A will be allowed to continue until practical alternatives exist.

Class B shall be the 3rd highest classification and these waters shall be of such quality that they provide an unimpaired habitat for aquatic life and wildlife and are suitable for drinking water after disinfection, water contact recreation, fishing, navigation and other recreational activities.

Discharges shall not cause the monthly average of the dissolved oxygen content of Class B waters to be less than 7 mg/l or 75% of saturation nor at any time lower the oxygen content of the water below 6 mg/l or 60% of saturation. Between May 15th and September 30th, the level of Escherichia coli bacteria of human origin in these waters shall not exceed a geometric mean of 160 per 100 milliliters. During the remainder of the year, bacteria shall be present only in amounts which do not cause these waters to be unsuitable for their designated uses other than water contact recreation.

Discharges to Class B waters shall ~~not~~ have an adverse impact on aquatic life in that the receiving waters, after combination with any discharge and in combination with all other discharges, shall be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the biological community. Discharges to these waters shall not cause deposition of materials to the bottom of the waterbody which will cause detrimental effects to the aquatic life.

Existing licensed discharges to these waters with a discharged effluent which does not meet the requirements for new discharges to Class B will be allowed to continue until practical alternatives exist.

Class C shall be the lowest classification and these waters shall be of such quality that they provide habitat for aquatic life and wildlife, are suitable for drinking water after treatment, water contact recreation, fishing, navigation and other recreational activities.

Discharges shall not cause the monthly average dissolved oxygen content of Class C waters to be less than 6 mg/l or 60% of saturation nor at any time lower the oxygen content of the water below 5 mg/l. Between May 15th and September 30th, the level of Escherichia coli bacteria of human origin in these waters shall not exceed a geometric mean of 160 per 100 ml. During the remainder of the year, bacteria shall be present only in amounts which do not cause these waters to be unsuitable for their designated uses other than water contact recreation.

Discharges to Class C waters may cause some change in aquatic communities provided that the properties of the receiving waters after combination with any discharge and in combination with all other discharges, shall be sufficient to sustain all functional processes of a diverse community. ~~Discharges shall not impair the fishable quality of these waters in that~~ the resultant water quality shall be sufficient to sustain normal survival, growth, and reproduction of all indigenous fish species or ~~other~~ test organisms designated by the Board. Discharges to these waters shall not cause deposition of materials to the bottom of the waterbody which will significantly affect the diversity of the aquatic community or interfere with maintainence of its functional processes.

Existing licensed discharges to these waters with a discharged effluent which does not meet the requirements for new discharges to Class C will be allowed to continue until practical alternatives exist.

§363-A Standards for classification of lakes and ponds

The board shall have 1 ~~class~~ standard of lakes and ponds. ~~except that~~ Impoundments of rivers and streams may be otherwise classified as specified in section 363.

Class GP-A waters shall be lakes and ponds which are ~~Great Ponds~~ of such quality that they are suitable for drinking water after disinfection, water contact recreation, fishing and other recreational activities, navigation and as a habitat for aquatic life, ~~and wildlife.~~ fish and other

Lakes and ponds classified as GP-A shall have a stable or decreasing trophic state, subject only to natural fluctuations, and shall be free of culturally induced algal blooms which impair their use and enjoyment. The trophic state of these waters shall be defined by measures of chlorophyll "a", Secchi disk transparency, total phosphorus content and other appropriate criteria. The bacteria level in these waters shall be as naturally occurs.

There shall be no new discharge into Class GP-A waters. There shall be no discharge of sewage to tributaries of GP-A waters. Non-sewage discharges to tributaries of GP-A waters will be permitted only if, in addition to satisfying all requirements of that tributary's classification, the discharge by itself or in combination with other discharges will not increase the trophic state, harm water quality, or change the natural aquatic community of the GP-A waterbody. Prior to issuing a discharge license, the Board shall require the applicant to objectively demonstrate to the Board's satisfaction that sufficient safeguards will be instituted which assure protection of the receiving lake or pond in the event of accident, spill, or malfunction. Existing licensed discharges to these waters ~~with a discharged effluent~~ which does not meet the requirements for new discharges to Class GP-A will be allowed to continue until practical alternatives exist, or as provided in section 371-A, subsection 3, ~~for aquatic~~ pesticides. No materials may be placed on or removed from the shores or banks of a Class GP A water body in such a manner that materials may fall or be washed into the water or that contaminated drainage therefrom may flow or leach into those waters, except as provided in section 391. No discharge resulting from a change of land use in the watershed of a Class GP-A water body may, by itself or in combination with other ~~discharges~~, cause the degradation of the quality of that water through siltation, nutrient increase or other means.

§364 Standards for classification of estuarine-marine waters.

~~The board shall~~ have 4 standards for the classification of estuarine-marine waters.

Class S-AA shall be the highest classification and shall be applied to waters which are outstanding resources for reasons of ecological, social, scenic or recreational importance. Class S-AA waters shall be free circulating and natural waters of such quality that they provide a natural habitat for estuarine-marine life and wildlife, are suitable for water contact recreation, fishing, navigation, other recreational activities, and for harvest of shellfish for direct consumption.

The estuarine-marine life, dissolved oxygen, and bacteria content of Class S-AA waters shall be as natually occurs.

The discharge of pollutants, other than those exempt from licensing as specified in section 413(4), shall be prohibited. Discharges to tributaries of Class S-AA waters will be permitted only if the applicant objectively demonstrates to the boards satisfaction that sufficient safeguards will be instituted which assure protection of the downstream Class S-AA receiving water in the event of accident, spill, or malfunction.

Class S-A shall be the 2nd highest classification and these waters shall be of such quality that they are natural habitat for estuarine-marine life and wildlife, are suitable for water contact recreation, fishing, navigation, other recreational activites, and for harvest of shellfish for direct consumption.

The aquatic life, dissolved oxygen and bacteria content of Class A waters shall be as naturally occurs.

There shall be no new discharge of sewage to Class S-A waters. New industrial discharges to these waters, other than those exempt from licensing as specified in section 413(4), will be permitted only if, in addition to satisfying all the requirements of this chapter, the discharged effluent will be of sufficient quality to support all estuarine and marine species indigenous to the receiving water without detrimental changes in the biological community. Discharges to these waters shall not cause deposition of materials to the bottom of the waterbody which will cause detrimental effects to the estuarine-marine life. Prior to issuing a discharge license, the Board shall require the applicant to objectively demonstrate to the Board's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available. Existing licensed discharges to these waters with an effluent which does not meet the requirements for new discharges to Class S-A will be allowed to continue only until practical alternatives exist.

Class S-A shall be the ~~3rd~~ highest classification and these waters shall be of such quality that they provide an unimpaired habitat for estuarine-marine life and wildlife and are suitable for water contact recreation, fishing, navigation, other recreational activities, and for harvest of shellfish for direct consumption.

The dissolved oxygen content of Class S-A waters shall be as naturally occurs. Between May 15th and September 30th, the enterococci bacteria level in these waters shall not exceed a geometric mean of 14 per 100 milliliters. During the remainder of the year, bacteria shall be present only in amounts which do not cause these waters to be unsuitable for their designated uses other than water contact recreation.

Discharges to Class S-B waters shall not cause adverse impact to estuarine and marine life in that the receiving waters, after combination with any discharge and in combination with all other discharges, shall be of sufficient quality to support all estuarine and marine species indigenous to the receiving water without detrimental changes in the biological community. Discharges to these waters shall not cause deposition of materials to the bottom of the waterbody which will cause detrimental effects to the estuarine-marine life. In addition, new discharges of sewage to areas designated as shellfish propagation and harvest areas will be permitted only if the discharge by itself or in combination with all other discharges, does not cause shellfish to be unfit for direct consumption according to standards set forth by the Department of Marine Resources. Existing licensed discharges to these waters with an effluent which does not meet the requirements for new discharges to Class S-B will be allowed to continue only until practical alternatives exist.

Class S-C shall be the ~~lowest~~ 2nd classification and these waters shall be of such quality that they provide habitat for estuarine-marine life and wildlife, are suitable for water contact recreation, fishing, navigation, other recreational activities, and for harvest of shellfish for consumption after depuration.

Discharges to Class S-C waters shall not cause the dissolved oxygen content to be less than 7 mg/l or 70% of saturation or as naturally occurs. Between May 15th and September 30th, the enterococci bacteria level in these waters shall not exceed a geometric mean of 14 per 100 ml. During the remainder of the year, bacteria shall be present only in amounts which do not cause these waters to be unsuitable for their designated uses other than water contact recreation.

Discharges to Class S-C waters may cause some change in estuarine-marine communities provided that the properties of the receiving waters after combination with any discharge and in combination with all other dischages, shall be sufficient to sustain all functional processes of a diverse community. These discharges shall not impair the fishable quality of these waters in that the resultant water quality shall be sufficient to sustain normal survival, growth, and reproduction of all indigenous fish species or other test organisms designated by the Board. Discharges to these waters shall not cause deposition of materials to the bottom of the waterbody which will significantly affect the diversity of the estuarine-marine community or interfere with maintainence of its functional processes. In addition, new discharges of sewage to areas designated as shellfish propagation and harvest areas will be permitted only if the discharge by itself or in combination with all other discharges, does not cause shellfish to be unfit for consumption after depuration according to standards and conditions set forth by the Department of Marine Resources. Existing licensed discharges to these waters with an effluent which does not meet the requirements for new discharges to Class S-C will be allowed to continue only until practical alternatives exist.

STATE OF MAINE
Department of Environmental Protection

MAIN OFFICE: RAY BUILDING, HOSPITAL STREET, AUGUSTA
MAIL ADDRESS: State House Station 17, Augusta, 04333

JOSEPH E. BRENNAN
GOVERNOR

HENRY E. WARREN
COMMISSIONER

MEMORANDUM

DATE: August 9, 1984

TO: Division of Environmental Evaluation and Lake Studies

FROM: John Sowles

SUBJ: Minutes of August 9, 1984

Apparently, my original proposed schedule was too ambitious as we are a few weeks behind. This meeting, however, pretty much finished up the freshwater classification outline.

1. We agreed that mention of risk levels, swimmer illnesses, etc. would be suicidal to our efforts. Rather, simple numbers of E. coli would be more appropriate leaving it to the imagination of the legislators what this meant.

2. We agreed that all classes of waters be managed as swimmable--swimmable meaning that between May 15 and October 15, the geometric mean value of E. coli be less than ∝ individuals/100 ml, not including samples taken during licensed C.S.O. events.

Frank Fiore will make a list of all licensed C.S.O.s to see if they are exclusive to large mainstem rivers. Frank will also look into the benefits of having "no-swim" zones below sewage outfalls.

3. We agreed that if only one set of numbers were to go into the statute (as opposed to regulation), they should be dissolved oxygen levels.

4. We agreed that, in principle, the Department should be striving for no detrimental impact to all aquatic life from licensed discharges.

5. We agreed that statutory D.O. criteria for Class B waters be based on meeting seasonal average of 7 mg/L or 75% saturation with a minimum limit of 6 mg/L or 60% saturation. In non-stratified waters, attainment of these limits would be based on representative samples throughout the water column. In stratified waters, attainment would be based on samples from the upper mixed layer.

6. We strongly agreed that in water which now has water quality meeting Class B standards and yet is classified as C, no new discharge should be permitted which will lower water quality to the C level. Such environmental "backsliding" is not, can not, and will not be supported by this Division. This does not preclude economic growth. It merely means that growth must occur responsibly in the truest sense of "progress." This does not cause any new problems of compliance or treatment upgrading since those problems exist now under present law. We'd have to deal with them anyway!

7. We agreed to consider that in C waters, discharges may not lower the average D.O. levels below 6 mg/L or 60% saturation with a minimum limit of 5 mg/L, bearing in mind the anti-degradation policy (above).

8. We agreed to place Barb's and Mary Ellen's criteria for establishing a change in trophic state in regulation form.

I will chair next meeting when we will flush out an outline of the fresh surface water statute.

cc: Stephen Groves

Stine

STATE OF MAINE

Department of Environmental Protection

MAIN OFFICE: RAY BUILDING, HOSPITAL STREET, AUGUSTA
MAIL ADDRESS: State House Station 17, Augusta, 04333

JOSEPH E. BRENNAN
GOVERNOR

HENRY E. WARREN
COMMISSIONER

MEMORANDUM

DATE: August 6, 1984

TO: D.E.E.L.S.

FROM: John Sowles

SUBJ: Minutes of July 26th Reclassification Meeting

Barb Welch did such a fine job getting down the proceedings of our meeting, that I present them to you here virtually verbatim.

1. Discharge policy for lake tributaries

   Agreed: policy should be same as for lakes (i.e., no discharges to tributaries of lakes and ponds except as specifically authorized by the Legislature. This relieves burden on DEP and BEP for decisions of great social importance. Does not weaken "no-discharge provision" of other lake tributaries. Provides for more public exposure and input than would a BEP hearing.

2. Standards for lakes and ponds

   Agreed: Standard or goal shall be a stable or decreasing trophic state with no sustained and/or repeated culturally induced algae blooms (less than 2m Secchi disk) which impair uses.

   This eliminates T.P., chlorophyll, and "blue green" standards from statute allowing more technical flexibility such as when natural lake color interferes with phosphorus concentrations or when green algae cause a use problem. We need to define; however, what we mean by "stable or decreasing trophic state" or rather when is a change significant and also when does this "impair uses."

3. Stream and river classification

   Agreed: to work with four classes, all of which will be fishable and swimmable. They will be goal oriented not reflecting ambient water quality. Lowest class would have a measurable impact but still remain fishable and swimmable to some as yet undefined degree.

   Segments not meeting their class would be noted in a periodic water quality status report. Non-attainment segments would be highlighted.

4. Discharge policy

Agreed: that new discharges which would contribute to the prevention of a water meeting its goal would be prohibited until the water reached its goal and "room" was available for that discharge.

A side note of some unknown significance is that we do not intend to enforce instream standards as long as the discharger was operating in accordance with its license. This provides protection for CSO (combined sewer overflow). What did we do with industry?

5. Agreed: that swimmable needed a definition and that we would work on one which does not guarantee or imply a guarantee of absolute safety when swimming. Bacteria standard should be same for all classes.

Questions: do standards belong in regulation or statute?

Are risk limits something we want to fool with?

6. Finally, Jeff Dennis graciously volunteered to chair our next meeting. Thanks Jeff and to Barb, many thanks for taking such good notes.

Steve

STATE OF MAINE

Department of Environmental Protection

MAIN OFFICE: RAY BUILDING, HOSPITAL STREET, AUGUSTA
MAIL ADDRESS: State House Station 17, Augusta, 04333

JOSEPH E. BRENNAN
GOVERNOR

HENRY E. WARREN
COMMISSIONER

MEMORANDUM

DATE: August 6, 1984

TO: DEELS

FROM: Barbara Welch and Jeff Dennis

SUBJ: Reclassification Minutes

1. Discharge policy for bacteria

A. Proposed:

1) Set bacteria standard the same for all discharge classes.

2) Statute: For Class B & C waters shall be swimmable with a risk level not to exceed 6 illnesses per 1000 swimmers from May 15 to Sep 15 with the exception of licensed CSO events (when people are not usually swimming anyway).

3) Regulation: Put the bacteria standard that defines the risk level in regulation not statute because technology is changing so rapidly that the bacteria numbers should be more easily accessible for change.

4) Two proposed ways to handle bacteria standards: One is to give a frequency of excursion that would be allowable from the standard. Two, a non swimming zone below every sewage treatment plant.

B. To consider:

1) Agricultural runoff will influence bacterial tests but does it influence the risk level? If agricultural runoff does not influence risk, then it would be a good reason to have bacteria #3 in regulation not statute. Also agricultural runoff not licensed, so can't be managed by discharge policy.

2) Are we happy with 160 Ecoli per 100mls? Are we happy with a risk level of 6 illnesses per 1000 swimmers?

C. Agreed: we should not imply any guarantee of safety for swimming.

2. Differences in Class B & C in regards to aquatic life

A. Proposed: discharges to B waters and in combination with other discharges shall make no detrimental changes to the residential biological community. Discharges to C waters and in combination with other discharges could make some changes in residential biological community but still must maintain the functional integrity of a balanced community. Both B & C discharges shall not be toxic.

B. In Regulation: define "amount of change" allowed in Class C, "balanced community," "residential," "detrimental," etc. (For Dave, Sue and Barry to work on.)

C. To consider: There are 2 measues of change (a) the richness of community, by the array of species within the community; and (b) direct effects in species, measured by bioassay tests.

Do we want to differentiate between the 2 measurements?

D. Agreed: White book applies for both nonfish and fish species for Class C as well as B.

E. Agreed: Fishable is eatable at least to FDA levels.

Frank offered to chair next week's meeting. Topics to cover:

1. Further define standards relating to aquatic life.

2. Do we need a D.O. standard and if so, what should it be?

3. Decide what is "swimmable."

cc: Stephen Groves, Director

STATE OF MAINE
Department of Environmental Protection
MAIN OFFICE: RAY BUILDING, HOSPITAL STREET, AUGUSTA
MAIL ADDRESS: State House Station 17, Augusta, 04333

JOSEPH E. BRENNAN
GOVERNOR

HENRY E. WARREN
COMMISSIONER

MEMORANDUM

DATE: August 3, 1984

TO: Division of Environmental Evaluation and Lake Studies, Water Bureau

FROM: John Sowles, Division of Environmental Evaluation and Lake Studies

SUBJ: Meeting of July 18, 1984

Because of a schedule shuffle, we departed from the topic of lakes last week. Today, July 18, we return to discuss lakes.

1. We agreed that lakes on the MIDAS list at the time of passage by the Legislature would be those managed as lakes and ponds. Exceptions would be named and approved by the Legislature. Future changes would have to have legislative approval. This prevents tampering by individuals or groups under political pressure.

2. We agreed uses of lakes should be similar or equal to those proposed in LD 1250.

3. We agreed that to overcome the drawback of not having a second class of "problem" lakes (since the goal for all lakes is the same) there would be a water quality report, officially recognized by the Legislature, which would identify problem lakes and direct the Board of Environmental Protection to pay special attention to development upstream of these lakes.

4. We agreed that small ponds on private land should be treated differently from larger lakes, but that we'd wait and see what the discharge policy of B waters was before we make a separate class of small ponds with restricted uses.

5. We agreed to define an algae bloom as one having a transparency of 2 meters or less and which impairs use.

6. We agreed no new discharges to lakes would be allowed which are not approved by the Legislature. This brought up the question of whether land application is considered a discharge. Past meeting parlance with George Lord reveals that land application systems must have discharge licenses. Now----, where does that put us?

7. We agreed that we do not want a statement regulating development but we do want to say that development has the potential to eutrophy and include some language which assists the DEP, RPC's, and municipal staffs when staff review of development are needed. This is compatible with phrases in the sub-division law which requires development to be "in harmony with the environment" and "must meet all state laws."

8. We agreed that the land-use "discharge" policy of LD 1250 says what we want.

cc: Stephen W. Groves, Director REGIONAL OFFICES

S.10

STATE OF MAINE

Department of Environmental Protection

MAIN OFFICE: RAY BUILDING, HOSPITAL STREET, AUGUSTA
MAIL ADDRESS: State House Station 17, Augusta, 04333

JOSEPH E. BRENNAN
GOVERNOR

HENRY E. WARREN
COMMISSIONER

MEMORANDUM

DATE: July 30, 1984

TO: Division of Environmental Evaluation and Lake Studies
Bureau of Water Quality Control

FROM: John Sowles

SUBJ: July 12 Meeting

The accomplishments of our July 12 meeting were:

1. We agreed that four classes of flowing water were desirable.

2. We agreed that waters whose quality does not meet the goal set by its classification could not receive additional pollutants which would inhibit the recovery of the water body to a condition meeting its classified goal. This would mean that a river with a D.O. problem could not receive more B.O.D. but could receive, say, metals as long as those metal levels did not exceed levels necessary to maintain the classification.

3. We agreed that there ought to be a formal means of evaluating/reevaluating water quality. Two possibilities would be to publish our 305b report biennially or our use attainability analysis every three years.

4. We agreed we wanted a class of waters to which no discharges would be permitted.

5. We agreed that this special "no-discharge class" would also exclude hydro development in the segment as well as below if it created a backwater in this class.

6. We agreed that the "no discharge class" of waters could be below a different class as long as the effect of that different class was not discernible within the "no-discharge class."

7. We agreed that the designated uses of the "no-discharge class": include but not be limited to water contact recreation, domestic water supplies, aquatic life and wildlife habitat and navigation.

8. We agreed that prohibited uses include hydro development industrial water supply, cooling water supply.

9. We agreed the "no-discharge class" include all waters in the Governor's Rivers Bill which have no existing discharges, the waters of the Allagash Waterway and Baxter State Park. (Question. Did we put waters draining less than 10 square miles in here too?)

10. We agreed to coordinate with L.U.R.C. so that state agency policies would be compatible with one another. L.U.R.C., as you might recall, zones to control development and could conflict with our classification system.

11. We agreed that the class below the "no-discharge class" have water quality which does not measurably effect the aquatic biota. To do this, discharges to this class must meet the water quality required of the next lower class. For example, if we call this water Class A, discharges to Class A must be of Class B quality, not the receiving water mind you, but the discharge itself. This is preferable to the present "equal to or better than" language.

At this point we adjourned.

Questions raised, however, include: How do we handle low flow, fish migration barriers and subcategories of use. Lets bring them up at another meeting.

JS/w

cc: Stephen W. Groves, Director

STATE OF MAINE

Inter-Departmental Memorandum Date 7-3-84

To Steve Groves Dept.

From Terry M'Govern Dept.

Subject Redass

Here is a typed version of the water quality standards bill. It differs from the handwritten draft in that the use of "limited water contact recreation" for C and SC has been changed to "water contact recreation". A risk level of 9/1000 is specified for B, C, SB+SC. We may want to go to two levels of risk once we know more about the attainment of proposed standards.

AN ACT to Amend the Classification System for Maine Waters, Change the Classification of Certain Waters and Exempt Certain Discharges from Licensing

Be it enacted by the People of Maine as follows:

Sec. 1. 38 MRSA §360 is enacted to read:

§360 Classification of Maine Waters

1. Findings; purpose

The Legislature finds and declares that the proper management of the State's water resources is of grave public interest and concern to the State in promoting its general welfare, preventing disease, promoting health, providing habitat for wildlife and as a source of recreation.

The Legislature further finds and declares that although the goal of the State is that all its surface waters shall be suitable for fishing and for recreation in and on the water, the remote, pristine waters of the State are more suitable for these purposes than waters which are impacted by human populations and economic development and that it is necessary to classify waters for the preservation of qualities which exceed those which are minimally acceptable for fishing and swimming.

The Legislature intends by the enacatment of this legislation to establish water quality management goals for the State's waters which will protect them and facilitate the improvement of those which do not presently meet their goal.

2. Procedures for Reclassification of Maine Waters

a. Data Collection. Following public notice, the board shall conduct classification studies and investigations. Information collected during these studies and investigations shall be made available to the public in an expeditious manner. After consultation with other State agencies and, where appropriate, individuals, citizen groups, industries, municipalities and federal and interstate water pollution control agencies, the board may propose changes in water quality classifcations.

b. Public Hearings. The board shall call public hearings in the affected area or reasonably adjacent thereto, for the purpose of presenting to all interested persons the proposed classification for each particular water body and obtaining public input.

c. Recommendations to the Legislature. In accordance with this section, the board shall recommend changes in classification to the Legislature.

3. General Provisions

a. Management goals. Classification of water quality management goals shall be based on the quality of water necessary to support the designated uses established as the goal for each body of water. There shall be no issuance of a waste discharge license pursuant to 38 MRSA §414-A or a water quality certification pursuant to section 401 of the United States Clean Water Act if such issuance will cause the quality of the particular receiving water to fall below the minimum standards specified in sections 363, 363-A, 363-B and 364 for the management goal of that particular receiving water.

b. Discharge assimilation. There shall be no discharge of sewage, industrial waste, heat, hazardous matter or other substances to waters of the State which imparts color, taste, turbidity, toxicity, radioactivity or other characteristics which cause those waters to be unsuitable for the uses ascribed to their class. All surface waters of the State shall be free of settled substances such as sludge deposits and sediment banks and of floating substances such as oil, grease, foam and scum, except as naturally occur, which would impair the uses ascribed to their class.

There shall be no discharge to waters of the State which violates the discharge provisions specified in sections 363, 363-A, 363-B and 364 or causes the quality of downstream waters to fall below the minimum standards specified in those sections. Waters contained in excavations for the purpose of wastewater treatment or containment shall not be classified provided that any discharge from said excavation is licensed in accordance with section 413.

c. Discharge prohibited. There shall be no new discharge of sewage or industrial wastewaters, with the exception of uncontaminated, noncontact cooling water or discharges incidental to hyroelectric power generation, to Class SA waters, areas of Class SB waters which have been designated "reclaimable shellfish propagation and harvesting areas" by the board, Class GP waters, tributaries of Class GP waters or to waters with a drainage area of less than 10 square miles.

d. Alteration of flow. There shall be no unnatural alteration of the volume of flow in any classified body water in a manner which will, in combination with natural conditions and licensed discharges, cause the quality of downstream water to fall below the minimum standards specified in sections 363, 363-A, 363-B and 364.

Sec. 2. 38 MRSA §363 is amended to read:

§363. Standards [of] for classification of fresh waters

The board shall have 4 standards for the classification of fresh surface waters[.] which are not classified as great ponds.

Class AA shall be the highest classification and shall be applied to waters which are outstanding resources for reasons of ecological, social, scenic or recreational importance. Class AA waters shall be of such quality that they are suitable for drinking water after disinfection, water contact recreation, fishing and other recreational activities, navigation and as a habitat for fish and wildlife.

The aquatic life, dissolved oxygen and bacteria content of these waters shall be as naturally occurs.

The discharge of pollutants, other than those exempt from licensing as specified in section 413(4), shall be prohibited. All surface waters upstream of Class AA waters shall have a water quality management goal of Class AA, Class A or Class GP-A.

Class A shall be the 2nd highest classification and these waters shall be of such quality that [it can be used for recreational purposes, including bathing, and for public water supplies after disinfection.] they are suitable for drinking water after disinfection, water contact recreation, fishing and other recreational activities, industrial process and cooling water supply, hydroelectric power generation, navigation and as a habitat for fish and wildlife.

The dissolved oxygen content of [such] Class A waters shall not be less than 75% of saturation or as naturally occurs. [, and contain not more than 20 fecal coliform bacteria per 100 milliliters.] The aquatic life and bacteria content of these waters shall be as naturally occurs.

[These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which would impart color, turbidity, taste or odor other than that which naturally occurs in said waters, nor shall such matter or substance alter the temperature or hydrogen-ion concentration of these waters or contain chemical constituents which would be harmful or offensive to humans or which would be harmful to animal or aquatic life. No ratioactive matter or substance shall be permitted in these waters other than that occurring from natural phenomena.

There shall be no discharge of sewage or other pollutants into water of this classification and no deposits of such material on the banks of these waters in any manner that transfer of sewage other pollutants into the waters is likely, except that existing licensed discharges into waters of this classification will be allowed to continue until practical alternatives exist.] typo in law

New discharges to these waters, other than those exempt from licensing as specified in section 413(4), will be permitted only if, in addition to satisfying all the requirements of this chapter, the discharged effluent will be equal to or better than the existing water quality of the receiving waters. Prior to issuing a discharge license, the board shall require the applicant to objectively demonstrate to the board's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available.

Existing licensed discharges to these waters with a discharged effluent which is not equal to or better than the existing water quality of the receiving waters will be allowed to continue until practical alternatives exist.

Class B [the 2nd highest classification, shall be divided into 2 desinated groups as B-1 and B-2.] shall be the 3rd highest classification and these waters shall be of such quaity that they are suitable for drinking water supply after treatment, water contact recreation, fishing and other recreational activities, industrial process and cooling water supply, hydroelectric power generation, navigation and as a habitat for fish and wildlife.

[B-1. Waters of this class shall be considered the higher quality of the Class B group and shall be acceptable for recreational purposes, including water contact recreation, for use as potable water supply after adequate treatment and for a fish and wildlife habitat.] The dissolved oxygen content of [such] Class B waters shall be not less than 75% of saturation [, and not less than 5 parts per million at any time.] or as naturally occurs. [The fecal coliform bacteria shall not exceed 60 per 100 milliliters] Between May 15th and September 30th, the *Escherichia coli* bacteria level in these waters shall not exceed a geometric mean of 160 per 100 milliliters. During the remainder of the year, bacteria shall be present only in amounts which do not cause these waters to be unsuitable for their designated uses other than water contact recreation.

Discharges to Class B waters shall not cause adverse impact to aquatic life in that the receiving waters, after mixing with any discharge and in combination with all other discharges, shall be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community.

[These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification nor shall such matter or subsrance alter the temperature or hydrogen-ion concentration of these waters so as to render such waters harmful to fish or other aquatic life. There shall be no discharge to these waters which will cause the hydrogen-ion centration or] Discharges to these waters shall not cause fish to be unsuitable for human consumption or cause the "pH" of these waters to fall outside of the 6.0 to 8.5 range. [There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans, animals or aquatic life or which adversely affect any other water use in this class. No radioactive matter or substances shall be discharged to these waters which will raise the radio-nuclide concentrations above the standards as established by the United States Public Health Service as being acceptable for drinking water. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material, or which interferes with the propagation of fish.]

[There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatmet for the adequate removal of waste constitutents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

B-2. Waters of this class shall be acceptable for recreational purposes including water contact recreation, for industrial and potable water supplies after adequate treatment, and for a fish and wildlife habitat. The dissolved oxygen of such waters shall not be less than 60% of saturation, and not less th an 5 parts per million at any time. The fecal coliform bacteria is not to exceed 200 per 100 milliliters.]

[These waters shall be from sludge deposits, solid refuse and floating solids such as oils, grease and scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification, nor shall such matter or substance alter the temperature or hydrogen-ion concentration of the waters so as to render such waters harmful to fish or other aquatic life. There shall be no disposal of any matter or subatance that contains chemical constituents which are harmful to humans, anumal or aquatic life, or which adversely affect any other water use in this class. There shall be no discharge to these waters which will cause the hydrogen-ion concentration of "pH" of these waters to fall outside of the 6.0 to 8.5 range. No radioactive matter or substance shall be discharged to these waters which will raise the radio-nuclide concentrations above the standards as established by the United States Public Health Service as being acceptable for drinking water. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material, or which interferes with the propagation of fish.

There shall be no disposal of sewage, industrial wastes or other wastes in such waters except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.]

Class C [, waters, The 3rd highest classification, shall be of such quality as to be satisfactory for recreational boating and fishing, for a fish and wildlife habitat and for other uses except potable water supplies and water contact recreation, unless such waters are adequately treated.] shall be the lowest classification and these waters shall be of such quality that they are suitable for drinking water supply after treatment, water contact recreation, fishing and other recreational activities, industrial process and cooling water supply, hydroelectric power generation, navigation and as a habitat for fish and wildlife. The dissolved oxygen content of [such] Class C waters shall be not [be] less than 5 parts per million or 60% of saturation, whichever is higher, or as naturally occurs. [, except in those cases where the board finds that the natural dissolved oxygen of any such body of water falls below 5 parts per million, in which case the board may grant a variance to this requirement. In no event shall the dissolved oxygen content of such waters be less than 4 parts per million. The fecal coliform bacteria is not to exceed 1,000 per 100 milliliters.]

Between May 15th and September 30th, the *Escherichia coli* bacteria level in these waters shall not exceed a geometric mean of 160 per 100 ml. During the remainder of the year, bacteria shall be present only in amounts which do not cause these waters to be unsuitable for their designated uses other-than limited water contact recreation.

Discharges to Class C waters may cause some impact to aquatic life in that the receiving waters, after mixing with any discharge and in combination with all other dischages, may cause some changes in the resident biological community provided that the resultant water quality shall be sufficient to naturally support all indigenous species of fish.

[These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste, or odor which would impair the usages ascribed to this classification, nor shall such matter or substance alter the temperature or hydrogen-ion content of the waters so as to render such waters harmful to fish or other aquatic life. There shall be no discharge to these waters which will cause the hydrogen-ion concentration or]

Dischages to these waters shall not cause fish to be unsuitable for human consumption or cause the

"pH" of these waters to fall outside of the 6.0 to 8.5 range. [There shall be no disposal of any mater or substance that contains chemical constituents which ~~with~~ are harmful to humans, animal or aquatic life or which adversely affect any other water use in this class. No radioactive material or substance shall be discharged to these waters which will raise the radio-nuclide concentration above the standards as established by the United States Public Health Service as being acceptable for drinking water.

There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.]

[Class D waters shall be assigned only where a higher water classification cannot be attained after utilizing the best practicable treatment or control of sewage or other wastes.

Waters of this class may be used for power generation, navigation and industrial process waters after adequate treatment.

Dissolved oxygen of these waters shall not be less than 2.0 parts per million. The numbers of coliform bacteria allowed in these waters shall be only those amounts which will not, in the determination of the Commission, indicate a condition harmful to the public health or impair any usages ascribed to this classification.

These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification, nor shall such matter or substance alter the temperature or hydrogen-ion concentration of the waters to impair the usages of this classification. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans or which adversely affect any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animal or aquatic life and there shall be no disposal of any matter or substance which would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption.]

[There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification.]

[Treated wastes discharging to these waters shall not create a public nuisance as defined in Title 17, Section 2802, by the creation of odor producing sludge banks and deposits or other nuisance conditions.

With respect to all classifications hereinbefore set forth, the board may take such actions as may be appropriate for the best interests of the public, when it finds that any such classification is temporarily lowered due to abnormal conditions of temperature or stream flow.]

Sec. 3. 38 MRSA §363-A is amended to read:

§363-A Standards [of] for classification of great ponds

The board shall have [2 standards] 1 standard - Class GP - for the classification of great ponds except that impoundments of rivers may be otherwise classified as specified in section 363. To facilitate the improvement of water quality in certain great ponds, this classification shall be divided into two designated groups: GP-A and GP-B. Class GP waters shall be of such quality that they are suitable for drinking water supply after treatment, water contact recreation, fishing and other recreational activities, industrial process and cooling water supply, hydroelectric power generation, navigation and as a habitat for fish and wildlife.

The quality of Class GP water shall be described by a Trophic State Index ranging from 0 to 100 as defined by the board which shall include measures of the chlorophyll "a" content, Secchi disk transparency, total phosphorus content and other appropriate criteria. The *Escherichia coli* bacteria level in these waters shall not exceed 160 per 100 milliliters at any point at any time.

There shall be no new discharge into Class GP waters of sewage or industrial waste waters with the exception of uncontaminated, noncontact cooling water or discharges incidental to hdyroelectric power generation. Existing licensed discharges into these waters or their tributaries shall be allowed to continue only until practical alternatives exist, or as provided in section 371-A, subsection 3 for aquatic pesticides. Discharges into these waters shall not cause fish to be unsuitable for human consumption or cause the "pH" of the water to fall outside the 6.0 to 8.5 range. No materials may be placed on or removed from the shores or banks of a Class GP water body in such a manner that materials may fall or be washed into the water or that contaminated drainage therefrom may flow or leach into those waters, except as provided in section 391. No discharge resulting from a change of land use in the watershed of a Class GP water body may, by itself or in combination with other discharges, cause water quality degradation which would impair the designated use of Class GP waters or cause an increase in the phosphorus loading to Class GP waters which will degrade the quality of those waters.

Great ponds designated as GP-A shall have a stable or decreasing trophic state, subject only to natural fluctuations, and shall be free of culturally-induced, blue-green, Cyanophyta, algal blooms.

Great ponds designated as GP-B include those which support repeated culturally-induced blue-green Cyanophyta, algal blooms or which have water quality characterized by a current trend of increasing trophic state which cannot be accounted for solely by natural fluctuations. The water quality management goal of all designated GP-B waters shall be that their quality be improved and that they be restored to GP-A quality.

[Class GP-A shall be the highest classification and shall be of such quality that it can be used for recreational purposes, including bathing, fish and wildlife habitat and for public water supplies after disinfection. Such waters shall have a Secchi disk transparency of not less than 2.0 meters or as naturally occurs, and contain not more than 20 fecal coliform bacteria per 100 milliliters. Total phosphorus concentration shall not exceed 15 parts per billion, and chlorophyll A concentration shall not exceed 8 parts per billion as measured in samples taken at or near the surface of the water.

These waters shall be free from sludge deposits, solid refuse. floating solids, oils, grease and scum. No radioactive matter or substance shall be permitted in these waters other than that occurring from natural phenomena.

There shall be no direct or indirect discharge of sewage, pollutants or other substances harmful to water quality or aquatic life into waters of this classification except as provided in sections 371-A and 413. No materials shall be placed on the shores or banks thereof in such a manner that the same may fall or be washed into the waters or in such a manner that the drainage therefrom may flow or leach into those waters.

Class GP-B, the 2nd highest classification, shall be acceptable for recreational purposes, including water contact recreation, for use as potable water supply after adequate treament, and for a fish and wildlife habitat. The fecal coliform bacteria count is not to exceed 60 per 100 milliliters. The total phosphorus concentration shall not exceed 50 parts per billion as measured in samples taken at or near the surface of the water.

These water shall be free from sludge deposits, solid refuse and floating solids, such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification nor shall such matter or substance alter the temperature or hydrogen-ion concentration of these waters so as to render such waters harmful to fish or other aquatic life. there shall be not discharge to these waters which will cause the "pH" of these waters to fall outside of the 5.5 to 8.5 range. There shall be no disposal of any substance that contains chemical constiuents which are harmful to humans, animals or aquatic life or which adversely affect any other water use in this class. No radioactive matter or substances shall be discharged to these waters which will raise the radio-nuclide concentrations above the standards established by the United States Public Health Service as being acceptable for drinking water. These waters shall be free of any matte or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material, or which interferes with the propagation of fish.

There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatment for the adequate removal of waste constituents, including, but not limited to, solids, color, turbidity, taste, odor and toxic material, such that these treated wastes will not cause any violation of water quality standards or alter the usages of this classifcation, nor shall such disposal of sewage or waste be injurious to aquatic life of cause it to be dangerous for human consumption. There shall be no additional discharge of phosphorus to waters of this classification, which discharge does not employ the best available technology for phosphorus removal.]

Sec. 4. 38 MRSA §363-B is amended to read:

§363-B Standards [of] for classification of groundwater

The board shall have [2 standards] 1 standard - Class GW - for the classification of groundwater. To facilitate the improvement of water quality in certain aquifers, this classification shall be divided into two designated groups: GW-A and GW-B.

Class [GW-A] GW waters shall be of such quality that [it] they can be used for [public] drinking water [supplies] supply, industrial process and cooling water supply and for other purposes. [These waters shall be free of radioactive matter or any matter that imparts color, turbidity, taste or odor which would impair usage of these waters, other than that occurring from natural phenomena.] There shall be no direct discharge of pollutants to Class GW waters. Indirect discharges to Class GW waters shall be permitted in accordance with 22 MRSA §43 and 38 MRSA §413 provided that after mixing within a reasonably limited area, they do not cause these waters to be unsuitable for the uses ascribed to their class.

Groundwaters designated as GW-A shall be those which do not contain substances, except as naturally occur, that cause them to be unsuitable for the uses ascribed to their class.

Groundwaters designated as GW-B shall be those which contain culturally-derived substances that cause them to be unsuitable for the uses ascribed to their class. Although the Legislature recognizes that groundwater, once polluted, can usually be reclaimed only by natural processes over an extended period of time, the water quality management goal of all designated GW-B waters shall be that their quality be improved and that they be restored to GW-A quality.

Sec. 5. 38 MRSA §364 is amended to read:

§364 Standards for classification of estuarine and marine waters [Tidal or Marine Waters]

The board shall have [5] 3 standards for the classification of [tidal] estuarine and marine waters.

Class SA [,] shall be the highest classification and these waters shall be of such quality that they are suitable for [all clean water usages, including] water contact recreation, [and] fishing and other recreational activities, propagation and harvesting of shellfish for direct consumption, industrial process and cooling water supply, hydroelectric power generation, navigation and as a habitat for fish and wildlife.

[Such waters shall be suitable for the harvesting and propagation of shellfish and for a fish and wildlife habitat. These waters shall contain not less than 6.0 parts per million of dissolved oxygen at all times.]

The dissolved oxygen content, estuarine life and marine life of these waters shall be as naturally occurs. In waters of this class, [The] the median [numbers of coliform] bacteria level in any series of representative samples [representative of waters in the shellfish growing area or non-shellfish growing area] shall not exceed [be in excess of] 70 total coliform bacteria per 100 milliliters, nor shall more than 10% of the samples exceed 230 total coliform bacteria per 100 milliliters[.] , nor shall the enterococcus bacteria level exceed a geometric mean of 6 per 100 milliliters.

[The median numbers of fecal coliform bacteria in any series of samples representative of waters in the shellfish growing area or non-shellfish growing area shall not be in excess of 14 per 100 milliliters, nor shall more than 10% of the samples exceed 43 fecal coliform bacteria per 100 milliliters.]

There shall be no new discharge into Class SA waters of sewage or industrial wastewaters, with the exception of uncontaminated, noncontact cooling water. Existing licensed discharges into these waters shall be allowed to continue only until practical alternatives exist provided tha they cause no harm to estuarine or marine life. [There shall be no floating solids, settleable solids, oil or sludge deposits attributable to sewage, industrial wastes or other wastes and no deposit garbage, cinders, ashes, oils, sludge or other refuse. There shall be no discharge of sewage or other wastes, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

There shall be no toxic wastes, deleterious substances, colored or other waste or heated liquids discharged to waters of this classification either singly or in combinations with other substances or wastes in such amounts or at such temperatures as to be injurious to edible fish or shellfish or to the culture or propagation thereof, or which in any manner shall adversely affect the flavor, color, odor or sanitary condition thereof; and otherwise none in sufficient amounts to make the waters unsafe or unsuitable for bathing or impair the waters for any other best usage as determined for the specific waters assigned to this class. There shall be no discharge which will cause the hydrogen-ion concentration or] Discharges to waters of this class shall not cause fish or shellfish to be unsuitable for direct human consumption or cause the "pH" of these waters to fall outside of the 6.7 to 8.5 range.

[There shall be no disposal of any matter or substances that contains chemical constituents which are harmful to humans, animal or aquatic life or which adversely affect any other water use in this class. No radioactive matter or substance shall be permitted in these waters would be harmful to humans, animal or aquatic life and there shall be no disposal of any matter or substance which would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material, or which interferes with the propagation of fish or shellfish if indigenous to the area.]

Class [SB-1] SB shall be the 2nd highest classification and these waters shall be of such quality that they are suitable for [all clean water usages including] water contact recreation, [and] fishing[.] and other recreational activities, propagation and harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as a habitat for fish and wildlife. [Such waters shall be suitable for the harvesting and propagation of shellfish, and for a fish and wildlife habitat. These waters shall contain not less than 6.0 parts per million of dissolved oxygen at all times.]

The dissolved oxygen content of Class SB waters shall be not less than 85% of saturation or as naturally occurs. In waters of this class, [The] the median [numbers of coliform] bacteria level in any series of representative samples [representative of waters in the shellfish growing area] shall not exceed [be in excess of] [70] 700 total coliforms per 100 milliliters[.] , nor shall the enterococcus bacteria level exceed a geometric mean of 6 per 100 milliliters.

[The median numbers of fecal coliform bacteria in any series of samples representative of waters in the shellfish growing area shall not be in excess of 14 per 100 milliliters, nor shall more than 10% of the median numbers of coliform bacteria per 100 milliliters. In a non-shellfish growing area the median numbers of coliform bacteria in a series of samples representative of the waters shall not exceed 240 per 100 milliliters, nor shall more than 10% of the samples exceed 50 coliform bacteria per 100 milliliters. In a non-shellfish growing area the median numbers of fecal coliform bacteria in a series of samples representative of the waters shall not exceed 50 per 100 milliliters, nor shall more than 10% of the samples exceed 150 fecal coliform bacteria per 100 milliliters.]

Discharges to Class SB waters shall not cause adverse impact to estuarine or marine life in that the properties of the receiving water after mixing with any discharge and in combination with all other discharges, shall be of sufficient quality to support all estuarine and marine life indigenous to the receiving water without changes in the resident biological community. [There shall be no floating solids, settleable solids, oil or sludge deposits attributable to sewage, industrial wastes or other wastes and no deposit of garbage, cinders, ashes, oils, sludge or other refuse. There shall be no discharge of sewage or other wastes, except those which have received treatment for the adequate removal of waste constituents including but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

There shall be no toxic wastes, deleterious substances, colored or other wastes or heated liquids discharged to waters of this classification, either singly or in combination with other substances or wastes in such amounts or at such temperatures as to be injurious to edible fish or shellfish or to the culture or propagation thereof, or which in any manner shall adversely affect the flavor, color, odor or sanitary condition thereof; and otherwise none in sufficient amounts to make the waters unsafe or unsuitable for bathing or impair the waters for any other best usage as determined for the specific waters which are assigned to this class. There shall be no waste discharge which will cause the hydrogen-ion concentration or] Discharges to waters of this class shall not cause fish or shellfish to be unsuitable for human consumption or cause the "pH" of these waters to fall outside the 6.7 to 8.5 range. [There shall be no disposal of matter or substance that contains chemical constituents which are harmful to humans, animal or aquatic life or which adversely affects any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animal or aquatic life and there shall be no disposal of any matter or substance which would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material or which interferes with the propagation of fish or shellfish if indigenous to the area.]

[Class SB-2 shall be suitable for recreational usages, including water contact, and fishing. Such waters shall be suitable for the harvesting and propagation of shellfish, for a fish and wildlife habitat, and suitable for industrial cooling and process uses. These waters shall contain not less than 6.0 parts per million of dissolved oxygen at all times. The median numbers of coliform bacteria in any series of samples representative of waters in the shellfish growing area shall not be in excess of 70 per 100 milliliters, nor shall more than 10% of the samples exceed 230 coliform bacteria per 100 milliliters. The median numbers of fecal coliform bacteria in any series of samples representative of waters in the shellfish growing area shall not be in excess of 14 per 100 milliliters, nor shall more than 10% of the samples exceed 43 fecal coliform bacteria per 100 milliliters. In a non-shellfish growing area the median numbers of coliform bacteria in a series of samples representative of the waters shall not exceed 500 per 100 milliliters, nor shall more than 10% of the samples exceed 1,000 coliform bacteria per 100 milliliters. In a non-shellfish growing area the median of fecal coliform bacteria in a series of samples representative of the waters shall not exceed 100 per 100 milliliters, or shall more than 10% of the samples exceed 200 fecal coliform bacteria per 100 milliliters. There shall be no floating solids, settleable solids, oil or sludge deposits attributable to sewage, industrial wastes or other wastes and no deposit of garbage, cinders, ashes, oils, sludge or other refuse. There shall be no discharge of sewage or other wastes, except those having received treatment for the adequate removal of waste constituents including but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

There shall be no toxic wastes, deleterious substances, colored or other wastes or heated liquids discharged to waters of this classification either singly or in combination with other substances or wastes in such amounts or at such temperatures as to be injurious to edible fish or shellfish or to the culture or propagation thereof, or which in any manner shall adversely affect the flavor, color, odor or sanitary condition thereof; and otherwise none in sufficient amounts to make the waters unsafe or unsuitable for bathing or impair the waters for any other best usage as determined for the specific waters assigned to this class. There shall be no waste discharge which will cause the hydrogen-ion concentration or "pH" of the receiving waters to fall outside of the 6.7 to 8.5 range. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans, animal or aquatic life or which adversely affects any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animal or aquatic life and there shall be no disposal of any matter or substance which would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material, or which interferes with the propagation of fish or shellfish if indigenous to this area.]

Class SC [,] <u>shall be</u> the [4th highest] <u>lowest</u> classification [,] <u>and these waters</u> shall be of such quality [as to be satisfactory] <u>that they are suitable</u> for [recreational boating] <u>water contact recreation,</u> fishing and other [similar uses except primary water contact.] <u>recreational activities, propagation of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as a habitat for fish and wildlife.</u>

[Such waters may be used for the propagation of indigenous shellfish to be harvested for depuration purposes, for a fish and wildlife habitat, and for industrial cooling and process uses. The dissolved oxygen content of such waters shall not be less than 5 parts per million at any time.]

The dissolved oxygen content of Class SC waters shall be not less than 70% of saturation or as naturally occurs. Between May 15th and September 30th, the enterococcus bacteria level in these waters shall not exceed a geometric mean of 6 per 100 milliliters.

[The median numbers of coliform bacteria in any series of samples representative of waters in the shellfish growing area shall not be in excess of 700 per 100 milliliters, nor shall more than 10% of the samples exceed 2,300 coliform bacteria per 100 milliliters. The median numbers of fecal coliform bacteria in any series of samples representative of waters in the shellfish growing area shall not be in excess of 150 per 100 milliliters, nor shall more than 10% of the samples exceed 500 fecal coliform bacteria per 100 milliliters. In a non-shellfish growing area the median number of coliform bacteria in a series of samples representative of the waters shall not exceed 1,500 per 100 milliliters nor shall more than 10% of the samples exceed 5,000 coliform bacteria per 100 milliliters.

In a non-shellfish growing area the median numbers of fecal coliform bacteria in a series of samples representative of the waters shall not exceed 300 per 100 milliliters, nor shall more than 10% of the samples exceed 1,000 fecal coliform bacteria per 100 milliliters.]

Discharges to Class SC waters may cause some impact to estuarine and marine life in that the receiving waters, after mixing with any discharge and in combination with all other discharges, may cause some changes in the resident biological community provided that the resultant water quality shall be sufficient to naturally support all indigenous species of fish.

[There shall be no floating solids, settleable solids, oil or sludge deposits attributable to sewage, industrial waste or other wastes, and no deposit of garbage, cinders, ashes, oils, sludge or other refuse. There shall be no discharge of sewage or other wastes, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic materials, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

There shall be no toxic wastes, deleterious substances, colored or other wastes or heated liquids discharged to waters of this classification either singly or in combination with other substances or wastes in such amounts or at such temperatures as to be injurious to edible fish or shellfish or to the culture or propagation thereof, or which in any manner shall adversely affect the flavor, color, or odor thereof or impair the waters for any other discharge ascribed to waters of this classification. There shall be no waste discharge which will cause the hydrogen-ion concentration or]

Discharges to waters of this class shall not cause fish to be unsuitable for human consumption or cause the "pH" of the receiving waters to fall outside the 6.7 to 8.5 range. [There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans, animal or aquatic life or which adversely affects any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animals or aquatic life and there shall be no disposal of any matter or substance which would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for ~~man~~ human consumption.]

[Class SD waters shall be assigned only where a higher water classification cannot be attained after utilizing the best practicable treatment or control of sewage or other wastes. Waters of this class may be used for power generation, navigation, industrial process waters or cooling waters, and for migration of fish. Dissolved oxygen of these waters shall not be less than 3.0 parts per million at any time. The numbers of coliform bacteria allowed in these waters shall be only those amounts which will not, in the determination of the board, indicate a condition harmful to the public health or impair any usages ascribed to this classification.

These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification, nor shall such matter or substance alter the temperature or hydrogen-ion concentration of the waters so as to impair the usages of this classification. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans or which adversely affect any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animal or aquatic life and there shall be no disposal of any matter or substance which would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption.

There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or altar the usages of this classification. Treated wastes discharged to these waters shall not create a public nuisance as defined in Title 17, Section 2802, by the creation of odor-producing sludge banks and deposits or other nuisance conditions.

With respect to all classifications hereinbefore set forth, the board may take such actions as may be appropriate for the best interests of the public, when it finds than any such classification is temporarily lowered due to abnormal conditions of temperature or stream flow.]

Sec. 6. 38 MRSA §368 is amended to read:

Sec. 7. 38 MRSA §369 is amended to read:

Sec. 8. 38 MRSA §370 is amended to read:

Sec. 9. 38 MRSA §413 is amended to read:

§413. Waste discharge licenses

1. License required. No person shall directly or indirectly, discharge or cause to be discharged any pollutant without first obtaining a license therefore from the board.

[1-A.]2. License required for surface waste water disposal systems. No person shall install, operate or maintain a surface waste water disposal system without first obtaining a license therefor from the board.

[1-B.]3. License required for subsurface waste water disposal systems. No person shall install, operate or maintain a subsurface waste water disposal system without first obtaining a license therefor from the board, except that a license shall not be required for systems designed and installed in conformance with the State of Maine Plumbing Code, as prolulgated under Title 22, section 42.

[2. Exception. No person shall be deemed to be in violation of subsection 1 for any discharge as it existed on Oct. 3, 1973 provided that application has been made for a license for such discharge on or before December 31, 1973. The exemption provided by this subsection shall expire upon final administrative disposition of such application or 180 days after the date of such application, whichever occurs first.]

4. Exemptions.

No person shall be deemed in violation of this section for the discharge of pollutants due to certain activities, subject to the following conditions.

A. Agriculture. No person shall be deemed in violation of this section for the discharge of rock, sand, dirt or other pollutants resulting from erosion related to agricultural activities, [subject to the following conditions.] provided that:

[A.]i. The appropriate soil and water conservation district has recommended an erosion and sedimentation control plan or conservation plan for the land where this erosion originates.

[B.]ii. The board has certified that the plan meets the objectives of this chapter.

[C.]iii. The department determines that the agricultural activities are in compliance with the applicable portion of the plan, or the soil and water district has certified that funds from existing federal and state programs are not available to implement the applicable portion of the plan.

[D.]iv. The discharge causes no harm to aquatic life or results in a turbidity increase of XX Nephelometric Turbidity Units in any perennial water body.

B. Forestry. No person shall be deemed in violation of this section for the discharge of rock, sand, dirt or other pollutants resulting from erosion related to forestry activities provided that the discharge causes no harm to aquatic life or results in a turbidity increase of XX Nephelometric Turbidity Units in any perennial water body.

C. Site Location of Development. No person shall be deemed in violation of this section for the discharge of rock, sand, dirt or other pollutants resulting from erosion related to activities permitted under 38 MRSA §344 provided that:

i. the activities are in full compliance with the approved comprehensive erosion and sedimentation control plan.

ii. The discharge causes no harm to aquatic life or results in a turbidity increase of XX Nephelometric Turbidity Units in any perennial water body.

D. Projects which are exempt from Site Location of Development. No person shall be deemed in violation of this section for the discharge of rock, sand, dirt or other pollutants resulting from building or landscaping projects which are exempt from Site Location of Development provided that:

i. The project is conducted in a manner which minimizes discharges to the State's waters.

ii. The discharge causes no harm to aquatic life or results in a turbidity increase of XX Nephelometric Turbidity Units in any perennial water body.

E. Navigation. No person shall be deemed in violation of this section for the discharge of pollutants incidental to the propulsion of mechanically-powered watercraft provided that:

i. The discharge is from a propulsion unit which is mechanically sound and in good working order.

ii. The discharge does not violate 38 MRSA §423 or 38 MRSA §543.

iii. The discharge causes no harm to aquatic or marine life.

F. Fishing. No person shall be deemed in violation of this section for the discharge of pollutants incidental to fishing provided that:

i. The pollutant is not discharged as the result of pumping or other mechanical actions.

ii. The discharge does not violate 38 MRSA §423 or 38 MRSA §543.

iii. The discharge causes no harm to aquatic or marine life. This exemption does not apply to the discharge or disposal of pollutants from fish processing facilities located on the State's land.

G. Snow Dumps

[2-B. Exemptions; snow dumps.] The Board of Environmental Protection may by rule exempt categories of snow dumps from the need to obtain a license under this section when it finds that the exempted activity would not have a significant adverse effect on the quality or classification of the waters of the State.

[3.] 5. Transfer of Ownership. In the event that any person possessing a license issued by the board shall transfer the ownership of the property, facility or structure which is the source of a licensed discharge, without transfer of the license being approved by the board, the license granted by the board shall continue to authorize a discharge within the limits and subject to the terms and conditions stated in the license, provided that the parties to the transfer shall be jointly and severally liable for any violation thereof until such time as the board approves transfer or issuance of a waste discharge license to the new owner. The board may in its discretion require the new owner to apply for a new license, or may approve transfer of the existing license upon a satisfactory showing that the new owner can abide by its terms and conditions.

~~4 and 5. Repealed.~~

6. Unlicensed discharge. If after investigation the board finds any unlicensed discharge, it may notify the Attorney General of the violation without recourse to the hearing procedures of section 347. The Attorney General shall proceed immediately under section 348.

7. Tidal waters and subtidal lands. In connection with a license under sections 414 and 414-A, whenever issued, the board may grant to a licensee a permit to construct, maintan and operate any facilities necessary to comply with the terms of such license in, on, above or under tidal waters or subtidal lands of the State. Such permit may be issued upon such terms and conditions as the board deems necessary to insure that such facilities create minimal interference with existing uses, incuding a requirement that the licensee provide satisfactory evidence of financial capacity, or in lieu thereof, a bond in such form and amount as the board may find necessary, to insure removal of such facilities. In the event that such facilities are no longer necessary in order for such licensee or successor thereof to comply with the terms of its license, the board may, after opportunity for notice and hearing, require the licensee or successor to remove all or any portion of such facilities from the tidal waters or subtidal lands. Such removal may be ordered if the board determines that maintenance of such facilities will unreasonably interfere with navigation, the development or conservation of marine resources, the scenic character of any coastal area, other appropriate existing public uses of such area or public health and safety, and that cost of such removal will not create an undue economic burden on such licensee or successor.

STATE OF MAINE

Inter-Departmental Memorandum Date 3/13/84

To STEVE GROVES Dept. ENVIRONMENTAL PROTECTION

From TERRY MCGOVERN TM Dept. ENVIRONMENTAL PROTECTION

Subject WATER QUALITY SAMPLING CRITERIA

John Sowles and I have had several discussions and disagreements lately concerning water quality sampling criteria. The disagreements seem to arise from the Water Bureau's lack of Standard Procedures Manual. I believe such a manual would greatly aid the effectiveness and efficiency of Water Bureau operations. Here are my thoughts on how that manual's section on water quality sampling criteria should read.

The major objectives of water quality sampling programs are to:

1. Maintain a data base on a wide variety of State waters (polluted and unpolluted) to aid in the formulation of water quality standards. This activity assesses the highly variable nature of water quality impacts and establishes confidence limits on data gathered by less-intensive sampling programs.

2. Determine what portion of the State's waters are not attaining their assigned classification. This activity provides data for changes in the funding of water pollution control programs and the assignment of water quality classifications.

3. Determine if a discharge or combination thereof is causing a violation of classification or licensing laws. This activity provides data for load allocation and enforcement activities.

The most difficult part of establishing a sampling program is to determine how many sampling sites are needed and what frequency of sampling is appropriate. Due to the reality of limited resources being applied to a program, any data collected will provide only an approximation of real conditions. The following considerations should be addressed during the development of any sampling program.

1. Because of the highly variable nature of water quality, feasible sampling programs generally provide only a crude approximation of environmental conditions. This is in sharp contrast to sampling in such programs as agricultural experimentation where rigorously controlled environmental conditions provide data which has statistical significance.

2. When data collected from a limited number of locations at a limited frequency is used to make generalizations about water quality for an entire water body or segment thereof, the primary consideration in making assessments (generalizations) on water quality is what level of confidence will be associated with that data.

3. The confidence associated with the completeness of water quality data needs to be assessed not from the viewpoint of the person designing the sampling program but from the viewpoint of the ultimate judges of that data; whether they be in a court of law, the legislature, the general public, or other regulatory agencies.

Please inform me of your opinion on the validity of these criteria as well as the development of a Standard Procedures Manual.

cc: John Sowles

TM/krs

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J. F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203

February 29, 1984

Mr. Frank Fiore
Planning and Evaluation Division
Department of Environmental
Protection
State House, Station 17
Augusta, ME 04333

Dear Frank,

The Environmental Protection Agency (EPA) has recently revised the methods for calculating the final acute values for toxicity to aquatic life and has recalculated the criteria for a number of the more prevalent toxic contaminants. The Federal Register published Tuesday, February 7 and Wednesday, February 15, 1984, request comments on revised criteria for:

1. Ammonia
2. Arsenic
3. Cadmium
4. Chlorine
5. Chromium (+6 and +3)
6. Copper
7. Cyanide
8. Lead
9. Mercury
10. Dioxin

Copies of the Federal Register summaries are attached along with the revised criteria documents for all of the above except Dioxin. Also "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Life and Its Uses" and "Calculation of the Final Acute Value for Water Quality Criteria for Aquatic Life" are included for your use.

We are using the revised criteria for screening purposes in our review of permits in the non-delegated states in accordance with our policy on issuing permits for potentially toxic discharges. You may wish to do the same, wait for the criteria to become final, or develop your own. If you have any questions feel free to call me at 617-223-3935 or Frank Gostomski in EPA Headquarters at 203-245-3030.

Sincerely yours,

Eric

Eric P. Hall
Planning and Standards Section
Water Quality Branch

Enclosures

File

STATE OF MAINE

Department of Environmental Protection

MAIN OFFICE: RAY BUILDING, HOSPITAL STREET, AUGUSTA
MAIL ADDRESS: State House Station 17, Augusta, 04333

JOSEPH E. BRENNAN
GOVERNOR

HENRY E. WARREN
COMMISSIONER

TO: Senator Judy Kany
Representative John Martin
Representative Elizabeth Mitchell
Representative Donald Hall

FROM: Henry E. Warren, Commissioner

SUBJ: L.D. 1250

DATE: November 7, 1983

The Department has gotten authorization from the Governor's Office to withdraw L.D. 1250, AN ACT To Revise the Classification System for Maine Waters. This action results from the recent release by U.S. EPA of a totally new system of measuring and categorizing bacterial impacts on water quality. This change affects the field work we have already completed and may require a different approach to the classification process.

We will stay in touch as the plans develop and welcome any input we can get. We expect to resubmit the bill in revised form for deliberation by the 112th Legislature.

HEW/raj

cc: ~~Stephen~~ W. Groves
Richard Davies

STATE OF MAINE
Department of Environmental Protection

MAIN OFFICE: RAY BUILDING, HOSPITAL STREET, AUGUSTA
MAIL ADDRESS: State House Station 17, Augusta, 04333

JOSEPH E. BRENNAN
GOVERNOR

HENRY E. WARREN
COMMISSIONER

MEMORANDUM

TO: The Honorable Joseph E. Brennan, Governor

FROM: Commissioner Henry E. Warren, D.E.P.

DATE: November 1, 1983

SUBJECT: Department of Environmental Protection Request to Withdraw LD 1250 (An Act to Revise Maine's Water Quality Classification System)

As you recall LD 1250 was tabled by the 111th Legislature until the second regular session. The reasons for the tabling action, as stated by the Energy and Natural Resources Committee, included the desire to allow the Department of Environmental Protection to conduct water quality sampling during a complete field season. It was our intention to return to the second session with a revised water quality classification system as well as recommendations for classifying the Kennebec River Basin and the tidal portions of York County. Very recent actions by the United States Environmental Protection Agency will, with your permission, require us to withdraw LD 1250 and present it to the 112th Legislature.

I have enclosed a copy of an article written for EnvironNews by one of our staff which details the changes in bacteria standards being proposed by EPA. While on the surface this new direction appears to be a setback in our goal of revising Maine's water quality standards we feel the use of a new bacteria standard may help us solve a problem which surfaced during this summer's sampling program. The results of our summer's work show that Maine's major rivers cannot meet swimmability criteria using the existing fecal coliform bacteria limits in existing Maine law.

The treatment systems used by Maine's paper industry depend on bacteria to assimilate the oxygen depleting wastes and in the process some of these bacteria are discharged to the rivers and show up as a false enteric fecal coliform bacteria in our sampling. If we were to proceed with reclassification using the fecal coliform standard most of our major rivers would unjustly be deemed unsuitable for swimming and some streams in which swimming is currently allowed would have to be downgraded. It is important to note that this is only a legal/technical problem. In fact, from a public health standpoint the vast majority of our river miles are perfectly safe for swimming.

The new swimmability standard proposed by EPA recognizes the fallibility of the fecal coliform standard and proposes use of a bacteria standard much more indicative of pollution which can result in illness. We support EPA's position and will be revising our bacteriological sampling and holding public meetings to begin implementation of the new standard.

We do feel that our overall goal of a new classification system and suggested stream classifications for legislative and executive approval is not severely jeopardized. We are hopeful that an additional year of bacteriological sampling will allow us to develop a revised classification system which will suggest that the majority of Maine's rivers be upgraded to allow swimming. Consequently, if you agree I will so inform Senator Kany and Representative Hall.

HEW/SWG/aw

Enclosure

cc: Richard Barringer
Dick Davies

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date 10-6-83

TO: Steve Groves

FROM: Terry McGovern

Terry,

What do you think?

Steve

Return to Sender
Yes ☐ No ☑

REMARKS

To some extent, this approach with SPO is an abrogation of our water quality planning responsibilities. The designated uses specified in L.D. 1250 were logical, incremental and reflected public input obtained during the workshop phase. If we wanted to get the bill through the 111th Legislature, this consultation with SPO would cause an unacceptable delay. If the bill is to go to the 112th, I expect such consultation to yield limited benifits of both a conceptual and a political nature. As for problems with data-fit, they do not weaken the conceptual basis of the Classification Bill but rather define the DEP's goals for pollution abatement.

STATE OF MAINE
Department of Environmental Protection

MAIN OFFICE: RAY BUILDING, HOSPITAL STREET, AUGUSTA
MAIL ADDRESS: State House Station 17, Augusta, 04333

JOSEPH E. BRENNAN
GOVERNOR

HENRY E. WARREN
COMMISSIONER

MEMORANDUM

TO: Richard E. Barringer, Director, State Planning Office

FROM: Henry E. Warren, Commissioner, Department of Environmental Protection

DATE: October 5, 1983

SUBJECT: Designated Uses of Maine Waters

Over the past eighteen months the Department of Environmental Protection has been conducting an intensive program to revise and update the State's use-based system for classification of surface waters. To that end the Department prepared draft legislation for consideration by the first regular session of the 111th Maine Legislature which, as you will recall, was "tabled for further consideration" by the Energy and Natural Resources Committee. Concurrently with this legislative initiative the Department developed and implemented a comprehensive three-year sampling program to provide a sound data base for use in making classification assignments.

Preliminary results from the first field season of the sampling program indicate that water quality conditions in a number of streams show enough seasonal variability or impact from industrial and agricultural discharges that the "higher" uses are not always supported given current levels of treatment/controls. The question of what uses the State's water bodies can or should support was one of the major concerns of citizens, industry groups, legislators and other during the development of and debate over the Department's proposed revisions to the classification system.

The above described efforts are leading us to the conclusion that the assignment of designated uses to specific water bodies is a task the implications of which extend far beyond the DEP's responsibility to protect and maintain water quality. Revision of the system for classification of surface waters, and in particular the assignment of designated uses, represents an opportunity to establish a comprehensive system of water body uses applicable to all State agencies and programs. Such an undertaking would logically seem to fall within the responsibility of the State Planning Office and it is on that assumption that the following paragraphs are based.

My proposal to you is that SPO coordinate a study that would in effect be an extension of the Maine Rivers Study. In such a study the State Planning Office and/or other appropriate State agencies would determine what uses Maine's waterways can physically support and which of those uses the citizens of the State want maintained in particular waters. The Department of Environmental Protection in turn will continue its sampling program to determine existing levels of water quality. That data base will enable us to determine which water bodies have a current water quality adequate to support the desired uses and which water bodies do not. We will also be able to estimate the feasibility and cost of upgrading water quality to the point where desired uses can be supported.

We at the DEP feel that such a study would be of great benefit to the State for a number of reasons. For example: The determination of designated uses for specific water bodies and therefore the level of water quality that will be maintained in those water bodies will reflect the desires of a broaden cross-section of interests than if the recommendations to the legislature came from just the DEP. Also, use designations arrived at through the proposed process would form the basis for water body related planning and implementation activities of all State agencies and would thus promote policy and program consistency between agencies.

There are of course numerous other advantages to this proposal and I urge you to give it your fullest consideration. My staff and I are available at your convenience to assist in fleshing out the specifics of the propsed project.

STATE OF MAINE

Department of Environ

MAIN OFFICE: RAY BUILDING, HOSPITAL STREET,
MAIL ADDRESS: State House Station 17, Augusta

JOSEPH E. BRENNAN
GOVERNOR

Dick,

What do you think?

Steve

Scary if this is seen as an opportunity for a power grab
Rfr

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Ann, Please file these under State by WRL Stuff

Gardner,

What do you think?

Steve

DEPARTMENT OF ENVIRONMENTAL PROTECTION · STATE OF MAINE

JOSEPH E. BRENN
GOVERNOR

AINE

ironmental Protection

TAL STREET, AUGUSTA
n 17, Augusta, 04333

HENRY E. WARREN
COMMISSIONER

DUM

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FROM: Warren — epartment of Environmental Protection

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Steve

MENT OF ENVIRONMENTAL PROTECTION

Date 10-6-83

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_____ Recall

✓ Your Information

_____ Attention

_____ Your File

_____ To Order

Return to Sender
Yes ☐ No ☑

~~Kate~~ Steve

What do you think?

Steve

Yes, this covers everything we talked about a few weeks ago. It is well done; my only reservation is that SPO will take over all control, but maybe that is good. Thanks much

STATE OF MAINE

...ent of Environmental Protection

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Charlie,
What do you think?
Steve

Depa ental Protection

JOSEPH E. BRENNAN
GOVERNOR

HENRY E. WARREN
COMMISSIONER

TO: Richard E. Barringer, Director, State Planning Office

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Is there some other state agency better equipped to determine what uses Maine's waterways can physically support than the DEP?

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Do you remember the DED?

I agree that cooperation and graduation may be very effective in getting the classifications/system through the legislature, however I don't think that it is our charge to be in complete harmony with the rest of the world all the time.

TO: S.W.G
From: CK
Re: Memo Warren to Barringer (Uses of Maine Waters)

That memo gives away one hell of a lot of power. What prompted it? Do you think that the reclassification efforts need broader base support; that the revised system and classifications cannot be sold by DEP alone?

"It shall be the duty of the board, exercising the police power of the state, to control, abate and prevent the pollution of the air, waters, coastal flats and prevent diminution of the highest and best use of the natural environment of the state."

The opinion as to what the "highest and best use" is would vary greatly from one staffed agency to the next. (Prestile Stream) I think the agency has a charge to be an environmental advocate and that by being that we may support a position that is not shared by others and thats OK.

The agency has evolved philosophically over the years and the hard line of "has a charge to be an environmental advocate" is getting a lot of shades of <u>had</u> instead of <u>has</u>. This memo to Barringer is an example of that kind of change. It's insidious but very very real. May be the changes evolve naturally with the gradual de emphasis of the environmental movement.

Anyway, if the memo hasn't gone yet I still think there is another way. One that I suggested in the beginning. Put the system in place first and then change the classifications. Changing the system can be sold on Maine staying abreast of current technology. What we have is antiquated and needs change. No waterways need be mentioned. When our state wide sampling program is finished apply the new system to specific basins. It could even be done a basin at a time. (divide + conquer)

A few thoughts. I'll sit down with you and talk more if you like.

WATER QUALITY

Speaker Martin steps in to preserve

Me. Times 6-24-83

Maine's cleanest rivers and ponds

Political tampering has killed a convoluted bill that would have created a new classifi for Maine waters. It was a classic cas interests — industrial, environmental sunk by their own quagmire of amen

"We are now back to square one, Scott, director of the Division of Biological Studies in the Departme ronmental Protection (DEP). A revisio will be presented to the 1984 legislatu Scott, the DEP's long-time champion water, hopes that the second time arou will survive "efforts to diminish its protect" rivers, streams, lakes and pond

The water quality rating system that h effect for the last 25 years designates wa as A, B, C and D classifications. Class cleanest water. It prohibits any discharg lutants into an A waterway unless the di be made equal to or better than the receivi The proposed reclassification would ha blished an F1, F2, F3 and F4 system. B specific rating for existing water quality, e would have had a water quality management goal.

Under reclassification, F1 would have been tougher than Class A because it would have forbid any discharge at all. That provision was one of its

BUREAU OF (2)
WATER QUALITY CONTROL
(2nd Floor)
This material is provided for your information. Please review, passing along as soon as possible. Please initial.
Date 6-24-83
Groves
Swasey
Lord
Ward
Peppe

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with the current Class A requirements that would affect their development and need F2 to go ahead with the project.

Environmentalists were particularly upset with Superior's lobbying because the company had been behind a weakening of the Class A law a couple of years ago. At the time, Class A prohibited discharges of any kind. But to help Superior, the legislature went along with enacting the "equal to or better than" provision on discharges into A waters. Then Superior said they couldn't meet the Class A requirements without super-technology that would be very expensive. The company leaned on the legislative Energy and Natural Resources Committee to approve less specific F2 point and non-point discharge language.

Gardiner said the discharge provision is important to them because Superior will have to deal with leachate from their tailings pond and pollution control. "But it wasn't clear in the proposed bill how they would be affected. It wasn't even clear what point source are," he added.

Numerous amendments were offered by environmentalists and industry to change the bill to meet their wishes. Negotiations went on in the hallway before the committee's public hearing on the bill in last minute efforts to ram the bill through. The DEP's technical staff was dismayed at the drive to substantially alter it and indicated that the agency's leadership acquiesced to pressures from industry and the governor's office.

Cont'd

over

"The bill just kept changing and changing," said Gardiner. "It went from being bad one day to being tougher the very next day." However, major issues were never resolved. Legislative assistant John Bailey, who works with the committee, finally offered a completely new draft in easier to understand language. But that didn't go anywhere. Gardiner partly blamed the committee for not being able to straighten out the situation. "We don't have people on the committee now with an intimate understanding of environmental laws and issues," he said. "Sherry Huber [the committee's strongest member for four years] is missed terribly. She wasn't there to slow down the process and figure out what was going on." Huber dropped out of the legislature to unsuccessfully seek the Republican nomination for governor.

House Speaker John Martin (D-Eagle Lake) entered the picture at the height of confusion and political dealing over the bill. He said he didn't object to all Class A waters being redesignated as F1. There would be no discharges at all and he would be satisfied, he said. But Martin flatly opposed downgrading Class A waterways to F2. Martin is still mindful of the public furor caused years ago when the legislature allowed the pristine Prestile Stream to become a potato waste sewer. Many of the rivers and streams that would be affected by reclassification are in the Aroostook County area he represents and Martin has gone on record opposing waterway declassification for the Bald Mountain mine.

In a memorandum to the committee analyzing the bill, Martin said it had several major deficiencies. Besides downgrading Class A rivers and streams, he said the bill established management goals that would be in direct conflict with federal law. He said the Federal Water Pollution Control Act establishes a national goal of no discharge and an interim national goal of "fishable-swimmable." For example, the bill would allow a water quality management goal for Class F3 waters of "limited water contact recreation," he said. "The term limited is not defined in the bill but it presumably means something less than the federal goal," Martin said.

He pointed out that the bill didn't contain any timetables for achieving management goals. "What is the purpose of setting a management goal when there is no direction to the DEP to achieve the higher classification by a certain time? Nor is there any description of the quality and type of plan to be adopted to reach the goal. Nor are there any guidelines to determine when a goal ought to be a higher classification than the existing water quality of what it should be," Martin said.

He said the "vague" language in the bill about point source discharges in the various classifications would lead to litigation. Martin said the description of the types of discharges allowed in Class F3 call for "some adverse impact to aquatic life" and "some changes in the biological community." Such imprecise language would beg for court interpretation, he suggested.

Faced with opposition from the Speaker, who could kill the bill easily in his Democratic controlled House, the committee backed off from the bill and tabled it until next January.

Steve Groves, director of the DEP's Bureau of Water Quality Control, told *Maine Times* that the failure of the bill was a "setback" to the bureau. He said he had anticipated problems with the Natural Resources Council and industry and had met with their representatives to try to iron out difficulties. But he admitted he didn't approach Martin and misjudged the importance of getting him behind the bill.

Al Presunka, a biologist in the bureau who helped write the original draft of the bill, said, "At issue now is when we change it, do we go with total reclassification or use the existing system to change so the letters, A,B,C and D are still the same."

DEP commissioner Henry Warren favors a new classification. He said the old system is outdated. The old system was designed to address the pollution impacts from conventional sources of municipal and industrial pollution. Since those impacts have been reduced, other sources have become more evident, such as toxic and hazardous wastes, he said. "These more subtle forms of water pollution tend to be more complex and therefore more difficult to deal with than the more obvious forms of pollution. The current classification system is not well suited to coping with the more recent problems."

For years, Maine and other states have relied on chemical parameters with numerical criteria to keep pollutant levels low enough to protect fish, shellfish and insects, Warren explained. The growing number and complexity of toxic industrial chemicals have made it nearly impossible to fully test the effects of each one on marine organisms, he said. And substances which behave a certain way in a controlled laboratory situation may act entirely differently in a river or lake and impacts may vary fom one animal to the next, he said. "Thus there is a considerable degree of uncertainty over the protection of aquatic species if we rely solely on numerical criteria."

The proposed bill would have supplemented numerical criteria with biological measures of environmental impact to more completely gauge the effects of discharges, Matt Scott said. Those measures will be part of a new bill, he said.

If the bill had been enacted, it would have passed without the technical data to back up the reclassifications — a cart before the horse situation. During the summer, Scott said, his staff will be doing the field work. "We will have data to show the committee so they can understand reclassification better," he said.

Scott said he felt that "what the committee and Martin came to think was that Maine would lose a lot" with reclassification. They couldn't help it with "all the last minute lobbying going on in the back rooms. With each revision at the end there was a weakening of the law." Scott said he agreed with the action the committee took, given the "extenuating circumstances and all the pressures. I think that we will come up with a bill better for the legislature and the public."

by Phyllis Austin

(906) 885-5111

COPPER RANGE COMPANY
WHITE PINE, MICHIGAN 49971

Groves file LD 1250

May 24, 1983

Mr. Henry Warren
Commissioner, Department of Environmental Protection
State House
Station #7
Augusta, Maine 04330

Dear Commissioner Warren:

The Bald Mountain partner companies are pleased to have been offered the opportunity to comment on the concepts embodied in L.D. 1250: "Classification of Maine Water". Althcugh the proposed bill did not move through committee for a vote during this legislative session as expected, we nevertheless feel that progress was made in seeking a creative, fair-minded balance of concerns. In this effort, all citizens were well served by representatives of your agency.

I hope that all interested parties can rekindle a similar sense of open discussion at a later date when the bill again comes up. In the interim, we want you to know that our organization stands prepared to work earnestly with your agency in developing a framework for a responsible mining industry in Maine.

Sincerely,

COPPER RANGE COMPANY

John R. Suffron, Director
External Affairs

JRS:bs

cc: Governor Joseph E. Brennan

SILVER COPPER
COPPER RANGE
WHITE PINE

LD 1250

SUPERIOR *MINING*

May 16, 1983

Mr. Steven Groves
Director, Bureau of Water Quality Control
Department of Environmental Protection
Station # 17
State House
Augusta, ME 04330

Dear Steve:

On behalf of the joint venture partners of Superior Mining and Louisiana Land & Exploration, I want to express our sincere appreciation for the efforts of yourself and your staff for your work and effort on LD 1250. As I believe you know, as a result of Speaker of the House John Martin's recommendation, the bill is now held over until the next session.

I believe, Steve, that the final proposed language in the May 10th, draft on new discharges to great pond tributaries provides reasonable environmental standards without stymieing opportunities for the minerals industry to be able to develop new mines with adequate water treatment capability within great pond watersheds. Once the DEP starts preparing this bill for the next session, we at Superior, would like to be informed and will be more than glad to assist in any way we may be able.

Also, please do extend my appreciation to Matt Scott, Jeff Dennis, Al Prysunka, and the many others on your staff who worked so hard on LD 1250. I continue to look forward to the day when we can work with you in permitting an environmentally sound mining project at Bald Mountain.

In the meantime, Steve, I hope you will not be discouraged by the lack of progress on LD 1250, and I do want you to know that your efforts still were appreciated.

Best Regards,

Ron

Ronald C. Howes
Environmental Director

RCH:smr

cc: Henry E. Warren
W. Josey , D. Boxer, R. Hunt, J. Suffron

SUPERIOR *MINING*

Groves File

May 16, 1983

Mr. Henry Warren
Commissioner, Department of Environmental Protection
State House
Station # 7
Augusta, ME 04330

Dear Commissioner Warren:

On behalf of the joint venture partners of Superior Mining and Louisiana Land & Exploration, I want to express our appreciation for the efforts of yourself and your staff in attempting to formulate a balanced approach to LD 1250: "Classification of Maine Water".

Certainly, the innovative classification system developed by your staff after so many hours of effort and public workshops is a credit both to the Department and to the State of Maine. We feel that the May 10th redraft of LD 1250 establishes the basis for protection of Maine waters while still leaving the possibility open of developing new mines with adequate controls in Maine. However, as you know, based on Speaker of the House John Martin's recommendation, the bill is now held over until January, but we are hopeful that most of the original language considered in the May 10th draft can be included once the legislation is reconsidered.

We especially appreciate the openmindedness and effort that members of your staff, S. Groves, M. Scott, A Prysunka, and J. Dennis exerted in listening to our viewpoints and developing subsequent revisions to LD 1250. We continue to look forward to the day when we can work with you and the Department on licensing the proposed Bald Mountain Project.

Best Regards,

Ron

Ronald C. Howes
Environmental Director

RCH:smr

cc: Governor Joseph Brennan
W. Josey
R. Hunt
D. Boxer
J. Suffron

STATE OF MAINE

Department of Environmental Protection

MAIN OFFICE: RAY BUILDING, HOSPITAL STREET, AUGUSTA
MAIL ADDRESS: State House Station 17, Augusta, 04333

JOSEPH E. BRENNAN
GOVERNOR

HENRY E. WARREN
COMMISSIONER

The request is for Gardner SPO to develope a master water quality plan for the state. Seems like an appropriate fnct for SPO. Of course, implementation will still be responsibility of legislature. May be redundant with the legislative hearing process but SPO should be able to do a better job. Good idea. Don't forget feds Smium/Fish Standard.

TO:

FROM

SUBJ

DATE

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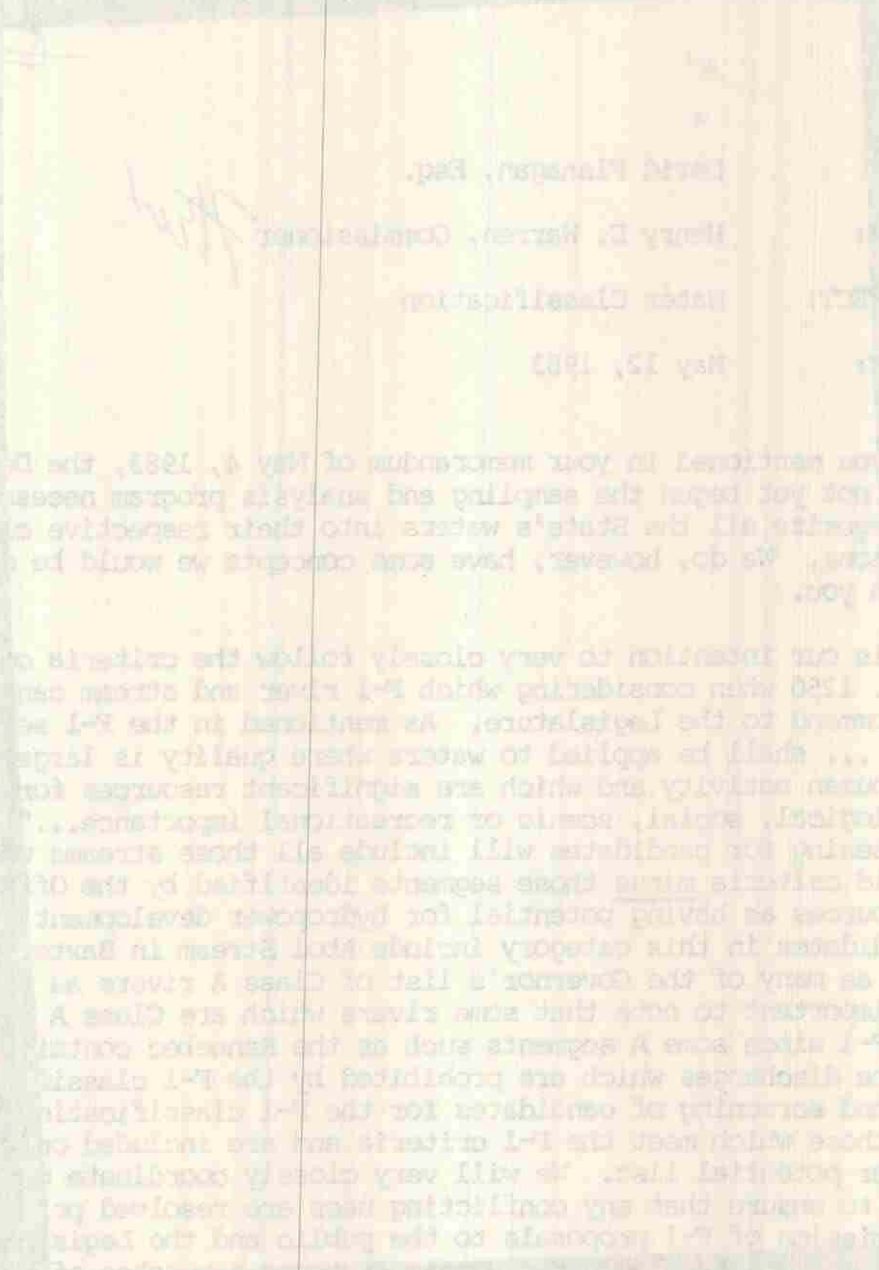
expect to do by eliminating with OER those stretches of possible F-1 rivers having the hydropower potential and assigning that segment the appropriate classification to allow the potential possibility of development. Other segments of those same rivers would then be assigned the F-1 classification.

We will work very closely with the Executive Department during the entire reclassification process and look forward to providing the technical assistance needed to assist in balancing the State's needs and interests.

Any additional thoughts you may have on the process would be welcome.

HEW/raj



STATE OF MAINE

Inter-Departmental Memorandum Date May 4, 1983

To Henry Warren, Commissioner Dept. Environmental Protection

From David T. Flanagan, Legal Counsel Dept. Office of the Governor

Subject L.D. 1250, Water Classification

As you know, there has been some concern about the effect of L.D. 1250, the Department of Environmental Protection's Water Classification bill, on hydropower development. The sentence that was added to the bill which clarifies that uses of a water body will not be limited to only those designated by the classification partially meets that concern.

However, because the F-1 classification will, in most cases, preclude hydropower development, there is still some cause for concern. To the extent that the F-1 classification coincides with the Governor's list of protected rivers, there is no problem. An F-1 classification on an unprotected stretch where there is hydropower potential will most likely preclude development and disrupt the balance of protected and developable rivers set up in L.D. 1296. I would appreciate receiving from you a proposed list of F-1 river stretches based on the information currently available to you. I realize that the department will be doing further work on this question in the next two years, but I am interested in your current thinking.

Thank you.

File LD 1250

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J. F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203

April 26, 1983

Stephen W. Groves, Director
Water Bureau
Department of Environmental
Protection
State House Station 17
Augusta, ME 04333

Dear Mr. Groves:

My staff has reviewed the proposed revisions to Maine's Water Quality Standards revisions, which they discussed at a meeting in Augusta on April 6 and 7 with Matt Scott and other members of his staff. At the meeting we expressed our support of Maine's proposed revisions particularly the dual classification system, which shows the existing quality and the quality goal for each segment, and your desire to establish biological water quality criteria.

At the meeting, your staff clarified several questions we had on the proposed standards. However, there are two concerns we expressed that we feel should be addressed. They are as follows:

1. Section 367-D Standards for classification at rivers, streams and brooks

Page 6, Line 15 States that for F3 waters "Between October 1 and May 15, fecal coliform bacteria shall be present in these waters only in amounts which do not cause these waters to be unsuitable for their designated uses other than limited water contact recreation."

We believe that this statement should be expanded to provide for fecal coliform bacteria limits for F3 waters between the period of May 15 and September 30.

Page 6, Line 32 States that "The water quality management goal of Class F3 waters shall be F3 or higher

To be more consistent with Federal goals, we would prefer a statement as follows:

"The water quality management goal of Class F3 waters shall be F2 or higher wherever attainable. Where it is determined that a Class F2 quality cannot be attained the goal shall be Class F3."

I hope these comments will be considered by you in the revision process.

Sincerely yours,

Edward K. McSweeney, Chief
Water Quality Branch

cc: Matt Scott
Frank Fiore
Bob Nunan

TOWN OF ASHLAND
P. O. DRAWER A
ASHLAND, MAINE 04732

April 8, 1983

Crowe
A chance for a sales pitch.
HW
LD 1750

Office Of The
TOWN MANAGER
Tel.: 435-2311

Mr. Henry Warren
Commissioner of the Department
of Environmental Protection
Ray Building
State House
Augusta, Maine 04333

Mr. Warren,

The members of the Ashland Planning Board would like to convey our thoughts concerning LD-1250 as presently drafted.

We have always been and are still concerned with maintaining high quality water standards within our State, however we do feel that the wording of LD-1250 tends to be restrictive and in some sections prohibitive to industry and in paticular the Bald Mountain Project.

We refer explicitly to page four lines 22 - 27, "There shall be no new discharge of sewage or industrial waste, with the exception of noncontact cooling water or discharges incidental to hydroelectric power generation, to Class GP1 or GP2 waters, their tributaries or to waters with a drainage area of less than 10 square miles," and also on page seven lines 32 - 34, "There shall be no new discharge into Class GP1 or GP2 waters of sewage or industrial wastes with the exception of noncontact cooling water.", which seems to imply that any new industrial discharge would be prohibitive regardless of treatment.

We realize that these areas are being worked on by the parties involved and we are confident that a good marriage will evolve between industry and the Protection Agency.

We would like to thank you in advance for your cooperation and concerns.

Very truly yours,

Willis (Bo) Gardner

Willis Gardner
Chairman, Ashland Planning Board

WG/nef

cc: Governor Joseph Brennan
Speaker John L. Martin

TOWN OF ASHLAND
P. O. DRAWER A
ASHLAND, MAINE 04732

Grove

April 8, 1983

Office Of The
TOWN MANAGER
Tel.: 435-2311

Mr. Henry Warren
Commissioner of the Department
of Environmental Protection
Ray Building
State House
Augusta, Maine 04333

Mr. Warren,

We are aware as you are of the present slump in employment in our area as well as others. We look forward in anticipation of new industry comming to our area in order to create new jobs and to ease the economic situation. We do not however wish in anyway to compromise our environment to this end. We wish and must maintain clean air and pure water in the future in such a manner comparable to that of the past for which we are proud.

As members of the Ashland Town Council we wish to express our concerns regarding the present draft of LD-1250.

LD-1250 in it's present draft seems to prohibit any new industry development and subsequent discharge however treated. For example, page four lines 22 - 27, "There shall be no new discharge of sewage or industrial waste, etc., etc."and also page seven lines 32 - 34 , "There shall be no new discharge into Class GP1 or GP2 waters of sewage or industrial wastes, etc.,etc."

We understand these problems are being addressed by industry as well as your agency. We have full confidence that these problems will be resolved by a cooperative effort and that industry and a clean environment will be compatible.

Thank you for being attentive to our concerns at this time.

Very truly yours,

Melvin P. Graham

Melvin P. Graham
Chairman, Ashland Town Council

MPG/nef
cc: Governor Joseph Brennan
Speaker John L. Martin

Natural Resources Council of Maine
271 State Street, Augusta, Maine 04330 207-622-3101

File LD 1250

March 30, 1983

Steve Groves
Director
Bureau of Water Quality Control
Department of Environmental Protection
State House, Station 17
Augusta, Maine 04333

Re: An Act to Revise the Classification System for Maine Waters

Dear Steve:

In reviewing our position on L.D. 1250, we have developed some concerns as to the impacts of the reclassification project upon staff resources and other water quality programs and the precise role that bioassay and biomonitoring will play in reclassification. I have asked to meet with you so that we could obtain information to address these concerns.

Specifically throughout the legislation, language such as "Discharges to Class F2 waters shall not cause harm to aquatic life in the receiving waters after combination with any discharge, and in combination with all other discharges, shall be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community." appears. It is our understanding that these words were inserted to reflect the use of bioassay and biomonitoring. We would like to know specifically how you intend to use bioassay and biomonitoring in the reclassification program, and what emphasis will be placed on these approaches. We would also like to know the schedule for obtaining and implementing a test protocol so that this type of approach can be used. In addition, what will be the things for reclassification?

And finally, we are concerned about the impact of a reclassification program upon existing water quality programs and the development of a groundwater project. Thus, we would like to know what impacts a reclassification project will have upon the Bureau's other

programs, and how staff time and budget will be allocated to accommodate reclassification (including a bioassay, biomonitoring program) and all other water quality needs.

One final concern deals with the Department's plans to formally integrate a bioassay biomonitoring program into licensing and enforcement actions.

I am looking forward to meeting with you and your staff Thursday afternoon.

Sincerely,

Virginia E. Davis
Counsel

VED:pln

cc: Matt Scott
Frank Fiore
Rob Gardiner
Mary Grow

MEMORANDUM

TO: David Elliott, Legislative Assistant

FROM: Phyllis Gardiner, Asst. A.G.

DATE: October 19, 1985

RE: Water Reclassification Bill

I apologize for not getting in touch with you yesterday, but I was racing to meet about three different deadlines and the day disappeared on me! I did get a chance to speak briefly with Matt Scott and Dana Murch on the telephone, and I got some but not all of the information we wanted.

The principal reason that Maine has not sought delegation of the NPDES licensing program is the very practical one of cost — DEP wanted federal funding for the additional staff necessary to do the job. EPA at one time was encouraging states to take over the program, but they have now backed off and seem content to handle it at the federal level. From what I can gather, the dual licensing scheme in effect now works as follows: DEP first issues a water quality certificate on the basis of compliance with state water quality standards, but the staff also includes EPA water quality criteria and industry effluent standards; EPA then reviews the state license and, usually, issues a federal NPDES permit with the same conditions and restrictions. Apparently, there is very rarely any disagreement or inconsistency between the two agencies in this licensing process. This is admittedly a very rough outline of the process. When I get back in town later next week I plan to sit down with Matt Scott and with George Lord of the DEP licensing staff to go over this in more detail using sample licenses. After that education, I may be able to convey more useful information to you.

Matt Scott claims that the DEP has not yet made the switch to bio-monitoring as the method of determining compliance with water quality standards.

The staff has asked certain companies to submit bio-assays as a form of toxicity test to determine whether or not a particular effluent discharge may be licensed in the first instance. They expect to continue to do that, but they do not expect biomonitoring to be fully developed as a regulatory scheme for 2-3 years to come. Once again, we may get a clearer idea of this after sitting down with the staff to review some actual licenses.

I do not yet have a list of all riverine impoundments, but I think that the DEP can generate one for me using the computer data base for dam registration. I will pursue that later next week, as well. Nevertheless, my impression from talking with both Dana and Matt is that the vast majority of riverine impoundments — particularly those on the main stems of major rivers such as the Kennebec, Androscoggin, Penobscot and St. Croix — are classified as rivers (ie. class B-1, B-2 or C). Even Wyman Lake which the Water Bureau treats as a Great Pond (strictly because there are no discharges into it now and they want to keep it that way !) appears to be classified as B-1 under existing law. See 38 MRSA § 368 (1978) at p. 304. However, the proposed legislation, interestingly enough, would exclude Wyman Lake from the river classification scheme (see LD 1503, p. 13, sub-sections (4) and (5)). Perhaps some thought should be given to redefining "great ponds" under the statute. In any event, I think that the underlying rationale for the Water Bureau's somewhat arbitrary system of making distinctions between riverine impoundments (that I suspect would be difficult to distinguish on biological grounds) is, again, a practical one — they want to treat impoundments with no existing discharges as great ponds in order to prevent any discharges in the future and thereby preserve a higher level of water quality; on the other hand, they are not willing to treat all such impoundments as great ponds even if they meet the definition because of the impact that would have on industry. The difficulty, of course, is how to devise a more rational system that is also fair!

I did not discuss regulation of non-point sources or interpretations of § 414-A (1)(c), but I will pursue those issues when I meet with the staff.

Did you learn anything useful from the meeting between EPA and DEP last week? Also, Matt Scott mentioned some report that DEP just sent over to the Committee giving the staff's "scientific justifications" for the proposed reclass. bill — have you seen that? Does it explain anything?

I'll check in with you when I get back to the office on Friday, Oct. 25th. Once again, I apologize for being slow in getting information to you. I hope what I've gathered to date is at least of some limited use.

Eric Hall -
existg uses to be defined by St.

hydro - have we built our last dam?
give St. auth. to protect existing & future

Paul Mitnick Total maximum load - computer
modelling - what load reduc necessary
to bring up to min. class - this improves monitoring waters

Sabock
Branch chief of Criteria & Stand. Div.
of Off of Water Reg. & Stand.
office chief Counsel - Kathy Wiener (202) 382-7703
legal reason for standards issues -
reviews St. submittal

Impairment - remove designated use which
have not been achieved based on hydrologic modifications

Pump Storage - N.C.? case - where pump
impairment could be considered discharge.
lower levels DO of impairment - look if only in
bottom levels. Kathy Wiener

ME NH MASS - EPA issues permits
don't know why Maine doesn't

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date 9-9-85

TO: Dave Eliot

FROM: Terry McGovern

FOR

_____ Approval

_____ Signature

_____ Information

_____ Recall

✓ Your Information

_____ Attention

_____ Your File

_____ To Order

Return to Sender
Yes ☐ No ☐

REMARKS

This memo covered a draft document which was the basis for L.D. 1503. Changes which occurred between 12/29/83 and the printing of L.D. 1503 include

1. the decision to retain the alphabetic designations
2. the deletion of the non-attainment (D) classes.
3. no cooling water discharges to Class A waters.
4. the replacement of a dual designation system with a biennial report to the Legislature
5. the decision to maintain status quo on non-point discharges
6. the development of final recommendations for bacteria standards
7. §369 and §370 were revised

STATE OF MAINE
Department of Environmental Protection

MAIN OFFICE: RAY BUILDING, HOSPITAL STREET, AUGUSTA
MAIL ADDRESS: State House Station 17, Augusta, 04333

JOSEPH E. BRENNAN
GOVERNOR

HENRY E. WARREN
COMMISSIONER

MEMORANDUM

TO: Stephen W. Groves, Director, Bureau of Water Quality Control

FROM: TM Terry McGovern, Division of Operation & Maintenance, Water Bureau

DATE: December 29, 1983

SUBJECT: Revision of the Water Quality Standards Statute

The attached draft of a revised water quality standards statute was prepared to address issues raised in legislative hearings on LD 1250. This draft attempts to accommodate the concerns of legislative leadership as well as the concerns of lobbyists for industrial and environmental organizations. Given those considerations, this draft has been designed to provide the highest possible level of protection for the State's water resources.

The major changes which this draft contains in relation to LD 1250 can be summarized as follows:

1. Organization. This draft is written in the form suggested by John Bailey.

2. Bacteria standards. Hypothetical standards for water contact recreation and limited water contact recreation, based on levels of enterococci bacteria are included. At this time, these standards should be regarded as an example of form rather than an attempt to establish acceptable risks.

3. Modification of DO standards. The phrase "or as naturally occurs" has been added to all DO standards to allow for appropriate classification of waters which receive no point source discharges but have naturally low DO.

4. Establishment of five classes for rivers streams and brooks. Because of the necessity of continuing present discharge policy for Class A waters, another class was added to 367-D. The provisions of these classes include:

L.D. 1503

AA F1. Preservationist management. No point source discharges (including hydroelectric power generation) are allowed.

A F2. Management of discharges equivalent to Class A. Discharges shall have no impact on aquatic life.

B F3. Managed for fishing, swimming, etcetera. Discharges may cause some changes in aquatic life provided such changes are not detrimental to the biological community.

C F4. Managed for fishing, limited water contact recreation, etcetera. Discharges may result in detrimental changes to aquatic life but may not disrupt the food web to the point where it will not support all species of fish.

deleted F5. Nonattainment class. All F5 waters shall have a management goal of F4 or higher. The empirical DO limit of Class D has been replaced by a biological limit--no fish kills allowed! Since there are discharge-impacted waters in Maine which have a DO of less than 2 ppm at times, it seems that the only alternative to this approach would be a Class F6 for waters where the DO sometimes goes below 2 ppm. I think you'll agree that five classes are enough.

5. Class A discharge policy refined. Aside from a few words which were added to improve clarity, the major difference between A and F2 is that F2 allows the discharge of uncontaminated, noncontact cooling water provided it has no impact on aquatic life.

6. Clarification of nonpoint discharge policy. The criteria for nonpoint discharges specified in 367-C(4) set an upper limit on the allowable impact of nonpoint discharges. This limit, based on impact to aquatic life, is equivalent to the impact allowed for point source discharges in Class F3 waters. Although this clarification does not address the quandary of licensing nonpoint source discharges, it may aid in rectifying that situation. A revision of 414-A which licenses certain nonpoint source discharges by statute might prove valuable.

7. Reorganization of section 368. This section of law has been rewritten so that all river basins with a drainage area greater than 100 square miles are included. Where sub-basins (such as the Aroostook and Meduxnekeag) were listed separately, they were grouped under the major river basin. The State's major river basins are described as follows:

I. River Basin Name

A. Main Stem

1. Descriptions of the classification of all segments.

B. Major Tributary Name

1. Main Stem

a. Descriptions of the classification of all segments.

2. Tributaries

a. Classification of tributaries and segments thereof which are not otherwise described.

b. Classifications of tributaries and segments thereof.

C. Minor Tributaries of the Main Stem

1. Classification of tributaries and segments thereof which are not otherwise classified.

2. Classifications of tributaries and segments thereof.

8. Modification of section 369. Rivers with a drainage area greater than 100 square miles have been deleted from section 369 and added to section 368. Reorganization of section 369 should be delayed until these drainages are to be reclassified under the revised system.

9. Fl classifications assigned. All rivers, streams and brooks within the boundaries of Baxter State Park and Acadia National Park are classified as Fl/Fl under sections 10 and 11 of the attached draft document. In addition to those waters, the rivers, streams and brooks designated as outstanding resources deserving of special protection in the Maine Rivers Policy (12 M.R.S.A. Section 401) which do not currently receive point source discharges are classified as Fl/Fl under section 10. Since this proposal is made in response to a legislative finding, it might be well received. It would put much more force of law behind the Legislature's decision to restrict hydro development on those waters. At the present time, a denial of water quality certification under section 401 of the U. S. Clean Water Act would be based on alteration of fish and wildlife habitat. I believe that to be a weak and specious defense for the State's denial of water quality certification for a hydro project. After all, fish and wildlife habitat would not be eliminated by such a project, it would just be altered. Since the DO standard for Fl is "as naturally occurs," hydro development with its consequent lowering of DO would not be a permitted use. The classification of these outstanding rivers as Fl/Fl would help ensure that the protection provided them by the Legislature is not later overturned in the Federal Courts.

10. F2 classifications assigned. All Class A waters which are not classified as F1/F1 (as outlined above) are reclassified as F2/F2 under sections 10 and 11.

I appreciate the opportunity to have been able to work on a document of this complexity and importance. It has been a challenging and exhilarating task. In the absence of further direction from management, I consider my work on the revision of Maine's water quality standards to be finished. Sections 1 through 9 have been reviewed by Bob Nunan and Bonny Hadiaris. They thought it well conceived and offered suggestions for improvement which were incorporated in the final draft. Sections 10 and 11 have not been reviewed and should be intensely scrutinized and the F1/F1 segments ground-checked before circulation.

TM/w

cc: Richard Swasey, Director, Division of Operation & Maintenance, Water Bureau

STATE OF MAINE
Department of Environmental Protection

MAIN OFFICE: RAY BUILDING, HOSPITAL STREET, AUGUSTA
MAIL ADDRESS: State House Station 17, Augusta, 04333

JOSEPH E. BRENNAN
GOVERNOR

HENRY E. WARREN
COMMISSIONER

July 26, 1985

Timothy Glidden
Legislative Assistant
Committee on Energy and Natural Resources
State House Station #13
Augusta, ME 04333

Dear Tim:

I appreciate the Committee's invitation to the Department of Environmental Protection to work closely with them throughout their study of proposed changes in Classification of Surface Waters. I have conferred with members of the Bureau of Water Quality Control and offer the following response to the request for initial assistance detailed in the Committee Chairmen's letter of July 18, 1985.

Enclosed are two copies of a 11/1/84 draft of what eventually became sections 10 and 11 of L.D. 1503. This draft is written in amendment form rather than L.D. 1503's repeal/enact form and represents the best "side-by-side" comparison of present and propos ed assignments of classification which DEP has available. Also available are the 1:500,000 scale maps of present and proposed assignments of classification. These maps are available on loan (they cost $250 a piece and we have only two) for meetings of the Committee's study group.

With respect to assignments of classification, I must restate the DEP's goals with regard to water classification. We visualize it as a two-step process: 1) update the standards for each classification so that they are more scientifically defensible and provide a more appropriate series of choices for the management of Maine's various water resources; and 2) after full public participation on a regional level, formulate recommendations for changes in assignment of classification which are thought to best serve public interest and submit those recommendations tc subsequent Legislatures for consideration. The intent of L.D. 1503 is to accomplish the first step while making only those changes in assignments of classification necessary to maintain consistency with the updated classification standards.

The "side-by-side" comparisons of present and proposed assignments of classification is summarized in the Statement of Fact for L.D. 1503. To verify that the porivisions of sections 10, 11 and 12 are accurately summarized in L.D. 1503's Statement of Fact, the Department contracted with an independent

consultant to check our work. I have enclosed two copies of her report covered by a staff memo describing corrections made in DEP's proposal prior to the printing of L.D. 1503.

The second item requested for initial assistance; "a synopsis of the scientific literature upon which the Department has relied in changing the definitions of the classifications" is not immediately available. The scientific basis of proposed changes in water quality standards was described in general terms in the December, 1984 ENVIRONEWS article which was distributed to the Committee members at the L.D. 1503 public hearing. Preparation of a more comprehensive synopsis will require a significant allocation of staff resources. I expect we can provide the Committee with the requested synopsis by October 1, 1985.

To respond to the request for an analysis of what waters are not meeting their classification, meeting their classification or meeting the standards of a higher classification, DEP staff will be preparing a report on the Attainment of Present and Proposed Water Quality Standards in Maine. This report will also contain estimates on the cost of correcting situations where assigned classification is not being met. I expect we can provide the Committee with this report by October 1, 1985.

Please let me know if the information attached is helpful and how we can be of continued assistance.

Very truly yours,

Ken

Kenneth C. Young, Jr.
Deputy Commissioner

KCY/raj
Encs.

cc: H. E. Warren
S. Groves
T. McGovern
M. Scott

STATE OF MAINE
HOUSE OF REPRESENTATIVES
SPEAKER'S OFFICE
AUGUSTA, MAINE 04333

JOHN L. MARTIN
SPEAKER OF
THE HOUSE

August 19, 1985

MEMORANDUM

TO: Tim Glidden
Legislative Assistant

FROM: John L. Martin, Speaker of the House JLM.

RE: L.D. 1503

Just a note to acknowledge your letter of August 9 in regard to L.D. 1503. If you will let me know when the Energy and Natural Resources Committee will be meeting on this, I will try to attend.

JLM/as

STATE OF MAINE
Department of Environmental Protection

MAIN OFFICE: RAY BUILDING, HOSPITAL STREET, AUGUSTA
MAIL ADDRESS: State House Station 17, Augusta, 04333

JOSEPH E. BRENNAN
GOVERNOR

HENRY E. WARREN
COMMISSIONER

September 3, 1985

William T. Glidden, Legislative Ass't
Station #13
State House
Augsuta, Maine 04333

Dear Mr.Glidden:

For several years now the Water Bureau of the Department of Environmental Protection has considered amendment of the surface water standards a high priority. Basically unchanged since the 1950s, the Standards of Classification of Surface Waters were written as a response to obvious forms of pollution observed at the time: scums, floating sludge, odors, massive fish kills and direct threats to public health. Today's water quality contrasts sharply with that of the 1950s and 1960s when the larger rivers were used to transport and dilute untreated waste. Maine's "working rivers" are providing people with far more enjoyment today by supporting a diversity of fishing and boating opportunities. Indeed, Maine has received national acclaim for its water quality cleanup efforts and citizens gather to celebrate the dramatic improvements in events such as the Great Kennebec River Whatever Race.

In light of these changes the D.E.P. feels the old Surface Water Standards and classification system is clearly an outdated tool. For example, parts of the standards for Classes C and D, carried along since the original drafting, actually condone conditions prohibited by the Federal Clean Water Act. The Department of Environmental Protection has therefore proposed a major revision of the Statute which is pending before the second session of 112th Legislature as LD 1503.

One of the modern methods whose importance is not fully recognized by the wording of the existing law is the use of aquatic life in our waters to determine the overall level of health and livability that is attained by enacting the water quality standards. On a national level, biological monitoring of surface waters has become an important aspect of pollution assessment in the 1980s and is enthusiastically encouraged by the U.S. Environmental Protection Agency.

In Maine, the biology staff of the Water Bureau has been concerned with evaluation of pollutional stresses on aquatic communities for over 15 years. We feel we are in a good position to put these years of experience to work in a more formal, legal context. Biological assessment has, in

many cases provided information critical to the Department's decision-making process, either through reassuring us that a questionable discharge was having a benign effect or by alerting us to critical biological stress in a situation which appeared to be adequately controlled. The success of early investigations and the development of increasingly valid and reliable sampling and analysis techniques gives us confidence that the time has come to elevate the status of biological monitoring in the law. To do this, we wish to make its merits and limitations subject to public comment and scrutiny.

Accordingly, the biology staff of the Water Bureau has scheduled a public workshop to familiarize interested parties with the biological language in the proposed statute and with how we envision its implementation. We invite you to review the wording in the proposed statute and the enclosed draft of Guidelines Concerning Interpretation of the Biological Water Quality Standards of Maine and to attend the workshop and/or submit your comments and questions to us.

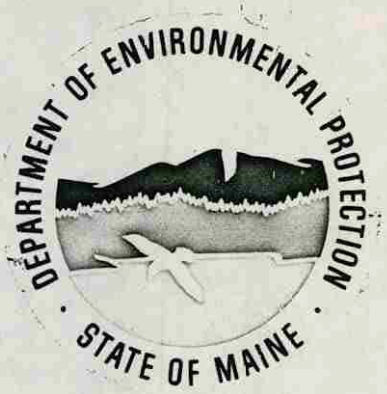
Sincerely,

Susan Davies

SUSAN DAVIES
Biologist
Division of Environmental Evaluation
and Lake Studies
Bureau of Water Quality Control
Department of Environmental Protection

SD/d

Attachment



WHAT: Informative workshop on instream biological monitoring

a). What is it?
b). Who will it affect?
c). How is it done?
d). How will DEP use it?

WHEN: Monday September 30, 1985 at 1:00 pm

WHERE: Piscataquis Room
Augusta Civic Center
Augusta, Maine

WHO: Presented by the Biology Staff of the Division of Environmental Evaluation and Lake Studies.
Department of Environmental Protection.

ATTENDANCE: Legislators, Citizens, Industry, Environmental Groups, Municipal Treatment Plant Operators

INTRODUCTION

Amateur naturalists and scientists alike make use of all types of aquatic animals to provide clues about the livability of water bodies. Fishermen rely on biological signs such as the types of plant or insect life in a stream to tell them if they can expect to catch a favored fish species. The DEP frequently receives calls during the summer from citizens who have observed biological events and occurences such as fish kills, insect hatches, or algae blooms. Their concern is that pollution has caused these events. These citizens are, in a sense, engaged in biological monitoring. On a more advanced and methodological level scientists have developed sophisticated ways of collecting and counting everything from microscopic bacteria to fish, to compare the livability of different stretches of water.

Biological monitoring is the term applied to water quality investigations which rely on the presence, absence and abundance of animals which occur in the sampling location. Here in Maine our efforts have been directed at the occurrence of macroinvertebrates (animals without backbones, visible to the eye such as insects, snails, clams, leeches, worms, crayfish, etc), which live on, under and around rocks, gravel or mud on the bottom of rivers and streams.

Below are listed some points which justify the choice of macroinvertebrates as the study group:

1. Aquatic macroinvertebrates are generally limited in mobility and are therefore less able to avoid the effects of pollutants. Fish, on the other hand, often have the ability to swim away from the effects of a pollutant and so may not be as reliable at indicating environmental conditions.

2. Macroinvertebrates have longer more complex life cycles than algae or bacteria, frequently living 1 to 3 years, and therefore may integrate water quality effects over time.

3. Within the group of macroinvertebrates, there is a very wide range of pollution tolerances of different species. Some sensitive species may be killed or excluded by very low levels of pollutants while other types may actually thrive in huge numbers only in the presence of extreme pollution. There is a great deal of information contained in one sample of macroinvertebrates.

4. Gamefish, which are of interest to the people of Maine, are largely dependent on the aquatic macroinvertebrate community as a food source. Since pollution tolerances of certain types of insects are broadly comparable to those of certain types of fish, assessment of the macroinvertebrates is an indirect method of gaining information about the potential of a fishery in the area without the expense of directly sampling gamefish.

5. Aquatic macroinvertebrates are an extremely diverse group, having more different types of feeding and energy use strategies than higher level organisms like fish and therefore can provide information about disturbances in nutrient cycling in the whole system.

6. Methods of sample collection and analysis of results are becoming well established and accepted.

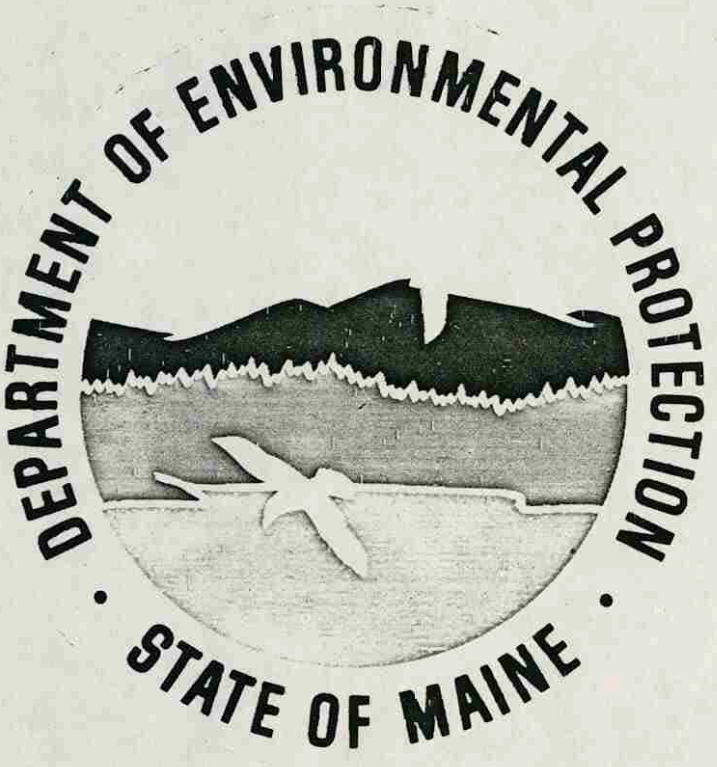
7. Some forms of aquatic macroinvertebrate life can be found in all but the most severely poisoned or disturbed habitats, unlike fish which are much more likely to be absent due to natural causes. Availability and ease of capture make them a more cost effective group to sample.

The last ten years have seen a dramatic increase in the quantity and the level of sophistication of macroinvertebrate studies. The EPA has strongly advocated the development and adoption of some form of biological monitoring as an additional mechanism to test compliance with narrative water quality criteria. Maine has been one of the first states to work with the EPA to attain that goal. Our careful and deliberate attention to the process will help to set a workable precedent for other states as they develop their programs.

The attached guidelines represent the first stage in the state's implementation of the biological water quality standards in the proposed statute. Macroinvertebrate data has been collected at locations above and below the majority of licensed discharges in Maine (117 sampling locations) in accordance with these guidelines. The next step is for the data to be analyzed and for the results to be sorted into categories of water quality in order to develop a picture of acceptable macroinvertebrate standards for each water quality class. Until this work is completed, strictly defined regulation of this portion of the statute is unrealistic. Therefore the following information is intended to present a framework for the development of the working document and to inform the public about our methods and intent.

AQUATIC LIFE STANDARDS PROPOSED IN LD 1503, MAY 1985

Classification	September, 1979 Maine Revised Statutes	May, 1985 Proposed Revision
Class AA	---	Aquatic life shall be as naturally occurs; all discharges prohibited
Class A	New discharges permitted only if "equal to or better than existing water quality of receiving waters".	Aquatic life shall be as naturally occurs; discharges permitted only if equal to or better than existing quality of the receiving waters.
Class B	No discharge of substances harmful to humans, animals or aquatic life.	Discharges shall not cause adverse impact to aquatic life; no detrimental changes in the resident biological community; receiving waters shall be of sufficient quality to support all indigenous species.
Class C	(Same as for Class B)	Discharges may cause some changes to the resident biological community, but receiving waters shall be of sufficient quality to support all indigenous species of fish; structure and function of the aquatic community shall be maintained.
Class D	No discharge of radioactive matter harmful to humans, animals, or aquatic life.	(Non attainment of classification)



D R A F T

Guidelines Concerning Interpretation of the Biological Water Quality Standards of Maine

Bureau of Water Quality Control

April 13, 1985

PURPOSE

To describe the procedure whereby the Board will determine whether the biological condition of a given stream or river section is satisfying the statutory standards of its designated class as stated in 38 MRSA, Section 363;

To document and explain State approved methods of the biological assessment of water quality;

To present examples of applications of biological standards to specific conditions which exist in waters of the State.

SECTION I

DEFINITIONS

"as naturally occurs" - With essentially the same assemblage of aquatic species and numnbers found in situations free of human activity or influence.

Benthic Macroinvertebrate - Animals large enough to be seen with the naked eye which are retained on a U.S. Standard No. 30 sieve and live at least part of their life cycle within or upon available substrates in a body of water. Major taxnomic groups include insects, crustaceans, molluscs, segmented worms, flatworms, leeches.

Community Function - Pathways and processes of energy and nutrient use, storage and transfer within a system. A function of particular interest to the State is the efficiency of transfer of energy to other trophic levels such a gamefish.

Community Structure - Characteristics of the community based on abundance of individuals within different taxonomic groups, the proportional relationships between each of the components and their relation to the whole.

Indigenous - Native

Note: This shall be construed to mean that water quality shall be sufficient to support all indigenous species but not that all indigenous species must be present.

"natural habitat" -

Class AA: Defined by aquatic life being "as naturally occurs".

Class A: Defined by effluent quality being of "equal to or better than the existing water quality of the receiving waters"; further defined by aquatic life being "as naturally occurs".

Support - To sustain unimpaired life cycle requirements.

"without detrimental changes in the resident biological community" - change between a community and an unimpacted reference community may occur but it should be in the direction of benign change such as limited enrichment, rather than significant loss of species or excessive dominance by any one group.

SECTION II

ASSESSMENT OF ATTAINMENT

This section presents factors considered in assessing whether a river or stream section is attaining its designated class in terms of the biological criteria set forth in 38 M.R.S.A., Section 363.

SUMMARY

This section presents biological assessment procedures which the State finds acceptable and provides guidelines to insure that conclusions generated from the assessment procedures are consistent, statistically reliable and valid in their interpretation of the directive of the statute. The section addresses the following major considerations:

A. What constitutes a sample of the biological community.

B. How the quantitative and qualitative information from the sample may be evaluated.

C. How conclusions are drawn from the data about the attainment of a classification applied to a stream or river section.

INTRODUCTION

Classification of Maine's rivers and streams according to biological water quality criteria requires a flexible and robust mechanism of data collection and analysis which allows comparisons to be made and conclusions to be drawn from many different environmental conditions. This document addresses the State's evaluation of the resident biological communities of its classified rivers and streams in terms of a defined sample of benthic macroinvertebrates inhabiting the section in question. The development of a sampling design for each location examined requires that careful attention is given to differentiating between differences or changes in biota attributable to natural or chance causes and those which are more properly identified as being of human origin. Sampling strategy strives to equalize the determining effects of local conditions and to promote data collection which reliably reflects the influence of water quality alone on community structure and function and the overall health and aesthetic appeal of the system.

The various sampling and analytical methods that are presented in this Section can be seen as tools which, when used in concert, can objectively define existing conditions, but should not be thought of as direct measures of ecological integrity. They are dependent upon the best professional judgment and experience of the examiner to determine whether they indicate that statutory standards of a particular classification have been satisfied.

Many of the most useful tools for interpretation of pollution effects depend upon examining relative differences between the test community and a reference community which is assumed to be unimpacted. Selection of the reference community is based upon its freedom from the environmental

perturbation in question and the overall similarity of its habitat to that of the sample community. Examples of relative measures are similarity indices, coefficient of community loss, and comparisons of lists of dominant taxa.

Static measures of existing community structure such as species diversity, presence/absence of indicator taxa and distribution of functional groups are useful for establishing the limits of normality to be expected in unperturbed systems and to thereby contribute to the interpretation of "without detrimental change" and "maintain structure and function."

No single index or measure has been universally recognized for its freedom from bias and its reliability as a decision-making tool. However, the weaknesses of one measure or index can often be compensated for by the strengths of another. Acceptable sampling methodologies and quantitative and qualitative analyses are presented in this section.

A. SAMPLING DESIGN

The biological community shall be evaluated in terms of the benthic macroinvertebrates inhabiting the river or stream section in question. Where practical and appropriate the community sampled shall be the macroinvertebrates colonizing a rock-filled basket artificial substrate (Weber, 1973) or a rock-filled cone sampling device (Courtemanch, 1984) incubated on the stream or river bottom for four weeks.

In some situations other sampling methods may be more appropriate or more practical and are acceptable provided that comparable standards of overall sampling design are maintained. The following is a list of sample collection methods which may be found appropriate in certain situations:

Sample Collection Method	Conditions for Use
Rock-filled artificial substrate	Hard bottom, scoured substrates of cobble, rubble, gravel.
Surber Square Foot Sampler	Gravel, rubble substrates; moderate water velocity; less than 3 feet deep.
Ekman Dredge	Soft-bottom substrates.
Kick Net	Hard bottom substrate of wadeable depth; appropriate for qualitative surveys to arrive at a rapid initial best professional judgment of condition.

B. SITE SELECTION

The habitat sampled shall be representative of the habitat of the section as a whole and in the case of sampling downstream of a known source of pollution it shall be representative of the receiving water habitat just

downstream of the area of initial dilution of the discharge. Wherever possible the following site selection criteria will be met:

1. Site shall be essentially unaffected by atypical influences such as bridges, culverts, waterfalls, obstructions to flow, etc.

2. The sample shall be taken from the middle 50% of the bank to bank stream width or from a location which is representative of the overall character of the segment;

3. The substrate of choice to be sampled is well scoured, rubble, cobble or gravel;

4. The sample shall be taken from a flowing or erosional area as opposed to a pool or depositional area;

5. For matched (upstream and downstream) sites efforts shall be made to take samples from habitats comparable in the following characteristics:

   a) water velocity
   b) substrate composition
   c) canopy coverage
   d) depth

C. APPLICABLE MEASURES OF COMMUNITY STRUCTURE AND FUNCTION:

The benthic macroinvertebrates obtained from the site shall be counted and identified to the lowest practicable taxonomic level (in most cases this will be to genus or to species). Quantitative analysis will be performed on sites with 3 or more replicate samples which yield an average of at least 50 organisms per sample at the upstream site.

Quantitative and qualitative examination of the data may include but not be limited to the parameters and interpretive analyses listed in Appendix A.

Severely impacted downstream sites may have fewer than 50 organisms and still be used for some quantitative analyses.

D. BASIS FOR SATISFACTION OF STATUTORY CRITERIA:

This section describes some of the analyses expected to contribute most strongly to evaluations of the attainment of a designated classification. Values obtained from all applicable community structure and function parameters, in conjunction with the experience and professional judgment of the investigator will place each site on the continuum of biological water quality conditions found in the State.

Conclusions about the justifiability and feasibility of strict reliance on specific values of or degrees of change in the parameters to represent break-points between the classes will be drawn following in-depth technical review of the Statewide biomonitoring program.

1. Determination of "as naturally occurs":

The site will be evaluated on the degree to which descriptors of the benthic macroinvertebrate community are comparable to features known to be characteristic of communities from natural areas. Pertinent features include:

Presence of Indicator Taxa (Plecoptera; Ephemeroptera)
High Ephemeroptera/Plecoptera Trichoptera Richness

Where data from a matched reference site exists:

Taxonomic Similarity (Jaccard, 1912)
Percent Similarity (Gauch and Whittaker, 1972)

2. Determination of "without detrimental change":

The site will be evaluated on the degree and nature of change in the community as compared to a matched community from an unimpacted area. Pertinent features include:

Presence of Indicator Taxa (Plecoptera; Ephemeroptera; Trichoptera)
High Ephemeroptera, Plecoptera, Trichoptera Richness

Where data from a matched reference site exists:

Maintenance or increase in total Taxonomic Richness
Maintenance or increase in Taxonomic Diversity (Shannon and Weaver, 1963; Brillouin, 1960)
Low Coefficient of Community Loss (Courtemanch, 1983)

Change between this community and an unimpacted reference community may be documented but it shall be in the direction of benign (limited) enrichment (increased Richness, Diversity, Total Numbers) rather than loss of taxonomic groups or dominance by any one group.

3. Determination of "maintain structure and function":

A. Structure:

Evaluations of benthic macroinvertebrate community structure will include but not be limted to the following descriptors:

Total Number of Individuals
Taxonomic Richness
Taxonomic diversity (Shannon and Weaver, 1963)

Where data from a matched reference site exists:

Coefficient of Community Loss
Percent Similarity

The degree of change in these measures which occurs below a source of pollution shall determine whether structure of the reference (upstream) benthic macroinvertebrate community has been maintained. In evaluating this standard the State will find acceptable some changes in the actual identities of the taxa constituting the communities, i.e., from sensitive, pollution-intolerant forms (Plecoptera, Ephemeroptera) to somewhat more pollution-tolerant forms (Hydropsychidae (Trichoptera); Chironomidae (Diptera)). Some representatives of either of the intolerant orders should be present.

B. Function:

Evaluations of benthic macroinvertebrate community function will include but not be limited to the following:

Functional Feeding Group Classificaiton
Trophic Specialist: Trophic Generalists Ratio
Indicator Taxa

The degree of change in pathways of processing nutritive materials shall be evaluated by the distribution of individuals within different Functional Feeding Groups, the ratio of Trophic Specialists to Trophic Generalists and the presence and abundance of Indicator Taxa known to utilize certain resources. Satisfaction of the statutory language for this classification will require demonstration that nutritive materials are being utilized by (several) different functional groups and that Trophic Specialists are not entirely excluded by limiting water quality conditions.

APPENDIX A

Applicable Measures of Community Structure and Function

1. Total Number of Individuals

   Count all individuals in all replicate samples from one site and divide by the number of replicates to yield mean number of individuals per sample.

2. Taxonomic Richness

   Count the number of different taxa found in all replicates from one site.

3. Presence or Absence of Indicator Taxa

   Qualitative assessment of the distribution of pollution intolerant and pollution tolerant organisms in the sample.

4. Ephemeroptera/Plecoptera/Trichoptera Richness (Lenat, D.R. 1983)

   Count the number of different taxa from the orders Ephemeroptera, Plecoptera, Trichoptera found in all replicates from one site.

5. Percent Non-Dipteran Insecta

   Tally the count of insectan individuals excluding the Dipterans and calculate what percentage of the total sample they represent.

6. Functional Feeding Group Classification (Merritt and Cummins, 1984)

   A general classification system for aquatic insects based on morpho-behavioral mechanisms of food acquisition. Major functional groups are: Shredders; Collectors; Scrapers; Piercers; Predators and Parasites.

   Taxa are assigned to one of these functional groups to facilitate functional community analysis and to assess the degree to which the biota reflect dependence upon a particular nutritional resource (Merritt and Cummins, 1984).

7. Trophic Specialist: Trophic Generalist Ratio (Merritt and Cummins, 1984)

   Within a functional feeding group individual taxa may be either specialists which are restricted to the utilization of a specific food resource or be facultative and thus able to exploit a broader range of food resources.

   Trophic generalists are expected to be better able to tolerate disturbance to aquatic habitats and thus to become numerically dominant because of their more flexible ability to utilize available resources.

   NOTE: This is a new measure which will be subject to verification against other measures.

Indices

1. Shannon-Weaver Taxonomic Diversity (Shannon and Weaver, 1963)

Combines information regarding taxonomic richness and the evenness of the distribution of individuals among the taxa.

$$\bar{d} = \frac{C}{N} (N \log_{10} N - \sum n_i \log_{10} n_i)$$

$\bar{d}$ = Shannon-Weaver mean diversity
C = 3.321928 (converts base 10 log to base 2)
N = Total number of individuals
H_i = Total number of individuals in the i^{th} species

2. Percent Similarity to matched unimpacted site (Gauch and Whittaker 1972):

A calculation of the degree to which the distribution of individuals within specific taxa in one site is similar to the distribution in another matched site. The value may range from zero (0) for sites with no taxa in common, to one for identical communities.

$$PS = \frac{2 \sum \min (P_{ij}, P_{ik})}{(P_{ij} + P_{ik})}$$

PS = Percent Similarity
Pij = Percentage of organisms of taxa i in community j
Pik = Percentage of organisms of taxa i in community k.

3. Coefficient of Community Loss (Courtemanch, D.L. 1983):

A similarity type measure which is sensitive to the loss of taxa from the unimpacted to the impacted site.

$$I = \frac{a - c}{b}$$

I = Coefficient of community loss
a = Number of taxa in unimpacted site
b = Number of taxa in impacted site
c = Number of taxa common to a and b

The result is a ratio of the number of taxa assumed lost due to the pollution source (a-c) to the number of taxa remaining including any new taxa (b).

4. Hilsenhoff Biotic Index (Hilsenhoff, W.L. 1982):

An index which assigns tolerance values to taxa and then calculates an overall average tolerance for the site based on the assemblage of organisms found.

$$B\ I = \lesssim \frac{n_i\ a_i}{N}$$

BI = Biotic Index
ni = Number of individuals of each taxon
ai = Tolerance value assigned to that taxon
N = Total number of individuals in the sample

This index was developed to assess the impact of organic pollutants.

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ncasi

NATIONAL COUNCIL OF THE PAPER INDUSTRY FOR AIR AND STREAM IMPROVEMENT, INC.

NORTHEAST REGIONAL CENTER
Department of Civil Engineering
Tufts University
Medford, MA 02155
(617) 381 3254

September 30, 1985

Mr. Tim Glidden
Legislative Assistant
State of Maine
State House - Station 13
Augusta, Maine 04333

Dear Mr. Glidden:

I am requesting by copy of this letter that single copies of our Technical Bulletins No. 414 "Effects Of Biologically Stabilized Bleached Kraft Effluent On Warm Water Stream Productivity In Experimental Streams - Third Progress Report" and No. 445 "Effects Of Biologically Treated Bleached Kraft Mill Effluent On Cold Water Stream Productivity In Experimental Stream Channels - Third Progress Report" be mailed to your attention. The material in these reports formed the basis for my presentation to the subcommittee on September 24, 1985.

If we can be of further assistance in your considering water quality classification procedures, I would be glad to discuss the matter with Dale Phenicie or Dan Boxer of the Paper Industry Information Office.

Sincerely,

James J. McKeown
Regional Manager

JJM/gc

cc: R.O. Blosser

Log: I01

Natural Resources Council of Maine
271 State Street, Augusta, Maine 04330 207-622-3101

22 November 1985

Senator Ronald E. Usher
342 Saco Street
Westbrook, Me. 04092

Representative Michael H. Michaud
P.O.Box W
East Millinocket, Me. 04430

Dear Ron and Mike,

I write regarding the rescheduled water quality subcommittee meeting on Wednesday, November 27th.

Following the October 22nd meeting of the subcommittee, at which the next meeting was scheduled for November 25th, I made a commitment that will take me out of state on the 26th and 27th. Feeling I must honor that prior commitment, I will be unable to attend the meeting on the 27th.

Although the working group has made significant progress over the past month, it appears likely that following the November 25th meeting of the group a consensus will not have been reached on at least a few issues of importance. Having invested much time and effort in this piece of legislation and in the working group, I would like the opportunity to discuss NRCM's position on the unresolved issues with the subcommittee before it makes its decision on those issues. I would thus ask you to postpone any decisions on the non-consensus issues until a subsequent meeting.

I trust you will find this request a reasonable one. Since sufficient time seems to exist before the deadline for the filing of study legislation to hold another subcommittee meeting, I hope you will be able to grant it.

Thanks for your consideration. Do have an enjoyable Thanksgiving holiday.

Sincerely,

James W. Dow

HELEN T. GINDER, DIRECTOR
HAVEN WHITESIDE, ASST. DIRECTOR
GILBERT W. BREWER
DAVID C. ELLIOTT
MARTHA E. FREEMAN
JERI B. GAUTSCHI
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ANDREA L. COLNES, RES. ASST.

TO: Interested Parties, Water Reclassification
FROM: Tim Glidden, Legislative policy analyst

SUBJECT: Full Committee meeting on New Draft of LD 1503
DATE: February 27,1986

There will be a meeting of the full Energy and Natural Resource Committee to receive the recommendations of the Water Quality Reclassification Study Subcommittee on Tuesday, March 4th in room 120 of the State Office Building. The meeting will begin immediately after the morning legislative session which starts at 9AM.

The objective of the meeting will be to complete work on the new draft.

Copies of the new draft will be available at the meeting.

Please call if you have any questions.

5123M

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5123M

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

TO: Sen. Charles Pray, President of the Senate
Rep. John Martin, Speaker of the House

FROM: Sen. Ron Usher, Senate Chair
Rep. Mike Michaud, House Chair
Joint Standing Committee on Energy and Natural Resources

SUBJECT: Extension for holdover of LD 1503; Water Reclassification

DATE: February 18,1986

The purpose of this memo is to request authorization to hold LD 1503 in committee for a limited period of further consideration. The committee has devoted a great deal of effort to resolving the many thorny issues connected with the water quality system. A subcommittee and working group has made substantial progress and anticipates resolving the remaining issues soon.

The committee is also dealing with several closely related bills regarding water quality and development issues. It will be more practical to defer final committee action on LD 1503 for several weeks. In this way, a comprehensive and consistent approach to the water quality classification system can be developed.

We appreciate your attention to this matter.

5008M

STATE HOUSE STATION 2, AUGUSTA, MAINE 04333 TELEPHONE 207-289-4149

TO: Members: Water Reclassification Study Subcommittee
Interested Parties - Water Reclassification
FROM: Tim Glidden, Legislative Policy Analyst

SUBJECT: Review meeting on latest draft
DATE: January 23,1986

Enclosed you will find the latest draft of the water reclassification bill. Changes have been made to incorporate the revisions discussed at the 1/21 meeting along with refinements of the Speaker's suggestions. All language which has been agreed to by the group is in normal type; sections pending further discussion are in boldface.

The next meeting has been scheduled for Wednesday, February 5th at 9AM in room 120 (SOB). You may want to call my office earlier in that week to confirm the meeting.

The subcommittee will focus its discussion on the remaining areas of disagreement; primarily the DO standards and the anti-degradation provisions.

4718M

Water Reclassification
Working Group
1-23-86

SECOND REGULAR SESSION

ONE HUNDRED AND TWELFTH LEGISLATURE

Legislative Document No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY SIX

AN ACT to Amend the Classification System for Maine Waters and Change the Classifications of Certain Waters.

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

Sec. 1. 38 MRSA, chapter 3, Article 4-A is enacted to read:

ARTICLE 4-A. WATER CLASSIFICATION PROGRAM

§464. Classification of Maine waters

The waters of the State shall be classified in accordance with the provisions of this article.

1. Findings; objectives; purpose. The Legislature finds that the proper management of the State's water resources is of great public interest and concern to the State in promoting the general welfare, preventing disease, promoting health, providing habitat for fish, shellfish and wildlife, as a source of recreational opportunity and as a resource for commerce and industry.

The Legislature hereby declares that it is the State's objective to restore and maintain the chemical, physical and biological integrity of the State's waters and to preserve certain pristine State waters. The Legislature further declares that in order to achieve this objective the State's

goals are: (1) that the discharge of pollutants into the waters of the State be eliminated where appropriate; (2) that no pollutants be discharged into any water of the state without first being given the degree of treatment necessary to allow those waters to attain their classification, and (3) that water quality be sufficient to provide for the protection and propagation of fish, shellfish, and wildlife and provide for recreation in and on the water.

The Legislature intends by passage of this Act to establish a water quality classification system which will allow the State to manage its surface waters so as to protect the quality of those waters and, where water quality standards are not being achieved, to enhance water quality. This classification system shall be based on water quality standards which designate the uses and related characteristics of those uses for each class of water and which also establish water quality criteria necessary to protect those uses and related characteristics. The Legislature further intends by passage of this Act to assign to each of the State's surface water bodies the water quality classification which shall designate the minimum level of quality which the Legislature intends for the body of water. This designation is intended to direct the State's management of that water body in order to achieve at least that minimum level of water quality.

Comment to sub-§1.

This subsection states in broad and general terms the Legislature's intent in adopting the new surface water classification system. The adoption of this broad language is meant to reflect the resolve of Legislature to improve, where appropriate, the waters of the State over the course of time. This is an effort which has already yielded important results thanks to efforts by all segments of the economy. It is not the intent of the Legislature that the general language of this section be used by itself to establish a water quality violation. The standards contained in other portions of the bill are the mechanisms by which water quality is to be managed and regulated.

The first paragraph contains findings on the importance of water resources to Maine. The value of water to the economy is pointed out by adding reference to commerce and industry.

The second paragraph defines the State's water quality objective and goals. The language tracks closely that of section 101 of the Federal Clean Water Act by establishing an objective of maintaining and improving water quality and setting goals to achieve that objective. It also recognizes the need for some discharges to surface waters and articulates the policy of requiring treatment of those discharges to protect water quality.

The third paragraph states the Legislature's intent concerning the implementation of the surface water classification system. The system is to be used to protect and, where a water body is not attaining its classification, to enhance water quality. Water bodies are to be protected by a 2-step classification process. First, a standard is established for each class of water quality which consists of a/ designated uses and related characteristics and b/ water quality criteria which will support those uses and characteristics. Second, each water body will be assigned a specific classification by the Legislature. That classification will serve the dual purposes of establishing water quality goals for the water body and of serving as the basis for establishment of water quality-based conditions attached to State water discharge licenses.

2. Procedures for reclassification. Reclassification of Maine waters shall be governed by the following provisions.

A. Upon petition by any person or on its motion, the board, following public notice, may conduct classification studies and investigations. Information collected during these studies and investigations shall be made available to the public in an expeditious manner. After consultation with other state agencies and, where appropriate, individuals, citizen groups, industries, municipalities and federal and interstate water pollution control agencies, the board may propose changes in water reclassification.

B. The board shall call public hearings in the affected area, or reasonably adjacent to the affected area, for the purpose of presenting to all interested persons the proposed classification for each particular water body and obtaining public input.

C. The board may recommend changes in classification it deems necessary to the Legislature.

D. The Legislature shall have sole authority to make any changes in the classification of the waters of the state.

Comment to sub-§2

This subsection has been reorganized for clarity. Most of its language is taken from LD1503.

In paragraph A the language allowing "any person" to petition the board for a classification study is not intended to require the board to conduct such a study. This intent is clear from the language retained from LD1503; "the board may...conduct classification studies".

3. Reports to the Legislature. The board and the department shall periodically report to the Legislature as governed by the following provisions.

A. The board shall submit to the First Regular Session of each Legislature a report on the the quality of the State's waters which describes existing water quality, identifies waters which are not attaining their classification and which states what measures are necessary for the attainment of the standards of their classification.

B. The board shall from time to time, but at least once every three years, hold public hearings for the purpose of reviewing the water quality classification system and related standards and, as appropriate, recommending changes in the standards to the Legislature.

C. The department shall report annually to each regular session of the Legislature on the status of licensed discharges. (SPEAKER'S SUGGESTION)

D. The department, in cooperation with the Land Use Regulation Commission, shall conduct a study of indirect discharges and the problems posed by such discharges to the waters of the state. The study shall incorporate the results of previous investigations conducted pursuant to section 201 of the Federal Water Pollution Control Act. The study shall include recommendations for land use management and other related techniques designed to mitigate the effects of indirect discharges. The study shall commence on July 1,1987. The study shall be submitted to the joint standing committee of the Legislature having jurisdiction over natural resources on or before January 1,1988. (Rep. Law concerned over fiscal impact)

Comment to sub-§3

This subsection has been reorganized for clarity.

Para. A is taken verbatim from LD1503.

Para. B includes a procedure to periodically review the adequacy of the classification system (as distinct from the classification of a particular stretch of water). The DEP already undertakes this review to meet EPA requirements.

4. General provisions. The classification system for surface waters established by this article shall be subject to the following provisions.

A. Notwithstanding section 414-A, the board shall not issue a water discharge license for any of the following discharges:

(1) Direct discharge of pollutants to waters having a drainage area of less than 10 square miles except that discharges into these waters which were licensed prior to January 1,1986 shall be allowed to continue only until practical alternatives exist;

(2) New direct discharge of domestic pollutants to tributaries of class GPA waters. No discharges into tributaries of GPA waters may, by themselves or in combination with other activities, cause water quality degradation which would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters; **(see new definition of domestic)**

(3) Discharge of pollutants to waters of the State which imparts color, taste, turbidity, toxicity, radioactivity or other properties which cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class; and

(4) Discharge of pollutants to any water of the State which violates the provisions of sections 465, 465-A, and 465-B, except as provided in section 451, causes the "pH' of fresh waters to fall outside of the 6.0 to 8.5 range, causes the "pH" of estuarine and marine waters to fall outside of the 7.0 to 8.5 range or causes fish for human consumption to be injurious to human health as determined by the U.S. Food and Drug Administration under the procedures established by 21 USC §342 or as determined by the Department of Human Services. The Department of Human Services shall establish a protocol for determining risk in such situations. The protocol shall be promulgated as a rule in accordance with the Maine Administrative Procedure Act, 5 MRSA chapter 375.

B. All surface waters of the State shall be free of settled substances which alter the physical or chemical nature of bottom material and of floating substances, except as naturally occur, which impair the characteristics and designated uses ascribed to their class.

C. Where natural conditions, including but not limited to, marshes, bogs and abnormal concentrations of wildlife cause the dissolved oxygen or other water quality criteria to fall below the minimum standards specified in sections 465, 465-A, and 465-B, those waters will not be considered to be failing to attain their classification on account of those natural conditions.

D. For the purpose of computing whether a discharge will violate the classification of any river or stream, the assimilative capacity of the river or stream shall be computed using the minimum 7-day low flow which can be expected to occur with a frequency of once in 10 years.

E. The waters contained in excavations approved by the board for waste water treatment purposes shall be unclassified waters.

Comment to sub-§3

This subsection has been reorganized to improve clarity and revised based on discussions in the working group.

The general provisions of the bill relating to discharges have been organized in paragraph A. The language prohibiting discharges into Class AA and SA waters has been deleted from this subsection because it is duplicative of provisions found in the Class AA and SA sections. In line with the November 5, 1985 discussion, the term "direct" has been added to modify "discharge" in sub-paragraphs 1 and 2 to distinguish those discharges from non-point source discharges. See new definitions for meaning of direct discharge. Subsections 3 and 4 include all discharges in order to offer the broadest possible protection to water quality

In sub-para. 1, the prohibition on direct discharges to waters draining 10 sq. miles or less has been limited to new direct discharges to provide for the limited number of discharges which may currently exist in those waters. Existing discharges may continue until practical alternatives exist.

In sub-para. 2, language is included regarding discharges to tributaries of GPA waters which is transfered from the GPA classification section. The intent of this transfer is to have all provisions regarding discharges to GPA tributaries in one location. The term domestic pollutant is understood to include the release of domestic discharges from residences directly or via municipal treatment plants.

In sub-para. 3, the term "pollutant" has been substituted for "sewage, industrial waste, heat, hazardous matter or other substance."

In sub-para. 4, "unsuitable for human consumption" has been changed to "injurious to human health" as defined by the U.S. Food and Drug Administration or the Maine Dept. of Human Services to emphasize the intent to protect public health while allowing for possible differences in personal tastes in fish consumption.

Paragraphs B, C and D are taken from LD 1503.

Paragraph E is added to place the provisions regarding the status of certain excavations in the general provisions section for clarity. The language is taken verbatim from the GPA classification section of LD1503.

NRCM OPTION - ANTIDEGRADTION

F. Anti-degradation. It is the intent of this paragraph to comply with the requirements of the Federal Clean Water Act and associated regulations relating to antidegradation when waste discharge licenses, wasteload allocations or water quality certifications are being considered by the department or board.

(1) Existing instream water uses and the level of water quality necessary to protect those existing uses shall be maintained and protected. When used in this paragraph "existing instream water uses" are defined as significant, well-established uses that have actually occurred on a water body and fall within the category of designated uses and related characteristics of the classification of that body of water. Factual determinations of what constitutes an existing instream water use on a particular water body shall be made of a case by case basis by the Board.

(2) The level of water quality necessary to protect the designated uses and related characteristics of each classification shall be maintained and protected.

(3) Any discharge or activity licensed pursuant to section 414-A or requiring water quality certification pursuant to section 401 of the Clean Water Act shall not lower the existing quality of any water body without a finding by the board, after public participation, of important economic or social benefit to the state. That finding shall be made following procedures established by rule of the board.

(4) Where high quality waters of the State constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(5) Any discharge license pursuant to section 414-A or any water quality certification pursuant to section 401 of the Federal Clean Water Act PL 92-500, as amended, (33 USC 1251 et seq.) shall be issued only if the standards of classification of the water body and the requirements of this paragraph will be met.

(6) Where the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality shall be maintained and protected. The board shall recommend to the Legislature that such water be reclassified in that next higher classification.

(7) In any classification or reclassification of an individual water body, that water shall not be assigned a classification with water quality standards which are lower than the existing quality at the time of classification or reclassification if that existing quality meets the standards of a higher classification.

PIIO OPTION - ANTIDEGRADATION

F. Anti-degradation. It is the intent of this paragraph to comply with the requirements of the Federal Clean Water Act and associated regulations relating to antidegradation when waste discharge licenses, wasteload allocations or water quality certifications are being considered by the department or board and to provide the maximum flexibility allowed by federal law to imlement and develop state procedures and to interpret appropriate federal requirements.

(1) Existing instream water uses and the level of water quality necessary to protect those existing uses shall be maintained and protected. When used in this paragraph "existing instream water uses" are defined to be the designated uses of each classification that are actually being attained. The extent of allowable impact on designated uses shall be determined on a case by case basis in connection with the applicable requirements of state and federal law when a specific application is presented to the board or department.

(2) Any discharge or activity licensed pursuant to section 414-A or requiring water quality certification pursuant to section 401 of the Clean Water Act shall not lower the existing quality of any water body without a finding by the board, after public participation, of important economic or social benefit to the state. That finding shall be made following procedures established by rule of the board.

(3) Where high quality waters of the State constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected. For purposes of this section, "high quality waters" shall mean those river segments listed in 12 MRSA §403.

(4) Any discharge license pursuant to section 414-A or any water quality certification pursuant to section 401 of the Federal Clean Water Act PL 92-500, as amended, (33 USC 1251 et seq.) shall be issued only if the standards of classification of the water body and the requirements of this paragraph will be met.

(5) The policy expressed in this paragraph, to the extent possible, is to be carried out through the process of reviewing applications made pursuant to state and federal statutes and is not intended to be used as an independant basis (a) to limit consideration or approval of an application pursuant to the terms of any state or federal statute which allows an applicant upon receipt of a license or permit to affect the uses of a waterbody, including, without limitation, laws relating to dredging and filling, hydroelectric facilities, bridges or causeways or (b) to affect the application of 38 MRSA subarticle 1-B with respect to water quality certification pursuant to section 401 of the Federal Clean Water Act.

SPEAKER'S OPTION - ANTIDEGRADTION

F. The anti-degradtion policy of the state shall be governed by the following provisions:

(1) Existing instream water uses and the level of water quality necessary to protect those existing uses shall be maintained and protected. When used in this paragraph "existing instream water uses" are defined as significant, well-established uses that have actually occurred on a water body. Factual determinations of what constitutes an existing instream water use on a particular water body and the extent of allowable impact on the existing use will be made on a case by case basis by the Board.

(2) Where high quality waters of the State constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected. For purposes of this ~~section~~ paragraph, "high quality waters" shall include but not be limited to those river segments listed in 12 MRSA §403.

(3) The board may only issue a discharge license pursuant to section 414-A or approve water quality certification pursuant to section 401 of the Federal Clean Water Act PL 92-500, as amended, (33 USC 1251 et seq.) if the standards of classification of the water body and the requirements of this paragraph will be met.

(4) Where the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality shall be maintained and protected. The board shall recommend to the Legislature that such water be reclassified in that next higher classification.

(5) The board may only issue a discharge license pursuant to section 414-A or approve water quality certification pursuant to section 401 of the Clean Water Act which would result in lowering the existing quality of any water body after making a finding, following opportunity for public participation, that such action is necessary to achieve important economic or social benefits to the state and when such action is in conformance with subparagraph 3. That finding shall be made following procedures established by rule of the board.

NOTE: The following language is part of the Speaker's antidegradation proposal. Its actual location in the new draft of LD1503 is to be determined.

38 MRSA §634 sub§4 is enacted to read:

4. Hydrologic conditions. The board shall make a determination of whether the impoundment of the proposed development would be characterized by predominantly riverine or lacustrine hydrologic conditions. The board shall make the determination on the basis of information included in the application and other information as the board deems appropriate. For the purposes of evaluating the impact of the proposed development on water quality under §636 and for considering water quality certification pursuant to the United States Water Pollution Control Act, Section 401, the board shall use the water quality criteria of the GPA classification if the proposed impoundment is characterized as lacustrine or the water quality criteria of the existing classification of the water body in question if the proposed impoundment is characterized as riverine.

38 MRSA §635-B is enacted to read:

§635-B Approval; water quality certification

If the board approves the project pursuant to §635 and if the board finds that the proposed impoundment will be characterized by predominantly lacustrine conditions, the board shall recommend to the legislature that the water body in question be reclassified as GPA conditional upon federal approval of the project and construction of the facility. Affirmative action by the Legislature on the board's recommendation shall constitute final approval of water quality certification pursuant to the United States Water Pollution Control Act, Section 401.

Paragraph F of subsection 3 contains the State's antidegradation policy. A state antidegradation policy is required by the Federal Clean Water Act. With respect to increments in water quality which are protected in subpara 3 of the NRCM option and subpara 2 of the PIIO option, it is the intent of the working group that the increases which are to be

protected be not merely transitory improvements which are caused by plant closings, economic swings or other plant operations which are cyclical in nature. On the entire antidegradation issue, final agreement has not been attained due to disagreement on subparagraphs 1 and 5 of the PIIO option. PIIO views these as necessary to insure that applicants for discharge licenses or other regulated activities affecting water quality are given full consideration and that no application for a hydro facility, bridge, causeway or dredging and filling be denied solely on the basis of the antidegradation provisions. PIIO further feels subpara. 6 is needed to maintain the force of the provisions of 38 MRSA §§633-636 regarding water quality certification in hydro licensing. NRCM and MAS object to subpara. 6 on the grounds that it could preclude the effective application of the antidegradation policy to discharge applications and other regulated activities. Subpara.'s 7 and 8 of the NRCM option are opposed by PIIO and MCCI. DEP views subpara. 7 as unnecessary and subpara. 8 as ineffective.

See attached comments from PIIO and NRCM on the antidegradation language.

5. Rulemaking. In accordance with the Maine Administrative Procedure Act, the board shall promulgate rules necessary to implement the water quality classification system established by this Act. In promulgating rules, the board shall solicit and consider, in addition to any other materials, information on the economic and environmental impact of those rules.

Rules shall be promulgated by January 1, 1987, and as necessary thereafter, and shall include, but are not limited to, sampling and analytical methods, protocols and procedures for satisfying the water quality criteria, including evaluation of the impact of any discharge on the resident biological community.

Rules adopted pursuant to this subsection shall become effective upon adoption. Rules adopted pursuant to this subsection shall be submitted to the joint standing committee of the Legislature with jurisdiction over natural resources for review during the next regular session of the Legislature. This committee may report legislation it deems necessary to clarify legislative intent regarding rules adopted pursuant to this subsection. If the committee takes no action the rules shall continue in effect. (SPEAKER'S SUGGESTION)

Comment to sub-§5

This subsection is added to explicitly require DEP to adopt rules on certain subjects. The APA is cross referenced to ensure the availability of the public participation and legislative oversight provisions of that law. Specific provision is made requiring the board to consider the economic and environmental impact of its rules. The first set of rules must be adopted by January 1, 1987.

6. Implementation of biological water quality criteria. The implementation of water quality criteria pertaining to the protection of the resident biological community shall be governed by the provisions of this subsection.

A. At any time during the term of a valid waste water discharge license which was issued prior to the effective date of this Act, the board may modify that license in accordance with section 347 sub§3 if the discharger is not in compliance with the water quality criteria pertaining to the protection of the resident biological community. When a discharge license is modified under this subsection, the board shall establish a reasonable schedule to bring the discharge into compliance with the water quality criteria pertaining to the protection of the resident biological community.

B. A discharger seeking a new discharge license following the effective date of the rules adopted under subsection 4 of this section shall comply with the water quality criteria of this article.

Comment to sub-§6.

This subsection is added to clarify how enforcement will occur after enactment of the new classification system. After the effective date of rules adopted under this Act, a discharger seeking a new discharge license must comply with the provisions of the new system and rules adopted thereunder. The term, new discharge license, has been used in working group discussions to include renewals of existing licences. A discharger with a valid water discharge license issued before the effective date of this Act who is found to be not in compliance with the new water quality criteria may have its license modified under §347. A compliance schedule will be established by the board. A discharger seeking a renewal before the adoption of the rules will be treated in the same manner as a discharger with an existing license with respect to compliance with the biological water quality criteria. A discharger seeking renewal after that date shall be treated in the same manner as a new discharge application.

In order to give the legislative subcommittee an indication of the waters that are not expected to attain the biological standards, pgs 54-55 of the DEP "Summary of Scientific Basis for Proposed Changes" will be included in these comments.

§465. Standards for classification of fresh surface waters

The board shall have 4 standards for the classification of fresh surface waters which are not classified as great ponds.

1. Class AA waters. Class AA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved

because of their ecological, social, scenic or recreational importance.

A. Class AA waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, fishing, recreation in and on the water, navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as free flowing and natural.

B. The aquatic life, dissolved oxygen and bacteria content of Class AA waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants to Class AA waters.

2. Class A waters. Class A shall be the 2nd highest classification.

A. Class A waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation, except as prohibited under Title 12, section 403 ,navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as natural.

B. The dissolved oxygen content of Class A waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher. The aquatic life and bacteria content of Class A waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants into waters of this classification and no deposits of such material on the banks of these waters in any manner that transfer of pollutants into the waters is likely, except that existing licensed discharges into waters of this classification will be allowed to continue until practical alternatives exist. New direct discharges to these waters will be permitted only if, in addition to satisfying all the requirements of this chapter, the discharged effluent will be equal to or better than the existing water quality of the receiving waters. Prior to issuing a discharge license, the board shall require the applicant to objectively demonstrate to the board's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available.

OR

C. Direct discharges to these waters licensed after January 1,1986 will be permitted only if, in addition to satisfying all the requirements of this chapter, the discharged effluent will be equal to or better than the existing water

quality of the receiving waters. Prior to issuing a discharge license, the board shall require the applicant to objectively demonstrate to the board's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available. Discharges into waters of this classification which were licensed prior to January 1,1986 will be allowed to continue until practical alternatives exist. There shall be no deposits of any material on the banks of these waters in any manner that transfer of pollutants into the waters is likely. (SPEAKER'S SUGGESTION)

3. Class B. waters. Class B shall be the 3rd highest classification.

A. Class B waters shall be of such quality that they are suitable for the designated uses of drinking water supply after treatment, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation except as prohibited under Title 12, section 403, navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as unimpaired.

B. The dissolved oxygen content of Class B waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period October 1, through May 14, in order to ensure spawning and egg incubation of indigenous fish species, the 7 day mean dissolved oxygen concentration shall not be less than 9.5 parts per million and the 1 day minimum dissolved oxygen concentration shall not be less than 8.0 parts per million in identified fish spawning areas. (MCCI opposes the spawning standard) Between May 15th and September 30th, the number of Escherichia coli bacteria of human origin in these waters shall not exceed a geometric mean of 64 per 100 milliliters or a instantaneous level of 427 per 100 milliliters.

C. Discharges to Class B waters shall not cause adverse impact to aquatic life in that the receiving waters shall be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community.

4. Class C waters. Class C shall be the 4th highest classification.

A. Class C waters shall be of such quality that they are suitable for the designated uses of drinking water supply after treatment, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation except as prohibited under Title 12, section 403, navigation and as a habitat for fish and other aquatic life.

B. The dissolved oxygen content of Class C water shall be not less than 5 parts per million or 60% of saturation, whichever is higher - PIIO-MCCI option stops here) (DEP option would continue , except that for the period October 1 through May 14, in identified fish spawning areas, where a 7 day mean dissolved oxygen concentration not less than 9.5 parts per million and a 1 day minimum dissolved oxygen concentration not less than 8.0 parts per million is being achieved at the time of application for a discharge license those levels shall be maintained to ensure spawning and egg incubation of indigenous fish species.) (NRCM/MAS proposal for the DO standard is as follows The dissolved oxygen content of Class C water shall be not less than 6 parts per million or 60% of saturation, whichever is higher, except that from the period October 1 through May 14 in order to ensure successful spawning and egg incubation of indigenous fish species, the 7 day mean dissolved oxygen concentration shall not be less than 9.5 ppm and the 1 day mininum dissolved oxygen concentration shall not be less than 8.0 ppm. Between May 15th and September 30th, the number of Escherichia coli bacteria of human origin in these waters shall not exceed a geometric mean of 142 per 100 milliliters or an instantaneous level of 949 per 100 milliliters. The department shall promulgate rules governing the procedure for designation of spawning areas. Those rules shall include provision for periodic review of designated spawning areas and consultation with affected persons prior to designation of a stretch of water as a spawning area.

C. Discharges to Class C waters may cause some changes to aquatic life, provided that the receiving waters shall be of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.

Comments to §465

This section has been reorganized to improve clarity and revised based on discussions in the working group. Each of the 4 classes are described in a separate subsection. Within each subsection, there are 3 paragraphs for designated uses and characteristics, biological criteria and discharge language.

In sub-§2, para. A, the appropriateness of hydroelectric power generation on Class A waters which have been designated for special protection (i.e., no dams) in the Rivers Bill is clarified.

In sub-§3, para. B, additional dissolved oxygen criteria are established Class B waters between September 30 and May 15 in identified fish spawning areas in order to protect early stages of salmonid fish life. MCCI opposes this provision because of the potential impact on new discharges.

In sub-§3, para. A, identical language to that discussed above in Class A waters dealing with hydroelectric power generation has been added for Class B waters.

In sub-§4, para. B, the working group understands that, in adopting the 60% saturation standard for DO, Class C waters in the Act will meet their classification under existing conditions and in conjunction with the proposed impoundments provisions.

NRCM and MAS propose a 6 ppm DO criteria to replace the 5 ppm criteria supported by DEP, PIIO and MCCI. The grounds for their proposal is that 6 ppm is needed to adequately protect fisheries.

In sub-§4, para.B, DEP has proposed language similar to that in sub-§3, para.3 establishing special dissolved oxygen criteria for Class C waters to protect spawning areas. The important difference in DEP's proposal for the C class is that the spawning criteria for C class would have to be maintained only if they were being attained at the time of application for a discharge.

NRCM and MAS proposes that a DO spawning criteria for Class C be identical to that in Class B.

Both PIIO and MCCI have certain philosophical objections to the DO spawning criteria based on the potential impact on new discharges.

§465-A. Standards for classification of lakes and ponds

The board shall have one standard for the classification of great ponds and natural lakes and ponds less than 10 acres in size. Impoundments of rivers that are defined as great ponds pursuant to §392 shall (AG suggestion) be classified as GPA or as specifically provided in sections 466 and 466-A or may become great ponds by definition as set forth in §392 (PIIO proposal).

1. Class GPA waters. Class GPA shall be the sole classification of great ponds and natural ponds and lakes less than 10 acres size.

A. Class GPA waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, recreation in and on the water, fishing, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as natural.

B. Class GPA waters shall be described by their trophic state based on measures of the chlorophyll "a" content, Secchi disk transparency, total phosphorus content and

other appropriate criteria. Class GPA waters shall have a stable or decreasing trophic state, subject only to natural fluctuations, and shall be free of culturally-induced algal blooms which impair their use and enjoyment. The number of Escherichia coli bacteria of human origin in these waters shall not exceed a geometric mean of 29 per 100 milliliters or an instantaneous level of 194 per 100 milliliters.

C. There shall be no new direct discharge of pollutants into Class GPA waters. Aquatic chemical applications approved by the board shall be exempt from the no discharge provision. Discharges into these waters which were licensed prior to January 1,1986 shall be allowed to continue only until practical alternatives exist. No materials may be placed on or removed from the shores or banks of a Class GPA water body in such a manner that materials may fall or be washed into the water or that contaminated drainage therefrom may flow or leach into those waters, except as permitted pursuant to section 391. No change of land use in the watershed of a Class GPA water body may, by itself or in combination with other activities, cause water quality degradation which would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters.

Comments on GPA Classification

PIIO has proposed additional language for the introduction to this section to allow impoundments to become great ponds "by definition". The term "by definition" refers to the statutory definition of "great pond" in the Title 38. This subject has not been discussed at length by the group and no resolution has been reached. However, DEP, NRCM and MAS object to this proposal because, as was discussed by the group in considering the impoundments provisions (contained later in this draft), some impoundments may fit the hydrologic characteristics of a lake and others, of a river. Thus, classification by arbitrary size definition is inappropriate from a scientific perspective.

§465-B. Standards for classification of estuarine and marine waters

The board shall have 3 standards for the classification of estuarine and marine waters.

1. Class SA waters. Class SA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic, economic or recreational importance.

A. Class SA waters shall be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, navigation and as habitat for fish and other

estuarine and marine life. The habitat shall be characterized as free-flowing and natural.

B. The estuarine and marine life, dissolved oxygen and bacteria content of Class SA waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants to Class SA waters.

2. Class SB waters. Class SB waters shall be the 2nd highest classification.

A. Class SB shall be the 2nd highest classification and these waters shall be such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting or shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other estuarine and marine life. The habitat shall be characterized as unimpaired.

B. The dissolved oxygen content of Class SB waters shall be not less than 85% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human origin in these waters shall not exceed a geometric mean of 8 per 100 milliliters or an instantaneous level of 54 per 100 milliliters. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in shellfish harvesting areas shall not exceed the criteria recommended under the National Shellfish Sanitation Program Manual of Operations, Part I - Sanitation of Shellfish Growing Areas, United States Food and Drug Administration.

C. Discharges to Class SB waters shall not cause adverse impact to estuarine and marine life in that the receiving waters shall be of sufficient quality to support all estuarine and marine species indigenous to the receiving water without detrimental changes in the resident biological community. There shall be no new discharge to Class SB waters which would cause closure of open shellfish areas by the Department of Marine Resources.

3. Class SC waters. Class SC waters shall be the 3rd highest classification.

A. Class SC waters shall be of such quality that they are suitable for recreation in and on the water, fishing, aquaculture, propagation and restricted harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as a habitat for fish and other estuarine and marine life.

B. The dissolved oxygen content of Class SC waters shall be not less than 70% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human origin in these waters shall not exceed a geometric mean of 14 per 100 milliliters or an instantaneous level of 94 per 100 milliliters. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in restricted shellfish harvesting areas shall not exceed the criteria recommended under the National Shellfish Sanitation Program Manual of Operations, Part I - Sanitation of Shellfish Growing Areas, United States Food and Drug Administration.

C. Discharges to Class SC waters may cause some changes to estuarine and marine life provided that the receiving waters are of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.

Comments on §465-B

A coliform standard has been added to the SB and SC classifications to protect the state's certification of interstate shellfish shipments. Please note that rather than using specific numerical criteria for bacteria, the standard references the FDA program manual for shellfish sanitation. A designated use of "restricted harvesting of shellfish" has been added to the SC classification recognising the clamming industry's ability to harvest and sell after depuratation treatment.

Sec. 2. 38 MRSA §XXX is amended by adding the following definitions.

1. As naturally occurs. "As naturally occurs" means conditions with essentially the same physical, chemical and biological characteristics as found in situations with similar habitats free of measureable effects of human activity.

2. Aquatic life. "Aquatic life" means any plants or animals which live at least part of their life cycle in fresh water.

3. Community function. "Community function" means mechanisms of uptake, storage and transfer of life-sustaining materials available to a biological community which determines the efficiency of use and the amount of export of the materials from the community.

4. Community structure. "Community structure" means the organization of a biological community based on numbers of individuals within different taxonomic groups and the proporation each taxonomic group represents of the total community.

5. Direct discharge. "Direct discharge" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

6. Domestic pollutants. "Domestic pollutants" means any material, including without limitation, sanitary wastes, wastewater from household activities or wastewaters with similar chemical characteristics, which are generated at residential or commercial locations.

7. Estuarine and marine life. "Estuarine and marine life" means any plants or animals which live at least part of their life cycle in salt water.

8. Indigenous. "Indigenous" means supported in a reach of water or known to have been supported according to historical records compiled by state and federal agencies or published scientific literature.

9. Natural. "Natural" means living in, or as if in, a state of nature not measurably affected by human activity.

10. Resident biological community. "Resident biological community" means aquatic life existing in a habitat prior to the influence of a discharge.

11. Unimpaired. "Unimpaired" means without a diminished capacity to support aquatic life.

12. Without detrimental changes in the resident biological community. "Without detrimental changes in the resident biological community" means no significant loss of species or excessive dominance by any species or group of species attributable to human activity.

Comments on Definitions

The definitions included here are derived from language proposed by the DEP and modified following discussion by the working group including the professional biologist with PIIO. All definitions have been approved by the working group. The definitions included in LD1503 ("fresh surface waters" and "estuarine and marine waters") are not included in the enclosed material but will be included in the final version submitted to the subcommittee.

In the definition of indigenous in sub-§ 7, the legislature recognizes that in some waters of the State (e.g. impoundments) habitat in unsuitable to support all indigenous species. The intent of the legislature is that water quality not be a limiting factor to the survival of an indigenous species although for other reasons that species may not occur in the water in question.

In the definition of "direct discharge" in sub§5, the working group understands that the term "rolling stock" includes all vehicles including trucks and railroad cars.

Sec. 3. 38 MRSA §XXX, sub§X, ¶X, sub¶2 is enacted to read:

(2) The Legislature recognizes, however, that at certain times portions of the waters in the impoundments created by Gulf Island, Deer Rips and Lewiston Falls Dams have not and may continue to not meet the Class C requirements for dissolved oxygen due to hydrologic conditions related to the creation of the impoundments, including but not limited to impaired mixing of water columns, historical accumulation of sediment and elevated water temperature. The Legislature further recognizes that, for the purposes of this subparagraph, these impoundments constitute a valuable indigenous and renewable energy resource for hydroelectric energy which provide a significant contribution to the economic development and general welfare of the citizens of the State. Accordingly, the value and importance to the people of the State of hydroelectric energy and the unavoidable consequences to water quality resulting from the existance of these impoundments shall be considered when the board determines the impact of a discharge on the designated uses of the impoundments identified in this subparagraph. These impoundments shall be considered to meet their classification if **the Department finds that** (SPEAKER'S SUGGESTION) conditions in those impoundments are not preventing their designated uses from being reasonably attained. Nothing in this subparagraph shall be construed to limit the board's authority to consider the requirements of §414-A, sub§1 ¶¶A through E.

Sec. 4. 38 MRSA §XXX, sub§X, ¶X, sub¶3 is enacted to read:

(2) The Legislature recognizes, however, that at certain times portions of the waters in the impoundments created by Mattaceunk Dam. also known as Weldon Dam, and Dolby Dam have not and may continue to not meet the Class C requirements for dissolved oxygen due to hydrologic conditions related to the creation of the impoundments, including but not limited to impaired mixing of water columns, historical accumulation of sediment and elevated water temperature. The Legislature further recognizes that, for the purposes of this subparagraph, these impoundments constitute a valuable indigenous and renewable energy resource for hydroelectric energy which provide a significant contribution to the economic development and general welfare of the citizens of the State. Accordingly, the value and

importance to the people of the State of hydroelectric energy and the unavoidable consequences to water quality resulting from the existance of these impoundments shall be considered when the board determines the impact of a discharge on the designated uses of the impoundments identified in this subparagraph. These impoundments shall be considered to meet their classification if the Department finds that (SPEAKER'S SUGGESTION) conditions in those impoundments are not preventing their designated uses from being reasonably attained. Nothing in this subparagraph shall be construed to limit the board's authority to consider the requirements of §414-A, sub§1 ¶¶A through E.

Comments on Impoundments language

The group has agreed that water quality in certain identified impoundments fails to achieve the criteria required by their classification (eg DO) which may in turn threaten some of their designated uses (eg fish habitat). This failure is not primarily the fault of any existing discharges.

The group agrees that these specific impoundments provide significant economic and social benefits, primarily related to their use in hydroelectric facilities. Hydropower is a recognized and legitimate use of these river stretches.

The group agrees that it is appropriate to make special provisions for these situations so as not to impose unreasonable conditions on the existing, upstream discharges in these rivers.

It is the intent of the working group that these provisions apply only to the impoundments specifically identified. The working group does not foresee the need to include other existing impoundments nor any future impoundments in these provisions.

3944M

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TO: Members, Study Subcommittee on Water Quality
All Interested Parties
FROM: Tim Glidden and Dave Elliott, Legislative Assistants

SUBJECT: Presentation of fianl working group draft to study subcommittee
DATE: January 14,1986

The legislative study subcommittee on water quality (LD1503) will take up the final working group draft for discussicn on Tuesday, January 22,1986 at 1:30PM in room 120 (SOB).

The purpose of the meeting will be to decide on the subcommittee's recommendations to the Energy and Natural Resources Committee. The draft under discussion has been previously mailed to all parties on December 31,1985 (draft date: 12/30/85).

4585M

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

TO: Members, Study Subcommittee on Water Quality
All Interested Parties
FROM: Tim Glidden and Dave Elliott, Legislative Assistants

SUBJECT: Correction of meeting date
DATE: January 16,1986

This previous memo of January 14th contained an error in the meeting date. Please note the correct date.

The legislative study subcommittee on water quality (LD1503) will take up the final working group draft for discussion on Tuesday, January 21,1986 at 1:30PM in room 120 (SOB).

The purpose of the meeting will be to decide on the subcommittee's recommendations to the Energy and Natural Resources Committee. The draft under discussion has been previously mailed to all parties on December 31,1985 (draft date: 12/30/85).

4585M

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December 31, 1985

To: Members, Water Reclassification Study

From: David Elliott and Tim Glidden, Legislative Assistants

Subj: Working group draft

Enclosed is a final draft of the working group's version of the water reclassification bill. The working group has been able to resolve many of the areas of concern identified at earlier subcommittee meetings. As in earlier drafts which you have received, language which has not been agreed on has been highlighted and the source of any alternative language suggestions identified within the text of the bill.

Three areas are identified over which agreement on language has not yet been reached. They are:

- Anti-degradation policy (pp 7-9) (copies of NRCM and PIIO letters on anti-degradation are enclosed);
- Dissolved oxygen content for Class C waters and a special spawning standard for oxygen in Class B and C waters; (pp 12-13); and
- Treatment of impoundments of over 30 acres as great ponds (p. 15)

This draft has been reviewed by all members of the working group and the Attorney General's Office.

Please let us know if you have any questions. The subcommittee will be meeting early in the Session to discuss the final report.

DCE:TG:lk:4453

Water Reclassification
Working Group
12-30-85

SECOND REGULAR SESSION

ONE HUNDRED AND TWELFTH LEGISLATURE

Legislative Document No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY SIX

AN ACT to Amend the Classification System for Maine Waters and Change the Classifications of Certain Waters.

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

Sec. 1. 38 MRSA, chapter 3, Article 4-A is enacted to read:

ARTICLE 4-A. WATER CLASSIFICATION PROGRAM

§464. Classification of Maine waters

The waters of the State shall be classified in accordance with the provisions of this article.

1. Findings; objectives; purpose. The Legislature finds that the proper management of the State's water resources is of great public interest and concern to the State in promoting the general welfare, preventing disease, promoting health, providing habitat for fish, shellfish and wildlife, as a source of recreational opportunity and as a resource for commerce and industry.

The Legislature hereby declares that it is the State's objective to restore and maintain the chemical, physical and biological integrity of the State's waters and to preserve certain pristine State waters. The Legislature further declares that in order to achieve this objective the State's

goals are: (1) that the discharge of pollutants into the waters of the State be eliminated where appropriate; (2) that no pollutants be discharged into any water of the state without first being given the degree of treatment necessary to allow those waters to attain their classification, and (3) that water quality be sufficient to provide for the protection and propagation of fish, shellfish, and wildlife and provide for recreation in and on the water.

The Legislature intends by passage of this Act to establish a water quality classification system which will allow the State to manage its surface waters so as to protect the quality of those waters and, where water quality standards are not being achieved, to enhance water quality. This classification system shall be based on water quality standards which designate the uses and related characteristics of those uses for each class of water and which also establish water quality criteria necessary to protect those uses and related characteristics. The Legislature further intends by passage of this Act to assign to each of the State's surface water bodies the water quality classification which shall designate the minimum level of quality which the Legislature intends for the body of water. This designation is intended to direct the State's management of that water body in order to achieve at least that minimum level of water quality.

Comment to sub-§1.

This subsection states in broad and general terms the Legislature's intent in adopting the new surface water classification system. The adoption of this broad language is meant to reflect the resolve of Legislature to improve, where appropriate, the waters of the State over the course of time. This is an effort which has already yielded important results thanks to efforts by all segments of the economy. It is not the intent of the Legislature that the general language of this section be used by itself to establish a water quality violation. The standards contained in other portions of the bill are the mechanisms by which water quality is to be managed and regulated.

The first paragraph contains findings on the importance of water resources to Maine. The value of water to the economy is pointed out by adding reference to commerce and industry.

The second paragraph defines the State's water quality objective and goals. The language tracks closely that of section 101 of the Federal Clean Water Act by establishing an objective of maintaining and improving water quality and setting goals to achieve that objective. It also recognizes the need for some discharges to surface waters and articulates the policy of requiring treatment of those discharges to protect water quality.

The third paragraph states the Legislature's intent concerning the implementation of the surface water classification system. The system is to be used to protect and, where a water body is not attaining its classification, to enhance water quality. Water bodies are to be protected by a 2-step classification process. First, a standard is established for each class of water quality which consists of a/ designated uses and related characteristics and b/ water quality criteria which will support those uses and characteristics. Second, each water body will be assigned a specific classification by the Legislature. That classification will serve the dual purposes of establishing water quality goals for the water body and of serving as the basis for establishment of water quality-based conditions attached to State water discharge licenses.

2. Procedures for reclassification. Reclassification of Maine waters shall be governed by the following provisions.

A. Upon petition by any person or on its motion, the board, following public notice, may conduct classification studies and investigations. Information collected during these studies and investigations shall be made available to the public in an expeditious manner. After consultation with other state agencies and, where appropriate, individuals, citizen groups, industries, municipalities and federal and interstate water pollution control agencies, the board may propose changes in water reclassification.

B. The board shall call public hearings in the affected area, or reasonably adjacent to the affected area, for the purpose of presenting to all interested persons the proposed classification for each particular water body and obtaining public input.

C. The board may recommend changes in classification it deems necessary to the Legislature.

Comment to sub-§2

This subsection has been reorganized for clarity. Most of its language is taken from LD1503.

In paragraph A the language allowing "any person" to petition the board for a classification study is not intended to require the board to conduct such a study. This intent is clear from the language retained from LD1503; "the board may...conduct classification studies".

3. Reports to the Legislature. The board shall periodically report to the Legislature as governed by the following provisions.

A. The board shall submit to the First Regular Session of each Legislature a report on the the quality of the State's

waters which describes existing water quality, identifies waters which are not attaining their classification and which states what measures are necessary for the attainment of the standards of their classification.

B. The board shall from time to time, but at least once every three years, hold public hearings for the purpose of reviewing the water quality classification system and related standards and, as appropriate, recommending changes in the standards to the Legislature.

Comment to sub-§3

This subsection has been reorganized for clarity.

Para. A is taken verbatim from LD1503.

Para. B includes a procedure to periodically review the adequacy of the classification system (as distinct from the classification of a particular stretch of water). The DEP already undertakes this review to meet EPA requirements.

4. General provisions. The classification system for surface waters established by this article shall be subject to the following provisions.

A. **Not withstanding section 414-A, the board shall not issue a water discharge license for any of the following discharges:** (AG suggestion)

(1) New direct discharge of pollutants to waters having a drainage area of less than 10 square miles. Existing licensed discharges into these waters shall be allowed to continue only until practical alternatives exist;

(2) New direct discharge of domestic pollutants to tributaries of class GPA waters. No discharges into tributaries of GPA waters shall, by themselves or in combination with other activities, cause water quality degradation which would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters;

(3) Discharge of pollutants to waters of the State which imparts color, taste, turbidity, toxicity, radioactivity or other properties which cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class; and

(4) Discharge of pollutants to any water of the State which violates the provisions of sections 465, 465-A, and 465-B, except as provided in section 451, causes the "pH' of fresh waters to fall outside of the 6.0 to 8.5 range, causes the "pH" of estuarine and marine waters to fall outside of the 7.0 to 8.5 range or

causes fish for human consumption to be injurious to human health as determined by the U.S. Food and Drug Administration under the procedures established by 21 USC §342 or as determined by the Department of Human Services. The department shall establish a protocol for determining risk in appropriate situations. The protocol shall be promulgated as a rule in accordance with the Maine Administrative Procedure Act, 5 MRSA chapter 375.

B. All surface waters of the State shall be free of settled substances which alter the physical or chemical nature of bottom material and of floating substances, except as naturally occur, which impair the characteristics and designated uses ascribed to their class.

C. Where natural conditions, including but not limited to, marshes, bogs and abnormal concentrations of wildlife cause the dissolved oxygen or other water quality criteria to fall below the minimum standards specified in sections 465, 465-A, and 465-B, those waters will not be considered to be failing to attain their classification on account of those natural conditions.

D. For the purpose of computing whether a discharge will violate the classification of any river or stream, the assimilative capacity of the river or stream shall be computed using the minimum 7-day low flow which can be expected to occur with a frequency of once in 10 years.

E. The waters contained in excavations approved by the board for waste water treatment purposes shall be unclassified waters.

Comment to sub-§3

This subsection has been reorganized to improve clarity and revised based on discussions in the working group.

The general provisions of the bill relating to discharges have been organized in paragraph A. The language prohibiting discharges into Class AA and SA waters has been deleted from this subsection because it is duplicative of provisions found in the Class AA and SA sections. In line with the November 5, 1985 discussion, the term "direct" has been added to modify "discharge" in sub-paragraphs 1 and 2 to distinguish those discharges from non-point source discharges. See new definitions for meaning of direct discharge. Subsections 3 and 4 include all discharges in order to offer the broadest possible protection to water quality

In sub-para. 1, the prohibition on direct discharges to waters draining 10 sq. miles or less has been limited to new direct discharges to provide for the limited number of discharges which may currently exist in those waters. Existing discharges may continue until practical alternatives exist.

In sub-para. 2, language is included regarding discharges to tributaries of GPA waters which is transfered from the GPA classification section. The intent of this transfer is to have all provisions regarding discharges to GPA tributaries in one location. The term domestic pollutant is understood to include the release of domestic discharges from residences directly or via municipal treatment plants.

In sub-para. 3, the term "pollutant" has been substituted for "sewage, industrial waste, heat, hazardous matter or other substance."

In sub-para. 4, "unsuitable for human consumption" has been changed to "injurious to human health" as defined by the U.S. Food and Drug Administration or the Maine Dept. of Human Services to emphasize the intent to protect public health while allowing for possible differences in personal tastes in fish consumption.

Paragraphs B, C and D are taken from LD 1503.

Paragraph E is added to place the provisions regarding the status of certain excavations in the general provisions section for clarity. The language is taken verbatim from the GPA classification section of LD1503.

NRCM OPTION - ANTIDEGRADTION

F. Anti-degradation. It is the intent of this paragraph to comply with the requirements of the Federal Clean Water Act and associated regulations relating to antidegradation when waste discharge licenses, wasteload allocations or water quality certifications are being considered by the department or board.

(1) Existing instream water uses and the level of water quality necessary to protect those existing uses shall be maintained and protected. When used in this paragraph "existing instream water uses" are defined as significant, well-established uses that have actually occurred on a water body and fall within the category of designated uses and related characteristics of the classification of that body of water. Factual determinations of what constitutes an existing instream water use on a particular water body shall be made of a case by case basis by the Board.

(2) The level of water quality necessary to protect the designated uses and related characteristics of each classification shall be maintained and protected.

(3) Any discharge or activity licensed pursuant to section 414-A or requiring water quality certification pursuant to section 401 of the Clean Water Act shall not lower the existing quality of any water body without a finding by the board, after public participation, of important economic or social benefit to the state. That finding shall be made following procedures established by rule of the board.

(4) Where high quality waters of the State constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(5) Any discharge license pursuant to section 414-A or any water quality certification pursuant to section 401 of the Federal Clean Water Act PL 92-500, as amended, (33 USC 1251 et seq.) shall be issued only if the standards of classification of the water body and the requirements of this paragraph will be met.

(6) Where the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality shall be maintained and protected. The board shall recommend to the Legislature that such water be reclassified in that next higher classification.

(7) In any classification or reclassification of an individual water body, that water shall not be assigned a classification with water quality standards which are lower than the existing quality at the time of classification or reclassification if that existing quality meets the standards of a higher classification.

PIIO OPTION - ANTIDEGRADATION

F. Anti-degradation. It is the intent of this paragraph to comply with the requirements of the Federal Clean Water Act and associated regulations relating to antidegradation when waste discharge licenses, wasteload allocations or water quality certifications are being considered by the department or board and to provide the maximum flexibility allowed by federal law to imlement and develop state procedures and to interpret appropriate federal requirements.

(1) Existing instream water uses and the level of water quality necessary to protect those existing uses shall be maintained and protected. When used in this paragraph "existing instream water uses" are defined to be the designated uses of each classification that are actually being attained. The extent of allowable impact on designated uses shall be determined on a case by case basis in connection with the applicable requirements of state and federal law when a specific application is presented to the board or department.

(2) Any discharge or activity licensed pursuant to section 414-A or requiring water quality certification pursuant to section 401 of the Clean Water Act shall not lower the existing quality of any water body without a finding by the board, after public participation, of important economic or social benefit to the state. That finding shall be made following procedures established by rule of the board.

(3) Where high quality waters of the State constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected. For purposes of this section, "high quality waters" shall mean those river segments listed in 12 MRSA §403.

(4) Any discharge license pursuant to section 414-A or any water quality certification pursuant to section 401 of the Federal Clean Water Act PL 92-500, as amended, (33 USC 1251 et seq.) shall be issued only if the standards of classification of the water body and the requirements of this paragraph will be met.

(5) The policy expressed in this paragraph, to the extent possible, is to be carried out through the process of reviewing applications made pursuant to state and federal statutes and is not intended to be used as an independant basis (a) to limit consideration or approval of an application pursuant to the terms of any state or federal statute which allows an applicant upon receipt of a license or permit to affect the uses of a waterbody, including, without limitation, laws relating to dredging and filling, hydroelectric facilities, bridges or causeways or (b) to affect the application of 38 MRSA subarticle 1-B with respect to water quality certification pursuant to section 401 of the Federal Clean Water Act.

Paragraph F of subsection 3 contains the State's antidegradation policy. A state antidegradation policy is required by the Federal Clean Water Act. With respect to increments in water quality which are protected in subpara 3 of the NRCM option and subpara 2 of the PIIO option, it is the intent of the working group that the increases which are to be protected be not merely transitory improvements which are caused by plant closings, economic swings or other plant operations which are cyclical in nature. On the entire antidegradation issue, final agreement has not been attained due to disagreement on subparagraphs 1 and 6 of the PIIO option. PIIO views these as necessary to insure that applicants for discharge licenses or other regulated activities affecting water quality are given full consideration and that no application for a hydro facility, bridge, causeway or dredging and filling be denied solely on the basis of the antidegradation provisions. PIIO further feels subpara. 6 is needed to maintain the force of the provisions of 38 MRSA §§633-636 regarding water quality certification in hydro licensing. NRCM and MAS object to subpara. 6 on the grounds that it could preclude the effective application of the antidegradation policy to discharge applications and other regulated activities. Subpara.'s 7 and 8 of the NRCM option are opposed by PIIO and MCCI. DEP views subpara. 7 as unnecessary and subpara. 8 as ineffective.

See attached comments from PIIO and NRCM on the antidegradation language.

5. Rulemaking. In accordance with the Maine Administrative Procedure Act, the board shall promulgate rules necessary to implement the water quality classification system established by this Act. In promulgating rules, the board shall solicit and consider, in addition to any other materials, information on the economic and environmental impact of those rules.

Rules shall be promulgated by January 1, 1987, and as necessary thereafter, and shall include, but are not limited to, sampling and analytical methods, protocols and procedures for satisfying the water quality criteria, including evaluation of the impact of any discharge on the resident biological community.

Comment to sub-§4

This subsection is added to explicitly require DEP to adopt rules on certain subjects. The APA is cross referenced to ensure the availability of the public participation and legislative oversight provisions of that law. Specific provision is made requiring the board to consider the economic and environmental impact of its rules. The first set of rules must be adopted by January 1, 1987.

6. Implementation of biological water quality criteria. The implementation of water quality criteria pertaining to the protection of the resident biological community shall be governed by the provisions of this subsection.

A. At any time during the term of a valid waste water discharge license which was issued prior to the effective date of this Act, the board may modify that license in accordance with section 347 if the discharger is not in compliance with the water quality criteria pertaining to the protection of the resident biological community. When a discharge license is modified under this subsection, the board shall establish a reasonable schedule to bring the

discharge into compliance with the water quality criteria pertaining to the protection of the resident biological community.

B. A discharger seeking a new discharge license following the effective date of the rules adopted under subsection 4 of this section shall comply with the water quality criteria of this article.

Comment to sub-§5.

This subsection is added to clarify how enforcement will occur after enactment of the new classification system. After the effective date of rules adopted under this Act, a discharger seeking a new discharge license must comply with the provisions of the new system and rules adopted thereunder. The term, new discharge license, has been used in working group discussions to include renewals of existing licences. A discharger with a valid water discharge license issued before the effective date of this Act who is found to be not in compliance with the new water quality criteria may have its license modified under §347. A compliance schedule will be established by the board. A discharger seeking a renewal before the adoption of the rules will be treated in the same manner as a discharger with an existing license with respect to compliance with the biological water quality criteria. A discharger seeking renewal after that date shall be treated in the same manner as a new discharge application.

In order to give the legislative subcommittee an indication of the waters that are not expected to attain the biological standards, pgs 54-55 of the DEP "Summary of Scientific Basis for Proposed Changes" will be included in these comments.

§465. Standards for classification of fresh surface waters

The board shall have 4 standards for the classification of fresh surface waters which are not classified as great ponds.

1. Class AA waters. Class AA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic or recreational importance.

A. Class AA waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, fishing, recreation in and on the water, navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as free flowing and natural.

B. The aquatic life, dissolved oxygen and bacteria content of Class AA waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants to Class AA waters.

2. Class A waters. Class A shall be the 2nd highest classification.

A. Class A waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation, except as prohibited under Title 12, section 403 ,navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as natural.

B. The dissolved oxygen content of Class A waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher. The aquatic life and bacteria content of Class A waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants into waters of this classification and no deposits of such material on the banks of these waters in any manner that transfer of pollutants into the waters is likely, except that existing licensed discharges into waters of this classification will be allowed to continue until practical alternatives exist. New direct discharges to these waters will be permitted only if, in addition to satisfying all the requirements of this chapter, the discharged effluent will be equal to or better than the existing water quality of the receiving waters. Prior to issuing a discharge license, the board shall require the applicant to objectively demonstrate to the board's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available.

3. Class B. waters. Class B shall be the 3rd highest classification.

A. Class B waters shall be of such quality that they are suitable for the designated uses of drinking water supply after treatment, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation except as prohibited under Title 12, section 403, navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as unimpaired.

B. The dissolved oxygen content of Class B waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period October 1, through May 14, in order to ensure spawning and egg incubation of indigenous fish species, the 7 day mean dissolved oxygen concentration shall not be less than 9.5 parts per million and the 1 day minimum dissolved oxygen

concentration shall not be less than 8.0 parts per million in identified fish spawning areas. (MCCI opposes the spawning standard) Between May 15th and September 30th, the number of Escherichia coli bacteria of human origin in these waters shall not exceed a geometric mean of 64 per 100 milliliters or a instantaneous level of 427 per 100 milliliters.

C. Discharges to Class B waters shall not cause adverse impact to aquatic life in that the receiving waters shall be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community.

4. Class C waters. Class C shall be the 4th highest classification.

A. Class C waters shall be of such quality that they are suitable for the designated uses of drinking water supply after treatment, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation except as prohibited under Title 12, section 403, navigation and as a habitat for fish and other aquatic life.

B. The dissolved oxygen content of Class C water shall be not less than 5 parts per million or 60% of saturation, whichever is higher - PIIO-MCCI option stops here) (DEP option would continue , except that for the period October 1 through May 14, in identified fish spawning areas, where a 7 day mean dissolved oxygen concentration not less than 9.5 parts per million and a 1 day minimum dissolved oxygen concentration not less than 8.0 parts per million is being achieved at the time of application for a discharge license those levels shall be maintained to ensure spawning and egg incubation of indigenous fish species.) (NRCM/MAS proposal for the DO standard is as follows The dissolved oxygen content of Class C water shall be not less than 6 parts per million or 60% of saturation, whichever is higher, except that from the period October 1 through May 14 in order to ensure successful spawning and egg incubation of indigenous fish species, the 7 day mean dissolved oxygen concentration shall not be less than 9.5 ppm and the 1 day mininum dissolved oxygen concentration shall not be less than 8.0 ppm. Between May 15th and September 30th, the number of Escherichia coli bacteria of human origin in these waters shall not exceed a geometric mean of 142 per 100 milliliters or an instantaneous level of 949 per 100 milliliters. The department shall promulgate rules governing the procedure for designation of spawning areas. Those rules shall include provision for periodic review of designated spawning areas and consultation with affected persons prior to designation of a stretch of water as a spawning area.

C. Discharges to Class C waters may cause some changes to aquatic life, provided that the receiving waters shall be of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.

Comments to §465

This section has been reorganized to improve clarity and revised based on discussions in the working group. Each of the 4 classes are described in a separate subsection. Within each subsection, there are 3 paragraphs for designated uses and characteristics, biological criteria and discharge language.

In sub-§2, para. A, the appropriateness of hydroelectric power generation on Class A waters which have been designated for special protection (i.e., no dams) in the Rivers Bill is clarified.

In sub-§3, para. B, additional dissolved oxygen criteria are established Class B waters between September 30 and May 15 in identified fish spawning areas in order to protect early stages of salmonid fish life. MCCI opposes this provision because of the potential impact on new discharges.

In sub-§3, para. A, identical language to that discussed above in Class A waters dealing with hydroelectric power generation has been added for Class B waters.

In sub-§4, para. B, the working group understands that, in adopting the 60% saturation standard for DO, Class C waters in the Act will meet their classification under existing conditions and in conjunction with the proposed impoundments provisions.

NRCM and MAS propose a 6 ppm DO criteria to replace the 5 ppm criteria supported by DEP, PIIO and MCCI. The grounds for their proposal is that 6 ppm is needed to adequately protect fisheries.

In sub-§4, para.B, DEP has proposed language similar to that in sub-§3, para.3 establishing special dissolved oxygen criteria for Class C waters to protect spawning areas. The important difference in DEP's proposal for the C class is that the spawning criteria for C class would have to be maintained only if they were being attained at the time of application for a discharge.

NRCM and MAS proposes that a DO spawning criteria for Class C be identical to that in Class B.

Both PIIO and MCCI have certain philosophical objections to the DO spawning criteria based on the potential impact on new discharges.

§465-A. Standards for classification of lakes and ponds

The board shall have one standard for the classification of great ponds and natural lakes and ponds less than 10 acres in size. Impoundments of rivers **that are defined as great ponds pursuant to §392 shall** (AG suggestion) be classified as GPA or as specifically provided in sections 466 and 466-A **or may become great ponds by definition as set forth in §392** (PIIO proposal).

1. Class GPA waters. Class GPA shall be the sole classification of great ponds and natural ponds and lakes less than 10 acres size.

A. Class GPA waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, recreation in and on the water, fishing, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as natural.

B. Class GPA waters shall be described by their trophic state based on measures of the chlorophyll "a" content, Secchi disk transparency, total phosphorus content and other appropriate criteria. Class GPA waters shall have a stable or decreasing trophic state, subject only to natural fluctuations, and shall be free of culturally-induced algal blooms which impair their use and enjoyment. The number of Escherichia coli bacteria of human origin in these waters shall not exceed a geometric mean of 29 per 100 milliliters or an instantaneous level of 194 per 100 milliliters.

C. There shall be no new direct discharge of pollutants into Class GPA waters. Aquatic chemical applications approved by the board shall be exempt from the no discharge provision. Existing licensed discharges into these waters shall be allowed to continue only until practical alternatives exist. No materials may be placed on or removed from the shores or banks of a Class GPA water body in such a manner that materials may fall or be washed into the water or that contaminated drainage therefrom may flow or leach into those waters, except as permitted pursuant to section 391. No change of land use in the watershed of a Class GPA water body may, by itself or in combination with other activities, cause water quality degradation which would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters.

Comments on GPA Classification

PIIO has proposed additional language for the introduction to this section to allow impoundments to become great ponds "by definition". The term "by definition" refers to the statutory definition of "great pond" in the Title 38. This subject has

not been discussed at length by the group and no resolution has been reached. However, DEP, NRCM and MAS object to this proposal because, as was discussed by the group in considering the impoundments provisions (contained later in this draft), some impoundments may fit the hydrologic characteristics of a lake and others, of a river. Thus, classification by arbitrary size definition is inappropriate from a scientific perspective.

§465-B. Standards for classification of estuarine and marine waters

The board shall have 3 standards for the classification of estuarine and marine waters.

1. Class SA waters. Class SA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic, economic or recreational importance.

A. Class SA waters shall be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, navigation and as habitat for fish and other estuarine and marine life. The habitat shall be characterized as free-flowing and natural.

B. The estuarine and marine life, dissolved oxygen and bacteria content of Class SA waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants to Class SA waters.

2. Class SB waters. Class SB waters shall be the 2nd highest classification.

A. Class SB shall be the 2nd highest classification and these waters shall be such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting or shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other estuarine and marine life. The habitat shall be characterized as unimpaired.

B. The dissolved oxygen content of Class SB waters shall be not less than 85% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human origin in these waters shall not exceed a geometric mean of 8 per 100 milliliters or an instantaneous level of 54 per 100 milliliters. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in shellfish harvesting areas shall not exceed the criteria recommended under the

National Shellfish Sanitation Program Manual of Operations, Part I - Sanitation of Shellfish Growing Areas, United States Food and Drug Administration.

C. Discharges to Class SB waters shall not cause adverse impact to estuarine and marine life in that the receiving waters shall be of sufficient quality to support all estuarine and marine species indigenous to the receiving water without detrimental changes in the resident biological community. There shall be no new discharge to Class SB waters which would cause closure of open shellfish areas by the Department of Marine Resources.

3. Class SC waters. Class SC waters shall be the 3rd highest classification.

A. Class SC waters shall be of such quality that they are suitable for recreation in and on the water, fishing, aquaculture, propagation and restricted harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as a habitat for fish and other estuarine and marine life.

B. The dissolved oxygen content of Class SC waters shall be not less than 70% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human origin in these waters shall not exceed a geometric mean of 14 per 100 milliliters or an instantaneous level of 94 per 100 milliliters. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in restricted shellfish harvesting areas shall not exceed the criteria recommended under the National Shellfish Sanitation Program Manual of Operations, Part I - Sanitation of Shellfish Growing Areas, United States Food and Drug Administration.

C. Discharges to Class SC waters may cause some changes to estuarine and marine life provided that the receiving waters are of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.

Comments on §465-B

A coliform standard has been added to the SB and SC classifications to protect the state's certification of interstate shellfish shipments. Please note that rather than using specific numerical criteria for bacteria, the standard references the FDA program manual for shellfish sanitation. A designated use of "restricted harvesting of shellfish" has been added to the SC classification recognising the clamming industry's ability to harvest and sell after depuratation treatment.

Sec. 2. 38 MRSA §XXX is amended by adding the following definitions.

1. As naturally occurs. "As naturally occurs" means conditions with essentially the same physical, chemical and biological characteristics as found in situations with similar habitats free of measureable effects of human activity.

2. Aquatic life. "Aquatic life" means any plants or animals which live at least part of their life cycle in fresh water.

3. Community function. "Community function" means mechanisms of uptake, storage and transfer of life-sustaining materials available to a biological community which determines the efficiency of use and the amount of export of the materials from the community.

4. Community structure. "Community structure" means the organization of a biological community based on numbers of individuals within different taxonomic groups and the proporation each taxonomic group represents of the total community.

5. Direct discharge. "Direct discharge" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

6. Estuarine and marine life. "Estuarine and marine life" means any plants or animals which live at least part of their life cycle in salt water.

7. Indigenous. "Indigenous" means supported in a reach of water or known to have been supported according to historical records compiled by state and federal agencies or published scientific literature.

8. Natural. "Natural" means living in, or as if in, a state of nature not measurably affected by human activity.

9. Resident biological community. "Resident biological community" means aquatic life existing in a habitat prior to the influence of a discharge.

10. Unimpaired. "Unimpaired" means without a diminished capacity to support aquatic life.

11. Without detrimental changes in the resident biological community. "Without detrimental changes in the resident biological community" means no significant loss of species or excessive dominance by any species or group of species attributable to human activity.

Comments on Definitions

The definitions included here are derived from language proposed by the DEP and modified following discussion by the working group including the professional biologist with PIIO. All definitions have been approved by the working group. The definitions included in LD1503 ("fresh surface waters" and "estuarine and marine waters") are not included in the enclosed material but will be included in the final version submitted to the subcommittee.

In the definition of indigenous in sub-§ 7, the legislature recognizes that in some waters of the State (e.g. impoundments) habitat in unsuitable to support all indigenous species. The intent of the legislature is that water quality not be a limiting factor to the survival of an indigenous species although for other reasons that species may not occur in the water in question.

In the definition of "direct discharge" in sub§5, the working group understands that the term "rolling stock" includes all vehicles including trucks and railroad cars.

Sec. 3. 38 MRSA §XXX, sub§X, ¶X, sub¶2 is enacted to read:

(2) The Legislature recognizes, however, that at certain times portions of the waters in the impoundments created by Gulf Island, Deer Rips and Lewiston Falls Dams have not and may continue to not meet the Class C requirements for dissolved oxygen due to hydrologic conditions related to the creation of the impoundments, including but not limited to impaired mixing of water columns, historical accumulation of sediment and elevated water temperature. The Legislature further recognizes that, for the purposes of this subparagraph, these impoundments constitute a valuable indigenous and renewable energy resource for hydroelectric energy which provide a significant contribution to the economic development and general welfare of the citizens of the State. Accordingly, the value and importance to the people of the State of hydroelectric energy and the unavoidable consequences to water quality resulting from the existance of these impoundments shall be considered when the board determines the impact of a discharge on the designated uses of the impoundments identified in this subparagraph. These impoundments shall be considered to meet their classification if the Board finds that conditions in those impoundments are not preventing their designated uses from being reasonably attained. Nothing in this subparagraph shall be construed to limit the board's authority to consider the requirements of §414-A, sub§1 ¶¶A through E.

Sec. 4. 38 MRSA §XXX, sub§X, ¶X, sub¶3 is enacted to read:

(2) The Legislature recognizes, however, that at certain times portions of the waters in the impoundments created by Mattaceunk Dam. also known as Weldon Dam, and Dolby Dam have not and may continue to not meet the Class C requirements for dissolved oxygen due to hydrologic conditions related to the creation of the impoundments, including but not limited to impaired mixing of water columns, historical accumulation of sediment and elevated water temperature. The Legislature further recognizes that, for the purposes of this subparagraph, these impoundments constitute a valuable indigenous and renewable energy resource for hydroelectric energy which provide a significant contribution to the economic development and general welfare of the citizens of the State. Accordingly, the value and importance to the people of the State of hydroelectric energy and the unavoidable consequences to water quality resulting from the existance of these impoundments shall be considered when the board determines the impact of a discharge on the designated uses of the impoundments identified in this subparagraph. These impoundments shall be considered to meet their classification if the Board finds that conditions in those impoundments are not preventing their designated uses from being reasonably attained. Nothing in this subparagraph shall be construed to limit the board's authority to consider the requirements of §414-A, sub§1 ¶¶A through E.

Comments on Impoundments language

The group has agreed that water quality in certain identified impoundments fails to achieve the criteria required by their classification (eg DO) which may in turn threaten some of their designated uses (eg fish habitat). This failure is not primarily the fault of any existing discharges.

The group agrees that these specific impoundments provide significant economic and social benefits, primarily related to their use in hydroelectric facilities. Hydropower is a recognized and legitimate use of these river stretches.

The group agrees that it is appropriate to make special provisions for these situations so as not to impose unreasonable conditions on the existing, upstream discharges in these rivers.

It is the intent of the working group that these provisions apply only to the impoundments specifically identified. The working group does not foresee the need to include other existing impoundments nor any future impoundments in these provisions.

PIERCE, ATWOOD, SCRIBNER, ALLEN, SMITH & LANCASTER

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December 17, 1985

Mr. David Elliott
Mr. Tim Glidden, Jr.
Office of the Legislative Assistants
Room 101
State House Station 13
Augusta, Maine 04333

Re: Water Quality Reclassification Study (L.D. 1503)

Dear Dave & Tim:

I enclose a redrafted version of paragraphs 1 through 6 of the Anti-degradation proposal. My attempt was to be even more explicit on what the PIIO position is. The more I read on the subject and the more I think about it, it is absolutely essential that the Maine Legislature not put into its statutes some EPA Regulations which were designed to allow a great deal of flexibility to the State. For instance, where EPA says it doesn't care how Maine defines "existing use" to simply put the EPA language in as a Maine statute raises unintended questions as to the rigidity with which the words must be interpreted. In fact, it may be wise that we give serious consideration to a simple requirement that anti-degradation policies and methods should be established to be consistent with the requirements of EPA and perhaps leave it up to the Board to decide the specifics, subject to Legislative approval. We have had problems in the past where the Maine Legislature has adopted Federal Regulations (the Federal PSD process) only to find that the Federal Regulations have been changed or overturned by Courts and we are left with statutes on our books which are inconsistent with requirements in other parts of the country. For this reason, I think we should give serious thought to whether the statutes need to contain a verbatim recitation of an EPA Regulation which is intended to be interpreted flexibly.

On the assumption that the Legislature does want to have a statement in the Maine Statutes, I have tried to show in a number of places that flexibility is intended and that anti-degradation is not to be used by itself to deny licenses or permits.

I have deleted paragraph 2 because I can't see how it adds anything that is not in paragraph 1 and I have, of course, not included the NRCM or Maine Audubon Society proposals.

I view this as another draft and one which I have not reviewed with PIIO or the Maine Chamber. I did promise to send additional language in and am doing so in the hopes that it shows further the kind of thinking which we have been doing with industry.

Very truly yours,

Daniel E. Boxer

DEB/jo
Enclosure
cc: James Dow, Esq.
Nancy Anderson, Esq.
Patricia Warr
Valmar S. Thompson
Stephen Groves
Kenneth C. Young, Jr.
PIIO List

INITIAL DRAFT
for discussion
D. BOXER

STATE OF MAINE

L.D. 1503 AN ACT to Amend the Classification System for Maine Waters and Change the Classifications of Certain Waters

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F. Anti-degradation. It is the intent of this paragraph to comply with the requirements of the Federal Clean Water Act and associated regulations relating to anti-degradation when waste discharge licenses, wasteload allocations or water quality certifications are being considered by the department or board and to provide the maximum flexibility allowed by Federal Law to implement and develop State procedures and to interpret appropriate federal requirements.

(1) Existing instream water uses and the level of water quality necessary to protect those existing uses shall be maintained and protected. When used in this paragraph "existing instream water uses" are defined to be the designated uses ~~and related characteristics~~ of each classification that are actually being attained and the extent of allowable impact on designated uses shall be determined on a case-by-case basis in connection with the applicable requirements of State and federal law when a specific application is presented to the board or department.

~~(2) The level of water quality necessary to protect the designated uses and related characteristics of each classification shall be maintained and protected.~~

(2) Any discharge or activity licensed pursuant to Section 414-A or requiring water quality certification pursuant to Section 401 of the Clean Water Act shall not lower the existing quality of any water body without a finding by the board, after public hearing, of important economic or social benefit to the state. That finding shall be made as provided by rule of the board.

~~(4)~~ (3) Where high quality waters of the State constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected. For purposes of this section, "high quality waters" shall mean those river segments listed in M.R.S.A. §403.

~~(5)~~ (4) Any discharge license pursuant to section 414-A or any water quality certification pursuant to section 401 of the Federal Clean Water Act PL 92-500, as amended, (33 USG 1251 et seq.) shall be issued only if the standards of classification of the water body and the requirements of this paragraph will be met.

~~(6)~~ (5) ~~(~~The policy expressed in this paragraph, to the extent possible, is to be carried out through the process of reviewing applications made pursuant to State and federal statutes and is not intended to be used as an independent basis (a) to limit consideration and/or approval of an application pursuant to the terms of any State or federal statute which allows an applicant upon receipt of a license or permit to affect the uses of a waterbody, including without limitation, laws relating to dredging and filling, hydroelectric facilities, bridges or causeways or (b) to affect the application of 38 M.R.S.A. subarticle 1-B with respect to water quality certification pursuant to section 401 of the Federal Clean Water Act.

~~(7)~~

~~(8)~~

Natural Resources Council of Maine
271 State Street, Augusta, Maine 04330 207-622-3101

December 20, 1985

David Elliot
William T. Glidden, Jr.
Office of Legislative Assistants
State House Station 13
Augusta, Maine 04333

Gentlemen:

As you requested at the December 11th meeting of the working group, I have set out below our position on the proposed anti--degradation provisions. Because the "existing use" language is primarily at issue, I have focussed on that.

Existing use language:

The concept embodied in the sentence, "Existing instream water uses and the level of water quality necessary to protect those existing uses shall be maintained and protected" is an essential element of the anti-degradation provisions required by federal law. It in fact hits at the very heart of the term anti-degradation by acknowledging that there are certain things that must be absolutely protected, that cannot be eroded by development. The difficult question is, how are those existing uses to be defined.

Our position is that the protection of existing uses does not mean that all uses that presently exist can never be affected; yet it also does not mean that all uses of a water body in every case can be adversely affected by development. The proper meaning rests somewhere in the middle. We see that middle as the protection of significant, well-established uses.

These significant, well-established uses would be specific activities that fall within the broad range of activities set out as the designated uses and characteristics of the classification of the water body at issue. However, the two terms, existing uses and designated uses, must not be then seen as exact equivalents. Existing uses are specific uses that are a subset of designated uses.

The actual determination of what use fits into this definition can and should be made on a case by case basis. Similar factual determinations are made regularly by the BEP and other regulatory agencies in the issuance of a variety of permits. The "case law" developed by the Board over time would further refine the meaning of existing uses, as only case law can.

Because the focus would be on significant well-established uses, this existing use would be a limiting factor in only a small percentage of cases. Even then, development would not be precluded if the project were designed or redesigned to be consistent with those uses. When that is not possible, the development could still be relocated to another site.

There clearly would be some cases where a development would destroy significant, well-established uses. In those few cases, the existing use language would preclude that development at that particular site. That however is as it should be if the federal requirement regarding existing use is to have any real meaning.

As for the specific language of the anti-degradation section of the draft bill regarding existing uses, the following changes should be made:

(1) The second sentence under sub (1) should be eliminated and replaced with the following: "When used in this paragraph, "existing insteam water uses" are defined as significant, well-established uses that have actually occurred on a water body and fall within the category of designated uses and related characteristics of the classification of that body of water. Factual determinations of what constitutes an existing instream water use on a particular water body shall be made on a case by case basis by the Board".

(2) Sub 6 should be eliminated. This language seeks to limit the applicability of the anti-degradation language, in particular the subsection regarding existing use protection. It is our position that an analysis under these anti-degradation provisions must be made whenever a waste discharge license or section 401 certification is at issue.

Other language.

Sub-sections 2, 3, 4, 5, 7, and 8 of anti-degradation language, as set out in the 11-26-85 draft should remain as is. Together with the existing use language proposed these sections comprise a comprehensive approach to protecting the investments made in improving the state's water quality.

I have discussed these comments with Nancy Anderson of Maine Audubon and she is in agreement with them. I hope this clearly describes our position on the anti-degradation language. If you have any questions, please let me know.

Sincerely,

James Dow

JD:kw

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TO: Interested Parties: WATER QUALITY
FROM: Tim Glidden and Dave Elliott, Legislative Assistants

SUBJECT: Final Draft of LD1503 Revisions
DATE: December 20,1985

Enclosed you will find a draft of the water quality bill revised to include all of the working group's efforts to date. Additions of consequence include the agreed-to language on impoundments and the proposed antidegradation language from PIIO and NRCM. Their cover letters are attached to the end of the bill. Please give careful attention to this entire draft and the related comments. Let us know, in writing, by December 30th if you need any further fine tuning. We will be mailing this to the legislative subcommittee on the December 30th.

Dave and I met with Phyllis Gardner of the AG's office today to discuss their concerns. We have made several changes in the text which are in boldface and are identified as "(AG suggestions)". We do not think that these require an additional meeting of the working group. Please notify us before December 30th if you feel otherwise. If we do not hear from you by that date we will assume the AG suggestions are acceptable to the group.

Finally, ... please relax over the holidays and have a good time.

4426M

Water Reclassification
Working Group
12-~~12~~-85
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SECOND REGULAR SESSION

ONE HUNDRED AND TWELFTH LEGISLATURE

Legislative Document No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY SIX

AN ACT to Amend the Classification System for Maine Waters and Change the Classifications of Certain Waters.

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

Sec. 1. 38 MRSA, chapter 3, Article 4-A is enacted to read:

ARTICLE 4-A. WATER CLASSIFICATION PROGRAM

§464. Classification of Maine waters

The waters of the State shall be classified in accordance with the provisions of this article.

1. Findings; objectives; purpose. The Legislature finds that the proper management of the State's water resources is of great public interest and concern to the State in promoting the general welfare, preventing disease, promoting health, providing habitat for fish, shellfish and wildlife, as a source of recreational opportunity and as a resource for commerce and industry.

The Legislature hereby declares that it is the State's objective to restore and maintain the chemical, physical and biological integrity of the State's waters and to preserve certain pristine State waters. The Legislature further declares that in order to achieve this objective the State's

goals are: (1) that the discharge of pollutants into the waters of the State be eliminated where appropriate; (2) that no pollutants be discharged into any water of the state without first being given the degree of treatment necessary to allow those waters to attain their classification, and (3) that water quality be sufficient to provide for the protection and propagation of fish, shellfish, and wildlife and provide for recreation in and on the water.

The Legislature intends by passage of this Act to establish a water quality classification system which will allow the State to manage its surface waters so as to protect the quality of those waters and, where water quality standards are not being achieved, to enhance water quality. This classification system shall be based on water quality standards which designate the uses and related characteristics of those uses for each class of water and which also establish water quality criteria necessary to protect those uses and related characteristics. The Legislature further intends by passage of this Act to assign to each of the State's surface water bodies the water quality classification which shall designate the minimum level of quality which the Legislature intends for the body of water. This designation is intended to direct the State's management of that water body in order to achieve at least that minimum level of water quality.

Comment to sub-§1.

This subsection states in broad and general terms the Legislature's intent in adopting the new surface water classification system. The adoption of this broad language is meant to reflect the resolve of Legislature to improve, where appropriate, the waters of the State over the course of time. This is an effort which has already yielded important results thanks to efforts by all segments of the economy. It is not the intent of the Legislature that the general language of this section be used by itself to establish a water quality violation. The standards contained in other portions of the bill are the mechanisms by which water quality is to be managed and regulated.

The first paragraph contains findings on the importance of water resources to Maine. The value of water to the economy is pointed out by adding reference to commerce and industry.

The second paragraph defines the State's water quality objective and goals. The language tracks closely that of section 101 of the Federal Clean Water Act by establishing an objective of maintaining and improving water quality and setting goals to achieve that objective. It also recognizes the need for some discharges to surface waters and articulates the policy of requiring treatment of those discharges to protect water quality.

The third paragraph states the Legislature's intent concerning the implementation of the surface water classification system. The system is to be used to protect and, where a water body is not attaining its classification, to enhance water quality. Water bodies are to be protected by a 2-step classification process. First, a standard is established for each class of water quality which consists of a/ designated uses and related characteristics and b/ water quality criteria which will support those uses and characteristics. Second, each water body will be assigned a specific classification by the Legislature. That classification will serve the dual purposes of establishing water quality goals for the water body and of serving as the basis for establishment of water quality-based conditions attached to State water discharge licenses.

2. Procedures for reclassification. Reclassification of Maine waters shall be governed by the following provisions.

A. Upon petition by any person or on its motion, the board, following public notice, may conduct classification studies and investigations. Information collected during these studies and investigations shall be made available to the public in an expeditious manner. After consultation with other state agencies and, where appropriate, individuals, citizen groups, industries, municipalities and federal and interstate water pollution control agencies, the board may propose changes in water reclassification.

B. The board shall call public hearings in the affected area, or reasonably adjacent to the affected area, for the purpose of presenting to all interested persons the proposed classification for each particular water body and obtaining public input.

C. The board may recommend changes in classification it deems necessary to the Legislature.

Comment to sub-§2

This subsection has been reorganized for clarity. Most of its language is taken from LD1503.

In paragraph A the language allowing "any person" to petition the board for a classification study is not intended to require the board to conduct such a study. This intent is clear from the language retained from LD1503; "the board may...conduct classification studies".

3. Reports to the Legislature. The board shall periodically report to the Legislature as governed by the following provisions.

A. The board shall submit to the First Regular Session of each Legislature a report on the the quality of the State's

waters which describes existing water quality, identifies waters which are not attaining their classification and which states what measures are necessary for the attainment of the standards of their classification.

B. The board shall from time to time, but at least once every three years, hold public hearings for the purpose of reviewing the water quality classification system and related standards and, as appropriate, recommending changes in the standards to the Legislature.

Comment to sub-§3

This subsection has been reorganized for clarity.

Para. A is taken verbatim from LD1503.

Para. B includes a procedure to periodically review the adequacy of the classification system (as distinct from the classification of a particular stretch of water). The DEP already undertakes this review to meet EPA requirements.

4. General provisions. The classification system for surface waters established by this article shall be subject to the following provisions.

A. **The board shall not approve a discharge license pursuant to section §414-A for the following discharges:** (AG suggestion)

(1) New direct discharge of pollutants to waters having a drainage area of less than 10 square miles. Existing licensed discharges into these waters shall be allowed to continue only until practical alternatives exist;

(2) New direct discharge of domestic pollutants to tributaries of class GPA waters. Discharges into tributaries of GPA waters shall not, by themselves or in combination with other activities, cause water quality degradation which would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters;

(3) Discharge of pollutants to waters of the State which imparts color, taste, turbidity, toxicity, radioactivity or other properties which cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class; and

(4) Discharge of pollutants to any water of the State which violates the provisions of sections 465, 465-A, and 465-B, except as provided in section 451, causes the "pH' of fresh waters to fall outside of the 6.0 to 8.5 range, causes the "pH" of estuarine and marine waters to fall outside of the 7.0 to 8.5 range or

causes fish for human consumption to be injurious to human health as determined by the U.S. Food and Drug Administration under the procedures established by 21 USC §342 or as determined by the Department of Human Services. The department shall establish a protocol for determining risk in appropriate situations. The protocol shall be promulgated as a rule in accordance with the Maine Administrative Procedure Act, 5 MRSA chapter 375.

B. All surface waters of the State shall be free of settled substances which alter the physical or chemical nature of bottom material and of floating substances, except as naturally occur, which impair the characteristics and designated uses ascribed to their class.

C. Where natural conditions, including but not limited to, marshes, bogs and abnormal concentrations of wildlife cause the dissolved oxygen or other water quality criteria to fall below the minimum standards specified in sections 465, 465-A, and 465-B, those waters will not be considered to be failing to attain their classification on account of those natural conditions.

D. For the purpose of computing whether a discharge will violate the classification of any river or stream, the assimilative capacity of the river or stream shall be computed using the minimum 7-day low flow which can be expected to occur with a frequency of once in 10 years.

E. The waters contained in excavations approved by the board for waste water treatment purposes shall be unclassified waters.

Comment to sub-§3

This subsection has been reorganized to improve clarity and revised based on discussions in the working group.

The general provisions of the bill relating to discharges have been organized in paragraph A. The language prohibiting discharges into Class AA and SA waters has been deleted from this subsection because it is duplicative of provisions found in the Class AA and SA sections. In line with the November 5, 1985 discussion, the term "direct" has been added to modify "discharge" in sub-paragraphs 1 and 2 to distinguish those discharges from non-point source discharges. See new definitions for meaning of direct discharge. Subsections 3 and 4 include all discharges in order to offer the broadest possible protection to water quality

In sub-para. 1, the prohibition on direct discharges to waters draining 10 sq. miles or less has been limited to new direct discharges to provide for the limited number of discharges which may currently exist in those waters. Existing discharges may continue until practical alternatives exist.

In sub-para. 2, language is included regarding discharges to tributaries of GPA waters which is transfered from the GPA classification section. The intent of this transfer is to have all provisions regarding discharges to GPA tributaries in one location. **The term domestic pollutant is understood to include the release of domestic discharges from residences directly or via municipal treatment plants.** (AG suggestion)

In sub-para. 3, the term "pollutant" has been substituted for "sewage, industrial waste, heat, hazardous matter or other substance."

In sub-para. 4, "unsuitable for human consumption" has been changed to "injurious to human health" as defined by the U.S. Food and Drug Administration or the Maine Dept. of Human Services to emphasize the intent to protect public health while allowing for possible differences in personal tastes in fish consumption.

Paragraphs B, C and D are taken from LD 1503.

Paragraph E is added to place the provisions regarding the status of certain excavations in the general provisions section for clarity. The language is taken verbatim from the GPA classification section of LD1503.

NRCM OPTION - ANTIDEGRADTION

F. Anti-degradation. It is the intent of this paragraph to comply with the requirements of the Federal Clean Water Act and associated regulations relating to antidegradation when waste discharge licenses, wasteload allocations or water quality certifications are being considered by the department or board.

(1) Existing instream water uses and the level of water quality necessary to protect those existing uses shall be maintained and protected. When used in this paragraph "existing instream water uses" are defined as significant, well-established uses that have actually occurred on a water body and fall within the category of designated uses and related characteristics of the classification of that body of water. Factual determinations of waht constitutes an existing instream water use on a particular water body shall be made of a case by case basis by the Board.

(2) The level of water quality necessary to protect the designated uses and related characteristics of each classification shall be maintained and protected.

(3) Any discharge or activity licensed pursuant to section 414-A or requiring water quality certification pursuant to section 401 of the Clean Water Act shall not lower the existing quality of any water body without a finding by the board, after public participation, of important economic or social benefit to the state. That finding shall be made (following procedures established AG suggestion) by rule of the board.

(4) Where high quality waters of the State constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(5) Any discharge license pursuant to section 414-A or any water quality certification pursuant to section 401 of the Federal Clean Water Act PL 92-500, as amended, (33 USC 1251 et seq.) shall be issued only if the standards of classification of the water body and the requirements of this paragraph will be met.

(6) Where the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality shall be maintained and protected. The board shall recommend to the Legislature that such water be reclassified in that next higher classification.

(7) In any classification or reclassification of an individual water body, that water shall not be assigned a classification with water quality standards which are lower than the existing quality at the time of classification or reclassification if that existing quality meets the standards of a higher classification.

PIIO OPTION - ANTIDEGRADATION

F. Anti-degradation. It is the intent of this paragraph to comply with the requirements of the Federal Clean Water Act and associated regulations relating to antidegradation when waste discharge licenses, wasteload allocations or water quality certifications are being considered by the department or board and to provide the maximum flexibility allowed by federal law to imlement and develop state procedures and to interpret appropriate federal requirements.

(1) Existing instream water uses and the level of water quality necessary to protect those existing uses shall be maintained and protected. When used in this paragraph "existing instream water uses" are defined to be the designated uses of each classification that are actually being attained. The extent of allowable impact on designated uses shall be determined on a case by case basis in connection with the applicable requirements of state and federal law when a specific application is presented to the board or department.

(2) Any discharge or activity licensed pursuant to section 414-A or requiring water quality certification pursuant to section 401 of the Clean Water Act shall not lower the existing quality of any water body without a finding by the board, after public participation, of important economic or social benefit to the state. That finding shall be made (following procedures established AG suggestion) by rule of the board.

(3) Where high quality waters of the State constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected. For purposes of this section, "high quality waters" shall mean those river segments listed in 12 MRSA §403.

(4) Any discharge license pursuant to section 414-A or any water quality certification pursuant to section 401 of the Federal Clean Water Act PL 92-500, as amended, (33 USC 1251 et seq.) shall be issued only if the standards of classification of the water body and the requirements of this paragraph will be met.

(5) The policy expressed in this paragraph, to the extent possible, is to be carried out through the process of reviewing applications made pursuant to state and federal statutes and is not intended to be used as an independant basis (a) to limit consideration or approval of an application pursuant to the terms of any state or federal statute which allows an applicant upon receipt of a license or permit to affect the uses of a waterbody, including, without limitation, laws relating to dredging and filling, hydroelectric facilities, bridges or causeways or (b) to affect the application of 38 MRSA subarticle 1-B with respect to water quality certification pursuant to section 401 of the Federal Clean Water Act.

Paragraph F of subsection 3 contains the State's antidegradation policy. A state antidegradation policy is required by the Federal Clean Water Act. With respect to increments in water quality which are protected in subpara 3 of the NRCM option and subpara 2 of the PIIO option, it is the intent of the working group that the increases which are to be protected be not merely transitory improvements which are caused by plant closings, economic swings or other plants operations which are cyclical in nature. On the entire antidegradation issue, final agreement has not been attained due to disagreement on subparagraphs 1 and 6 of the PIIO option. PIIO views these as necessary to insure that applicants for discharge licenses or other regulated activities affecting water quality are given full consideration and that no application for a hydro facility, bridge, causeway or dredging and filling be denied solely on the basis of the antidegradation provisions. PIIO further feels subpara. 6 is needed to maintain the force of the provisions of 38 MRSA §§633-636 regarding water quality certification in hydro licensing. NRCM and MAS object to subpara. 6 on the grounds that it could preclude the effective application of the antidegradation policy to discharge applications and other regulated activities. Subpara.'s 7 and 8 of the NRCM option are opposed by PIIO and MCCI. DEP views subpara. 7 as unnecessary and subpara. 8 as ineffective.

See attached comments from PIIO and NRCM on the antidegradation language.

5. Rulemaking. In accordance with the Maine Administrative Procedure Act, the board shall promulgate rules necessary to implement the water quality classification system established by this Act. In promulgating rules, the board shall solicit and consider, in addition to any other materials, information on the economic and environmental impact of those rules.

Rules shall be promulgated by January 1, 1987, **and as necessary thereafter,** (AG suggestion) and shall include, but are not limited to, sampling and analytical methods, protocols and procedures for satisfying the water quality criteria, including evaluation of the impact of any discharge on the resident biological community.

Comment to sub-§4

This subsection is added to explicitly require DEP to adopt rules on certain subjects. The APA is cross referenced to ensure the availability of the public participation and legislative oversight provisions of that law. Specific provision is made requiring the board to consider the economic and environmental impact of its rules. The first set of rules must be adopted by January 1, 1987.

6. Implementation of biological water quality criteria. The implementation of water quality criteria pertaining to the protection of the resident biological community shall be governed by the provisions of this subsection.

A. At any time during the term of a valid waste water discharge license which was issued prior to the effective date of this Act, the board may modify that license in accordance with section 347 if the discharger is not in compliance with the water quality criteria pertaining to the protection of the resident biological community. When a discharge license is modified under this subsection, the board shall establish a reasonable schedule to bring the

discharge into compliance with the water quality criteria pertaining to the protection of the resident biological community.

B. A discharger seeking a new discharge license following the effective date of the rules adopted under subsection 4 of this section shall comply with the water quality criteria of this article.

Comment to sub-§5.

This subsection is added to clarify how enforcement will occur after enactment of the new classification system. After the effective date of rules adopted under this Act, a discharger seeking a new discharge license must comply with the provisions of the new system and rules adopted thereunder. The term, new discharge license, has been used in working group discussions to include renewals of existing licences. A discharger with a valid water discharge license issued before the effective date of this Act who is found to be not in compliance with the new water quality criteria may have its license modified under §347. A compliance schedule will be established by the board. A discharger seeking a renewal before the adoption of the rules will be treated in the same manner as a discharger with an existing license with respect to compliance with the biological water quality criteria. A discharger seeking renewal after that date shall be treated in the same manner as a new discharge application.

In order to give the legislative subcommittee an indication of the waters that are not expected to attain the biological standards, pgs 54-55 of the DEP "Summary of Scientific Basis for Proposed Changes" will be included in these comments.

§465. Standards for classification of fresh surface waters

The board shall have 4 standards for the classification of fresh surface waters which are not classified as great ponds.

1. Class AA waters. Class AA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic or recreational importance.

A. Class AA waters shall be of such quality that they are suitable for the designated uses of drinking water after disirfection, fishing, recreation in and on the water, navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as free flowing and natural.

B. The aquatic life, dissolved oxygen and bacteria content of Class AA waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants to Class AA waters.

2. Class A waters. Class A shall be the 2nd highest classification.

A. Class A waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation, except as prohibited under Title 12, section 403 ,navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as natural.

B. The dissolved oxygen content of Class A waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher. The aquatic life and bacteria content of Class A waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants into waters of this classification and no deposits of such material on the banks of these waters in any manner that transfer of pollutants into the waters is likely, except that existing licensed discharges into waters of this classification will be allowed to continue until practical alternatives exist. New direct discharges to these waters will be permitted only if, in addition to satisfying all the requirements of this chapter, the discharged effluent will be equal to or better than the existing water quality of the receiving waters. Prior to issuing a discharge license, the board shall require the applicant to objectively demonstrate to the board's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available.

3. Class B. waters. Class B shall be the 3rd highest classification.

A. Class B waters shall be of such quality that they are suitable for the designated uses of drinking water supply after treatment, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation except as prohibited under Title 12, section 403, navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as unimpaired.

B. The dissolved oxygen content of Class B waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period October 1, through May 14, in order to ensure spawning and egg incubation of indigenous fish species, the 7 day mean dissolved oxygen concentration shall not be less than 9.5 parts per million and the 1 day minimum dissolved oxygen

concentration shall not be less than 8.0 parts per million in identified fish spawning areas. **(MCCI opposes the spawning standard)** Between May 15th and September 30th, the number of Escherichia coli bacteria of human origin in these waters shall not exceed a geometric mean of 64 per 100 milliliters or a instantaneous level of 427 per 100 milliliters.

C. Discharges to Class B waters shall not cause adverse impact to aquatic life in that the receiving waters shall be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community.

4. Class C waters. Class C shall be the 4th highest classification.

A. Class C waters shall be of such quality that they are suitable for the designated uses of drinking water supply after treatment, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation except as prohibited under Title 12, section 403, navigation and as a habitat for fish and other aquatic life.

B. The dissolved oxygen content of Class C water shall be not less than **5 parts per million or 60% of saturation, whichever is higher** - PIIO-MCCI option stops here) (DEP option would continue **, except that for the period October 1 through May 14, in identified fish spawning areas, where a 7 day mean dissolved oxygen concentration not less than 9.5 parts per million and a 1 day minimum dissolved oxygen concentration not less than 8.0 parts per million is being achieved at the time of application for a discharge license those levels shall be maintained to ensure spawning and egg incubation of indigenous fish species.)** (NRCM/MAS proposal for the DO standard is as follows **The dissolved oxygen content of Class C water shall be not less than 6 parts per million or 60% of saturation, whichever is higher, except that from the period October 1 through May 14 in order to ensure successful spawning and egg incubation of indigenous fish species, the 7 day mean dissolved oxygen concentration shall not be less than 9.5 ppm and the 1 day mininum dissolved oxygen concentration shall not be less than 8.0 ppm.** Between May 15th and September 30th, the number of Escherichia coli bacteria of human origin in these waters shall not exceed a geometric mean of 142 per 100 milliliters or an instantaneous level of 949 per 100 milliliters. The department shall promulgate rules governing the procedure for designation of spawning areas. Those rules shall include provision for periodic review of designated spawning areas and consultation with affected persons prior to designation of a stretch of water as a spawning area.

C. Discharges to Class C waters may cause some changes to aquatic life, provided that the receiving waters shall be of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.

Comments to §465

This section has been reorganized to improve clarity and revised based on discussions in the working group. Each of the 4 classes are described in a separate subsection. Within each subsection, there are 3 paragraphs for designated uses and characteristics, biological criteria and discharge language.

In sub-§2, para. A, the appropriateness of hydroelectric power generation on Class A waters which have been designated for special protection (i.e., no dams) in the Rivers Bill is clarified.

In sub-§3, para. B, additional dissolved oxygen criteria are established Class B waters between September 30 and May 15 in identified fish spawning areas in order to protect early stages of salmonid fish life. MCCI opposes this provision because of the potential impact on new discharges.

In sub-§3, para. A, identical language to that discussed above in Class A waters dealing with hydroelectric power generation has been added for Class B waters.

In sub-§4, para. B, the working group understands that, in adopting the 60% saturation standard for DO, Class C waters in the Act will meet their classification under existing conditions and in conjunction with the proposed impoundments provisions.

NRCM and MAS propose a 6 ppm DO criteria to replace the 5 ppm criteria supported by DEP, PIIO and MCCI. The grounds for their proposal is that 6 ppm is needed to adequately protect fisheries.

In sub-§4, para.B, DEP has proposed language similar to that in sub-§3, para.3 establishing special dissolved oxygen criteria for Class C waters to protect spawning areas. The important difference in DEP's proposal for the C class is that the spawning criteria for C class would have to be maintained only if they were being attained at the time of application for a discharge.

NRCM and MAS proposes that a DO spawning criteria for Class C be identical to that in Class B.

Both PIIO and MCCI have certain philosophical objections to the DO spawning criteria based on the potential impact on new discharges.

§465-A. Standards for classification of lakes and ponds

The board shall have one standard for the classification of great ponds and natural lakes and ponds less than 10 acres in size. Impoundments of rivers may be classified as GPA or as specifically provided in sections 466 and 466-A **or may become great ponds by definition as set forth in 38 MRSA §392** PIIO proposal).

1. Class GPA waters. Class GPA shall be the sole classification of great ponds and natural ponds **and lakes** (AG suggestion) less than 10 acres size.

A. Class GPA waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, recreation in and on the water, fishing, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as natural.

B. Class GPA waters shall be described by their trophic state based on measures of the chlorophyll "a" content, Secchi disk transparency, total phosphorus content and other appropriate criteria. Class GPA waters shall have a stable or decreasing trophic state, subject only to natural fluctuations, and shall be free of culturally-induced algal blooms which impair their use and enjoyment. The number of Escherichia coli bacteria of human origin in these waters shall not exceed a geometric mean of 29 per 100 milliliters or an instantaneous level of 194 per 100 milliliters.

C. There shall be no new direct discharge of pollutants into Class GPA waters. Aquatic chemical applications approved by the board shall be exempt from the no discharge provision. Existing licensed discharges into these waters shall be allowed to continue only until practical alternatives exist. No materials may be placed on or removed from the shores or banks of a Class GPA water body in such a manner that materials may fall or be washed into the water or that contaminated drainage therefrom may flow or leach into those waters, except as **permitted pursuant to** (AG suggestion) section 391. No change of land use in the watershed of a Class GPA water body may, by itself or in combination with other activities, cause water quality degradation which would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters.

Comments on GPA Classification

PIIO has proposed additional language for the introduction to this section to allow impoundments to become great ponds "by definition". The term "by definition" refers to the statutory definition of "great pond" in the Title 38. This subject has

not been discussed at length by the group and no resolution has been reached. However, DEP, NRCM and MAS object to this proposal because, as was discussed by the group in considering the impoundments provisions (contained later in this draft), some impoundments may fit the hydrologic characteristics of a lake and others, of a river. Thus, classification by arbitrary size definition is inappropriate from a scientific perspective.

§465-B. Standards for classification of estuarine and marine waters

The board shall have 3 standards for the classification of estuarine and marine waters.

1. Class SA waters. Class SA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic, economic or recreational importance.

A. Class SA waters shall be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, navigation and as habitat for fish and other estuarine and marine life. The habitat shall be characterized as free-flowing and natural.

B. The estuarine and marine life, dissolved oxygen and bacteria content of Class SA waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants to Class SA waters.

2. Class SB waters. Class SB waters shall be the 2nd highest classification.

A. Class SB shall be the 2nd highest classification and these waters shall be such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting or shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other estuarine and marine life. The habitat shall be characterized as unimpaired.

B. The dissolved oxygen content of Class SB waters shall be not less than 85% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human origin in these waters shall not exceed a geometric mean of 8 per 100 milliliters or an instantaneous level of 54 per 100 milliliters. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in shellfish harvesting areas shall not exceed the criteria recommended under the

National Shellfish Sanitation Program Manual of Operations, Part I - Sanitation of Shellfish Growing Areas, United States Food and Drug Administration.

C. Discharges to Class SB waters shall not cause adverse impact to estuarine and marine life in that the receiving waters shall be of sufficient quality to support all estuarine and marine species indigenous to the receiving water without detrimental changes in the resident biological community. There shall be no new discharge to Class SB waters which would cause closure of open shellfish areas by the Department of Marine Resources.

3. Class SC waters. Class SC waters shall be the 3rd highest classification.

A. Class SC waters shall be of such quality that they are suitable for recreation in and on the water, fishing, aquaculture, propagation and restricted harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as a habitat for fish and other estuarine and marine life.

B. The dissolved oxygen content of Class SC waters shall be not less than 70% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human origin in these waters shall not exceed a geometric mean of 14 per 100 milliliters or an instantaneous level of 94 per 100 milliliters. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in restricted shellfish harvesting areas shall not exceed the criteria recommended under the National Shellfish Sanitation Program Manual of Operations, Part I - Sanitation of Shellfish Growing Areas, United States Food and Drug Administration.

C. Discharges to Class SC waters may cause some changes to estuarine and marine life provided that the receiving waters are of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.

Comments on §465-B

A coliform standard has been added to the SB and SC classifications to protect the state's certification of interstate shellfish shipments. Please note that rather than using specific numerical criteria for bacteria, the standard references the FDA program manual for shellfish sanitation. A designated use of "restricted harvesting of shellfish" has been added to the SC classification recognising the clamming industry's ability to harvest and sell after depuratation treatment.

Sec. 2. 38 MRSA §XXX is amended by adding the following definitions.

1. As naturally occurs. "As naturally occurs" means conditions with essentially the same physical, chemical and biological characteristics as found in situations with similar habitats free of measureable effects of human activity.

2. Aquatic life. "Aquatic life" means any plants or animals which live at least part of their life cycle in fresh water.

3. Community function. "Community function" means mechanisms of uptake, storage and transfer of life-sustaining materials available to a biological community which determines the efficiency of use and the amount of export of the materials from the community.

4. Community structure. "Community structure" means the organization of a biological community based on numbers of individuals within different taxonomic groups and the proporation each taxonomic group represents of the total community.

5. Direct discharge. "Direct discharge" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

6. Estuarine and marine life. "Estuarine and marine life" means any plants or animals which live at least part of their life cycle in salt water.

7. Indigenous. "Indigenous" means supported in a reach of water or known to have been supported according to historical records compiled by state and federal agencies or published scientific literature.

8. Natural. "Natural" means living in, or as if in, a state of nature not measurably affected by human activity.

9. Resident biological community. "Resident biological community" means aquatic life existing in a habitat prior to the influence of a discharge.

10. Unimpaired. "Unimpaired" means without a diminished capacity to support aquatic life.

11. Without detrimental changes in the resident biological community. "Without detrimental changes in the resident biological community" means no significant loss of species or excessive dominance by any species or group of species attributable to human activity.

Comments on Definitions

The definitions included here are derived from language proposed by the DEP and modified following discussion by the working group including the professional biologist with PIIO. All definitions have been approved by the working group. The definitions included in LD1503 ("fresh surface waters" and "estuarine and marine waters") are not included in the enclosed material but will be included in the final version submitted to the subcommittee.

In the definition of indigenous in sub-§ 7, the legislature recognizes that in some waters of the State (e.g. impoundments) habitat in unsuitable to support all indigenous species. The intent of the legislature is that water quality not be a limiting factor to the survival of an indigenous species although for other reasons that species may not occur in the water in question.

In the definition of "direct discharge" in sub§5, the working group understands that the term "rolling stock" includes all vehicles including trucks and railroad cars.

Sec. 3. 38 MRSA §XXX, sub§X, ¶X, sub¶2 is enacted to read:

(2) The Legislature recognizes, however, that at certain times portions of the waters in the impoundments created by Gulf Island, Deer Rips and Lewiston Falls Dams have not and may continue to not meet the Class C requirements for dissolved oxygen due to hydrologic conditions related to the creation of the impoundments, including but not limited to impaired mixing of water columns, historical accumulation of sediment and elevated water temperature. The Legislature further recognizes that, for the purposes of this subparagraph, these impoundments constitute a valuable indigenous and renewable energy resource for hydroelectric energy which provide a significant contribution to the economic development and general welfare of the citizens of the State. Accordingly, the value and importance to the people of the State of hydroelectric energy and the unavoidable consequences to water cuality resulting from the existance of these impoundments shall be considered when the board determines the impact of a discharge on the designated uses of the impoundments identified in this subparagraph. These impoundments shall be considered to meet their classification if the Board finds that conditions in those impoundments are not preventing their designated uses from being reasonably attained. Nothing in this subparagraph shall be construed to limit the board's authority to consider the requirements of §414-A, sub§1 ¶¶A through E.

Sec. 4. 38 MRSA §XXX, sub§X, ¶X, sub¶3 is enacted to read:

(2) The Legislature recognizes, however, that at certain times portions of the waters in the impoundments created by Mattaceunk Dam. also known as Weldon Dam, and Dolby Dam have not and may continue to not meet the Class C requirements for dissolved oxygen due to hydrologic conditions related to the creation of the impoundments, including but not limited to impaired mixing of water columns, historical accumulation of sediment and elevated water temperature. The Legislature further recognizes that, for the purposes of this subparagraph, these impoundments constitute a valuable indigenous and renewable energy resource for hydroelectric energy which provide a significant contribution to the economic development and general welfare of the citizens of the State. Accordingly, the value and importance to the people of the State of hydroelectric energy and the unavoidable consequences to water quality resulting from the existance of these impoundments shall be considered when the board determines the impact of a discharge on the designated uses of the impoundments identified in this subparagraph. These impoundments shall be considered to meet their classification if the Board finds that conditions in those impoundments are not preventing their designated uses from being reasonably attained. Nothing in this subparagraph shall be construed to limit the board's authority to consider the requirements of §414-A, sub§1 ¶¶A through E.

Comments on Impoundments language

The group has agreed that water quality in certain identified impoundments fails to achieve the criteria required by their classification (eg DO) which may in turn threaten some of their designated uses (eg fish habitat). This failure is not primarily the fault of any existing discharges.

The group agrees that these specific impoundments provide significant economic and social benefits, primarily related to their use in hydroelectric facilities. Hydropower is a recognized and legitimate use of these river stretches.

The group agrees that it is appropriate to make special provisions for these situations so as not to impose unreasonable conditions on the existing, upstream discharges in these rivers.

It is the intent of the working group that these provisions apply only to the impoundments specifically identified. The working group does not foresee the need to include other existing impoundments nor any future impoundments in these provisions.

Natural Resources Council of Maine
271 State Street, Augusta, Maine 04330 207-622-3101

December 20, 1985

David Elliot
William T. Glidden, Jr.
Office of Legislative Assistants
State House Station 13
Augusta, Maine 04333

Gentlemen:

As you requested at the December 11th meeting of the working group, I have set out below our position on the proposed anti-degradation provisions. Because the "existing use" language is primarily at issue, I have focussed on that.

Existing use language:

The concept embodied in the sentence, "Existing instream water uses and the level of water quality necessary to protect those existing uses shall be maintained and protected" is an essential element of the anti-degradation provisions required by federal law. It in fact hits at the very heart of the term anti-degradation by acknowledging that there are certain things that must be absolutely protected, that cannot be eroded by development. The difficult question is, how are those existing uses to be defined.

Our position is that the protection of existing uses does not mean that all uses that presently exist can never be affected; yet it also does not mean that all uses of a water body in every case can be adversely affected by development. The proper meaning rests somewhere in the middle. We see that middle as the protection of significant, well-established uses.

These significant, well-established uses would be specific activities that fall within the broad range of activities set out as the designated uses and characteristics of the classification of the water body at issue. However, the two terms, existing uses and designated uses, must not be then seen as exact equivalents. Existing uses are specific uses that are a subset of designated uses.

The actual determination of what use fits into this definition can and should be made on a case by case basis. Similar factual determinations are made regularly by the BEP and other regulatory agencies in the issuance of a variety of permits. The "case law" developed by the Board over time would further refine the meaning of existing uses, as only case law can.

Because the focus would be on significant well-established uses, this existing use would be a limiting factor in only a small percentage of cases. Even then, development would not be precluded if the project were designed or redesigned to be consistent with those uses. When that is not possible, the development could still be relocated to another site.

There clearly would be some cases where a development would destroy significant, well-established uses. In those few cases, the existing use language would preclude that development at that particular site. That however is as it should be if the federal requirement regarding existing use is to have any real meaning.

As for the specific language of the anti-degradation section of the draft bill regarding existing uses, the following changes should be made:

(1) The second sentence under sub (1) should be eliminated and replaced with the following: "When used in this paragraph, "existing insteam water uses" are defined as significant, well-established uses that have actually occurred on a water body and fall within the category of designated uses and related characteristics of the classification of that body of water. Factual determinations of what constitutes an existing instream water use on a particular water body shall be made on a case by case basis by the Board".

(2) Sub 6 should be eliminated. This language seeks to limit the applicability of the anti-degradation language, in particular the subsection regarding existing use protection. It is our position that an analysis under these anti-degradation provisions must be made whenever a waste discharge license or section 401 certification is at issue.

<u>Other language</u>.

Sub-sections 2, 3, 4, 5, 7, and 8 of anti-degradation language, as set out in the 11-26-85 draft should remain as is. Together with the existing use language proposed these sections comprise a comprehensive approach to protecting the investments made in improving the state's water quality.

I have discussed these comments with Nancy Anderson of Maine Audubon and she is in agreement with them. I hope this clearly describes our position on the anti-degradation language. If you have any questions, please let me know.

Sincerely,

James Dow

JD:kw

PIERCE, ATWOOD, SCRIBNER, ALLEN, SMITH & LANCASTER

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December 17, 1985

Mr. David Elliott
Mr. Tim Glidden, Jr.
Office of the Legislative Assistants
Room 101
State House Station 13
Augusta, Maine 04333

Re: Water Quality Reclassification Study (L.D. 1503)

Dear Dave & Tim:

I enclose a redrafted version of paragraphs 1 through 6 of the Anti-degradation proposal. My attempt was to be even more explicit on what the PIIO position is. The more I read on the subject and the more I think about it, it is absolutely essential that the Maine Legislature not put into its statutes some EPA Regulations which were designed to allow a great deal of flexibility to the State. For instance, where EPA says it doesn't care how Maine defines "existing use" to simply put the EPA language in as a Maine statute raises unintended questions as to the rigidity with which the words must be interpreted. In fact, it may be wise that we give serious consideration to a simple requirement that anti-degradation policies and methods should be established to be consistent with the requirements of EPA and perhaps leave it up to the Board to decide the specifics, subject to Legislative approval. We have had problems in the past where the Maine Legislature has adopted Federal Regulations (the Federal PSD process) only to find that the Federal Regulations have been changed or overturned by Courts and we are left with statutes on our books which are inconsistent with requirements in other parts of the country. For this reason, I think we should give serious thought to whether the statutes need to contain a verbatim recitation of an EPA Regulation which is intended to be interpreted flexibly.

On the assumption that the Legislature does want to have a statement in the Maine Statutes, I have tried to show in a number of places that flexibility is intended and that anti-degradation is not to be used by itself to deny licenses or permits.

I have deleted paragraph 2 because I can't see how it adds anything that is not in paragraph 1 and I have, of course, not included the NRCM or Maine Audubon Society proposals.

I view this as another draft and one which I have not reviewed with PIIO or the Maine Chamber. I did promise to send additional language in and am doing so in the hopes that it shows further the kind of thinking which we have been doing with industry.

Very truly yours,

Daniel E. Boxer

DEB/jo
Enclosure
cc: James Dow, Esq.
Nancy Anderson, Esq.
Patricia Warr
Valmar S. Thompson
Stephen Groves
Kenneth C. Young, Jr.
PIIO List

INITIAL DRAFT
for discussion
D. BOXER

STATE OF MAINE

L.D. 1503 AN ACT to Amend the Classification System for Maine Waters and Change the Classifications of Certain Waters

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F. Anti-degradation. It is the intent of this paragraph to comply with the requirements of the Federal Clean Water Act and associated regulations relating to anti-degradation when waste discharge licenses, wasteload allocations or water quality certifications are being considered by the department or board and to provide the maximum flexibility allowed by Federal Law to implement and develop State procedures and to interpret appropriate federal requirements.

(1) Existing instream water uses and the level of water quality necessary to protect those existing uses shall be maintained and protected. When used in this paragraph "existing instream water uses" are defined to be the designated uses ~~and related characteristics~~ of each classification that are actually being attained and the extent of allowable impact on designated uses shall be determined on a case-by-case basis in connection with the applicable requirements of State and federal law when a specific application is presented to the board or department.

~~(2) The level of water quality necessary to protect the designated uses and related characteristics of each classification shall be maintained and protected.~~

(2) Any discharge or activity licensed pursuant to Section 414-A or requiring water quality certification pursuant to Section 401 of the Clean Water Act shall not lower the existing quality of any water body without a finding by the board, after public hearing, of important economic or social benefit to the state. That finding shall be made as provided by rule of the board.

~~(4)~~ (3) Where high quality waters of the State constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected. For purposes of this section, "high quality waters" shall mean those river segments listed in M.R.S.A. §403.

~~(5)~~ (4) Any discharge license pursuant to section 414-A or any water quality certification pursuant to section 401 of the Federal Clean Water Act PL 92-500, as amended, (33 USG 1251 et seq.) shall be issued only if the standards of classification of the water body and the requirements of this paragraph will be met.

~~(6)~~ (5) ~~(~~The policy expressed in this paragraph, to the extent possible, is to be carried out through the process of reviewing applications made pursuant to State and federal statutes and is not intended to be used as an independent basis (a) to limit consideration and/or approval of an application pursuant to the terms of any State or federal statute which allows an applicant upon receipt of a license or permit to affect the uses of a waterbody, including without limitation, laws relating to dredging and filling, hydroelectric facilities, bridges or causeways or (b) to affect the application of 38 M.R.S.A. subarticle 1-B with respect to water quality certification pursuant to section 401 of the Federal Clean Water Act.

~~(7)~~

~~(8)~~

MEMORANDUM

TO: Sen. Ron Usher, Senate Chair
Rep. Mike Michaud, House Chair
Joint Standing Committee on Energy and Natural Resources

FROM: Nancy Anderson, MAS
Dan Boxer, PIIO
Jim Dow, NRCM
Dale Phenicie, GNP/PIIO
Val Thompson, CMP
Patty Waugh, MCCI
Ken Young, DEP

SUBJECT: Proposed Replacement Language for LD1503
DATE: November 27,1985

The ad-hoc working group on LD1503, established at your direction, has substantially completed its charge as laid out in your memo of October 23,1985. The proposed language enclosed with this memo and presented today by your staff is the product of many hours of constructive give and take between us all. While differences remain amongst us as specifically noted in the proposed language, we have achieved consensus on many important issues.

The proposed language is presented as a package. The many issues we have agreed on are complex and interrelated. Thus, we urge you to give careful attention to the relationships between issues before making substantial changes. Please note that, as you requested, specific statements of intent have been developed to reflect our shared understanding of the proposed language. In several instances, these statements are important parts of the agreements reached between us. We stand ready to assist you and the committee in the remainder of the legislative process for LD1503.

Finally, we would like to express our general satisfaction with the process followed by the study subcommittee. You have provided a useful and open forum for the resolution of many difficult issues. The consensus established within this group will assist the legislature in its deliberations and will also provide the foundation for successful implementation of the program.

4121M

Water Reclassification
Working Group
11-26-85

SECOND REGULAR SESSION

ONE HUNDRED AND TWELFTH LEGISLATURE

Legislative Document No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY SIX

AN ACT to Amend the Classification System for Maine Waters and Change the Classifications of Certain Waters.

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

Sec. 1. 38 MRSA, chapter 3, Article 4-A is enacted to read:

ARTICLE 4-A. WATER CLASSIFICATION PROGRAM

§464. Classification of Maine waters

The waters of the State shall be classified in accordance with the provisions of this article.

1. Findings; objectives; purpose. The Legislature finds that the proper management of the State's water resources is of great public interest and concern to the State in promoting the general welfare, preventing disease, promoting health, providing habitat for fish, shellfish and wildlife, as a source of recreational opportunity and as a resource for commerce and industry.

The Legislature hereby declares that it is the State's objective to restore and maintain the chemical, physical and biological integrity of the State's waters and to preserve certain pristine State waters. The Legislature further

declares that in order to achieve this objective the State's goals are: (1) that the discharge of pollutants into the waters of the State be eliminated where appropriate; (2) that no pollutants be discharged into any water of the state without first being given the degree of treatment necessary to allow those waters to attain their classification, and (3) that water quality be sufficient to provide for the protection and propagation of fish, shellfish, and wildlife and provide for recreation in and on the water.

The Legislature intends by passage of this Act to establish a water quality classification system which will allow the State to manage its surface waters so as to protect the quality of those waters and, where water quality standards are not being achieved, to enhance water quality. This classification system shall be based on water quality standards which designate the uses and related characteristics of those uses for each class of water and which also establish water quality criteria necessary to protect those uses and related characteristics. The Legislature further intends by passage of this Act to assign to each of the State's surface water bodies the water quality classification which shall designate the minimum level of quality which the Legislature intends for the body of water. This designation is intended to direct the State's management of that water body in order to achieve at least that minimum level of water quality.

Comment to sub-§1.

This subsection states in broad and general terms the Legislature's intent in adopting the new surface water classification system. The adoption of this broad language is meant to reflect the resolve of Legislature to improve, where appropriate, the waters of the State over the course of time. This is an effort which has already yielded important results thanks to efforts by all segments of the economy. It is not the intent of the Legislature that the general language of this section be used by itself to establish a water quality violation. The standards contained in other portions of the bill are the mechanisms by which water quality is to be managed and regulated.

The first paragraph contains findings on the importance of water resources to Maine. The value of water to the economy is pointed out by adding reference to commerce and industry.

The second paragraph defines the State's water quality objective and goals. The language tracks closely that of section 101 of the Federal Clean Water Act by establishing an objective of maintaining and improving water quality and setting goals to achieve that objective. It also recognizes the need for some discharges to surface waters and articulates the policy of requiring treatment of those discharges to protect water quality.

The third paragraph states the Legislature's intent concerning the implementation of the surface water classification system. The system is to be used to protect and, where a water body is not attaining its classification, to enhance water quality. Water bodies are to be protected by a 2-step classification process. First, a standard is established for each class of water quality which consists of a/ designated uses and related characteristics and b/ water quality criteria which will support those uses and characteristics. Second, each water body will be assigned a specific classification by the Legislature. That classification will serve the dual purposes of establishing water quality goals for the water body and of serving as the basis for establishment of water quality-based conditions attached to State water discharge licenses.

2. Procedures for reclassification. Reclassification of Maine waters shall be governed by the following provisions.

A. Upon petition by any person or on its motion, the board, following public notice, may conduct classification studies and investigations. Information collected during these studies and investigations shall be made available to the public in an expeditious manner. After consultation with other state agencies and, where appropriate, individuals, citizen groups, industries, municipalities and federal and interstate water pollution control agencies, the board may propose changes in water reclassification.

B. The board shall call public hearings in the affected area, or reasonably adjacent to the affected area, for the purpose of presenting to all interested persons the proposed classification for each particular water body and obtaining public input.

C. The board may recommend changes in classification it deems necessary to the Legislature.

Comment to sub-§2

This subsection has been reorganized for clarity. Most of its language is taken from LD1503.

In paragraph A the language allowing "any person" to petition the board for a classification study is not intended to require the board to conduct such a study. This intent is clear from the language retained from LD1503; "the board may...conduct classification studies".

3. Reports to the Legislature. The board shall periodically report to the Legislature as governed by the following provisions.

A. The board shall submit to the First Regular Session of each Legislature a report on the the quality of the State's waters which describes existing water quality, identifies waters which are not attaining their classification and which states what measures are necessary for the attainment of the standards of their classification.

B. The board shall from time to time, but at least once every three years, hold public hearings for the purpose of reviewing the water quality classification system and related standards and, as appropriate, recommending changes in the standards to the Legislature.

Comment to sub-§3

This subsection has been reorganized for clarity.

Para. A is taken verbatim from LD1503.

Para. B includes a procedure to periodically review the adequacy of the classification system (as distinct from the classification of a particular stretch of water). The DEP already undertakes this review to meet EPA requirements.

4. General provisions. The classification system for surface waters established by this article shall be subject to the following provisions.

A. The following discharges are prohibited:

(1) New direct discharge of pollutants to waters having a drainage area of less than 10 square miles. Existing licensed discharges into these waters shall be allowed to continue only until practical alternatives exist;

(2) New direct discharge of domestic pollutants to tributaries of class GPA waters. Discharges into tributaries of GPA waters shall not, by themselves or in combination with other activities, cause water quality degradation which would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters;

(3) Discharge of pollutants to waters of the State which imparts color, taste, turbidity, toxicity, radioactivity or other properties which cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class; and

(4) Discharge of pollutants to any water of the State which violates the provisions of sections 465, 465-A, and 465-B, except as provided in section 451, causes

the "pH' of fresh waters to fall outside of the 6.0 to 8.5 range, causes the "pH" of estuarine and marine waters to fall outside of the 7.0 to 8.5 range or causes fish for human consumption to be injurious to human health as determined by the U.S. Food and Drug Administration under the procedures established by 21 USC §342 or as determined by the Department of Human Services. The department shall establish a protocol for determining risk in appropriate situations. The protocol shall be promulgated as a rule in accordance with the Maine Administrative Procedure Act, 5 MRSA chapter 375.

B. All surface waters of the State shall be free of settled substances which alter the physical or chemical nature of bottom material and of floating substances, except as naturally occur, which impair the characteristics and designated uses ascribed to their class.

C. Where natural conditions, including but not limited to, marshes, bogs and abnormal concentrations of wildlife cause the dissolved oxygen or other water quality criteria to fall below the minimum standards specified in sections 465, 465-A, and 465-B, those waters will not be considered to be failing to attain their classification on account of those natural conditions.

D. For the purpose of computing whether a discharge will violate the classification of any river or stream, the assimilative capacity of the river or stream shall be computed using the minimum 7-day low flow which can be expected to occur with a frequency of once in 10 years.

E. The waters contained in excavations approved by the board for waste water treatment purposes shall be unclassified waters.

F. Anti-degradation. It is the intent of this paragraph to comply with the requirements of the Federal Clean Water Act and associated regulations relating to antidegradation when waste discharge licenses, wasteload allocations or water quality certifications are being considered by the department or board.

(1) Existing instream water uses and the level of water quality necessary to protect those existing uses shall be maintained and protected. When used in this paragraph "existing instream water uses" are defined to be the designated uses and related characteristics of each classification that are actually being attained.

(2) The level of water quality necessary to protect the designated uses and related characteristics of each classification shall be maintained and protected.

(3) Any discharge or activity licensed pursuant to section 414-A or requiring water quality certification pursuant to section 401 of the Clean Water Act shall not lower the existing quality of any water body without a finding by the board, after public hearing, of important economic or social benefit to the state. That finding shall be made as provided by rule of the board.

(4) Where high quality waters of the State constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(5) Any discharge license pursuant to section 414-A or any water quality certification pursuant to section 401 of the Federal Clean Water Act PL 92-500, as amended, (33 USC 1251 et seq.) shall be issued only if the standards of classification of the water body and the requirements of this paragraph will be met.

(6) (The policy expressed in this paragraph is not intended to be used (a) to limit consideration of an application pursuant to the terms of any state or federal statute which allows an applicant upon receipt of a license or permit to affect the uses of a waterbody, including, without limitation, laws relating to dredging and filling, hydroelectric facilities, bridges or causeways or (b) to affect the application of 38 MRSA subarticle 1-B with respect to water quality certification pursuant to section 401 of the Federal Clean Water Act. PIIO proposal) OR (The requirements of the antidegradation provisions must retain their integrity in all licensing decisions and cannot be limited or altered by determinations made under unrelated standards of the various licensing statutes. NRCM and MAS proposal)

(7) Where the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality shall be maintained and protected. The board shall recommend to the Legislature that such water be reclassified in that next higher classification. (NRCM proposal)

(8) In any classification or reclassification of an individual water body, that water shall not be assigned a classification with water quality standards which are lower than the existing quality at the time of classification or reclassification if that existing quality meets the standards of a higher classification. (NRCM proposal)

Comment to sub-§3

This subsection has been reorganized to improve clarity and revised based on discussions in the working group.

The general provisions of the bill relating to discharges have been organized in paragraph A. The language prohibiting discharges into Class AA and SA waters has been deleted from this subsection because it is duplicative of provisions found in the Class AA and SA sections. In line with the November 5, 1985 discussion, the term "direct" has been added to modify "discharge" in sub-paragraphs 1 and 2 to distinguish those discharges from non-point source discharges. See new definitions for meaning of direct discharge. Subsections 3 and 4 include all discharges in order to offer the broadest possible protection to water quality

In sub-para. 1, the prohibition on direct discharges to waters draining 10 sq. miles or less has been limited to new direct discharges to provide for the limited number of discharges which may currently exist in those waters. Existing discharges may continue until practical alternatives exist.

In sub-para. 2, language is included regarding discharges to tributaries of GPA waters which is transfered from the GPA classification section. The intent of this transfer is to have all provisions regarding discharges to GPA tributaries in one location.

In sub-para. 3, the term "pollutant" has been substituted for "sewage, industrial waste, heat, hazardous matter or other substance."

In sub-para. 4, "unsuitable for human consumption" has been changed to "injurious to human health" as defined by the U.S. Food and Drug Administration or the Maine Dept. of Human Services to emphasize the intent to protect public health while allowing for possible differences in personal tastes in fish consumption.

Paragraphs B, C and D are taken from LD 1503.

Paragraph E is added to place the provisions regarding the status of certain excavations in the general provisions section for clarity. The language is taken verbatim from the GPA classification section of LD1503.

Paragraph F contains the State's antidegradation policy. A state antidegradation policy is required by the Federal Clean Water Act. Subparagraphs 1-5 represent a concensus position by the group. With respect to increments in water qyuality which are protected in subpara 3, it is the intent of the working group that the increases which are to be protected be not merely transitory improvements which are caused by plant closings, economic swings or other plants operations which are

cyclical in nature. On the entire antidegradation issue, final agreement has not been attained due to disagreement on subparagraph 6. PIIO views this subpara. as necessary to insure that applicants for discharge licenses or other regulated activities affecting water quality are given full consideration. PIIO further feels subpara. 6 is needed to maintain the force of the provisions of 38 MRSA §§633-636 regarding water quality certification in hydro licensing. NRCM and MAS object to subpara. 6 on the grounds that it could preclude the effective application of the antidegradation policy to discharge applications and other regulated activities. Subpara.'s 7 and 8 are proposed by NRCM and MAS. PIIO and MCCI oppose those provisions. DEP views subpara. 7 as unnecessary and subpara. 8 as ineffective.

5. Rulemaking. In accordance with the Maine Administrative Procedure Act, the board shall promulgate rules necessary to implement the water quality classification system established by this Act. In promulgating rules, the board shall solicit and consider, in addition to any other materials, information on the economic and environmental impact of those rules.

Rules shall be promulgated by January 1, 1987, and shall include, but are not limited to, sampling and analytical methods, protocols and procedures for satisfying the water quality criteria, including evaluation of the impact of any discharge on the resident biological community.

Comment to sub-§4

This subsection is added to explicitly require DEP to adopt rules on certain subjects. The APA is cross referenced to ensure the availability of the public participation and legislative oversight provisions of that law. Specific provision is made requiring the board to consider the economic and environmental impact of its rules. The first set of rules must be adopted by January 1, 1987.

6. Implementation of biological water quality criteria. The implementation of water quality criteria pertaining to the protection of the resident biological community shall be governed by the provisions of this subsection.

A. At any time during the term of a valid waste water discharge license which was issued prior to the effective date of this Act, the board may modify that license in accordance with section 347 if the discharger is not in compliance with the water quality criteria pertaining to the protection of the resident biological community. When a discharge license is modified under this subsection, the board shall establish a reasonable schedule to bring the discharge into compliance with the water quality criteria pertaining to the protection of the resident biological community.

B. A discharger seeking a new discharge license following the effective date of the rules adopted under subsection 4 of this section shall comply with the water quality criteria of this article.

Comment to sub-§5.

This subsection is added to clarify how enforcement will occur after enactment of the new classification system. After the effective date of rules adopted under this Act, a discharger seeking a new discharge license must comply with the provisions of the new system and rules adopted thereunder. The term, new discharge license, has been used in working group discussions to include renewals of existing licences. A discharger with a valid water discharge license issued before the effective date of this Act who is found to be not in compliance with the new water quality criteria may have its license modified under §347. A compliance schedule will be established by the board. A discharger seeking a renewal before the adoption of the rules will be treated in the same manner as a discharger with an existing license with respect to compliance with the biological water quality criteria. A discharger seeking renewal after that date shall be treated in the same manner as a new discharge application.

In order to give the legislative subcommittee an indication of the waters that are not expected to attain the biological standards, pgs 54-55 of the DEP "Summary of Scientific Basis for Proposed Changes" will be included in these comments.

§465. Standards for classification of fresh surface waters

The board shall have 4 standards for the classification of fresh surface waters which are not classified as great ponds.

1. Class AA waters. Class AA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic or recreational importance.

A. Class AA waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, fishing, recreation in and on the water, navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as free flowing and natural.

B. The aquatic life, dissolved oxygen and bacteria content of Class AA waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants to Class AA waters.

2. Class A waters. Class A shall be the 2nd highest classification.

A. Class A waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation, except as prohibited under Title 12, section 403,navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as natural.

B. The dissolved oxygen content of Class A waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher. The aquatic life and bacteria content of Class A waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants into waters of this classification and no deposits of such material on the banks of these waters in any manner that transfer of pollutants into the waters is likely, except that existing licensed discharges into waters of this classification will be allowed to continue until practical alternatives exist. New direct discharges to these waters will be permitted only if, in addition to satisfying all the requirements of this chapter, the discharged effluent will be equal to or better than the existing water quality of the receiving waters. Prior to issuing a discharge license, the board shall require the applicant to objectively demonstrate to the board's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available.

3. Class B. waters. Class B shall be the 3rd highest classification.

A. Class B waters shall be of such quality that they are suitable for the designated uses of drinking water supply after treatment, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation except as prohibited under Title 12, section 403, navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as unimpaired.

B. The dissolved oxygen content of Class B waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period October 1, through May 14, in order to ensure spawning and egg incubation of indigenous fish species, the 7 day mean dissolved oxygen concentration shall not be less than 9.5 parts per million and the 1 day minimum dissolved oxygen concentration shall not be less than 8.0 parts per million in identified fish spawning areas. Between May 15th and September 30th, the number of Escherichia coli bacteria of

human origin in these waters shall not exceed a geometric mean of 64 per 100 milliliters or a instantaneous level of 427 per 100 milliliters.

C. Discharges to Class B waters shall not cause adverse impact to aquatic life in that the receiving waters shall be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community.

4. Class C waters. Class C shall be the 4th highest classification.

A. Class C waters shall be of such quality that they are suitable for the designated uses of drinking water supply after treatment, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation except as prohibited under Title 12, section 403, navigation and as a habitat for fish and other aquatic life.

B. The dissolved oxygen content of Class C water shall be not less than (5 parts per million - PIIO-MCCI option) or 60% of saturation, whichever is higher, except that for the period October 1 through May 14, in identified fish spawning areas, where a 7 day mean dissolved oxygen concentration not less than 9.5 parts per million and a 1 day minimum dissolved oxygen concentration not less than 8.0 parts per million is being achieved at the time of application for a discharge license those levels shall be maintained to ensure spawning and egg incubation of indigenous fish species. Between May 15th and September 30th, the number of Escherichia coli bacteria of human origin in these waters shall not exceed a geometric mean of 142 per 100 milliliters or an instantaneous level of 949 per 100 milliliters. The department shall promulgate rules governing the procedure for designation of spawning areas. Those rules shall include provision for periodic review of designated spawning areas and consultation with affected persons prior to designation of a stretch of water as a spawning area.

OR

(B. The 30 day mean dissolved oxygen content of Class C waters shall not be less than 6.5 ppm and a 7 day mean minimum dissolved oxygen content of not less than 5.0 ppm, except that from the period October 1 through May 14 in order to ensure successful spawning and egg incubation of indigenous fish species, the 7 day mean dissolved oxygen concentration shall not be less than 9.5 ppm and the 1 day mininum dissolved oxygen concentration shall not be less than 8.0 ppm. NRCM proposal)

C. Discharges to Class C waters may cause some changes to aquatic life, provided that the receiving waters shall be of sufficient quality to support all species of fish

indigenous to the receiving waters and maintain the structure and function of the community of aquatic life.

Comments to §465

This section has been reorganized to improve clarity and revised based on discussions in the working group. Each of the 4 classes are described in a separate subsection. Within each subsection, there are 3 paragraphs for designated uses and characteristics, biological criteria and discharge language.

In sub-§2, para. A, the appropriateness of hydroelectric power generation on Class A waters which have been designated for special protection (i.e., no dams) in the Rivers Bill is clarified.

In sub-§3, para. B, additional dissolved oxygen criteria are established Class B waters between September 30 and May 15 in identified fish spawning areas in order to protect early stages of salmonoid fish life.

In sub-§3, para. A, identical language to that discussed above dealing with hydroelectric power generation has been added for Class B waters.

In sub-§4, para. B, the working group understands that, in adopting the 60% saturation standard for DO, waters classified as "C" in the Act will meet their classification under existing conditions and in conjunction with the proposed impoundments provisions.

In sub-§4, para.B, language has also been added which is similar to that in sub-§3, para.3 establishing special dissolved oxygen criteria for Class C waters to protect spawning areas.

MCCI currently objects to the inclusion of additional DO criteria for spawning areas.

§465-A. Standards for classification of lakes and ponds

The board shall have one standard for the classification of great ponds and natural lakes and ponds less than 10 acres in size. Impoundments of rivers may be classified as GPA or as specifically provided in sections 466 and 466-A (or may become great ponds by definition as set forth in 38 MRSA §392 PIIO proposal).

1. Class GPA waters. Class GPA shall be the sole classification of great ponds and natural ponds less than 10 acres size.

A. Class GPA waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, recreation in and on the water, fishing,

industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as natural.

B. Class GPA waters shall be described by their trophic state based on measures of the chlorophyll "a" content, Secchi disk transparency, total phosphorus content and other appropriate criteria. Class GPA waters shall have a stable or decreasing trophic state, subject only to natural fluctuations, and shall be free of culturally-induced algal blooms which impair their use and enjoyment. The number of Escherichia coli bacteria of human origin in these waters shall not exceed a geometric mean of 29 per 100 milliliters or an instantaneous level of 194 per 100 milliliters.

C. There shall be no new direct discharge of pollutants into Class GPA waters. Aquatic chemical applications approved by the board shall be exempt from the no discharge provision. Existing licensed discharges into these waters shall be allowed to continue only until practical alternatives exist. No materials may be placed on or removed from the shores or banks of a Class GPA water body in such a manner that materials may fall or be washed into the water or that contaminated drainage therefrom may flow or leach into those waters, except as provided in section 391. No change of land use in the watershed of a Class GPA water body may, by itself or in combination with other activities, cause water quality degradation which would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters.

§465-B. Standards for classification of estuarine and marine waters

The board shall have 3 standards for the classification of estuarine and marine waters.

1. Class SA waters. Class SA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic, economic or recreational importance.

A. Class SA waters shall be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, navigation and as habitat for fish and other estuarine and marine life. The habitat shall be characterized as free-flowing and natural.

B. The estuarine and marine life, dissolved oxygen and bacteria content of Class SA waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants to Class SA waters.

2. Class SB waters. Class SB waters shall be the 2nd highest classification.

A. Class SB shall be the 2nd highest classification and these waters shall be such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting or shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other estuarine and marine life. The habitat shall be characterized as unimpaired.

B. The dissolved oxygen content of Class SB waters shall be not less than 85% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human origin in these waters shall not exceed a geometric mean of 8 per 100 milliliters or an instantaneous level of 54 per 100 milliliters. The median numbers of total coliform bacteria in any series of samples representative of the waters in a shellfish harvesting area shall not be in excess of 70 per 100 millimeters, nor shall more than 10% of the samples exceed 230 total coliform bacteria per 100 millimeters.

C. Discharges to Class SB waters shall not cause adverse impact to estuarine and marine life in that the receiving waters shall be of sufficient quality to support all estuarine and marine species indigenous to the receiving water without detrimental changes in the resident biological community. There shall be no new direct discharge to Class SB waters which would cause closure of open shellfish areas by the Department of Marine Resources.

3. Class SC waters. Class SC waters shall be the 3rd highest classification.

A. Class SC waters shall be of such quality that they are suitable for recreation in and on the water, fishing, aquaculture, propagation and restricted harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as a habitat for fish and other estuarine and marine life.

B. The dissolved oxygen content of Class SC waters shall be not less than 70% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human origin in these waters shall not exceed a geometric mean of 14 per 100 milliliters or an instantaneous level of 94 per 100 milliliters.

C. Discharges to Class SC waters may cause some changes to estuarine and marine life provided that the receiving waters are of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the community of estuarine and marine life..

Comments on §465-B

A fecal coliform standard has been added to the SB classification to protect the state's certification of interstate shellfish shipments. A designated use of "restricted harvesting of shellfish" has been added to the SC classification recognising the clamming industry's ability to harvest and sell after depuratation treatment.

Sec. 2. 38 MRSA §XXX is amended by adding the following definitions.

1. As naturally occurs. "As naturally occurs" means conditions with essentially the same physical, chemical and biological characteristics as found in situations with similar habitats free of measureable effects of human activity.

2. Aquatic life. "Aquatic life" means any plants or animals which live at least part of their life cycle in fresh water.

3. Community function. "Community function" means mechanisms of uptake, storage and transfer of life-sustaining materials available to a biological community which determines the efficiency of use and the amount of export of the materials from the community.

4. Community structure. "Community structure" means the organization of a biological community based on numbers of individuals within different taxonomic groups and the proporation each taxonomic group represents of the total community.

5. Direct discharge. "Direct discharge" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

6. Estuarine and marine life. "Estuarine and marine life" means any plants or animals which live at least part of their life cycle in salt water.

7. Indigenous. "Indigenous" means supported in a reach of water or known to have been supported according to historical records compiled by state and federal agencies or published scientific literature.

8. Natural. "Natural" means living in, or as if in, a state of nature not measurably affected by human activity.

9. Resident biological community. "Resident biological community" means aquatic life existing in a habitat prior to the influence of a discharge.

10. Unimpaired. "Unimpaired" means without a diminished capacity to support aquatic life.

11. Without detrimental changes in the resident biological community. "Without detrimental changes in the resident biological community" means no significant loss of species or excessive dominance by any species or group of species attributable to human activity.

Comments on Definitions

The definitions included here are derived from language proposed by the DEP and modified following discussion by the working group including the professional biologist with PIIO. All definitions have been approved by the working group. The definitions included in LD1503 ("fresh surface waters" and "estuarine and marine waters") are not included in the enclosed material but will be included in the final version submitted to the subcommittee.

In the definition of indigenous in sub-§ 7, the legislature recognizes that in some waters of the State (e.g. impoundments) habitat in unsuitable to support all indigenous species. The intent of the legislature is that water quality not be a limiting factor to the survival of an indigenous species although for other reasons that species may not occur in the water in question.

Sec. 3. 38 MRSA §XXX, sub§X, ¶X, sub¶2 is enacted to read:

> (2) The Legislature recognizes, however, that at certain times portions of the waters in the impoundments created by Gulf Island, Deer Rips and Lewiston Falls Dams have not and may continue to not meet the Class C requirements for dissolved oxygen due to hydrologic conditions related to the creation of the impoundments, including but not limited to impaired mixing of water columns, historical accumulation of sediment and elevated water temperature. (The Legislature further recognizes, and has found and declared it to be state policy to support hydropower and that the surface waters of the state constitute a valuable indigenous and renewable

energy resource for hydroelectric energy which provides a significant contribution to the economic development and general welfare of the citizens of the State. Accordingly, the value and importance to the people of the State of hydroelectric energy and the unavoidable consequences to water quality resulting from the existance of impoundments shall be considered when the board determines the impact of a discharge on the designated uses of the impoundments identified in this subparagraph. PIIO proposal) OR (The Legislature further recognizes that these particular dams and the impoundments they create are necessary for the economic and social welfare of the state. Accordingly... NRCM proposal) These impoundments shall be considered to meet their classification if the Board finds that conditions in those impoundments are not preventing their designated uses from being reasonably attained. Nothing in this subparagraph shall be construed to limit the board's authority to consider the requirements of §414-A, sub§1 ¶¶A through E.

Sec. 4. 38 MRSA §XXX, sub§X, ¶X, sub¶3 is enacted to read:

(2) The Legislature recognizes, however, that at certain times portions of the waters in the impoundments created by Mattacehunk Dam. also known as Weldon Dam, and Dolby Dam have not and may continue to not meet the Class C requirements for dissolved oxygen due to hydrologic conditions related to the creation of the impoundments, including but not limited to impaired mixing of water columns, historical accumulation of sediment and elevated water temperature. The Legislature further recognizes, and has found and declared it to be state policy to support hydropower and that the surface waters of the state constitute a valuable indigenous and renewable energy resource for hydroelectric energy which provides a significant contribution to the economic development and general welfare of the citizens of the State. Accordingly, the value and importance to the people of the State of hydroelectric energy and the unavoidable consequences to water quality resulting from the existance of impoundments shall be considered when the board determines the impact of a discharge on the designated uses of the impoundments identified in this subparagraph. These impoundments shall be considered to meet their classification if the Board finds that conditions in those impoundments are not preventing their designated uses from being reasonably attained. Nothing in this subparagraph shall be construed to limit the board's authority to consider the requirements of §414-A, sub§1 ¶¶A through E.

Comments on Impoundments language

It is the intent of the working group that these provisions apply only to the impoundments specifically identified. The working group does not foresee the need to include other existing impoundments nor any future impoundments in these provisions.

3944M

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TO: Interested Parties: Water Quality Reclassification
FROM: Tim Glidden and Dave Elliott, Legislative Assistants

SUBJECT: Meeting of Water Quality Working Group
DATE: November 27,1985

The legislative subcommittee, having received a briefing on the progress of the working group, has directed the working group to meet one more time. This meeting has been scheduled for December 11th at 12:30PM in room 120 (SOB). We expect the meeting to last until 5PM.

The Rep. Michaud has directed the group to consider the issues of:

1. Anti-degradation policy with particular attention to the opening sentance and subparagraph 6 (see pgs 5 - 6 of 11/26 draft).
2. DO standards to protect spawning habitat (see B & C classification in the 11/26 draft).
3. The economic benefits finding of the impoundments provisiors (see pgs 16-18 in 11/26 draft).
4. Review definition of the term "direct" (pg 15 of 11/26 draft).

After considering these issues the group will take up any further questions for final treatment.

For those of you that did not attend the November 27th briefing a copy of the 11/26 draft is enclosed.

4193M

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TO: Members, Water Quality Reclassification Study Subcommittee

FROM: Tim Glidden and Dave Elliott, Legislative Assistants

SUBJECT: Report of the Working Group on LD 1503
DATE: November 27,1985

Enclosed you will find an outline of the major issues to be covered in today's briefing on the water quality working group. This package also includes the proposed language which has, in large part, been agreed to by the working group. There are areas where important differences remain amongst the working group members. These are clearly identified in the proposed language and we will bring them to your attention in this briefing. The proposed language is accompanied by an extensive set of comments which reflect the group's intent on many of the key issues.

Our objective today is to give the legislative subcommittee an overview of the working group's efforts, identifying both the areas of consensus and unresolved issues. To that end, we propose that detailed discussion of individual issues be deferred until you have had time to read and digest this package. Key issues that you would like to pursue in greater depth should be identified today. Staff could then prepare an agenda focussed on those issues for the next meeting of the legislative subcommittee. We would also point out that in several areas, discussions between members of the working group are ongoing and further agreement may yet be possible. These further efforts should be encouraged.

We have found this process to be constructive and believe that progress towards a consensus position has been made by the interested parties. All parties have participated in good faith with a lively give and take at each of the four sessions. The credit for this success is due to their efforts.

4141M

WATER QUALITY RECLASSIFICATION STUDY - LD1503

ISSUES:

1. Basic Goals & Objectives
   - relationship to Federal CWA
   - objectives and goals for WQ/goals for water bodies
   - relationship with Rivers Bill

2. Water Quality classifications
   - water quality standards
   - uses & characteristics
   - water quality criteria

3. Biomonitoring
   - the concept
   - definitions
   - rulemaking
   - implementation provisions

4. Classification of Certain Impoundments

5. DO standards
   - generally
   - for protection of fish spawning

6. Anti-degradation policy

7. Direct & Indirect Discharges

8. Procedures & Reports
   Schedules & Implementation

9. General povisions restricting discharges

10. Specific segments
    - Kennebec Mainstem (Scott/Warren facility)
    - Sheepscot (fish rearing station)

4141M

MEMORANDUM

TO: Sen. Ron Usher, Senate Chair
Rep. Mike Michaud, House Chair
Joint Standing Committee on Energy and Natural Resources

FROM: Nancy Anderson, MAS
Dan Boxer, PIIO
Jim Dow, NRCM
Dale Phenicie, GNP/PIIO
Val Thompson, CMP
Patty Waugh, MCCI
Ken Young, DEP

SUBJECT: Proposed Replacement Language for LD1503
DATE: November 27,1985

The ad-hoc working group on LD1503, established at your direction, has substantially completed its charge as laid out in your memo of October 23,1985. The proposed language enclosed with this memo and presented today by your staff is the product of many hours of constructive give and take between us all. While differences remain amongst us as specifically noted in the proposed language, we have achieved consensus on many important issues.

The proposed language is presented as a package. The many issues we have agreed on are complex and interrelated. Thus, we urge you to give careful attention to the relationships between issues before making substantial changes. Please note that, as you requested, specific statements of intent have been developed to reflect our shared understanding of the proposed language. In several instances, these statements are important parts of the agreements reached between us. We stand ready to assist you and the committee in the remainder of the legislative process for LD1503.

Finally, we would like to express our general satisfaction with the process followed by the study subcommittee. You have provided a useful and open forum for the resolution of many difficult issues. The consensus established within this group will assist the legislature in its deliberations and will also provide the foundation for successful implementation of the program.

4121M

Water Reclassification
Working Group
11-26-85

SECOND REGULAR SESSION

ONE HUNDRED AND TWELFTH LEGISLATURE

Legislative Document No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY SIX

AN ACT to Amend the Classification System for Maine Waters and Change the Classifications of Certain Waters.

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

Sec. 1. 38 MRSA, chapter 3, Article 4-A is enacted to read:

ARTICLE 4-A. WATER CLASSIFICATION PROGRAM

§464. Classification of Maine waters

The waters of the State shall be classified in accordance with the provisions of this article.

1. Findings; objectives; purpose. The Legislature finds that the proper management of the State's water resources is of great public interest and concern to the State in promoting the general welfare, preventing disease, promoting health, providing habitat for fish, shellfish and wildlife, as a source of recreational opportunity and as a resource for commerce and industry.

The Legislature hereby declares that it is the State's objective to restore and maintain the chemical, physical and biological integrity of the State's waters and to preserve certain pristine State waters. The Legislature further

declares that in order to achieve this objective the State's goals are: (1) that the discharge of pollutants into the waters of the State be eliminated where appropriate; (2) that no pollutants be discharged into any water of the state without first being given the degree of treatment necessary to allow those waters to attain their classification, and (3) that water quality be sufficient to provide for the protection and propagation of fish, shellfish, and wildlife and provide for recreation in and on the water.

The Legislature intends by passage of this Act to establish a water quality classification system which will allow the State to manage its surface waters so as to protect the quality of those waters and, where water quality standards are not being achieved, to enhance water quality. This classification system shall be based on water quality standards which designate the uses and related characteristics of those uses for each class of water and which also establish water quality criteria necessary to protect those uses and related characteristics. The Legislature further intends by passage of this Act to assign to each of the State's surface water bodies the water quality classification which shall designate the minimum level of quality which the Legislature intends for the body of water. This designation is intended to direct the State's management of that water body in order to achieve at least that minimum level of water quality.

Comment to sub-§1.

This subsection states in broad and general terms the Legislature's intent in adopting the new surface water classification system. The adoption of this broad language is meant to reflect the resolve of Legislature to improve, where appropriate, the waters of the State over the course of time. This is an effort which has already yielded important results thanks to efforts by all segments of the economy. It is not the intent of the Legislature that the general language of this section be used by itself to establish a water quality violation. The standards contained in other portions of the bill are the mechanisms by which water quality is to be managed and regulated.

The first paragraph contains findings on the importance of water resources to Maine. The value of water to the economy is pointed out by adding reference to commerce and industry.

The second paragraph defines the State's water quality objective and goals. The language tracks closely that of section 101 of the Federal Clean Water Act by establishing an objective of maintaining and improving water quality and setting goals to achieve that objective. It also recognizes the need for some discharges to surface waters and articulates the policy of requiring treatment of those discharges to protect water quality.

The third paragraph states the Legislature's intent concerning the implementation of the surface water classification system. The system is to be used to protect and, where a water body is not attaining its classification, to enhance water quality. Water bodies are to be protected by a 2-step classification process. First, a standard is established for each class of water quality which consists of a/ designated uses and related characteristics and b/ water quality criteria which will support those uses and characteristics. Second, each water body will be assigned a specific classification by the Legislature. That classification will serve the dual purposes of establishing water quality goals for the water body and of serving as the basis for establishment of water quality-based conditions attached to State water discharge licenses.

2. Procedures for reclassification. Reclassification of Maine waters shall be governed by the following provisions.

A. Upon petition by any person or on its motion, the board, following public notice, may conduct classification studies and investigations. Information collected during these studies and investigations shall be made available to the public in an expeditious manner. After consultation with other state agencies and, where appropriate, individuals, citizen groups, industries, municipalities and federal and interstate water pollution control agencies, the board may propose changes in water reclassification.

B. The board shall call public hearings in the affected area, or reasonably adjacent to the affected area, for the purpose of presenting to all interested persons the proposed classification for each particular water body and obtaining public input.

C. The board may recommend changes in classification it deems necessary to the Legislature.

Comment to sub-§2

This subsection has been reorganized for clarity. Most of its language is taken from LD1503.

In paragraph A the language allowing "any person" to petition the board for a classification study is not intended to require the board to conduct such a study. This intent is clear from the language retained from LD1503; "the board may...conduct classification studies".

3. Reports to the Legislature. The board shall periodically report to the Legislature as governed by the following provisions.

the "pH' of fresh waters to fall outside of the 6.0 to 8.5 range, causes the "pH" of estuarine and marine waters to fall outside of the 7.0 to 8.5 range or causes fish for human consumption to be injurious to human health as determined by the U.S. Food and Drug Administration under the procedures established by 21 USC §342 or as determined by the Department of Human Services. The department shall establish a protocol for determining risk in appropriate situations. The protocol shall be promulgated as a rule in accordance with the Maine Administrative Procedure Act, 5 MRSA chapter 375.

B. All surface waters of the State shall be free of settled substances which alter the physical or chemical nature of bottom material and of floating substances, except as naturally occur, which impair the characteristics and designated uses ascribed to their class.

C. Where natural conditions, including but not limited to, marshes, bogs and abnormal concentrations of wildlife cause the dissolved oxygen or other water quality criteria to fall below the minimum standards specified in sections 465, 465-A, and 465-B, those waters will not be considered to be failing to attain their classification on account of those natural conditions.

D. For the purpose of computing whether a discharge will violate the classification of any river or stream, the assimilative capacity of the river or stream shall be computed using the minimum 7-day low flow which can be expected to occur with a frequency of once in 10 years.

E. The waters contained in excavations approved by the board for waste water treatment purposes shall be unclassified waters.

F. Anti-degradation. It is the intent of this paragraph to comply with the requirements of the Federal Clean Water Act and associated regulations relating to antidegradation when waste discharge licenses, wasteload allocations or water quality certifications are being considered by the department or board.

(1) Existing instream water uses and the level of water quality necessary to protect those existing uses shall be maintained and protected. When used in this paragraph "existing instream water uses" are defined to be the designated uses and related characteristics of each classification that are actually being attained.

(2) The level of water quality necessary to protect the designated uses and related characteristics of each classification shall be maintained and protected.

(3) Any discharge or activity licensed pursuant to section 414-A or requiring water quality certification pursuant to section 401 of the Clean Water Act shall not lower the existing quality of any water body without a finding by the board, after public hearing, of important economic or social benefit to the state. That finding shall be made as provided by rule of the board.

(4) Where high quality waters of the State constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(5) Any discharge license pursuant to section 414-A or any water quality certification pursuant to section 401 of the Federal Clean Water Act PL 92-500, as amended, (33 USC 1251 et seq.) shall be issued only if the standards of classification of the water body and the requirements of this paragraph will be met.

(6) (The policy expressed in this paragraph is not intended to be used (a) to limit consideration of an application pursuant to the terms of any state or federal statute which allows an applicant upon receipt of a license or permit to affect the uses of a waterbody, including, without limitation, laws relating to dredging and filling, hydroelectric facilities, bridges or causeways or (b) to affect the application of 38 MRSA subarticle 1-B with respect to water quality certification pursuant to section 401 of the Federal Clean Water Act. PIIO proposal) OR (The requirements of the antidegradation provisions must retain their integrity in all licensing decisions and cannot be limited or altered by determinations made under unrelated standards of the various licensing statutes. NRCM and MAS proposal)

(7) Where the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality shall be maintained and protected. The board shall recommend to the Legislature that such water be reclassified in that next higher classification. (NRCM proposal)

(8) In any classification or reclassification of an individual water body, that water shall not be assigned a classification with water quality standards which are lower than the existing quality at the time of classification or reclassification if that existing quality meets the standards of a higher classification. (NRCM proposal)

Comment to sub-§3

This subsection has been reorganized to improve clarity and revised based on discussions in the working group.

The general provisions of the bill relating to discharges have been organized in paragraph A. The language prohibiting discharges into Class AA and SA waters has been deleted from this subsection because it is duplicative of provisions found in the Class AA and SA sections. In line with the November 5, 1985 discussion, the term "direct" has been added to modify "discharge" in sub-paragraphs 1 and 2 to distinguish those discharges from non-point source discharges. See new definitions for meaning of direct discharge. Subsections 3 and 4 include all discharges in order to offer the broadest possible protection to water quality

In sub-para. 1, the prohibition on direct discharges to waters draining 10 sq. miles or less has been limited to new direct discharges to provide for the limited number of discharges which may currently exist in those waters. Existing discharges may continue until practical alternatives exist.

In sub-para. 2, language is included regarding discharges to tributaries of GPA waters which is transfered from the GPA classification section. The intent of this transfer is to have all provisions regarding discharges to GPA tributaries in one location.

In sub-para. 3, the term "pollutant" has been substituted for "sewage, industrial waste, heat, hazardous matter or other substance."

In sub-para. 4, "unsuitable for human consumption" has been changed to "injurious to human health" as defined by the U.S. Food and Drug Administration or the Maine Dept. of Human Services to emphasize the intent to protect public health while allowing for possible differences in personal tastes in fish consumption.

Paragraphs B, C and D are taken from LD 1503.

Paragraph E is added to place the provisions regarding the status of certain excavations in the general provisions section for clarity. The language is taken verbatim from the GPA classification section of LD1503.

Paragraph F contains the State's antidegradation policy. A state antidegradation policy is required by the Federal Clean Water Act. Subparagraphs 1-5 represent a concensus position by the group. With respect to increments in water qyuality which are protected in subpara 3, it is the intent of the working group that the increases which are to be protected be not merely transitory improvements which are caused by plant closings, economic swings or other plants operations which are

cyclical in nature. On the entire antidegradation issue, final agreement has not been attained due to disagreement on subparagraph 6. PIIO views this subpara. as necessary to insure that applicants for discharge licenses or other regulated activities affecting water quality are given full consideration. PIIO further feels subpara. 6 is needed to maintain the force of the provisions of 38 MRSA §§633-636 regarding water quality certification in hydro licensing. NRCM and MAS object to subpara. 6 on the grounds that it could preclude the effective application of the antidegradation policy to discharge applications and other regulated activities. Subpara.'s 7 and 8 are proposed by NRCM and MAS. PIIO and MCCI oppose those provisions. DEP views subpara. 7 as unnecessary and subpara. 8 as ineffective.

5. Rulemaking. In accordance with the Maine Administrative Procedure Act, the board shall promulgate rules necessary to implement the water quality classification system established by this Act. In promulgating rules, the board shall solicit and consider, in addition to any other materials, information on the economic and environmental impact of those rules.

Rules shall be promulgated by January 1, 1987, and shall include, but are not limited to, sampling and analytical methods, protocols and procedures for satisfying the water quality criteria, including evaluation of the impact of any discharge on the resident biological community.

Comment to sub-§4

This subsection is added to explicitly require DEP to adopt rules on certain subjects. The APA is cross referenced to ensure the availability of the public participation and legislative oversight provisions of that law. Specific provision is made requiring the board to consider the economic and environmental impact of its rules. The first set of rules must be adopted by January 1, 1987.

6. Implementation of biological water quality criteria. The implementation of water quality criteria pertaining to the protection of the resident biological community shall be governed by the provisions of this subsection.

A. At any time during the term of a valid waste water discharge license which was issued prior to the effective date of this Act, the board may modify that license in accordance with section 347 if the discharger is not in compliance with the water quality criteria pertaining to the protection of the resident biological community. When a discharge license is modified under this subsection, the board shall establish a reasonable schedule to bring the discharge into compliance with the water quality criteria pertaining to the protection of the resident biological community.

B. A discharger seeking a new discharge license following the effective date of the rules adopted under subsection 4 of this section shall comply with the water quality criteria of this article.

Comment to sub-§5.

This subsection is added to clarify how enforcement will occur after enactment of the new classification system. After the effective date of rules adopted under this Act, a discharger seeking a new discharge license must comply with the provisions of the new system and rules adopted thereunder. The term, new discharge license, has been used in working group discussions to include renewals of existing licences. A discharger with a valid water discharge license issued before the effective date of this Act who is found to be not in compliance with the new water quality criteria may have its license modified under §347. A compliance schedule will be established by the board. A discharger seeking a renewal before the adoption of the rules will be treated in the same manner as a discharger with an existing license with respect to compliance with the biological water quality criteria. A discharger seeking renewal after that date shall be treated in the same manner as a new discharge application.

In order to give the legislative subcommittee an indication of the waters that are not expected to attain the biological standards, pgs 54-55 of the DEP "Summary of Scientific Basis for Proposed Changes" will be included in these comments.

§465. Standards for classification of fresh surface waters

The board shall have 4 standards for the classification of fresh surface waters which are not classified as great ponds.

1. Class AA waters. Class AA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic or recreational importance.

A. Class AA waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, fishing, recreation in and on the water, navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as free flowing and natural.

B. The aquatic life, dissolved oxygen and bacteria content of Class AA waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants to Class AA waters.

2. Class A waters. Class A shall be the 2nd highest classification.

A. Class A waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation, except as prohibited under Title 12, section 403,navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as natural.

B. The dissolved oxygen content of Class A waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher. The aquatic life and bacteria content of Class A waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants into waters of this classification and no deposits of such material on the banks of these waters in any manner that transfer of pollutants into the waters is likely, except that existing licensed discharges into waters of this classification will be allowed to continue until practical alternatives exist. New direct discharges to these waters will be permitted only if, in addition to satisfying all the requirements of this chapter, the discharged effluent will be equal to or better than the existing water quality of the receiving waters. Prior to issuing a discharge license, the board shall require the applicant to objectively demonstrate to the board's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available.

3. Class B. waters. Class B shall be the 3rd highest classification.

A. Class B waters shall be of such quality that they are suitable for the designated uses of drinking water supply after treatment, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation except as prohibited under Title 12, section 403, navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as unimpaired.

B. The dissolved oxygen content of Class B waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period October 1, through May 14, in order to ensure spawning and egg incubation of indigenous fish species, the 7 day mean dissolved oxygen concentration shall not be less than 9.5 parts per million and the 1 day minimum dissolved oxygen concentration shall not be less than 8.0 parts per million in identified fish spawning areas. Between May 15th and September 30th, the number of Escherichia coli bacteria of

human origin in these waters shall not exceed a geometric mean of 64 per 100 milliliters or a instantaneous level of 427 per 100 milliliters.

C. Discharges to Class B waters shall not cause adverse impact to aquatic life in that the receiving waters shall be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community.

4. Class C waters. Class C shall be the 4th highest classification.

A. Class C waters shall be of such quality that they are suitable for the designated uses of drinking water supply after treatment, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation except as prohibited under Title 12, section 403, navigation and as a habitat for fish and other aquatic life.

B. The dissolved oxygen content of Class C water shall be not less than (5 parts per million - PIIO-MCCI option) or 60% of saturation, whichever is higher, except that for the period October 1 through May 14, in identified fish spawning areas, where a 7 day mean dissolved oxygen concentration not less than 9.5 parts per million and a 1 day minimum dissolved oxygen concentration not less than 8.0 parts per million is being achieved at the time of application for a discharge license those levels shall be maintained to ensure spawning and egg incubation of indigenous fish species. Between May 15th and September 30th, the number of Escherichia coli bacteria of human origin in these waters shall not exceed a geometric mean of 142 per 100 milliliters or an instantaneous level of 949 per 100 milliliters. The department shall promulgate rules governing the procedure for designation of spawning areas. Those rules shall include provision for periodic review of designated spawning areas and consultation with affected persons prior to designation of a stretch of water as a spawning area.

OR

(B. The 30 day mean dissolved oxygen content of Class C waters shall not be less than 6.5 ppm and a 7 day mean minimum dissolved oxygen content of not less than 5.0 ppm, except that from the period October 1 through May 14 in order to ensure successful spawning and egg incubation of indigenous fish species, the 7 day mean dissolved oxygen concentration shall not be less than 9.5 ppm and the 1 day mininum dissolved oxygen concentration shall not be less than 8.0 ppm. NRCM proposal)

C. Discharges to Class C waters may cause some changes to aquatic life, provided that the receiving waters shall be of sufficient quality to support all species of fish

indigenous to the receiving waters and maintain the structure and function of the community of aquatic life.

Comments to §465

This section has been reorganized to improve clarity and revised based on discussions in the working group. Each of the 4 classes are described in a separate subsection. Within each subsection, there are 3 paragraphs for designated uses and characteristics, biological criteria and discharge language.

In sub-§2, para. A, the appropriateness of hydroelectric power generation on Class A waters which have been designated for special protection (i.e., no dams) in the Rivers Bill is clarified.

In sub-§3, para. B, additional dissolved oxygen criteria are established Class B waters between September 30 and May 15 in identified fish spawning areas in order to protect early stages of salmonoid fish life.

In sub-§3, para. A, identical language to that discussed above dealing with hydroelectric power generation has been added for Class B waters.

In sub-§4, para. B, the working group understands that, in adopting the 60% saturation standard for DO, waters classified as "C" in the Act will meet their classification under existing conditions and in conjunction with the proposed impoundments provisions.

In sub-§4, para.B, language has also been added which is similar to that in sub-§3, para.3 establishing special dissolved oxygen criteria for Class C waters to protect spawning areas.

MCCI currently objects to the inclusion of additional DO criteria for spawning areas.

§465-A. Standards for classification of lakes and ponds

The board shall have one standard for the classification of great ponds and natural lakes and ponds less than 10 acres in size. Impoundments of rivers may be classified as GPA or as specifically provided in sections 466 and 466-A (or may become great ponds by definition as set forth in 38 MRSA §392 PIIO proposal).

1. Class GPA waters. Class GPA shall be the sole classification of great ponds and natural ponds less than 10 acres size.

A. Class GPA waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, recreation in and on the water, fishing,

industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as natural.

B. Class GPA waters shall be described by their trophic state based on measures of the chlorophyll "a" content, Secchi disk transparency, total phosphorus content and other appropriate criteria. Class GPA waters shall have a stable or decreasing trophic state, subject only to natural fluctuations, and shall be free of culturally-induced algal blooms which impair their use and enjoyment. The number of Escherichia coli bacteria of human origin in these waters shall not exceed a geometric mean of 29 per 100 milliliters or an instantaneous level of 194 per 100 milliliters.

C. There shall be no new direct discharge of pollutants into Class GPA waters. Aquatic chemical applications approved by the board shall be exempt from the no discharge provision. Existing licensed discharges into these waters shall be allowed to continue only until practical alternatives exist. No materials may be placed on or removed from the shores or banks of a Class GPA water body in such a manner that materials may fall or be washed into the water or that contaminated drainage therefrom may flow or leach into those waters, except as provided in section 391. No change of land use in the watershed of a Class GPA water body may, by itself or in combination with other activities, cause water quality degradation which would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters.

§465-B. Standards for classification of estuarine and marine waters

The board shall have 3 standards for the classification of estuarine and marine waters.

1. Class SA waters. Class SA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic, economic or recreational importance.

A. Class SA waters shall be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, navigation and as habitat for fish and other estuarine and marine life. The habitat shall be characterized as free-flowing and natural.

B. The estuarine and marine life, dissolved oxygen and bacteria content of Class SA waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants to Class SA waters.

2. Class SB waters. Class SB waters shall be the 2nd highest classification.

A. Class SB shall be the 2nd highest classification and these waters shall be such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting or shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other estuarine and marine life. The habitat shall be characterized as unimpaired.

B. The dissolved oxygen content of Class SB waters shall be not less than 85% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human origin in these waters shall not exceed a geometric mean of 8 per 100 milliliters or an instantaneous level of 54 per 100 milliliters. The median numbers of total coliform bacteria in any series of samples representative of the waters in a shellfish harvesting area shall not be in excess of 70 per 100 millimeters, nor shall more than 10% of the samples exceed 230 total coliform bacteria per 100 millimeters.

C. Discharges to Class SB waters shall not cause adverse impact to estuarine and marine life in that the receiving waters shall be of sufficient quality to support all estuarine and marine species indigenous to the receiving water without detrimental changes in the resident biological community. There shall be no new direct discharge to Class SB waters which would cause closure of open shellfish areas by the Department of Marine Resources.

3. Class SC waters. Class SC waters shall be the 3rd highest classification.

A. Class SC waters shall be of such quality that they are suitable for recreation in and on the water, fishing, aquaculture, propagation and restricted harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as a habitat for fish and other estuarine and marine life.

B. The dissolved oxygen content of Class SC waters shall be not less than 70% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human origin in these waters shall not exceed a geometric mean of 14 per 100 milliliters or an instantaneous level of 94 per 100 milliliters.

C. Discharges to Class SC waters may cause some changes to estuarine and marine life provided that the receiving waters are of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the community of estuarine and marine life..

Comments on §465-B

A fecal coliform standard has been added to the SB classification to protect the state's certification of interstate shellfish shipments. A designated use of "restricted harvesting of shellfish" has been added to the SC classification recognising the clamming industry's ability to harvest and sell after depuratation treatment.

Sec. 2. 38 MRSA §XXX is amended by adding the following definitions.

1. As naturally occurs. "As naturally occurs" means conditions with essentially the same physical, chemical and biological characteristics as found in situations with similar habitats free of measureable effects of human activity.

2. Aquatic life. "Aquatic life" means any plants or animals which live at least part of their life cycle in fresh water.

3. Community function. "Community function" means mechanisms of uptake, storage and transfer of life-sustaining materials available to a biological community which determines the efficiency of use and the amount of export of the materials from the community.

4. Community structure. "Community structure" means the organization of a biological community based on numbers of individuals within different taxonomic groups and the proporation each taxonomic group represents of the total community.

5. Direct discharge. "Direct discharge" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

6. Estuarine and marine life. "Estuarine and marine life" means any plants or animals which live at least part of their life cycle in salt water.

attributable to human activity.

Comments on Definitions

The definitions included here are derived from language proposed by the DEP and modified following discussion by the working group including the professional biologist with PIIO. All definitions have been approved by the working group. The definitions included in LD1503 ("fresh surface waters" and "estuarine and marine waters") are not included in the enclosed material but will be included in the final version submitted to the subcommittee.

In the definition of indigenous in sub-§ 7, the legislature recognizes that in some waters of the State (e.g. impoundments) habitat in unsuitable to support all indigenous species. The intent of the legislature is that water quality not be a limiting factor to the survival of an indigenous species although for other reasons that species may not occur in the water in question.

Sec. 3. 38 MRSA §XXX, sub§X, ¶X, sub¶2 is enacted to read:

(2) The Legislature recognizes, however, that at certain times portions of the waters in the impoundments created by Gulf Island, Deer Rips and Lewiston Falls Dams have not and may continue to not meet the Class C requirements for dissolved oxygen due to hydrologic conditions related to the creation of the impoundments, including but not limited to impaired mixing of water columns, historical accumulation of sediment and elevated water temperature. (The Legislature further recognizes, and has found and declared it to be state policy to support hydropower and that the surface waters of the state constitute a valuable indigenous and renewable

energy resource for hydroelectric energy which provides a significant contribution to the economic development and general welfare of the citizens of the State. Accordingly, the value and importance to the people of the State of hydroelectric energy and the unavoidable consequences to water quality resulting from the existance of impoundments shall be considered when the board determines the impact of a discharge on the designated uses of the impoundments identified in this subparagraph. PIIO proposal) OR (The Legislature further recognizes that these particular dams and the impoundments they create are necessary for the economic and social welfare of the state. Accordingly... NRCM proposal) These impoundments shall be considered to meet their classification if the Board finds that conditions in those impoundments are not preventing their designated uses from being reasonably attained. Nothing in this subparagraph shall be construed to limit the board's authority to consider the requirements of §414-A, sub§1 ¶¶A through E.

Sec. 4. 38 MRSA §XXX, sub§X, ¶X, sub¶3 is enacted to read:

(2) The Legislature recognizes, however, that at certain times portions of the waters in the impoundments created by Mattacehunk Dam. also known as Weldon Dam, and Dolby Dam have not and may continue to not meet the Class C requirements for dissolved oxygen due to hydrologic conditions related to the creation of the impoundments, including but not limited to impaired mixing of water columns, historical accumulation of sediment and elevated water temperature. The Legislature further recognizes, and has found and declared it to be state policy to support hydropower and that the surface waters of the state constitute a valuable indigenous and renewable energy resource for hydroelectric energy which provides a significant contribution to the economic development and general welfare of the citizens of the State. Accordingly, the value and importance to the people of the State of hydroelectric energy and the unavoidable consequences to water quality resulting from the existance of impoundments shall be considered when the board determines the impact of a discharge on the designated uses of the impoundments identified in this subparagraph. These impoundments shall be considered to meet their classification if the Board finds that conditions in those impoundments are not preventing their designated uses from being reasonably attained. Nothing in this subparagraph shall be construed to limit the board's authority to consider the requirements of §414-A, sub§1 ¶¶A through E.

A. The board shall submit to the First Regular Session of each Legislature a report on the the quality of the State's waters which describes existing water quality, identifies waters which are not attaining their classification and which states what measures are necessary for the attainment of the standards of their classification.

B. The board shall from time to time, but at least once every three years, hold public hearings for the purpose of reviewing the water quality classification system and related standards and, as appropriate, recommending changes in the standards to the Legislature.

Comment to sub-§3

This subsection has been reorganized for clarity.

Para. A is taken verbatim from LD1503.

Para. B includes a procedure to periodically review the adequacy of the classification system (as distinct from the classification of a particular stretch of water). The DEP already undertakes this review to meet EPA requirements.

4. General provisions. The classification system for surface waters established by this article shall be subject to the following provisions.

A. The following discharges are prohibited:

(1) New direct discharge of pollutants to waters having a drainage area of less than 10 square miles. Existing licensed discharges into these waters shall be allowed to continue only until practical alternatives exist;

(2) New direct discharge of domestic pollutants to tributaries of class GPA waters. Discharges into tributaries of GPA waters shall not, by themselves or in combination with other activities, cause water quality degradation which would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters;

(3) Discharge of pollutants to waters of the State which imparts color, taste, turbidity, toxicity, radioactivity or other properties which cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class; and

(4) Discharge of pollutants to any water of the State which violates the provisions of sections 465, 465-A, and 465-B, except as provided in section 451, causes

Comments on Impoundments language

It is the intent of the working group that these provisions apply only to the impoundments specifically identified. The working group does not foresee the need to include other existing impoundments nor any future impoundments in these provisions.

3944M

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TO: Interested Parties: Water Quality
FROM: Tim Glidden and Dave Elliott, Legislative Assistants

SUBJECT: Anti-degradation Policy
DATE: November 25,1985

The purpose of this memo is to summarize the proposals for anti-degradation language received by the working group. In addition to the language of LD1503, proposals have been received from the NRC, PIIO and MCCI.

In the interest of achieving consensus, we have sought to identify the specific issues, areas of conceptual agreement, and areas of difference. Because of the importance and complexity of anti-degradation policy, it is particularly vital that the working group make every effort to reach agreement.

AREAS OF GENERAL, CONCEPTUAL AREEMENT

A. Protection of existing uses:

- required by EPA regs (40 CFR 131.12(a)(1)) although definition of the term "existing uses" is apparently up to the state.

- proposals from NRCM, PIIO and MCCI all provide for protection of existing uses.

- NRCM proposal provides an elaboration on the term "existing uses" which tracks EPA regs (40 CFR 131.3(e)). NRCM also provides for case by case determination of existings uses.

B. Protection of designated uses:

- not explicitly required by EPA regs.

- proposals from NRCM, PIIO and MCCI all provide for protection of designated uses in similar language.

- NRCM proposal includes the term "characteristics" in the protection language.

C. Maintenance of existing water quality

- required by EPA regs (40 CFR 131.12(a)(2)).

- proposals from NRCM and MCCI provide for the maintenance of existing water quality with similar provisions for limited reduction of water quality with a finding of important socioeconomic need.

- NRCM proposal includes language reiterating the protection of existing uses after a finding of socioeconomic need and language requiring tight control of direct and indirect discharges through treatment and management practices respectively. This language is taken from the CFR citation noted above.

- MCCI includes a provision that increments of water quality above minimum requirements must have been sustained for at least 12 consecutive months.

- PIIO does not provide for the protection of existing water quality beyond the minimum standards of the classification.

AREAS OF DIFFERENCE

D. Protection of applicant's rights:

- not required by EPA regs.

- PIIO proposal includes language to preserve the "right of any person to seek approval for any activity" licenseable under state or federal law.

- neither PIIO nor NRCM address this issue.

E. Protection of existing water quality exceeding next higher classification:

- not required by EPA regs beyond that noted in C above.

- NRCM proposal requires protection of increments of water quality which exceed the standards of the next higher classification. The proposal further requires that the DEP recommend such river stretches to the Legislature for reclassification.

- neither PIIO nor MCCI address this issue.

F. Maintenance of outstanding national resources:

- required by EPA regs (40 CFR 131.12(a)(3)).

- NRCM proposal tracks EPA language.

- neither PIIO nor MCCI address this issue.

G. Lowering of classifications:

- not required by EPA regs.

- NRCM proposal would prohibit a lowering of the classification if existing water quality would meet the standards of a higher classification.

- neither PIIO nor MCCI address this issue.

H. Consistency provision:

- NRCM proposal is a reworking of LD1503 language (§360, sub§3, 3rd¶, 1st sentance. It requires a license to comply with the antidegradation policy and the applicable water quality standards.

- neither PIIO nor MCCI address this issue.

See attached material for the various proposals.

4192M

Water Reclassification November 19, 1985
Anti-degradation

Water quality necessary to protect designated uses shall be maintained. Any discharge or activity requiring a waste discharge license pursuant to section 414-A or a water quality certification pursuant to Section 401 of the United States Clean Water Act shall not lower the quality of any water body below the minimum standards of its classification or cause water quality to be unsuitable for the protection of existing uses. Provided, however, that nothing in this paragraph shall be construed to affect the right of any person to seek approval pursuant to any provision of state or federal law for any activity which may affect the uses of a water body and which is otherwise permitted pursuant to such state or federal law including, without limitation, laws relating to dredging and filling, hydroelectric facilities, bridges, causeways and other activities or structures affecting water bodies.

NRCM: Antidegradation Language

1) existing uses protected. Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. Existing uses are those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards. Factual determinations of what constitutes an existing use on a particular water body shall be made on a case by case basis by the Board or any other state regulatory body empowered by state law to issue discharge licenses or certify water quality under section 401 of the Federal Water Pollution Control Act ("Clean Water Act").

2) designated uses protected. The level of water quality necessary to protect the characteristics and designated uses of each classification shall be maintained and protected.

3) actual water quality higher than minimum standards of its class to be maintained. Where the actual quality of any classified water exceeds the minimum standards of its classification, but not those of the next higher classification, the higher water quality shall be maintained and protected, unless the Board finds, after full intergovernmental and public participation, that allowing lower water quality is necessary to accommodate important economic and social development in the area in which the water is located. In allowing such lower quality, however, the Board shall assure that (1) water quality adequate to protect existing uses fully shall be maintained and (2) there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost effective and reasonable best management practices for control of indirect discharges.

4) water quality exceeding the minimum standards of the next higher classification to be maintained. Where the actual quality of any classified water exceeds the minimum standards of the next higher classification, that higher water quality shall be maintained and protected. The Board shall recommend to the Legislature that such water be reclassified in that next higher classification.

5) outstanding national resources to be maintained. Where high quality waters of the state constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

6) classification must not be lower than existing quality. In any classification or reclassification of an individual

water body, that water shall not be assigned a classification with water quality standards which are lower than the existing quality at the time of classification if that existing quality meets the standards of a higher classification.

7) licenses require compliance with standards. Any discharge license pursuant to section 414-A or any water quality certification pursuant to section 401 of the Federal Water Pollution Control Act ("Clean Water Act") PL 92-500, as amended, (33 USC 1251 et seq.) shall be issued only if both the standards of classification of the water body where the proposed discharge would occur and the requirements of this subsection will be met.

Comment. The following changes to the November 13 draft proposal on antidegradation language are made in this draft:

sub. 1: The definition of "existing uses" that appears in the federal regulations (40 CFR section 131.3(e)) has been added. Also added is language which directs how and by whom the actual determinations of existing use will be made.

sub. 2: The words "and characteristics" are added to be consistent with language agreed to be included in the bill.

sub. 3: This language significantly alters NRCM's original position. It tracks language offered by DEP (Terry McGovern) at the November 13 meeting.

sub. 4: This language is new.

sub. 5: Unchanged.

sub. 6: This language is new.

DRAFT LANGUAGE - MCCI

Anti-Degradation Provision: Page 3 of LD Lines 12-20

1. Existing uses protected: Existing instream water uses and level of water quality necessary to protect the existing uses shall be maintained and protected.

2. Designated uses protected. The level of water quality necessary to protect the disignated uses of each classification shall be maintained.

3. Existing water quality maintained. Where the existing quality of any classified water exceeds, for at least 12 consecutive months, the minimum standards necessary to support the designated uses of its classification, the higher water quality shall be maintained unless the Board finds that allowing the lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located.

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TO: Members, Water Quality Study Subcommittee
FROM: Tim Glidden and Dave Elliott, Legislative Assistants

SUBJECT: Presentation of LD1503 Working Group Results
DATE: November 22,1985

Just a reminder that we will present the results of the ad-hoc working group's efforts to you on Wednesday, November 27th in room 120 at 9AM.

We are preparing an "overview" presentation that generally covers all of the issues addressed by the work group. An additional subcommittee meeting will probably be necessary to address any specific issues in detail. You may want to use this meeting to identify those issues for further discussion.

The working group is meeting for a final time on Monday, November 25th to review its efforts and to attempt resolution of a few remaining issues.

We think you'll be pleased with the group's efforts to date. Much has been accomplished.

4151M

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TO: Interested Parties: Water Quality
FROM: Tim Glidden and Dave Elliott, Legislative Assistants

SUBJECT: Agenda for Water Quality Working Group Meeting: 11/25
DATE: November 19,1985

The final meeting of the working group on water quality will be held on Monday, November 25th at 9AM in room 120 (SOB). The purpose of this meeting will be to:

1. Continue discussion and resolve the working group's position on DO standards for spawning areas and on anti-degradation language.

2. Raise and resolve any final corrections to the proposed language of LD 1503 (see enclosed material).

3. Raise and resolve any issues regarding the classification of specific river segments.

The material enclosed incorporates all of the agreements made by the working group to date. We have made a limited number of structural and wording changes to improve the consistency of the classification provisions.

Please pay special attention to the comments on the proposed language. These will form the basis of the subcommittee's report and the statement of fact for the final bill.

4115M

Water Reclassification
Working Group
11-19-85

SECOND REGULAR SESSION

ONE HUNDRED AND TWELFTH LEGISLATURE

Legislative Document No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY SIX

AN ACT to Amend the Classification System for Maine Waters and Change the Classifications of Certain Waters.

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

Sec. 1. 38 MRSA, chapter 3, Article 4-A is enacted to read:

ARTICLE 4-A. WATER CLASSIFICATION PROGRAM

§464. Classification of Maine waters

The waters of the State shall be classified in accordance with the provisions of this article.

1. Findings; objectives; purpose. The Legislature finds that the proper management of the State's water resources is of great public interest and concern to the State in promoting the general welfare, preventing disease, promoting health, providing habitat for fish, shellfish and wildlife, as a source of recreational opportunity and as a resource for commerce and industry.

The Legislature hereby declares that it is the state's objective to restore and maintain the chemical, physical and biological integrity of the state's waters and to preserve certain pristine State waters. The Legislature further

declares that in order to achieve this objective the state's goals are: (1) that the discharge of pollutants into the waters of the State be eliminated where appropriate; (2) that no pollutants be discharged into any water of the state without first being given the degree of treatment necessary to allow these waters to attain their classification, and (3) that water quality be sufficient to provide for the protection and propagation of fish, shellfish, and wildlife and provide for recreation in and on the water.

The Legislature intends by passage of this Act to establish a water quality classification system which will allow the State to manage its surface waters so as to protect the quality of those waters and, where water quality standards are not being achieved, to enhance water quality. This classification system shall be based on water quality standards which designate the uses and related characteristics of those uses for each class of water and which also establish water quality criteria necessary to protect those uses and related characteristics. The Legislature further intends by passage of this Act to assign to each of the State's surface water bodies the water quality classification which shall designate the minimum level of quality which the Legislature intends for the body of water. This designation is intended to direct the State's management of that water body in order to achieve at least that minimum level of water quality.

Comment to sub-§1.

This subsection states in broad and general terms the Legislature's intent in adopting the new surface water classification system. The adoption of this broad language is meant to reflect the resolve of Legislature to improve, where appropriate, the waters of the State over the course of time. This is an effort which has already yielded important results thanks to efforts by all segments of the economy. It is not the intent of the Legislature that the general language of this section be used by itself to establish a water quality violation. The standards contained in other portions of the bill are the mechanisms by which water quality is to be managed and regulated.

The first paragraph contains findings on the importance of water resources to Maine. The value of water to the economy is pointed out by adding reference to commerce and industry.

The second paragraph defines the State's water quality objective and goals. The language tracks closely that of section 101 of the Federal Clean Water Act by establishing an objective of maintaining and improving water quality and setting goals to achieve that objective. It also recognizes the need for some discharges to surface waters and articulates the policy of requiring treatment of those discharges to protect water quality.

The third paragraph states the Legislature's intent concerning the implementation of the surface water classification system. The system is to be used to protect and, where a water body is not attaining its classification, to enhance water quality. Water bodies are to be protected by a 2-step classification process. First, a standard is established for each class of water quality which consists of a/ designated uses and related characteristics and b/ water quality criteria which will support those uses and characteristics. Second, each water body will be assigned a specific classification by the Legislature. That classification will serve the dual purposes of establishing water quality goals for the water body and of serving as the basis for establishment of water quality-based conditions attached to State water discharge licenses.

2. Procedures for reclassification. Reclassification of Maine waters shall be governed by the following provisions.

A. Upon petition by any person or on its motion, the board, following public notice, may conduct classification studies and investigations. Information collected during these studies and investigations shall be made available to the public in an expeditious manner. After consultation with other state agencies and, where appropriate, individuals, citizen groups, industries, municipalities and federal and interstate water pollution control agencies, the board may propose changes in water reclassification.

B. The board shall call public hearings in the affected area, or reasonably adjacent to the affected area, for the purpose of presenting to all interested persons the proposed classification for each particular water body and obtaining public input.

C. The board may recommend changes in classification it deems necessary to the Legislature.

Comment to sub-§2

This subsection has been reorganized for clarity. Most of its language is taken from LD1503.

In paragraph A the language allowing "any person" to petition the board for a classification study is not intended to require the board to conduct such a study. This intent is clear from the language retained from LD1503; "the board may...conduct classification studies".

3. Reports to the Legislature. The board shall periodically report to the Legislature as governed by the following provisions.

A. The board shall submit to the First Regular Session of each Legislature a report on the the quality of the State's waters which describes existing water quality, identifies waters which are not attaining their classification and which states what measures are necessary for the attainment of the standards of their classification.

B. The board shall from time to time, but at least once every three years, hold public hearings for the purpose of reviewing the water quality classification system and related standards and, as appropriate, recommending changes in the standards to the Legislature.

Comment to sub-§3

This subsection has been reorganized for clarity.

Para. A is taken verbatim from LD1503.

Para. B includes a procedure to periodically review the adequacy of the classification system (as distinct from the classification of a particular stretch of water). The DEP already undertakes this review to meet EPA requirements.

4. General provisions. The classification system for surface waters established by this article shall be subject to the following provisions.

A. The following discharges are prohibited:

(1) New direct discharge of pollutants to waters having a drainage area of less than 10 square miles. Existing licensed discharges into these waters shall be allowed to continue only until practical alternatives exist;

(2) New direct discharge of domestic pollutants to tributaries of class GPA waters. Discharges into tributaries of GPA waters shall not, by themselves or in combination with other activities, cause water quality degradation which would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters.

(3) Direct discharge of pollutants to waters of the State which imparts color, taste, turbidity, toxicity, radioactivity or other properties which cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class; and

(4) Direct discharge of pollutants to any water of the State which violates the provisions of sections 465, 465-A, and 465-B, except as provided in section

451, causes the "pH' of fresh waters to fall outside of the 6.0 to 8.5 range, causes the "pH" of estuarine and marine waters to fall outside of the 7.0 to 8.5 range or causes fish for human consumption to be injurious to human health as determined by the U.S. Food and Drug Administration under the procedures established by 21 USC §342 or as determined by the Department of Human Services under rules adopted pursuant to MRSA § .

B. All surface waters of the State shall be free of settled substances which alter the physical or chemical nature of bottom material and of floating substances, except as naturally occur, which impair the characteristics and designated uses ascribed to their class.

C. Where natural conditions, including but not limited to, marshes, bogs and abnormal concentrations of wildlife cause the dissolved oxygen or other water quality criteria to fall below the minimum standards specified in sections 465, 465-A, and 465-B, those waters will not be considered to be failing to attain their classification on account of those natural conditions.

D. For the purpose of computing whether a discharge will violate the classification of any river or stream, the assimilative capacity of the river or stream shall be computed using the minimum 7-day low flow which can be expected to occur with a frequency of once in 10 years.

E. The waters contained in excavations approved by the board for waste water treatment purposes shall be unclassified waters.

F. Anti-degradation.(options to be included for subcommittee review)

Comment to sub-§3

This subsection has been reorganized to improve clarity and revised based on discussions in the working group.

The general provisions of the bill relating to discharges have been organized in paragraph A. The language prohibiting discharges into Class AA and SA waters has been deleted from this subsection because it is duplicative of provisions found in the Class AA and SA sections. In line with the November 5, 1985 discussion, the term "direct" has been added to modify "discharge" in each sub-paragraph to distinguish those discharges from non-point source discharges. See new definitions for meaning of direct discharge.

In sub-para. 1, the prohibition on direct discharges to waters draining 10 sq. miles or less has been limited to new direct discharges to provide for the limited number of discharges which may currently exist in those waters.

In sub-para. 2, language is included regarding discharges to tributaries of GPA waters which is transfered from the GPA classification section. The intent of this transfer is to have all provisions regarding discharges to GPA tributaries in one location.

In sub-para. 3, the term "pollutant" has been substituted for "sewage, industrial waste, heat, hazardous matter or other substance."

In sub-para. 4, "unsuitable for human consumption" has been changed to "injurious to human health" as defined by the U.S. Food and Drug Administration or the Maine Dept. of Human Services to emphasize the intent to protect public health while allowing for possible differences in personal tastes in fish consumption.

Paragraph E is added to place the provisions regarding the status of certain excavations in the general provisions section for clarity. The language is taken verbatim from the GPA classification section of LD1503.

4. Rulemaking. In accordance with the Maine Administrative Procedure Act, the board shall promulgate rules necessary to implement the water quality classification system established by this Act. In promulgating rules, the board shall solicit and consider, in addition to any other materials, information on the economic and environmental impact of those rules.

Rules shall be promulgated by January 1, 1987, and shall include, but are not limited to, sampling and analytical methods, protocols and procedures for satisfying the water quality criteria, including evaluation of the impact of any discharge on the resident biological community.

Comment to sub-§4

This subsection is added to explicitly require DEP to adopt rules on certain subjects. The APA is cross referenced to ensure the availability of the public participation and legislative oversight provisions of that law. Specific provision is made requiring the board to consider the economic and environmental impact of its rules. The first set of rules must be adopted by January 1, 1987.

5. Implementation of biological water quality criteria. The implementation of water quality criteria pertaining to the protection of the resident biological community shall be governed by the provisions of this subsection.

A. At any time during the term of a valid waste water discharge license which was issued prior to the effective date of this Act, the board may modify that license in accordance with section 347 if the discharger is not in compliance with the water quality criteria pertaining to the protection of the resident biological community. When a discharge license is modified under this subsection, the board shall establish a reasonable schedule to bring the discharge into compliance with the water quality criteria pertaining to the protection of the resident biological community.

B. A discharger seeking a new discharge license following the effective date of the rules adopted under subsection 4 of this section shall comply with the water quality criteria of this article.

Comment to sub-§5.

This subsection is added to clarify how enforcement will occur after enactment of the new classification system. After the effective date of rules adopted under this Act, a discharger seeking a new discharge license must comply with the provisions of the new system and rules adopted thereunder. The term, new discharge license has been used in working group discussions to include renewals of existing licences. A discharger with a valid water discharge license issued before the effective date of this Act who is found to be not in compliance with the new water quality criteria may have its license modified under §347. A compliance schedule will be established by the board. A discharger seeking a renewal before the adoption of the rules will be treated in the same manner as a discharger with an existing license with respect to compliance with the biological water quality criteria. A discharger seeking renewal after that date shall be treated in the same manner as a new discharge application.

In order to give the legislative subcommittee an indication of the waters that are not expected to attain the biological standards, pgs 54-55 of the DEP "Summary of Scientific Basis for Proposed Changes" will be included in these comments.

§465. Standards for classification of fresh surface waters

The board shall have 4 standards for the classification of fresh surface waters which are not classified as great ponds.

1. Class AA waters. Class AA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic or recreational importance.

A. Class AA waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, fishing, recreation in and on the water, navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as free flowing and natural.

B. The aquatic life, dissolved oxygen and bacteria content of Class AA waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants to Class AA waters.

2. Class A waters. Class A shall be the 2nd highest classification.

A. Class A waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation, except as prohibited under Title 12, section 403, navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as natural.

B. The dissolved oxygen content of Class A waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher. The aquatic life and bacteria content of Class A waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants into waters of this classification and no deposits of such material on the banks of these waters in any manner that transfer of pollutants into the waters is likely, except that existing licensed discharges into waters of this classification will be allowed to continue until practical alternatives exist. New direct discharges to these waters will be permitted only if, in addition to satisfying all the requirements of this chapter, the discharged effluent will be equal to or better than the existing water quality of the receiving waters. Prior to issuing a discharge license, the board shall require the applicant to objectively demonstrate to the board's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available.

3. Class B. waters. Class B shall be the 3rd highest classification.

A. Class B waters shall be of such quality that they are suitable for the designated uses of drinking water supply after treatment, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation except as prohibited under Title 12, section 403, navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as unimpaired.

B. The dissolved oxygen content of Class B waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period October 1, through May 14, in order to ensure spawning and egg incubation of indigenous fish species, the 7 day mean dissolved oxygen concentration shall not be less than 9.5 parts per million and the 1 day minimum dissolved oxygen concentration shall not be less than 8.0 parts per million in identified fish spawning areas. Between May 15th and September 30th, the number of Escherichia coli bacteria of human origin in these waters shall not exceed a geometric mean of 64 per 100 milliliters or a instantaneous level of 427 per 100 milliliters.

C. Direct discharges to Class B waters shall not cause adverse impact to aquatic life in that the receiving waters shall be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community.

4. Class C waters. Class C shall be the 4th highest classification.

A. Class C waters shall be of such quality that they are suitable for the designated uses of drinking water supply after treatment, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation except as prohibited under Title 12, section 403, navigation and as a habitat for fish and other aquatic life.

B. The dissolved oxygen content of Class C water shall be not less than 5 parts per million or 60% of saturation, whichever is higher. (The inclusion or not of elevated DO standards during spawning season need further discussion.) Between May 15th and September 30th, the number of Escherichia coli bacteria of human origin in these waters shall not exceed a geometric mean of 142 per 100 milliliters or an instantaneous level of 949 per 100 milliliters.

discharges to Class C waters may cause some changes to aquatic life, provided that the receiving waters shall be of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.

Comments to §465

This section has been reorganized to improve clarity and revised based on discussions in the working group. Each of the 4 classes are described in a separate subsection. Within each subsection, there are 3 paragraphs for designated uses and characteristics, biological criteria and discharge language.

In sub-§2, para. A, the appropriateness of hydroelectric power generation on Class A waters which have been designated for special protection (i.e., no dams) in the Rivers Bill is clarified.

In sub-§3, para. B, additional dissolved oxygen criteria are established between September 30 and May 15 in identified fish spawning areas in order to protect early stages of fish life.

In sub-§3, para. A, identical language to that discussed above dealing with hydroelectric power generation has been added for Class B waters.

In sub-§4, para. B, the working group understands that, in adopting the 60% saturation standard for DO, waters classified as C in the Act will meet their classification under existing conditions and in conjunction with the proposed impoundments provisions.

§465-A. Standards for classification of lakes and ponds

The board shall have one standard for the classification of great ponds and natural lakes and ponds less than 10 acres in size. Impoundments of rivers may be classified as GPA or as specifically provided in sections 466 and 466-A. (PENDING)

1. Class GPA waters. Class GPA shall be the sole classification of great ponds and natural ponds less than 10 acres size.

A. Class GPA waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, recreation in and on the water, fishing, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as natural.

B. Class GPA waters shall be described by their trophic state based on measures of the chlorophyll "a" content, Secchi disk transparency, total phosphorus content and other appropriate criteria. Class GPA waters shall have a stable or decreasing trophic state, subject only to natural fluctuations, and shall be free of culturally-induced algal blooms which impair their use and enjoyment. The number of Escherichia coli bacteria of human origin in these waters shall not exceed a geometric mean of 29 per 100 milliliters or an instantaneous level of 194 per 100 milliliters.

C. There shall be no new direct discharge of pollutants into Class GPA waters. Aquatic chemical applications approved by the board shall be exempt from the no discharge provision. Existing licensed discharges into these waters shall be allowed to continue only until practical alternatives exist. No materials may be placed on or removed from the shores or banks of a Class GPA water body in such a manner that materials may fall or be washed into the water or that contaminated drainage therefrom may flow or leach into those waters, except as provided in section 391. No change of land use in the watershed of a Class GPA water body may, by itself or in combination with other activities, cause water quality degradation which would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters.

§465-B. Standards for classification of estuarine and marine waters

The board shall have 3 standards for the classification of estuarine and marine waters.

1. Class SA waters. Class SA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic, economic or recreational importance.

A. Class SA waters shall be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, navigation and as habitat for fish and other estuarine and marine life. The habitat shall be characterized as free-flowing and natural.

B. The estuarine and marine life, dissolved oxygen and bacteria content of Class SA waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants to Class SA waters.

2. Class SB waters. Class SB waters shall be the 2nd highest classification.

A. Class SB shall be the 2nd highest classification and these waters shall be such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting or shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other estuarine and marine life. The habitat shall be characterized as unimpaired.

B. The dissolved oxygen content of Class SB waters shall be not less than 85% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human origin in these waters shall not exceed a geometric mean of 8 per 100 milliliters or an instantaneous level of 54 per 100 milliliters. The median numbers of fecal coliform bacteria in any series of samples representative of the waters in a shellfish harvesting area shall not be in excess of 14 per 100 millimeters, nor shall more than 10% of the samples exceed 43 fecal coliform bacteria per 100 millimeters.

C. Direct discharges to Class SB waters shall not cause adverse impact to estuarine and marine life in that the receiving waters shall be of sufficient quality to support all estuarine and marine species indigenous to the receiving water without detrimental changes in the resident biological community. There shall be no new direct discharge to Class SB waters which would cause closure of open shellfish areas by the Department of Marine Resources.

3. Class SC waters. Class SC waters shall be the 3rd highest classification.

A. Class SC waters shall be of such quality that they are suitable for recreation in and on the water, fishing, aquaculture, propagation and restricted harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as a habitat for fish and other estuarine and marine life.

B. The dissolved oxygen content of Class SC waters shall be not less than 70% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human origin in these waters shall not exceed a geometric mean of 14 per 100 milliliters or an instantaneous level of 94 per 100 milliliters.

C. Direct discharges to Class SC waters may cause some changes to estuarine and marine life provided that the receiving waters are of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.

Comments on §465-B

A fecal coliform standard has been added to the SB classification to protect the state's certification of interstate shellfish shipments. A designated use of "restricted harvesting of shellfish" has been added to the SC classification recognising the clamming industry's ability to harvest and sell after depuratation treatment.

Sec. 2. 38 MRSA §XXX is amended by adding the following definitions.

1. As naturally occurs. "As naturally occurs" means conditions with essentially the same physical, chemical and biological characteristics as found in situations with similar habitats free of measureable effects of human activity.

2. Aquatic life. "Aquatic life" means any plants or animals which live at least part of their life cycle in fresh water.

3. Community function. "Community function" means mechanisms of uptake, storage and transfer of life-sustaining materials available to a biological community which determines the efficiency of use and the amount of export of the materials from the community.

4. Community structure. "Community structure" means characteristics of a biological community based on numbers of individuals within different taxonomic groups, their proportional relationships to each other and the relation of each proportion to the total population.

5. Direct discharge. "Direct discharge" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

6. Estuarine and marine life. "Estuarine and marine life" means any plants or animals which live at least part of their life cycle in salt water.

7. Indigenous. "Indigenous" means supported in a reach of water or are known to have been supported according to state and federal historical records or published scientific literature.

8. Natural. "Natural" means living in, or as if in, a state of nature not measurable affected by human activity.

9. Resident biological community. "Resident biological community" means any aquatic life currently supported within an aquatic habitat. (PENDING)

10. Unimpaired. "Unimpaired" means without a diminished capacity to support aquatic life.

11. Without detrimental changes in the resident biological community. "Without detrimental changes in the resident biological community" means no significant loss of species or excessive dominance by any species or group of species attributable to human activity.

Comments on Definitions

The definitions included here are derived from language proposed by the DEP and modified following discussion by the working group including the professional biologist with PIIO. All definitions have been approved by the working group with the exception of #6. The definitions included in LD1503 ("fresh surface waters" and "estuarine and marine waters") are not included in the enclosed material but will be included in the final version submitted to the subcommittee.

Sec. 3. 38 MRSA §XXX, sub§X, ¶X, sub¶2 is enacted to read:

(2) The Legislature recognizes, however, that at certain times portions of the waters in the impoundments created by Gulf Island, Deer Rips and Lewiston Falls Dams have not and may continue to not meet the Class C requirements for dissolved oxygen due to hydrologic conditions related to the creation of the impoundments, including but not limited to impaired mixing of water columns, historical accumulation of sediment and elevated water temperature. The Legislature ~~further~~ recognizes, and ~~has~~ has found and declared it to be state policy to support hydropower and that the surface waters of the state constitute a valuable indigenous and renewable energy resource for hydroelectric energy which provides a significant contribution to the economic development and general welfare of the citizens of the State. Accordingly, the value and importance to the people of the State of hydroelectric energy and the unavoidable consequences to water quality resulting from the existance of impoundments shall be considered when the Board determines the impact of a discharge on the designated uses of the impoundments identified in this subparagraph. These impoundments shall be considered to meet their classification if the Board finds that conditions in those impoundments are not preventing their designated uses from being reasonably attained. Nothing in this subparagraph shall be construed to limit the Board's authority to consider the requirements of §414-A, sub§1 ¶¶A through E.

Sec. 4. 38 MRSA §XXX, sub§X, ¶X, sub¶3 is enacted to read:

(2) The Legislature recognizes, however, that at certain times portions of the waters in the impoundments created by Mattacehunk Dam. also known as Weldon Dam, and Dolby Dam have not and may continue to not meet the Class C requirements for dissolved oxygen due to hydrologic conditions related to the creation of the impoundments, including but not limited to impaired mixing of water columns, historical accumulation of sediment and elevated water temperature. The Legislature further recognizes, and has found and declared it to be state policy to support hydropower and that the surface waters of the state constitute a valuable indigenous and renewable energy resource for hydroelectric energy which provides a significant contribution to the economic development and general welfare of the citizens of the State. Accordingly, the value and importance to the people of the State of hydroelectric energy and the unavoidable consequences to water quality resulting from the existance of impoundments shall be considered when the Board determines the impact of a discharge on the designated uses of the impoundments identified in this subparagraph. These impoundments shall be considered to meet their classification if the Board finds that conditions in those impoundments are not preventing their designated uses from being reasonably attained. Nothing in this subparagraph shall be construed to limit the Board's authority to consider the requirements of §414-A, sub§1 ¶¶A through E.

Comments on Impoundments language

It is the intent of the working group that these provisions apply only to the impoundments specifically identified. The working group does not foresee the need to include other existing impoundments nor any future impoundments in these provisions.

3944M

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TO: All Interested Parties; Water Quality
FROM: Tim Glidden and Dave Elliott, Legislative Assistants

SUBJECT: Materials for 11/19th Meeting of Water Quality Working Group
DATE: November 15,1985

You will find enclosed the materials for our next meeting (11/19). The materials take the form of language for all substantive sections of the bill, excepting the classification of specific stretches.

All substantive changes approved or under discussion by the working group are presented in **boldface type.** The source and status of each change is indicated parenthetically after the boldface type (e.g. MAS, approved or PIIO, pending). Structural reorganization for drafting clarity and any necessary, minor connective language is not in boldface. The so-called generic changes are in boldface only the first time they occur.

Please note that comments on sections of the bill which have not yet been considered, primarily from the Class C section on, are not included in the enclosed language. For these comments please refer to the two side-by-side comparisons distributed the previous meetings of the working group.

4068M

Water Reclassification
Working Group
11-15-85

SECOND REGULAR SESSION

ONE HUNDRED AND TWELFTH LEGISLATURE

Legislative Document No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY SIX

AN ACT to Amend the Classification System for Maine Waters and Change the Classifications of Certain Waters.

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

Sec. 1. 38 MRSA, chapter 3, Article 4-A is enacted to read:

ARTICLE 4-A. WATER CLASSIFICATION PROGRAM

§464. Classification of Maine waters

The waters of the State shall be classified in accordance with the provisions of this article.

1. Findings; objectives; purpose. The Legislature finds that the proper management of the State's water resources is of great public interest and concern to the State in promoting the general welfare, preventing disease, promoting health, providing habitat for fish, shellfish and wildlife, as a source of recreational opportunity **in and on the water** (P110, Under discussion) and as a resource for commerce and industry.

The Legislature hereby declares that it is the state's objective to restore and maintain the chemical, physical and biological integrity of the state's waters and to preserve certain pristine State waters. The Legislature further

declares that in order to achieve this objective the state's goals are: **(1) that the discharge of pollutants into the waters of the State be eliminated where appropriate; (2) that no pollutants be discharged into any water of the state without first being given the degree of treatment necessary to protect the quality of that water,** (WORKING GROUP, Under discussion) and (3) that water quality be sufficient to provide for the protection **and propagation** (P11O, Under discussion) of fish, shellfish, and wildlife and provide for recreation in and on the water.

The Legislature intends by passage of this Act to establish a water quality classification system which will allow the State to manage its surface waters so as to protect the quality of those waters and, where water quality standards are not being achieved, to enhance water quality. **This classification system shall be based on water quality standards which designate the uses and related characteristics of those uses for each class of water and which also establish water quality criteria necessary to protect those uses and related characteristics.** (PIIO/DEP, Under discussion) The Legislature further intends by passage of this Act to assign to each of the State's surface water bodies the water quality classification which shall designate the minimum level of quality which the Legislature intends for the body of water. This designation is intended to direct the State's management of that water body in order to achieve at least that minimum level of water quality.

Comment to sub-§1.

This subsection states in broad and general terms the Legislature's intent in adopting the new surface water classification system. The adoption of this broad language is meant to reflect the firm resolve of Legislature to improve, where appropriate, the waters of the State over the course of time. This is an effort which has already yielded important results thanks to efforts by all segments of the economy. It is not the intent of the Legislature that the general language of this section be used by itself to establish a water quality violation. The standards contained in other portions of the bill are the mechanisms by which water quality is to be managed and regulated.

The first paragraph contains findings on the importance of water resources to Maine. The value of water to the economy is pointed out by adding reference to commerce and industry.

The second paragraph defines the State's water quality objective and goals. The language tracks closely that of section 101 of the Federal Clean Water Act by establishing an objective of maintaining and improving water quality and setting goals to achieve that objective.

The third paragraph states the Legislature's intent concerning the implementation of the surface water

classification system. The system is to be used to protect and, where a water body is not attaining its classification, to enhance water quality. Water bodies are to be protected by a 2-step classification process. First, a standard is established for each class of water quality which consists of a/ designated uses and related characteristics and b/ water quality criteria which will support those uses and characteristics. (Note that language to clarify the relationship between uses and characteristics has been added here rather than attempting the more awkward drafting task of specifying designated uses and related characteristics of each water class.) Second, each water body will be assigned a specific classification by the Legislature. That classification will serve the dual purposes of establishing water quality goals for the water body and of serving as the basis for establishment of water quality-based conditions attached to State water discharge licenses.

2. Procedures for reclassification. Reclassification of Maine waters shall be governed by the following provisions.

A. **Upon petition by any person or on its own,** (MAS, approved) the board, following public notice, may conduct classification studies and investigations. Information collected during these studies and investigations shall be made available to the public in an expeditious manner. After consultation with other state agencies and, where appropriate, individuals, citizen groups, industries, municipalities and federal and interstate water pollution control agencies, the board may propose changes in water reclassification.

B. The board shall call public hearings in the affected area, or reasonably adjacent to the affected area, for the purpose of presenting to all interested persons the proposed classification for each particular water body and obtaining public input.

C. The board may recommend changes in classification it deems necessary to the Legislature.

Comment to sub-§2

This subsection has been reorganized for clarity. Most of its language is taken from LD1503.

In paragraph A the language allowing "any person" to petition the board for a classification study is not intended to require the board to conduct such a study. This intent is clear from the language retained from LD1503; "the board may...conduct classification studies".

3. Reports to the Legislature. The board shall periodically report to the Legislature as governed by the following provisions.

A. The board shall submit to the First Regular Session of each Legislature a report on the the quality of the State's waters which characterizes existing water quality, identifies waters which are not attaining their classification and which states what measures are necessary for the attainment of management goals.

B. The board shall from time to time, but at least once every three years, hold public hearings for the purpose of reviewing the water quality classification system and related standards and, as appropriate, recommending changes in the standards to the Legislature. (MAS - approved)

Comment to sub-§3

This subsection has been reorganized for clarity.

Para. A is taken verbatim from LD1503.

Para. B includes a procedure to periodically review the adequacy of the classification system (as distinct from the classification of a particular stretch of water). The DEP already undertakes this review to meet EPA requirements.

4. General provisions. The classification system for surface waters established by this article shall be subject to the following provisions.

A. The following discharges are prohibited:

(1) **New direct** (PIIO - approved; also used in subsequent, similar contexts) discharge of **pollutants** (various - approved; also used in subsequent, similar contexts) to waters having a drainage area of less than 10 square miles. **Existing licensed discharges into these waters shall be allowed to continue only until practical alternatives exist;** (MAS - approved)

(2) New direct discharge of domestic pollutants to tributaries of class GPA waters. **Allowable direct discharges into tributaries of GPA waters shall not, by themselves or in combination with other activities, cause water quality degradation which would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters.** (staff - proposed transfer from GPA section of LD1503)

(3) Direct discharge of pollutants to waters of the State which imparts color, taste, turbidity, toxicity, radioactivity or other characteristics which cause those waters to be unsuitable for the characteristics and designated uses ascribed to their class; and

(4) Direct discharge of pollutants to any water of the State which violates the provisions of sections 465, 465-A, and 465-B, except as provided in section

451, causes the "pH' of fresh waters to fall outside of the 6.0 to 8.5 range, causes the "pH" of estuarine and marine waters to fall outside of the 7.0 to 8.5 range or causes fish to be **injurious to human health as determined by the U.S. Food and Drug Administration under the procedures established by 21 USC §342.** (WORKING GROUP - approved)

B. All surface waters of the State shall be free of settled substances which alter the physical or chemical nature of bottom material and of floating substances, except as naturally occur, which impair the characteristics and designated uses ascribed to their class. (subject to further discussion on the impoundment issue)

C. Where natural conditions, including but not limited to, marshes, bogs and abnormal concentrations of wildlife cause the dissolved oxygen or other water quality criteria to fall below the minimum standards specified in sections 465, 465-A, and 465-B, those waters will not be considered to be failing to attain their classification on account of those natural conditions.

D. For the purpose of computing whether a discharge will violate the classification of any river or stream, the assimilative capacity of the river or stream shall be computed using the minimum 7-day low flow which occurs once in 10 years.

E. Anti-degradation.(options to be included for subcommittee review)

F. **The waters contained in excavations approved by the board for waste water treatment purposes shall be unclassified waters.** (staff - proposed transfer from GPA section of LD1503)

Comment to sub-§3

This subsection has been reorganized to improve clarity and revised based on discussions in the working group.

The general provisions of the bill relating to discharges have been organized in paragraph A. The language prohibiting discharges into Class AA and SA waters has been deleted from this subsection because it is duplicative of provisions found in the Class AA and SA sections. In line with the November 5, 1985 discussion, the term "direct" has been added to modify "discharge" in each sub-paragraph to distinguish those discharges from non-point source discharges. See new definitions for meaning of direct discharge.

In sub-para. 1, the prohibition on direct discharges to waters draining 10 sq. miles or less has been limited to new direct discharges to provide for the limited number of discharges which may currently exist in those waters.

In sub-para. 2, language is included regarding discharges to tributaries of GPA waters which is transfered from the GPA classification section. The intent of this transfer is to have all provisions regarding discharges to GPA tributaries in one location.

In sub-para. 3, the term "pollutant" has been substituted for "sewage, industrial waste, heat, hazardous matter or other substance."

In sub-para. 4, "unsuitable for human consumption" has been changed to "injurious to human health" as defined by the U.S. Food and Drug Administration to emphasize the intent to protect public health while allowing for possible differences in personal tastes in fish consumption.

Paragraph F is added to place the provisions regarding the status of certain excavations in the general provisions section for clarity. The language is taken verbatim from the GPA classification section of LD1503.

4. Rulemaking. In accordance with the Maine Administrative Procedure Act, the board shall promulgate rules necessary to implement the water quality classification system established by this Act. In promulgating rules, the board shall solicit and consider, in addition to any other materials, information on the economic and environmental impact of those rules.

Rules shall be promulgated by January 1, 1987, and shall include, but are not limited to, the following:

A. sampling and analytical methods, protocols and procedures for satisfying the water quality criteria, including evaluation of the impact of any discharge on the resident biological community; and

B. standards for new discharges to Class A waters under section 465. (WORKING GROUP, under discussion)

C. Other areas(determined necessary by the Working Group.)

Comment to sub-§4

This subsection is added to explicitly require DEP to adopt rules on certain subjects. The APA is cross referenced to ensure the availability of the public participation and legislative oversight provisions of that law. Specific provision is made requiring the board to consider the economic and environmental impact of its rules. The first set of rules must be adopted by January 1, 1987.

5. Implementation of biological water quality criteria. The implementation of water quality criteria pertaining to the protection of the resident biological community shall be governed by the provisions of this subsection.

A. Existing licenses. At any time during the term of a valid waste water discharge license which was issued prior to the effective date of this Act, the board may modify that license in accordance with section 347 if the discharger is not in compliance with the water quality criteria pertaining to the protection of the resident biological community. When a discharge license is modified under this subsection, the board shall establish a reasonable schedule to bring the discharge into compliance with the water quality criteria pertaining to the protection of the resident biological community.

B. Renewed licenses. When a discharge license is renewed after the effective date of this Act and before 198X, the board shall establish a reasonable schedule to bring the discharge into compliance with the water quality criteria pertaining to the protection of the resident biological community. A discharger seeking a license renewal after January 1,198X shall comply with the water quality criteria of this article.

C. New licenses. A discharger seeking a new discharge license following the effective date of this Act shall comply with the water quality criteria of this article.
(WORKING GROUP-MAS, under discussion)

Comment to sub-§5.

This subsection is added to clarify how enforcement will occur after enactment of the new classification system. After the effective date, a discharger seeking a new discharge license must comply with the provisions of the new system and rules adopted thereunder. A discharger with a valid water discharge license issued before the effective date of this Act who is found to be not in compliance with the new water quality criteria may have its license modified under §347. A compliance schedule will be established by the board. A discharger seeking a renewal before January 1,198X will be treated in the same manner as a discharger with an existing license with respect to compliance with the biological water quality criteria. A discharger seeking renewal after that date shall be treated in the same manner as a new discharge application.

§465. Standards for classification of fresh surface waters

The board shall have 4 standards for the classification of fresh surface waters which are not classified as great ponds.

1. Class AA waters. Class AA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic or recreational importance.

A. Class AA waters shall be of such quality that they are suitable for drinking water after disinfection, fishing, recreation **in and on the water,** (WORKING GROUP, Approved) navigation and as a free flowing and natural habitat for fish and other aquatic life.

B. The aquatic life, dissolved oxygen and bacteria content of Class AA waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants to Class AA waters.

2. Class A waters. Class A shall be the 2nd highest classification.

A. Class A waters shall be of such quality that they are suitable for drinking water after disinfection, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation, **except as prohibited under Title 12, section 403,** (LWRC, Approved) navigation and as a natural habitat for fish and other aquatic life.

B. The dissolved oxygen content of Class A waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher. The aquatic life and bacteria content of Class A waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants into waters of this classification and no deposits of such material on the banks of these waters in any manner that transfer of pollutants into the waters is likely, except that existing licensed discharges into waters of this classification will be allowed to continue until practical alternatives exist. New direct discharges to these waters will be permitted only if, in addition to satisfying all the requirements of this chapter, the discharged effluent will be equal to or better than the existing water quality of the receiving waters. Prior to issuing a discharge license, the board shall require the applicant to objectively demonstrate to the board's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available.

3. Class B. waters. Class B shall be the 3rd highest classification.

A. Class B waters shall be of such quality that they are suitable for drinking water supply after treatment, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation except as prohibited under Title 12, section 403, navigation and as an unimpaired habitat for fish and other aquatic life.

B. The dissolved oxygen content of Class B waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher, **except that for the period October 1, through May 14, in order to ensure spawning and egg incubation of indigenous fish species, the 7 day mean dissolved oxygen concentration shall not be less than 9.5 parts per million and the 1 day minimum dissolved oxygen concentration shall not be less than 8.0 parts per million in identified fish spawning areas.** (NRC, Approved except MCCI) Between May 15th and September 30th, the number of Escherichia coli bacteria of human origin in these waters shall not exceed a geometric mean of 64 per 100 milliliters or a instantaneous level of 427 per 100 milliliters. (Additional discussion may be necessary on the seasonal nature of the biological standards and the origin of bacteria in these waters.)

C. Direct discharges to Class B waters shall not cause adverse impact to aquatic life in that the receiving waters shall be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community.

4. Class C waters. Class C shall be the 4th highest classification.

A. Class C waters shall be of such quality that they are suitable for drinking water supply after treatment, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation except as prohibited under Title 12, section 403, navigation and as a habitat for fish and other aquatic life.

B. The dissolved oxygen content of Class C water shall be not less than 5 parts per million or 60% of saturation, whichever is higher. (The inclusion or not of elevated DO standards during spawning season and the saturation standard may need further discussion.) Between May 15th and September 30th, the number of Escherichia coli bacteria of human origin in

these waters shall not exceed a geometric mean of 142 per 100 milliliters or an instantaneous level of 949 per 100 milliliters.

C. Direct discharges to Class C waters may cause some changes to aquatic life, provided that the receiving waters shall be of sufficient quality to support all indigenous species of fish and maintain the structure and function of the **resident biological** community. (WORKING GROUP, Pending Discussion)

Comments to §465

This section has been reorganized to improve clarity and revised based on discussions in the working group. Each of the 4 classes are described in a separate subsection. Within each subsection, there are 3 paragraphs for designated uses and characteristics, biological criteria and discharge language.

In sub-§2, para. A, the appropriateness of hydroelectric power generation on Class A waters which have been designated for special protection (i.e., no dams) in the Rivers Bill is clarified.

In sub-§3, para. B, additional dissolved oxygen criteria are established between September 30 and May 15 in identified fish spawning areas in order to protect early stages of fish life.

In sub-§3, para. A, identical language to that discussed above dealing with hydroelectric power generation has been added for Class B waters.

§465-A. Standards for classification of lakes and ponds

The board shall have one standard for the classification of lakes and ponds. Impoundments of rivers may be classified as GPA or as specifically provided in sections 465, 466 and 466-A.

1. Class GPA waters. Class GPA waters shall be of such quality that they are suitable for drinking water after disinfection, recreation in and on the water, fishing, industrial process and cooling water supply, hydroelectric power generation, navigation and as a natural habitat for fish and other aquatic life.

A. Class GPA waters shall be described by their trophic state based on measures of the chlorophyll "a" content, Secchi disk transparency, total phosphorus content and other appropriate criteria. Class GPA waters shall have a stable or decreasing trophic state, subject only to natural fluctuations, and shall be free of culturally-induced algal blooms which impair their use and enjoyment. The number of Escherichia coli bacteria of human origin in these waters shall not exceed a geometric mean of 29 per 100 milliliters or an instantaneous level of 194 per 100 milliliters.

B. There shall be no new direct discharge of pollutants into Class GPA waters. Aquatic chemical applications approved by the board shall be exempt from the no discharge provision. Existing licensed discharges into these waters shall be allowed to continue only until practical alternatives exist. No materials may be placed on or removed from the shores or banks of a Class GPA water body in such a manner that materials may fall or be washed into the water or that contaminated drainage therefrom may flow or leach into those waters, except as provided in section 391. No change of land use in the watershed of a Class GPA water body may, by itself or in combination with other activities, cause water quality degradation which would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters.

§465-B. Standards for classification of estuarine and marine waters

The board shall have 3 standards for the classification of estuarine and marine waters.

1. Class SA waters. Class SA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic, economic or recreational importance.

A. Class SA waters shall be of such quality that they are suitable for recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, navigation and as a free-flowing and natural habitat for fish and other estuarine and marine life.

B. The estuarine and marine life, dissolved oxygen and bacteria content of Class SA waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants to Class SA waters.

2. Class SB waters. Class SB waters shall be the 2nd highest classification.

A. Class SB shall be the 2nd highest classification and these waters shall be such quality that they are suitable for recreation in and on the water, fishing, aquaculture, propagation and harvesting or shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as an unimpaired habitat for fish and other estuarine and marine life.

B. The dissolved oxygen content of Class SB waters shall be not less than 85% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human origin in these waters shall not exceed a geometric mean of 8 per 100 milliliters or an instantaneous level of 54 per 100 milliliters.

C. Direct discharges to Class SB waters shall nt cause adverse impact to estuarine and marine life in that the receiving waters shall be of sufficient quality to support all estuarine and marine life indigenous to the receiving water without detrimental changes in the resident biological community. There shall be no new direct discharge to Class SB waters which would cause closure of open shellfish areas by the Department of Marine Resources.

3. Class SC waters. Class SC waters shall be the 3rd highest classification.

A. Class SC waters shall be of such quality that they are suitable for recreation in and on the water, fishing, aquaculture, propagation of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as a habitat for fish and other estuarine and marine life.

B. The dissolved oxygen content of Class SC waters shall be not less than 70% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human origin in these waters shall not exceed a geometric mean of 14 per 100 milliliters or an instantaneous level of 94 per 100 milliliters.

C. Discharges to Class SC waters may cause some changes to estuarine and marine life provided that the receiving waters are of sufficient quality to support all indigenous species of fish and maintain the structure and function of the **resident biological** community. (WORKING GROUP, Pending discussion)

Sec. 2. 38 MRSA §XXX is amended by adding the following definitions.

1. As naturally occurs. "As naturally occurs" means conditions with essentially the same physical, chemical and biological characteristics as found in situations with similar habitats free of measureable effects of human activity. (PIIO/DEP - approved)

2. Aquatic life. "Aquatic life" means any plants or animals which live at least part of their life cycle in water. (PIIO/DEP - approved)

3. Community function. "Community function" means mechanisms of uptake, storage and transfer of life-sustaining materials available to a biological community which determines the efficiency of use and the amount of export of the materials from the community. (PIIO/DEP - approved)

4. Community structure. "Community structure" means characteristics of a biological community based on numbers of individuals within different taxonomic groups, their proportional relationships to each other and the relation of each proportion to the total sample. (PIIO/DEP - approved)

5. Direct discharge. "Direct discharge" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture. (PIIO/DEP - approved)

6. Indigenous species. "Indigenous species" means those species which are supported in a reach of water or are known to have been supported according to state and federal historical records or published scientific literature. (various - pending)

7. Natural. "Natural" means living in, or as if in, a state of nature not measurable affected by human activity. (PIIO/DEP - approved)

8. Resident biological community. "Resident biological community" means any aquatic life currently supported within an aquatic habitat. (PIIO/DEP - approved)

9. Unimpaired habitat. "Unimpaired habitat" means that habitat without a diminished capacity to support aquatic life. (PIIO/DEP - approved)

10. Without detrimental changes in the resident biological community. "Without detrimental changes in the resident biological community" means no significant loss of species or excessive dominance by any group or groups of species attributable to human activity. (PIIO/DEP - approved)

Comments on Definitions

The definitions included here are derived from language proposed by the DEP and modified following discussion by the working group including the professional biologist with PIIO. All definitions have been approved by the working group with the exception of #6. The definitions included in LD1503 ("fresh surface waters" and "estuarine and marine waters") are not included in the enclosed material but will be included in the final version submitted to the subcommittee.

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TO: All Interested Parties; Water Quality
FROM: Tim Glidden and Dave Elliott, Legislative Assistants

SUBJECT: Agenda for 11/19th Meeting of Water Quality Working Group
DATE: November 14,1985

The next meeting of the working group will be held, as previously announced, on November 19th in room 120 (SOB) beginning at 9AM. We expect that you will have submitted your comments in advance as called for in the original charge to the working group. On several of the issues under consideration (selected definitions, anti-degradation language) we are expecting to hear from interested parties by Friday, November 15th.

Agenda - 11/19

1. Discussion of remaining issues in classes C, GPA, and estuarine/tidal classifications.

2. Impoundments

3. Review of previously discussed issues in general language and classifications which has received conditional approval.

4. An implementation and enforcement schedule for the new classification system; and

5. Application of the water quality classification system to specific segments of water bodies.

NOTE: In order to have the opportunity for consideration of any outstanding issues and for final working group review of the new proposed language, a fourth and final working group meeting is scheduled for November 25th at 9AM in room 120 (SOB). The legislative subcommittee meeting has been rescheduled for Wedsnesday, November 27th at 9AM, room 120 (SOB).

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November 8, 1985

To: Interested Parties

From: David Elliott and Tim Glidden

Subj: Draft language

Enclosed is a copy of draft language on the issues discussed at the November 5 meeting. Comments explaining the language are also enclosed. Please review the language and comments. We will begin the November 13 meeting by discussing the proposed language.

The draft language covers the following:

- format and organization changes in former sections 360 and 363 of LD 1503
- findings, objectives and purpose language (P110 will also be proposing an alternative for the 2nd paragraph and possibly the 3rd)
- general provisions (except anti-degradation and DEP reporting provisions)
- rule-making procedures
- implementation of biological criteria
- standards for classes AA, A and B
- definition of direct discharge (P110 will be proposing language and additional definitions, e.g., "natural habitat" and "as naturally occurs."

See you on the 13th.

DCE:TG:lk
4016

Water Reclassification
Working Group
11-13-85

SECOND REGULAR SESSION

ONE HUNDRED AND TWELFTH LEGISLATURE

Legislative Document No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY SIX

AN ACT to Amend the Classification System for Maine Waters and Change the Classifications of Certain Waters.

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

Sec. 1. 38 MRSA, chapter 3, Article 4-A is enacted to read:

ARTICLE 4-A. WATER CLASSIFICATION PROGRAM

§464. Classification of Maine waters

The waters of the State shall be classified in accordance with the provisions of this article.

1. Findings; objectives; purpose. The Legislature finds that the proper management of the State's water resources is of great public interest and concern to the State in promoting the general welfare, preventing disease, promoting health, providing habitat for fish, shellfish and wildlife, as a source of recreational opportunity and as a resource for tourism, commerce and industry.

The Legislature hereby declares that it is the state's objective to restore and maintain the chemical, physical and biological integrity of the state's waters and to preserve certain pristine State waters. The Legislature further declares that in order to achieve this objective the state's

goals are: (1) that the discharge of pollutants into the waters of the State be eliminated where appropriate; (2) that no pollutants be discharged into any water of the state without first being given the degree of treatment necessary to protect the quality of that water, and (3) that water quality be attained which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.

-- or P110 language --
on the preceding paragraph

The Legislature intends by passage of this Act to establish a water quality classification system which will allow the State to manage its surface waters so as to protect the quality of those waters and, where water quality standards are not being achieved, to enhance water quality. This classification system shall be based on the water quality standards which designate the uses and characteristics of various classes of waters and set water quality criteria necessary to protect those uses and characteristics. The Legislature further intends by passage of this Act to assign to each of the State's surface water bodies the water quality classification which shall designate the minimum level of quality which the Legislature intends for the body of water. This designation is intended to direct the State's management of that water body in order to achieve at least that minimum level of water quality.

Comment to sub-§1.

This subsection states in broad and general terms the Legislature's intent in adopting the new surface water classification system.

The first paragraph contains findings on the importance of water resources to Maine. The value of water to the economy is pointed out by adding reference to tourism, commerce and industry.

The second paragraph defines the State's water quality objective and goals. The language tracks closely that of section 101 of the Federal Clean Water Act by establishing an objective of maintaining and improving water quality and setting goals to achieve that objective.

The third paragraph states the Legislature's intent concerning the implementation of the surface water classification system. The system is to be used to protect and, where a water body is not attaining its classification, to enhance water quality. Water bodies are to be protected by a 2-step process. First, water quality standards are to be established consisting of four classes of water with uses and characteristics designated for each class and water quality criteria are to be established for each class which will support those uses. Second, each water body will be assigned a

classification by the Legislature. That classification will serve the dual purposes of establishing water quality goals for the water body and of serving as the basis for establishment of water quality-based conditions attached to State water discharge licenses.

2. Procedures for reclassification. (Language to be reviewed at future meeting).

3. General provisions. The classification system for surface waters established by this article shall be subject to the following provisions.

A. The following discharges are prohibited:

(1) New direct discharge of pollutants to waters having a drainage area of less than 10 square miles;

(2) New direct discharge of domestic pollutants to tributaries of class GPA waters;

(3) Direct discharge of pollutants to waters of the State which imparts color, taste, turbidity, toxicity, radioactivity or other characteristics which cause those waters to be unsuitable for the characteristics and designated uses ascribed to their class; and

(4) Direct discharge of pollutants to any water of the State which violates the provisions of sections 465, 465-A, and 465-B, except as provided in section 451, causes the "pH' of fresh waters to fall outside of the 6.0 to 8.5 range, causes the "pH" of estuarine and marine waters to fall outside of the 7.0 to 8.5 range or causes fish to be unhealthful for human consumption as determined by the Federal Drug Administration under the procedures established by USC .

B. All surface waters of the State shall be free of settled substances which alter the physical or chemical nature of bottom material and of floating substances, except as naturally occur, which impair the characteristics and designated uses ascribed to their class. (subject to further discussion with the impoundment issue)

C. Where natural conditions, including but not limited to, marshes, bogs and abnormal concentrations of wildlife cause the dissolved oxygen or other water quality criteria to fall below the minimum standards specified in sections 465, 465-A, and 465-B, those waters will not be considered to be failing to attain their classification on account of those natural conditions.

D. For the purpose of computing whether a discharge will violate the classification of any river or stream, the

assimilative capacity of the river or stream shall be computed using the minimum 7-day low flow which occurs once in 10 years.

E. Anti-degradation (language to be reviewed at future meeting).

F. Report to the Legislature (language to be reviewed at future meeting).

Comment to sub-§3

This subsection has been reorganized to improve clarity and revised based on discussions in the working group.

The general provisions of the bill relating to discharges have been organized in paragraph A. The language prohibiting discharges into Class AA and SA waters has been deleted from this subsection because it is duplicative of provisions found in the Class AA and SA sections. In line with the November 5, 1985 discussion, the term "direct" has been added to modify "discharge" in each sub-paragraph to distinguish those discharges from non-point source discharges. See new definitions for meaning of direct discharge.

In sub-para. 1, the prohibition on direct discharges to waters draining 10 sq. miles or less has been limited to new direct discharges to provide for the limited number of discharges which may currently exist in those waters.

In sub-para. 3, the term "pollutant" has been substituted for "sewage, industrial waste, heat, hazardous matter or other substance."

In sub-para. 4, "unsuitable for human consumption" has been changed to "unhealthful ... as defined by the Federal Drug Administration to emphaize the intent to protect public health while allowing for possible differences in personal tastes in fish consumption.

Anti-degradation and reporting language will be developed later.

4. Rulemaking. In accordance with the Maine Administrative Procedure Act, the board shall promulgate rules necessary to implement the water quality classification system established by this Act. In promulgating rules, the board shall solicit and consider, in addition to any other materials, information on the economic and environmental impact of those rules.

Rules shall be promulgated by January 1, 1987, and shall include, but are not limited to, the following:

A. sampling and analytical methods, protocols and procedures for satisfying the water quality criteria, including evaluation of the impact of any discharge on the resident biological community; and

B. standards for new discharges to Class A waters under section 465.

Comment to sub-§4

This subsection is added to explicitly require DEP to adopt rules. The APA is cross referenced to ensure the availability of the public participation and legislative oversight provisions of that law. Specific provision is made requiring the board to consider the economic and environmental impact of its rules. The first set of rules must be adopted by January 1, 1987.

5. Implementation of biological water quality criteria. At any time during the term of a valid waste water discharge license which was issued prior to the effective date of this Act, the board may modify that license in accordance with section 347 if the discharger is not in compliance with the water quality criteria pertaining to the protection of the resident biological community. When a discharge license is modified under this subsection, the board shall establish a reasonable schedule to bring the discharge into compliance with the water quality criteria. A discharger seeking a new discharge license following the effective date of this Act shall comply with the water quality criteria of this article.

Comment to sub-§5.

This subsection is added to clarify how enforcement will occur after enactment of the new classification system. After the effective date, a discharger seeking a new discharge license must comply with the provisions of the new system and rules adopted thereunder. A discharger with a valid water discharge license issued before the effective date of this Act who is found to be not in compliance with the new water quality criteria may have its license modified under §347. A compliance schedule will be established by the board.

§465. Standards for classification of fresh surface waters

The board shall have 4 standards for the classification of fresh surface waters which are not classified as great ponds.

1. Class AA waters. Class AA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved for reasons of their ecological, social, scenic or recreational importance.

A. Class AA waters shall be of such quality that they are suitable for drinking water after disinfection, fishing, recreation in and on the water, navigation and as a free flowing and natural habitat for fish and other aquatic life.

B. The aquatic life, dissolved oxygen and bacteria content of Class AA waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants to Class AA waters.

2. Class A waters. Class A shall be the 2nd highest classification.

A. Class A waters shall be of such quality that they are suitable for drinking water after disinfection, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation, except as prohibited under Title 12, section 403, navigation and as a natural habitat for fish and other aquatic life.

B. The dissolved oxygen content of Class A waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher. The aquatic life and bacteria content of Class A waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants into waters of this classification and no deposits of such material on the banks of these waters in any manner that transfer of pollutants into the waters is likely, except that existing licensed discharges into waters of this classification will be allowed to continue until practical alternatives exist. New direct discharges to these waters will be permitted only if, in addition to satisfying all the requirements of this chapter, the discharged effluent will be equal to or better than the existing water quality of the receiving waters. Prior to issuing a discharge license, the board shall require the applicant to objectively demonstrate to the board's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available.

3. Class B. waters. Class B shall be the 3rd highest classification.

A. Class B waters shall be of such quality that they are suitable for drinking water supply after treatment, fishing, recreation in and on the water, industrial process and cooling water supply, hydroelectric power generation, except as prohibited under Title 12, section 403, navigation and as an unimpaired habitat for fish and other aquatic life.

B. The dissolved oxygen content of Class B waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher except that for the period October 1, through May 14, in order to ensure successful spawning and egg incubation of indigenous fish species, the 7 day mean dissolved oxygen concentration shall not be less than 9.5 parts per million and the 1 day minimum dissolved oxygen concentration shall not be less than 8.0 parts per million in identified fish spawning areas. Between May 15th and September 30th, the number of Escherichia coli bacteria of human origin in these waters shall not exceed a geometric mean of 64 per 100 milliliters or a instantaneous level of 427 per 100 milliliters.

C. Direct discharges to Class B waters shall not cause adverse impact to aquatic life in that the receiving waters shall be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community. (Additional discussion may be necessary on the seasonal nature of the biological standards for this class, the origin of bacteria in these waters and the definition of terms such as indigenous, detrimental change and resident biological community.)

Comments to §465

This section has been reorganized to improve clarity and revised based on discussions in the working group. Each of the 4 classes are described in a separate subsection. Within each subsection, there are 3 paragraphs for designated uses and characteristics, biological criteria and discharge language.

In sub-§2, para. A, the appropriateness of hydroelectric power generation on Class A waters which have been designated for special protection (i.e., no dams) in the Rivers Bill is clarified.

In sub-§3, para. B, additional dissolved oxygen criteria are established between September 30 and May 15 in identified fish spawning areas in order to protect early stages of fish life.

In sub-§3, para. A, identical language to that discussed above dealing with hydroelectric power generation has been added for Class B waters.

Sec. 2. 38 MRSA §361-A is amended by adding the following definitions.

1-B. Direct discharge. Direct discharge means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well,

discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

2-A. Indigenous. (to be discussed)

3-A. Natural habitat.

3-B. Naturally occurs.

4-C. Resident biological community-aquatic community

6-B. Unimpaired habitat.

DCE/lk/3944

NRCM: Antidegradation Policy Language

1) existing uses protected. Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

2) Designated uses protected. The level of water quality necessary to protect the designated uses of each classification shall be maintained and protected.

3) existing water quality to be maintained. Where the existing quality of any classified water exceeds the minimum standards necessary to support the designated uses of its classification, the higher water quality shall be maintained and protected.

4) water quality of high quality waters to be maintained. Where high quality waters of the state constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

5) licenses require compliance with standards. Any discharge license pursuant to section 414-A or any water quality certification pursuant to section 401 of the Federal Water Pollution Control Act ("Clean Water Act") PL 92-500, as amended: 33 USC 1251 et seq., shall be issued only if both the standards of the classification for the water body where the proposed discharge would occur and the requirements of this subsection will be met.

Comment: This language assures compliance with the minimum requirements of federal law regarding a state's antidegradation policy. (40 CFR section 131.12) (This language differs from NRCM's original comments in that it adds a new section 4, which tracks a like provision of the federal regulations, and renumbers the former section 4 as section 5.

TO: Interested Parties
FROM: Nancy Anderson, Maine Audubon NCA

RE: Additional Language for 11/13 Work Group Meeting
DATE: November 11, 1985

s. 464 (1) Findings:

What does the addition of "where appropriate" mean in the second paragraph? The elimination of the discharge of pollutants is a valid long-term goal for this state as the technology develops to no longer use our rivers and streams to assimilate waste. The remainder of this bill spells out how we will move toward that goal "appropriately."

(2) Procedures for Reclassification of Maine waters:

Upon petition by any person or persons, or on its own, the Board, following public notice, may conduct classification studies and investigations. The Board shall from time to time, but at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards and, as approporiate, modifying and adopting standards.

Comment: Section 131.20 of Title 40 CFR mandates a public review of standards at least once every three years.

(3) General Provisions:

A-1 Question: How many discharges to waters with drainage areas of less than 10 square miles, such as Maremont to Goosefare Brook, exist? Are they being phased out? Under what mechanism?

A-2 *[The following discharges are prohibited:]* New direct discharge of domestic and industrial pollutants, with the exception of noncontact cooling water or discharges incidental to hydroelectric power generation, to tributaries of class GPA waters.

Comment: The prohibition of industrial discharges, with an exception for noncontact cooling water and hydroelectric power related discharges, will ensure that wastewaters containing toxic, hazardous, or organic materials will not reach a great pond. .

E Anti-degradation:

Maine Audubon endorses the language proposed by the Natural Resources Council of Maine.

(5) Implementation of biological water quality criteria.

Change the third sentence to read: "A discharger seeking a license renewal after 198x or a new discharge license following the effective date of this Act shall comply with the water quality criteria of this article."

Alternatively, change the second sentence to read: "When a discharge license is modified under this subsection, or a license renewal is sought after 198x, the board shall establish a reasonable schedule to bring the discharge into complicance with the water quality criteria."

Comment: While avoiding changing the criteria for license renewals precipitously, the Department after a certain date should use the renewal process to shift dischargers over to biological water quality criteria so that eventually all dischargers will be operating under the same criteria.

s. 465. Standards for classification

3-B Class B waters

Add to first sentence the language regarding the necessary dissolved oxygen standard to protect early life stages of cold water fisheries "in identified spawning areas."

TABLE 2

PROPOSED DEFINITIONS TO BE INCLUDED IN LD 1503

"aquatic life"; "resident biological community"; "aquatic community":

Any plants and animals which live at least part of their life cycle in water.
Assessment of the condition of the aquatic life will include, but not necessarily be limited to, examination of the resident benthic macroinvertebrate community.

benthic macroinvertebrate:

Animals without backbones, large enough to be seen with the unaided eye, which are retained on a U.S. Standard No. 30 sieve, and live at least part of their life cycle within or upon bottom surfaces in a body of water, eg insects, snails, clams, crustaceans, worms, leeches, etc.

"natural":

Living in, or as if in a state of nature untouched by human influence or activity.

"as naturally occurs":

With essentially the same assemblage of aquatic species and numbers found in situations with similar habitats which are free of human activity or influence.

"indigenous":

Species which occur in a reach of water or are known to have occurred according to historical records.

"without detrimental changes in the resident biological community":

No significant loss of species or excessive dominance by any one group attributable to human influence.

TABLE 2 (Continued)

PROPOSED DEFINITIONS

"natural habitat":

Class AA: Determined by aquatic life being "as naturally occurs".
Class A: Determined by effluent quality being "of equal to or better than existing quality of the receiving waters"; further determined by aquatic life being "as naturally occurs".

"unimpaired habitat":

Without a diminished capacity to support aquatic life.
Class B: Determined by there being no "detrimental changes in the resident biological community".

"support":

To sustain unimpaired life cycle requirements.

"receiving waters shall be of sufficient quality to support all indigenous species of fish":

Determined by effluent toxicity testing of indigenous species of fish or surrogate species of similar tolerances.

"community structure": (numerical characteristics):

Characteristics of a biological community based on numbers of individuals within different taxonomic groups, their proportional relationships to each other and the relation of each proportion to the total sample.

"community function" (operational characteristics):

Mechanisms of uptake, storage and transfer of life-sustaining materials available to a biological community which determines the efficiency of use and the amount of export of the materials.

body or segment thereof to uses requiring less stringent water quality criteria. If seasonal uses are adopted, water quality criteria should be adjusted to reflect the seasonal uses, however, such criteria shall not preclude the attainment and maintenance of a more protective use in another season.

(g) States may remove a designated use which is *not* an existing use, as defined in § 131.3, or establish sub-categories of a use if the State can demonstrate that attaining the designated use is not feasible because:

(1) Naturally occurring pollutant concentrations prevent the attainment of the use; or

(2) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

(3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

(4) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use; or

(5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or

(6) Controls more stringent than those required by sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.

(h) States may not remove designated uses if:

(1) They are existing uses, as defined in § 131.3, unless a use requiring more stringent criteria is added; or

(2) Such uses will be attained by implementing effluent limits required under sections 301(b) and 306 of the

Act and by implementing cost-effective and reasonable best management practices for nonpoint source control.

(i) Where existing water quality standards specify designated uses less than those which are presently being attained, the State shall revise its standards to reflect the uses actually being attained.

(j) A State must conduct a use attainability analysis as described in § 131.3(g) whenever:

(1) The State designates or has designated uses that do not include the uses specified in section 101(a)(2) of the Act, or

(2) The State wishes to remove a designated use that is specified in section 101(a)(2) of the Act or to adopt subcategories of uses specified in section 101(a)(2) of the Act which require less stringent criteria.

(k) A State is not required to conduct a use attainability analysis under this regulation whenever designating uses which include those specified in Section 101(a)(2) of the Act.

§ 131.11 Criteria.

(a) *Inclusion of pollutants:* (1) States must adopt those water quality criteria that protect the designated use. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use.

(2) *Toxic pollutants*—States must review water quality data and information on discharges to identify specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use or where the levels of toxic pollutants are at a level to warrant concern and must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use. Where a State adopts narrative criteria for toxic pollutants to protect designated uses, the State must provide information identifying the method by which the State intends to regulate point source discharges of toxic pollutants on water quality limited segments based on such narrative criteria. Such information may be included as part of the standards or may be included in documents generated by the State in response to the Water Quality Planning and Management Regulations (40 CFR Part 35).

(b) Form of criteria: In establishing criteria, States should:

(1) Establish numerical values based on:

(i) 304(a) Guidance; or

(ii) 304(a) Guidance modified to reflect site-specific conditions; or

(iii) Other scientifically defensible methods;

(2) Establish narrative criteria or criteria based upon biomonitoring methods where numerical criteria cannot be established or to supplement numerical criteria.

§ 131.12 Antidegradation policy.

(a) The State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart. The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:

(1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(2) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best manage-

ment practices for nonpoint source control.

(3) Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(4) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Act.

§ 131.13 General policies.

States may, at their discretion, include in their State standards, policies generally affecting their application and implementation, such as mixing zones, low flows and variances. Such policies are subject to EPA review and approval.

Subpart C—Procedures for Review and Revision of Water Quality Standards

§ 131.20 State review and revision of water quality standards.

(a) State Review: The State shall from time to time, but at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Any water body segment with water quality standards that do not include the uses specified in section 101(a)(2) of the Act shall be re-examined every three years to determine if any new information has become available. If such new information indicates that the uses specified in section 101(a)(2) of the Act are attainable, the State shall revise its standards accordingly. Procedures States establish for identifying and reviewing water bodies for review should be incorporated into their Continuing Planning Process.

(b) *Public participation:* The State shall hold a public hearing for the purpose of reviewing water quality standards, in accordance with provisions of State law, EPA's water quality management regulation (40 CFR 130.3(b)(6)) and public participation regulation (40 CFR Part 25). The proposed water quality standards revision and supporting analyses shall be made available to the public prior to the hearing.

(c) *Submittal to EPA:* The State shall submit the results of the review, any supporting analysis for the use attainability analysis, the methodologies used for site-specific criteria development, any general policies applicable to water quality standards and any revisions of the standards to the Regional Administrator for review and approval, within 30 days of the final State action to adopt and certify the revised standard, or if no revisions are made as a result of the review, within 30 days of the completion of the review.

§131.21 EPA review and approval of water quality standards.

(a) After the State submits its officially adopted revisions, the Regional Administrator shall either:

(1) Notify the State within 60 days that the revisions are approved, or

(2) Notify the State within 90 days that the revisions are disapproved. Such notification of disapproval shall specify the changes needed to assure compliance with the requirements of the Act and this regulation, and shall explain why the State standard is not in compliance with such requirements. Any new or revised State standard must be accompanied by some type of supporting analysis.

(b) The Regional Administrator's approval or disapproval of a State water quality standard shall be based on the requirements of the Act as described in §§131.5, and 131.6.

(c) A State water quality standard remains in effect, even though disapproved by EPA, until the State revises it or EPA promulgates a rule that supersedes the State water quality standard.

(d) EPA shall, at least annually, publish in the FEDERAL REGISTER a notice of approvals under this section.

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TO: Interested Parties
FROM: ~~Tim~~ Glidden and Dave Elliott TG DE

SUBJECT: Agenda for 11/13 Work Group Meeting
DATE: November 6,1985

The next meeting of the working group on LD1503 will be held on November 13th at 9AM in room 120 (SOB). The agenda for this meeting will be as follows:

1. Review summary of 11/5 meeting and proposed language developed for resolved issues. The summary and related language will be sent to you under separate cover. Please be prepared to comment on the proposed language, we would like to finalize this material.

2. Complete discussions of the classification language for classes B & C, GPA and the "S" classes (tidal).

3. Anti-degradation language and procedures.

4. A procedure for instituting changes in the water classification system, including the need for a publicly initiated process (originally scheduled for the 11/19th meeting).

Discussion of the impoundment language will be rescheduled for the 11/19th meeting.

Please submit your comments and suggestions for items #3 & 4 above no later than 10AM, November 12th. Please notify us if you will use previously submitted comments. Copies will be made available to those who would like to pick up a package of comments that afternoon.

Please contact us if you have any questions.

4001M

AGENDA

November 5, 1985

Water Reclassification Working Group

- Review summary of 10-22-85 meeting
- Objectives and policy language (see draft)
- Descriptions of water quality classes
  - -- general provisions
  - -- designated uses
  - -- water quality criteria
  - -- bio-monitoring/bio-assay techniques
- Point/Non-point source discussion

DCE/lk/3981

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October 24, 1985

To: Interested Parties

From: David Elliott and Tim Glidden

Subj: Summary of 10-22-85 discussion on LD 1503

This memo is an attempt to summarize the discussions before the study subcommittee on October 22, 1985. It is divided into 3 parts. The first identifies areas where there was agreement on an issue or specific language. The second lists areas where there appeared to be ground for general agreement but where specific language needs to be worked out or where more information is needed before final agreement can be reached. The final part of the memo identifies areas of concern which were identified, discussed, not agreed on and deferred for future consideration.

Since it is often difficult to determine whether final approval has been achieved from all members of a group, this memo should be viewed as a working paper for discussion purposes. If the position of any of the parties has changed or been misinterpreted, that should be cleared up. There will be an opportunity for that at the first meeting of the working group described in the attached memo.

Please call if you have any questions or comments.

1. Language/issues agreed on:

- Use of word "surface" to modify water to distinguish surface water quality issues from ground water quality issues. (e.g., §360, heading)

- Class AA waters include only river segments dsignated for special protection (i.e., no dams) under the Rivers Bill and rivers in Acadia and Baxter parks.

- Add exclusion to the designated use of hydroelectric power generation in Classes A, B and C waters for river segments in those classes which were set aside for special protection (i.e., no dams) in 12 MRSA §403, the Rivers Bill.

- Delete reference to section 363-B (ground water classification standards) because this bill deals with surface water classification and ground water issues ought to be dealt with in other forums. (§360, sub-§3)

- The term "natural condition" does not need to be defined as used in §360, sub-§3.

- Delete "for attainment of management goals" and replace with "for those waters to attain their classification." (§360, sub-§3, end of 1st ¶)

- Replace list of polluting substances with term "pollutant" (§360, sub-§3, last ¶).

- Clarify that DEP has continuing authority to promulgate rules for the implementation of the Act after January 1, 1987 (§360, sub-§3, last ¶ -- NRC comment 4).

- Allow discharges in Class A waters. Discharges do not occur presently, but language allowing them exists in order to provide for possibility of mining activity. Parties agreed current situation is not clearest way of handling issue, but it seems to be working. New discharges would be required to equal or exceed existing water quality of the receiving water. (§363, 8th ¶)

- Given the EPA policy against adopting waste discharge as a designated use (40 CFR §131.10(a)), "discharge" will not be added to the list of designated uses for classes of waters below AA.

2. Issues where agreement exists or seems to exist in principle pending consideration of revised language, review of additional data or consultation with other affected parties:

- Revise general, broad philosophical statement of legislative policy and intent, including allowance of (without endorsing) discharges. (§360, 1st 3 ¶)

- Deletion of reference to management goals because it may be confused with use of the term goal in the statement of policy and intent. State that the interest is for the State to "protect and enhance" water quality with limitation that enhancement applies only where waters are not currently meeting their classification. (§360, 3rd ¶)

- Change "no discharge ... to water draining less than 10 sq. mi" to "no new discharge" in those waters to address the few existing mostly domestic discharges which do exist. (§360, sub-§3, 2nd ¶)

- Several issues related to promulgation of rules by DEP (§360, sub-§3, last ¶ and proposed NRC/PIIO language).

  -- Rely on the legislative review of rules provisions of Title 5,§11111 et. seq., rather than a special review process established for these particular rules;

  -- Add authority to promulgate rules on criteria for new discharges to Class A waters;

  -- The "methodology" for establishing biological standards should be included in rule making authority; "criteria" should be established by rule only to extent not established in the bill;

  -- In promulgating rules, DEP shall solicit and consider information including, but not limited to, economic and environmental impacts;

  --Non-compliance with biological standard rules of existing dischargers shall be addressed through reopening the discharge license under §347; dischargers seeking new or renewed licenses after the effective date of the bill shall comply with DEP rules at time of issuance of the license;

  -- Term "unsuitable for human consumption" modifying fish shall be changed to "unsafe for human consumption as defined by (appropriate federal or state standard);"

  -- Need to clarify that water contact recreation (swimmable) waters need to be "safe," not necessarily "suitable," for swimming;

  -- Class B DO criteria should remain as proposed in the bill. Problematic segment of the Kennebec River from Skowhegan to Shawmut will be redesignated Class C, instead of B;

  -- Accept the seasonal suspension of bacteria criteria in non-summer months because little swimming occurs during that time and because chlorine is toxic and expensive to apply.

3. Issues discussed, not agreed on and deferred for further discussion:

- Treatment of impoundments;
- Consistent use and possible definition of the terms: "standards," "characteristics" and "criteria" through the bill;
- Add "direct" to modify "no discharge to Class AA and SA waters" and define "direct" as in federal regulations. (§360, sub-§3, 2nd ¶) This is part of the point/non-point source issue which needs further discussion;
- Discharge to tributaries of GPA waters;
- Antidegradation policy;
- Definition of terms
- Higher DO criteria for Class B waters during periods of spawning and egg incubation. EPA has proposed such additional requirements.

DCE:TG:lk:3865

PROPOSED REORGANIZATION OF TITLE 38, CHAPTER 3
CHAPTER 3 PROTECTION AND IMPROVEMENT OF WATERS

ARTICLE 1 ORGANIZATION AND GENERAL PROVISIONS

§361 Organization; compensation; meeting; duties (no change in existing law)

§361-A Definitions (some new definitions may be necessary either here or in Article 1-A)

§362 Authority to accept federal funds (no change)

§362-A Experiments and scientific research (no change)

§362-B Cooperation with other departments and agencies (moved to general provisions from §366; no change in text of existing law)

§362-C Exception (moved to general provisions from §372; no change in text)

ARTICLE 1-A GREAT PONDS PROGRAM (no change in provisions)

ARTICLE 1-B GROUNDWATER PROTECTION PROGRAM (no change)

ARTICLE 1-C FRESHWATER WETLANDS (no change)

ARTICLE 2 POLLUTION CONTROL (no change)

ARTICLE 2-A ALTERATION OF RIVERS AND STREAMS (no change)

ARTICLE 2-B MANDATORY ZONING AND SUBDIVISION (no change)

ARTICLE 3 ENFORCEMENT (no change)

ARTICLE 4 AIR POLLUTION (repealed)

ARTICLE 4-A WATER CLASSIFICATION STANDARDS

(new article created containing surface and ground water classification provisions)

§464 Classification of Maine waters

§465 Standards for classification of fresh surface waters

§465-A Standards for classification of esturine and marine waters

§465-B Standards for classification of great ponds

§465-C Standards for classification of ground water (no change in existing law)

§466 Classification of major river basins

§466-A Classification of minor drainages

§466-B Classification of esturine and marine waters

ARTICLE 5 ALTERATION OF COASTAL WETLANDS (no change)

ARTICLE 6 SITE LOCATION OF DEVELOPMENT (no change)

DCE/elk/3936

11-25-85

DRAFT

§363. Classification of Maine waters

The waters of the State shall be classified in accordance with the provisions of this article.

1. Findings; objectives; purpose. The Legislature finds that the proper management of the State's water resources is of great public interest and concern to the State in promoting the general welfare, preventing disease, promoting health, providing habitat for fish, shellfish and wildlife, as a source of recreational opportunity and as a resource for tourism, commerce and industry.

The Legislature hereby declares that it is the state's objective to restore and maintain the chemical, physical and biological integrity of the state's waters and to preserve certain pristine state water. The Legislature further declares that in order to achieve this objective (1) it is the state's ultimate goal that the discharge of pollutants into the waters of the state be eliminated and (2) it is the state's interim goal to achieve water quality in the state's water which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.

The Legislature intends by passage of this Act to establish a water quality classification system which will allow the State to manage its surface waters so as to protect the quality of those waters and, where water quality standards are not being achieved, to enhance water quality. This classification system shall be based on the water quality standards which designate the use or uses to be made of a class of waters and set water quality criteria (characteristics) necessary to protect those uses. The Legislature further intends by passage of this Act to assign to each of the State's surface water bodies the water quality classification which shall designate the minimum level of quality which the Legislature intends for the body of water. This designation is intended to direct the State's management of that water body in order to achieve at least that minimum level of water quality.

#1 Comment

This subsection states in somewhat broad and general terms the Legislature's intent in adopting the new water classification system.

The first paragraph contains findings on the importance of water resources to Maine. The value of water to the economy is pointed out by adding reference to tourism, commerce and industry.

The second paragraph defines the State's water quality objective and goals. The langauge tracks that of section 101

of the federal Clean Water Act by establishing an objective of maintaining and improving water quality and setting long range and intermediate goals to achieve that objective.

The third paragraph states the Legislature's intent concerning the implementation of the water classification system. The system is to be used to protect and, where a water body is not attaining its classification, to enhance water quality. Water bodies are to be managed for those purposes by a 2-step process. First, water quality standards are to be established consisting of several classes of water with uses designated for each class and water quality criteria (characteristics) are to be established for each class which will support those uses. Second, each water body will be assigned a classification by the Legislature. That classification will save the dual purposes of establishing water quality goals for the water body and of serving as the basis for establishment of water quality based conditions attached to State water discharge licenses.

3944

11-26-85

DRAFT

New sub-§ to §363

4. Rulemaking. In accordance with the Maine Administrative Procedure Act, the board shall promulgate rules necessary to implement the water quality classification system established by this Act. In promulgating rules, the board shall solicit and consider, in addition to any other materials, information on the economic and environmental impact of those rules.

Rules shall be promulgated by January 1, 1987, and shall include, but are not limited to, the following:

A. sampling and analytical methods, protocols and procedures and the basis for satisfying the water quality criteria;

B. a mixing zone policy including the methodology for determining the characteristics of mixing zones as well as the in-zone water quality; and

C. standards for new discharges to Class A waters under section .

#2 Comment

This subsection is added to explicitly require DEP to adopt rules. The APA is cross referenced to ensure the availability of the public participation and legislative oversight provisions of that law. Specific provision is made requiring the board to consider the economic and environmental impact of its rules. The first set of rules must be adopted by January 1, 1987.

3944

DRAFT

11-25-85

New sub-§ to §363

5. Implementation. A discharger who has been issued a valid discharge license before the effective date of this Act and who, following that date, at any time during the term of that license is not in compliance with the water quality standards established by this Article or by rules promulgated thereunder may have that license modified as prescribed in §347. A discharger seeking a new or renewed license following the effective date of this Act shall comply with the water quality standards of this Article and rules promulgated thereunder.

#3 Comment

This subsection is added to clarify how enforcement will occur after enactment of the new classification system. After the effective date, a discharger seeking a new or renewed discharge license must comply with the provisions of the new system and rules adopted thereunder. A discharger with a valid water discharge license who is found to be not in compliance with the new water quality standards may have its license modified under §347.

3944

October 31,1985

TO: Tim Glidden, Dave Elliott
FROM: Andrea Colnes
SUBJ: Discrpancies between existing law and LD 1503 regarding the classifications of specific river segments.

Kennebec River Drainage:

- Existing Law (p 300): All tributaries, direct and indirect etc, not otherwise classified entering the Kennebec River between Wyman Dam and Chop Point in Bath Class B-1.

- LD 1503 (p 20): All tidal portions of tributaries entering above a line drawn across the tidal estuary due east from Abagadasset point which are not otherwise classified Class C.

    *So, are there any tidal tributaries not otherwise classified or specified in LD 1503 entering the Kennebec between Wyman Dam and Chop Point in Bath?

- Kennebec main stem 1000 ft below Harris Dam to confluence with the Dead River: currently B-1 (p304); in LD 1503 Class AA (p13, 3)

- Carrabassett Stream System: unclear what current classification is (p300); in LD 1503 it is defaulted to Class B

Dead River:

- Big Eddy to Kennebec confluence: currently B-1 (p304); in LD 1503 Class AA (p15)

Moose River:

- From confluence with #1 Brook in Beattie Township to its confluence with Attean Pond: currently Class A (p304, 5); in LD 1503 Class AA (p16 F1b)

- Long Pond: Currently Class B-1 (p304); in LD 1503 Class GPA.

Penobscot River West Branch Drainage:

- From a point located 1000 feet downstream from the dam at the outlet of Seboomook Lake to its confluence with Chesuncook Lake: currently Class B-1; in LD 1503 Class AA

- From the T.3, R.11, W.E.L.S -T.3, R.10, boundary to its confluence with Ambajejus Lake: currently Class B-1; in LD 1503 Class AA

Saco River

- Main stem from junction with Ossipee River to the entrance of Quaker Brook: currently Class B-2 (p314, 3); in LD 1503 Class AA (p29)

St Croix River Basin:

- All tributaries which have portions of their drainage area in Maine and portions in New Brunswick, those waters lying within the State: currently Class C (p315 3); in LD 1503 Class B (p30 B1)

  * DEP will strike this: Monument Brook is the only tributary with portions in both Maine and New Brunswick not otherwise classified. So, instead, add language to classify those waters of Monument Brook that are in state Class B

St John River Basin:

- Main stem from the confluence of the Northwest Branch and the Southwest Branch to a point located one mile above the foot of Big Rapids in Allagash: currently Class B-1 (p316 1); in LD 1503 Class AA (p31).

- Tributaries: The following segments are all proposed to be Class AA in LD 1503 (p36). Depending on whether or not they lie wholly within the State of Maine or not, they are currently classified as either B-1 (in-state) or B-2 (partially in-state) (p316 1,2).

  Baker Branch, from a point located 1.5 miles below Baker Lake to its confluence with the Southwest Branch.

  Big Black River, from the international boundary to its confluence with the St. John River.

  Northwest Branch, from the outlet of Beaver Pond in T.12, R.17, W.E.L.S. to its confluence with the St. John River.

  Southwest Branch, from a point located five miles downstream of the international boundary to its confluence with the Baker Branch.

Sheepscot River:

- main stem, from its origin in Montville to tidewater: currently Class B-1 and B-2 (p328); in LD 1503 Class AA (p37 A1)

  *Fish and Wildlife has a fish hatchery just below the outlet of Sheepscot Lake, so part of this segment cannot be classified AA. DEP proposes the following changes:

1. From its origin in Montville to its confluence with Sheepscot Pond: Class AA

2. From the outlet of Sheepscot Pond to its confluence with Long Pond: Class B

3. From the outlet of Long Pond to Tidewater Class AA

- West Branch, from the outlet of Branch Pond to confluence with the Sheepscot River: currently Class B-2 (p328); in LD 1503 Class AA (p37 B1)

3982M

October 31,1985

TO: Dave Courtemanch
FROM: Andrea Colnes
SUBJ: Discrpancies between existing law and LD 1503 regarding the classifications of specific river segments.

Carrabassett River Drainage:

- West branch of the Carrabassett river and its tributaries: currently B-2 (see 38 § 368 p300); in LD 1503 Class A (p14)

Kennebec River Drainage:

- From Abagadasset point to Augusta Dam (tidal portions): currently B-1 (p300, 1); in LD 1503 Class C (p20)

- Kennebec main stem 1000 ft below Harris Dam to confluence with the Dead River: currently B-1 (p304); in LD 1503 Class AA (p13, 3)

Dead River:

- Big Eddy to Kennebec confluence: currently B-1 (p304); in LD 1503 Class AA (p15)

Moose River:

- From confluence with #1 Brook in Beattie Township to its confluence with Attean Pond: currently Class A (p304, 5); in LD 1503 Class AA (p16 F1b)

- Long Pond: Currently Class B-1 (p304); in LD 1503 not specified (p16, F1 d&e)

Mousam River:

- Estes Lake to junction with the East Branch: currently Class C (p306); in LD 1503 Class B (p21, A 2&3)

Penobscot River:

- East Branch between the outlet of Mattagamon Lake and the dam at Grand Lake Mattagamonm: currently Class B-1 (p307); in LD 1503 the East Branch above Grand Lake Mattagamon is Class A (p22), so the segment between the outlet of Mattagamon Lake and Grand Mattagamon is in conflict.

- West Branch: several new segments are defined in LD 1503 (p24,25) -- how do these compare with existing classifications?

Penobscot River Minor Tributaries:

- All streams, segments and tributaries thereof, not otherwise defined, entering tidewater between the head of tide on Marsh Stream (Frankfort) and Fort Point (Stockton springs): currently Class C (p309, 4); not mentioned in LD 1503, therefore Class B.

Mattawamkeag River:

- From the Kingman-Mattawamkeag boundary to the confluence with the Penobscot River Class AA in LD 1503 (p25, 1b); what is existing classification?

Piscataquis River:

- All tributaries and segments not otherwise designated between (but not including) the Sebec River and the Maine Central Railroad bridge at Dover-Foxcroft: currently Class B-2 (p311 2); in LD 1503 Class C (p26)

- From the dam at Howland to the Penobscot River run-around: currently Class B-2 (p311, 11); in LD 1503 Class C (p26)

- Main stem from Abbot-Guilford town line to mouth of Kingsbury Stream: currently Class B-2 (p311, 15); in LD 1503 Class C (p26)

Presumpscot River Basin

- Pleasant River: definition of segments unclear -- appears to be Class B-2 in existing law (p313, 6) and in LD 1503 Class AA (p26 2g)

Saco River

- Main stem from junction with Ossipee River to the entrance of Quaker Brook: currently Class B-2 (p314, 3); in LD 1503 Class AA (p29)

St Croix River Basin:

- From the outlet of Chiputneticook Lakes to the Grand Falls Dam, those waters lying within the State: currently Class A (p315, 1); in LD 1503 Class B (p30 A1)

- All tributaries which have portions of their drainage area in Maine and portions in New Brunswick, those waters lying within the State: currently Class C (p315 3); in LD 1503 Class B (p30 B1)

St John River Basin:

- Main stem from the confluence of the Northwest Branch and the Southwest Branch to a point located one mile above the foot of Big Rapids in Allagash: currently Class B-1 (p316 1); in LD 1503 Class AA (p31).

- Tributaries: The following segments are all proposed to be Class AA in LD 1503 (p36). Depending on whether or not they lie wholly within the State of Maine or not, they are currently classified as either B-1 (in-state) or B-2 (partially in-state) (p316 1,2).

  Baker Branch, from a point located 1.5 miles below Baker Lake to its confluence with the Southwest Branch.

  Big Black River, from the international boundary to its confluence with the St. John River.

  Northwest Branch, from the outlet of Beaver Pond in T. 12, R. 17, W.E.L.S. to its confluence with the St. John River.

  Southwest Branch, from a point located five miles downstream of the international boundary to its confluence with the Baker Branch.

Sheepscot River:

- main stem, from its origin in Montville to tidewater: currently Class B-1 and B-2 (p328); in LD 1503 Class AA (p37 A1)
- West Branch, from the outlet of Branch Pond to confluence with the Sheepscot River: currently Class B-2 (p328); in LD 1503 Class AA (p37 B1)

3943M

TO: All Interested Parties
FROM: Sen. Ron Usher, Senate Chair Ron
Rep. Mike Michaud, House Chair Mike M

SUBJECT: Working Group on Water Quality Reclassification Study
DATE: October 23,1985

The subcommittee studying LD 1503, the water quality reclassification bill, has held several work sessions and has elicited numerous comments for revision of the LD. The subcommittee has now formed an ad-hoc working group of the interested parties. This memo 1/ establishes the subcommittee's charge to the group, 2/ defines the group's composition and 3/ sets an agenda and schedule for its work.

CHARGE

The primary objective of the ad-hoc working group is to achieve consensus on as many issues as possible with regard to LD 1503. While the subcommittee recognizes that this may not be possible in all instances, we feel very strongly that the ultimate success of the water quality program depends on a widely shared, common understanding of the intent of this legislation. The consensus building process we have established with this group will assist the legislature in its deliberations and will also provide the foundation for successful implementation of the program. Your constructive participation is essential.

The working group will report to the subcommittee its consensus on issues with specific statutory language which:

1. Has been agreed to by the working group;

2. Is accompanied by a statement of intent developed and accepted by the working group;

3. Is consistent with existing state law;

4. Complies with applicable provisions of the Clean Water Act and EPA regulations; and

5. Embodies sound drafting techniques in which the material is arranged and numbered in an organized and useful manner; in which terms and concepts are used consistently throughout, and in which necessary terms are defined.

When agreement on language cannot be reached, the issue should be clearly identified and options developed for subcommittee consideration.

COMPOSITION

All parties will have the opportunity to participate in discussions of issues in which they are interested. Our experience to date indicates that five groups, the DEP, the Paper Industry Information Office, the Maine Chamber of Commerce and Industry, the Natural Resources Council of Maine and the Maine Audubon Society have been most active in the discussion of the LD. We expect that these groups will form the core of the group and will be involved in discussion of every issue. Other interested parties should review the agenda for issues of direct interest to them. If you wish to participate in the discussion of a particular issue, please contact either Tim Glidden or Dave Elliott. Materials prepared for the working group will be distributed to all interested parties.

Subcommittee staff will participate in the working group deliberations to record discussions and to coordinate working group activities. Staff will serve a "gate-keeper" function of keeping the groups attention focussed on the agenda. However, staff will not represent the views of the subcommittee or its individual members on the substance of the issues under discussion unless specifically charged to do so by the subcommittee.

AGENDA

Using LD 1503 as the point of departure, we are seeking draft language for consideration by the subcommittee on the issues listed below. The issues are grouped to indicate the meeting at which they will be discussed.

<u>1st Meeting</u>

1. A general statement of State water quality objectives and policies;

2. A description of the four water quality classes -- including designated uses and water quality criteria (physical, chemical and biological characteristics) and general provisions as necessary;

3. Use of biomonitoring and bio-assay techniques by DEP in its water quality program; and

4. If found necessary, a policy distinguishing the impact of point sources from that of non-point sources of pollution on water quality.

2nd Meeting

5. A policy for the treatment of riverine impoundments;and

6. An anti-degradation policy.

3rd Meeting

7. A procedure for instituting changes in the water classification system, including the need for a publicly initiated process;

8. DEP review and reporting requirements;

9. An implementation and enforcement schedule for the new classification system; and

10. Application of the water quality classification system to specific segments of water bodies.

Specific language proposals and supporting comments must be received by staff 2 days before the meeting at which they are to be discussed. This will allow time for staff to coordinate the agenda and for interested parties to review the language and comments. A summary of the issues and language agreed on will be distributed following the meetings. Each meeting will begin with an opportunity to review, revise and finally approve the language from the previous meeting.

SCHEDULE

The three meeting dates which have been tenatively scheduled for the working group are: November 5th in room 120 SOB, November 13th in room 120 SOB, and November 19th in room 120 SOB. All meetings will begin at 9AM. Additional meetings will be scheduled if necessary. The working group will report its recommendations to the subcommittee at a meeting tenatively scheduled for November 25th at 9AM in room 120 SOB.

TG-DE/3834

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October 18, 1985

To: Members, Water Quality Reclassification Subcommittee

From: David Elliott and Tim Glidden, Legislative Assistants

Subj: Materials for next meeting

Enclosed are copies of specific language suggestions requested from interested parties following the last subcommittee meeting. The comments pertain to (1) the findings and purpose subsection, (2) the general provisions and (3) the descriptions of each individual classification. Comments have been received from the Paper Industry Information Office, Natural Resources Council, Maine Audubon Society and Maine Chamber of Commerce and Industry.

DE:TG:lk:3827

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TO: All Interested Parties, Water Quality Reclassification Study (LD 1503)
FROM: Tim Glidden, Legislative Assistant

SUBJECT: Meeting Time and Place for the October 22nd Meeting
DATE: October 1,1985

The next meeting of the subcommittee has been scheduled for Tuesday, October 22,1985 at 9AM in Room 120 of the State Office Building. A request for specific language changes has gone out to all interested parties under separate cover.

3631M

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

TO: All Interested Parties, Water Quality Reclassification Study (LD 1503)
FROM: Sen. Ronald Usher, Senate Chair Ron
Rep. Michael Michaud, House Chair Mike

SUBJECT: Agenda for October 22nd Meeting
DATE: September 27,1985

The subcommittee will focus further discussion on specific components of LD 1503. The general objective will be to resolve the central issues of the new water quality classification system first and then move successively through the other issues raised by the bill.

Please use the language and current structure of LD 1503 as the starting point for your proposals. Please organize your submission into three sections, each beginning on a new page, to parallel the areas listed below.

The deadline for receipt of submissions to be considered at the October 22nd meeting is October 17th. This will allow our staff to organize and distribute the comments to the subcommittee. Each presentor will have a brief opportunity for oral presentation of proposed language on each issue. A written summary of this presenation including justification for the new language should be provided by the October 17th deadline. We strongly encourage joint submissions of similar proposals by interested parties.

ISSUES TO BE CONSIDERED

We are now seeking specific language changes in the following areas:

1. the findings subsection (§360, sub§ 1)
2. the general provisions of the classification system that relate directly to the standards for each classification (§360; sub§3; 1st¶, 1st and 3rd sentences; 2nd¶; 3rd¶, 1st sentence; 4th¶)

3. the standards for each individual classification (§363 - Classes AA, A, B, C; §363-A - Class GPA; and §364 - Classes SA, SB, SC)

These recommendations should include specific attention to the following issues that are an integral part of these provisions:

- the inclusion of "designated uses" as part of classification standards
- the use of bio-monitoring and bio-assay techniques
- DO standards
- all issues related to discharges into tributaries to great ponds
- any definitions required for terms included in the sections listed above

ISSUES TO BE DEFERRED

For purposes of clarification, we will not discuss specific language on the following issues at the October 22nd meeting:

- procedures for reclassification (§360, sub§ 2)
- DEP reporting requirements (§360, sub§3, 1st¶, 2nd sentence
- anti-degradation provisions (§360, sub§3, 3rd¶, 2nd sentence)
- classification of specific water bodies (§368, 369, 370)
- treatment of impoundment classifications
- differentiating between direct and indirect (point and nonpoint) discharges
- implementation and enforcement schedule
- procedures for the consideration of abatement costs
- staffing requirements and fiscal impact
- any detailed line-by-line comments outside the scope of the classification definitions

Recommendations for wording changes in the related provisions will be deferred until subsequent subcommittee sessions. However, if time permits, we will discuss general concerns with the first 4 topics which were not covered at the September 24th meeting. No technical or drafting-type changes should be proposed at this point unless directly related to a substantive issue. The subcommittee expects to address the structural aspects of the bill after the major substantive issues are resolved.

We encourage you to call us, Tim Glidden or Dave Elliott at 289-1670 if you have any questions regarding this memo.

3631M

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

TO: Members, Water Quality Reclassification Subcommittee
FROM: Tim Glidden, Legislative Assistant TG

SUBJECT: Agenda for October 22nd Meeting
DATE: September 26,1985

The next meeting of the subcommittee has been scheduled for Tuesday, October 22,1985 at 9AM in Room 120 of the State Office Building. A request for specific language changes has gone out to all interested parties (see attached).

Dave and I will be trying to get copies of all testimony sent to you prior to the meeting. Please call with any questions or suggestions.

attch.

3631M

SENATE

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JUDY C. KANY, DISTRICT 17
JEROME A. EMERSON, DISTRICT 9

DAVID ELLIOTT, LEGISLATIVE ASSISTANT
WILLIAM T. GLIDDEN, LEGISLATIVE ASSISTANT
ALICE SCHLOSSER, COMMITTEE CLERK

HOUSE

MICHAEL H. MICHAUD, EAST MILLINOCKET, CHAIR
PAUL F. JACQUES, WATERVILLE
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VINTON T. RIDLEY, SHAPLEIGH
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DARRYL N. BROWN, LIVERMORE FALLS
MURIEL D. HOLLOWAY, EDGECOMB
STEPHEN J. LAW, DOVER-FOXCROFT

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

TO: Rep. John Diamond, Chairman
Legislative Council

FROM: Sen. Ronald Usher, Senate Chair
Rep. Michael Michaud, House Chair
Joint Standing Committee on Energy and Natural Resources

SUBJECT: Interim Study Progress Reports

DATE: September 24,1985

The purpose of this memo is to outline the status of interim studies undertaken by the Committee.

State Subdivision Laws (L.D. 1229)

Due to the summer schedules of members, the subcommittee has not met yet. Tentative plans are to meet in mid-October, late November and to complete the study in December.

Water Quality Reclassification Study (L.D. 1503)

The subcommittee has met twice to date. The Department has made a presentation responding to a series of issues raised during the public hearing of the last session. The subcommittee has solicited and received further comments on the bill from a variety of interested parties. The discussion of these suggestions has started and is expected to require several meetings. The subcommittee expects to complete its study prior to the next session but may require one subcommittee meeting beyond the three originally authorized.

Spruce-fir Forestry Tax Credit Study (L.D. 286)

The Subcommittee has met to initiate the study and will meet again on September 30th. The subcommittee is examining forest landowner patterns in the spruce-fir region in comparison to those in the state as a whole. The subcommittee will also review literature on the effectiveness and design of forestry tax credit programs (state and federal). The subcommittee plans to be briefed on the tax climate for forest landowners at the upcoming meeting. No problems are foreseen to timely completion of the study.

3571M

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ANDREA COLNES, Res. Asst.

TO: Members, Subcommittee on Water Quality Reclassification
FROM: Tim Glidden, Legislative Assistant

SUBJECT: Comparison of Existing and Proposed Classification System.
DATE: September 18,1985

The attached material provides a comparison of the existing water qulaity classification system with the new system proposed in LD 1503. This material is provided as background to the subcommittee's discussion of LD 1503 and the issues raised by various interested parties.

This packet has two parts. The first is a one-page summary comparison of the classification systems. This is taken from a DEP publication included in the testimony on LD 1503. The second part is a detailed comparison of the classification. The detailed comparison may be more useful for reference during discussions of specific aspects of LD 1503.

A detailed, side-by-side comparison of segment classifications proved unworkable. If there are any questions on specific river segments regarding their proposed classification in LD 1503, please ask.

3545M

Table 1. Differences between Maine's present and proposed water quality classifications (DO = dissolved oxygen).

Present Classes for Fresh Waters

A	Allows low levels of bacteria and slight decreases of DO. Certain discharges which are equal in quality to the receiving water are allowed but may cause no harm to aquatic life.
B-1	Allows higher levels of bacteria and more decrease of DO than the present A class. Discharges are allowed but may cause no harm to aquatic life.
B-2	Allows higher levels of bacteria and more decrease of DO than the present B-1 class. Discharges are allowed but may cause no harm to aquatic life.
C	Allows higher levels of bacteria and more decrease of DO than the present B-2 class. Discharges are allowed but may cause no harm to aquatic life. This class does not have a goal of being suitable for swimming.
D	Allows higher levels of bacteria and more decrease of DO than the present C class. This class does not have as a goal suitability for fishing or swimming.

GP-A	Includes the vast majority of Maine's lakes and ponds. This class allows low levels of bacteria. No discharges are allowed.
GP-B	Includes those lakes and ponds which have algal blooms caused by people. This class allows higher bacteria levels than the present GP-A class. Certain discharges are allowed.

Present Classes for Marine Waters

SA	Allows low levels of bacteria and significant decreases of DO. Discharges are allowed but may cause no harm to "aquatic" life and may not "interfere" with the propagation and harvesting of shellfish.
SB-1	Allows higher levels of bacteria than the present SA class. The allowed DO decrease and discharge policy for this class are the same as for the present SA class.
SB-2	Allows higher levels of bacteria than the present SB-1 class. The allowed DO decrease and discharge policy for this class are the same as for the prsent SA class.
SC	Allows higher levels of bacteria and more decrease of DO than the present SB-2 class. Discharges are allowed which cause shellfish to be unsuitable for harvesting for direct consumption. This class does not have a goal of being suitable for swimming.
SD	Allows higher levels of bacteria and more decrease of DO than the present SC class. This class does not have as a goal suitability for fishing or swimming.

Proposed Classes for Fresh Waters

AA	Would allow bacteria, DO and aquatic life to be only as naturally occur. No discharges or impoundments would be allowed.
A	Is similar to the present A class. This class would allow bacteria and aquatic life only to be as naturally occur. Slight decreases of DO would be allowed. Certain discharges which are equal in quality to the receiving water would be allowed but may cause no harm to aquatic life.
B	Is similar to the present B-1 class. This class allows higher levels of bacteria than the proposed A class. This class allows slightly less decrease of DO than the present B-1 class. Discharges are allowed and may have some effect on aquatic life but may cause no harm to aquatic life.
C	Is similar to the present C class. This class allows higher levels of bacteria and more decrease of DO than the proposed B class. Discharges are allowed and may cause slight harm to aquatic life. This class has a goal of suitability for fishing and swimming.
GPA	Includes all of Maine's lakes and ponds. It is similar to the present GP-A class but clarifies the state's policy that all GP-B waters be restored to GP-A quality. No new discharges are allowed.

Proposed Classes for Marine Waters

SA	Allows bacteria, DO and estuarine/marine life to be only as naturally occur. No discharges or impoundments are allowed.
SB	Is similar to the present SA class. This class allows higher levels of bacteria and more decrease of DO than the proposed SA class. Discharges which do not cause closure of open shellfish areas are allowed, provided they cause no harm to estuarine/marine life.
SC	Is similar to the present SC class. This class allows higher levels of bacteria and more decrease of DO than the proposed SB class. Discharges are allowed and may cause slight harm to estuarine/marine life. This class has as a goal suitability for fishing and swimming.

Proposed revisions to water reclassification:
New definitions of classifications.

Existing	Fresh Surface Waters	Proposed
No corresponding classification		§363 Class AA: New class. Uses: water contact recreation, fishing, navigation, drinking water (after disen.), and "free-flowing and natural habitat for fish and aquatic life". Applied to waters which are outstanding natural resources and should be preserved for reasons of ecological, social, scenic or recreational importance Aquatic life, dissolved oxygen and bacteria content of these waters shall be as naturally occurs. No discharge of domestic or industrial waste waters.
Class A: Uses: Water contact recreaton, public water supply after disinfection.		Class A: Uses: as existing plus fishing, industrial processes, cooling water supply, hydropower, natural habitat for fish and wildlife and navigation.
•Dissolved O_2 75% saturation or as naturally occurs •fecal coliform bacteria 20/100 ml.		•Dissovle O_2 7ppm or greater than 75% saturation whichever is higher (or as naturally occurs §360). •aquatic life and bacterial content as naturally occurs
No disposal of solid matter etc., no change to pH, no harmful chemicals, no radioactive matter, no sewage in water or on banks.		Similar to general provisions of §360
Existing discharges allowed until practical alternatives exist.		Same

New discharges allowed only if no reasonable alternative exist and if discharge is equal to or better than water quality of receiving waters.

Same

Class B-1:
Uses: Water contact recreation, potable water supply after treatment, fish and wildlife habitat.

Class B: Only B class.
Uses: as existing plus industrial process, cooling water supply, hydropower, "unimpaired" fish and aquatic habitat and navigation.

- Dissolved O_2 75% saturation and 5ppm at any time.

- Dissolved O_2 7ppm or greater than 75% saturation whichever is higher.

- fecal coliform bacteria 60/100 ml.

- Escherichia Coli (of human origin): Between May 15 - Sept. 30 not to exceed a geometric mean of 64/100 ml. or an instantaneous level of 427/100 ml. No standard Oct. 1 - May 14.

No disposal of solid matter etc., pH to remain between 6.0-8.5, no harmful chemicals, no radioactive matter that will raise radio-nuclide concentrations above U.S. Public Health Service Standards for drinking water.

Similar to general provisions of §360

Discharge free of anything adversely affecting bottom fauna, fish propagation or physical/chemical composition of bottom material. All discharges treated so as not to lower the standards of this classification, alter useage, harm aquatic life or render aquatic life dangerous for human consumption.

Water quality shall be maintained such that all indigenous aquatic species can be supported and that there are no detrimental changes to the biological community.

Class B-2:
Uses: Same as B-1 plus industrial water supply

- Dissolved O_2 60% saturation or 5 ppm whichever is higher
- fecal coliform 200/100 ml

Other provisions parallel to existing B-1.

Class C:
Uses: Not suitable for water contact recreation or potable water supplies unless adequately treated. Suitable for recreational boating, fishing, fish and wildlife habitat

- Dissolved O_2 5 ppm unless the board finds that the natural dissolved O_2 falls below 5 ppm in which case a variance may be obtained. In no event may dissolved O_2 4 ppm.
- fecal coliform bacteria 1000/100 ml

No disposal of solid matter etc., pH to remain between 6.0-8.5, no harmful chemicals, no radioactive matter that will raise radio-nuclide concentrations above U.S. Public Health Service Standards for drinking water.

No Class B-2.

Class C: Suitable for drinking water supply after treatment, water contact recreation and industrial process, cooling water supply, hydroelectric power generation, and navigation.

- Dissolved O_2 60% saturation or 5 ppm whichever is higher.
- Escherichia coli bacteria of human origin May 15 - Sept 30:
  geometric mean of 142/100 ml or
  instantaneus level of 949/100 ml

No standard Oct.1 - May 14

Similar to general provisions of §360

Disposal of sewage, industrial or other wastes shall not lower the standards of this classification or be injurious to aquatic life or render aquatic life dangerous for human consumption.

Class D

This classification assigned where higher class not attainable after best practicable treatment of discharges.

Uses: Hydropower, navigation, industrial process water after treatment.

- Dissolved O_2 2ppm
- Coliform bacteria not to create a public health hazard.

No disposal of solid matter etc., no harmful chemicals, no radioactive matter that would be harmful to humans or would affect any useage of this class.

Discharges not to create a public nuisance.

Discharges may cause some changes to aquatic life provided that the receiving waters are of sufficient quality to support all indigenous species of fish & maintain the structure & function of the aquatic community

No Class D

Existing	Tidal or Marine Waters	Proposed
Class SA: Uses: Water contact recreation, fishing, harvesting & propagation of shellfish, fish & wildlife habitat		§364 Class SA: Outstanding natural resources Uses: generally similar to existing SA.
•Dissolved O_2 6 ppm		•Dissolved O_2 as naturally occurs.
•Coliform bacteria 70/100 ml (median #) and, no more than 10% of the samples should exceed 230/100 ml.		•Bacterial content as naturally occurs.
•fecal coliform 14/100 ml (median #) and, no more than 10% of the samples should exceed 43/100 ml.		
No floating solids, oils, sludge etc. attributeable to discharges. No deposit of various types of refuse.		No discharge of domestic or industial wastes
Discharged sewage or other wastes must be adequately treated such that treated wastes will not lower standards, alter designated uses of the classification, be injurious to aquatic life or render aquatic life dangerous for human consumption		
No wastes or heated liquids harmful to edible fish or shellfish or to their culture and propagation or to bathing or which would cause pH to fall outside 6.7 - 8.5 range		
No chemicals harmful to humans, aquatic, animal life.		
No radioactive matter harmful to humans, aquatic, animal life or which would cause the radio-nuclide concentration in edible fish or other aquatic life to make them dangerous for human consumption.		
Nothing which adversely affects bottom fauna or propagation of fish or shellfish		

Class SB-1:

Uses: Water contact recreation, fishing, harvesting & propagation of shellfish, fish & wildlife habitat.

•Dissolved O_2 6.0 ppm

	Total Coliform		Fecal Coliform	
	SGA*	NSGA*	SGA	NSGA
Median #	< 70/100ml	< 240/100ml	< 14/100ml	< 50/100 ml
No more than 10% of samples	> 230/100ml	> 500/100ml	> 43/100ml	> 150/100ml

Similar conditions on discharges as in existing SA class.

Class SB-2:

Uses: water contact recreation fishing, harvest & propagation of shell fish, fish & wildlife habitat, industrial process & cooling uses

Dissolved O_2 6 ppm

	Total Coliform		Fecal Coliform	
	SGA	NSGA	SGA	NSGA
Median #	< 70/100 ml	< 500/100 ml	< 14/100ml	< 100/100ml
No more than 10% of samples	> 230/100ml	> 1000/100 ml	> 43/100ml	> 200/100ml

Similar conditions on discharges as existing SA Class.

Class SB: (only SB class)

Uses: As in existing SB-1 plus industrial process and cooling water supply, hydropower, unimpaired habitat for estuarine and marine life and navigation.

•Dissolved O_2 85% saturation

•enterococcus bacteria (of human origin): between May 15 - Sept. 30 geometric mean of 8/100 ml or an instantaneous level of 54/100 ml. No standard Oct.1 - May 14.

Discharges shall not cause adverse impact to any indigenous estuarine and marine life or cause detrimental changes in the resident biological community. No new discharges which would cause closure of open shellfish areas by the Dept. of Marine Resources.

No Class SB-2

*SGA - Shellfish Growing Area
NSGA - Nonshellfish Growing Area

Class SC:

Uses: No water contact recreation. Recreational fishing, propagation of indigenous shellfish to be harvested for depuration purposes, fish and wildlife habitat, industrial process & cooling water.

- Dissolved O_2 5ppm

	Total Coli.Form		Fecal Coli.Form	
	SGA	NSGA	SGA	NSGA
Median #	< 700/100ml	< 1500/100ml	< 150/100ml	< 300/100ml
No more than 10% of samples	> 2300/100ml	> 5000/100ml	> 500/100ml	> 1000/100ml

Similar conditions on discharges as existing SA class but no provision protecting bottom fauna & fish reproduction.

Class SD:

This classification assigned where higher class not attainable after best practicable treatment of discharges.

Uses: Hydropower, navigation, industrial process water, cooling water, and fish migration.

- Dissolved O_2 3ppm
- Coliform bacteria not to create a public health hazard.

Class SC:

Uses: Water contact recreation, fishing, aquaculture of shellfish, industrial process and cooling water supply, hydroelectric power generation, fish and estuarine and marine life habitat and navigation.

- Dissolved O_2 70% saturation
- enteroccous bacteria (of human origin): geometric mean of 14/100 ml or an instantaneous level of 94/100 ml

Discharges may cause some changes to estuarine and marine life provided that the receiving waters are of sufficient quality to support all indigenous species of fish and maintain the structure and function of the estuarine and marine communities.

No Class SD:

No disposal of solid matter etc., no harmful chemicals, no radioactive matter that would be harmful to humans or would affect any useage of this class.

Discharges not to create a public nuisance.

Great Ponds (Lakes & Ponds)

Existing	Proposed
Class GP-A: Uses: Water contact recreation, fish and wildlife habitat, public water supply after disinfection.	§363-A Class GP-A: only class for lakes $ ponds (except for impoundments of rivers which may be otherwise classified as per Sec. 363, 368, 369 and that waters contained in excavations approved by the board for waste water treatment purposes shall be unclassified.) Uses: Drinking water after disinfection, water contact recreation, fishing, habitat for fish and other aquatic life, industrial process and cooling water supply.
•fecal coliform bacteria 20/100 ml •Secchi disk transparency 2.0 meters or as naturally occurs. •phosphorous conc 15 ppb •chlorophyll A conc. 8 ppb at or near surface.	•Escherichia coli bacteria (of human origin): geometric mean of 29/100 ml or an instantaneous level of 194/100 ml. •a stable or decreasing trophic state subject only to natural fluctuations. •free of culturally induced algal blooms which impair their use and enjoyment.
No sludge deposits, floating solids and other materials. No radioactive matter discharged. No direct or indirect discharge of sewage, pollutants or other substances harmful to water quality or aquatic life except as provided for in §371-A or §413 (see below). No materials on banks which could wash into water or through which drainage might leak into water.	No discharge of domestic or industrial waste water. No change of land use in the watershed to cause water quality degradation. No domestic discharges to GPA tributaries.
§371-A Discharge provisions All great ponds classified as GP-A unless otherwise stated in this section.	Repealed

Existing licensed discharges to GP-A and GP-B allowed to continue until practical alternatives exist. No new discharges after Oct. 24, 1977.

Exemptions (from no discharge provision)

- Aquatic chemical applications approved by BEP.

- Commercial extraction operations or waste treatment facilities with discharges approved by BEP in ponds created by the approved facility.

§413: Licensing provisions — Retained

Relevant provision provides an exemption procedure for agricultural activities.

Other exemptions for snow dumps and dredge spoils

GP-B: — No GP-B class.

Uses: Water contact recreation, potable water supply after adequate treatment, fish and & wildlife habitat.

- fecal coliform bacteria 60/100 ml

- phosphorous 50 ppb at or near surface.

No solid matter etc., no radioactive matter

Conditions on discharges same as existing GP-A class.

SENATE

RONALD E. USHER, DISTRICT 28, CHAIR
JUDY C. KANY, DISTRICT 17
JEROME A. EMERSON, DISTRICT 9

DAVID ELLIOTT, LEGISLATIVE ASSISTANT
WILLIAM T. GLIDDEN, LEGISLATIVE ASSISTANT
ALICE SCHLOSSER, COMMITTEE CLERK

HOUSE

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VINTON T. RIDLEY, SHAPLEIGH
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MURIEL D. HOLLOWAY, EDGECOMB
STEPHEN J. LAW, DOVER-FOXCROFT

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

September 18, 1985

To: Members, Water Reclassification Study Subcommittee

From: David Elliott, Tim Glidden

Subject: Materials for next meeting

As you know, the next meeting of the subcommittee has been changed to Tuesday, September 24 at 10:00 a.m. in Room 427 of the State House (Taxation Committee room).

The following items are enclosed as background for that meeting:

- A side-by-side comparison of the existing water classification system and the one proposed in LD 1503.
- Copies of all the comments and suggested changes in LD 1503 submitted by various interested groups.
- A dissection of LD 1503 with comments and suggestions shown next to the section being commented on and identified by source.
- A summary of the federal law and regulations relating to development of the water classification system.

We will begin discussion with consideration of the impoundment issue. DEP has apparently met with interested parties and may have new language for consideration. After that, we will move on to other issues as time permits.

DE/TG/lk/3559
Enc.

STATE HOUSE STATION 2, AUGUSTA, MAINE 04333 TELEPHONE 207-289-2096

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LARS RYDELL
JOHN SELSER
ANDREA COLNES, RES. ASST.

TO: Interested Persons
FROM: Tim Glidden, Legislative Assistant

SUBJECT: Meeting of the Water Reclassification Study Subcommittee
DATE: September 18,1985

The Water Reclassification Study Subcommittee of the Energy and Natural Resources Committee will meet on Tuesday, September 24th at 10 AM in Room 427 (Taxation) of the State House Building. The purpose of the meeting is to continue discussions of the suggested revisions of LD 1503. The subcommittee will begin consideration of the comments submitted at the public hearing and over the past several months.

Please call if you have any questions.

3546M

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

September 17, 1985

To: Subcommittee on Water Quality Reclassification Study

From: David C. Elliott, Legislative Counsel

Subj: Water Quality Standards under the Federal Clean Water Act

I Background

The Federal Water Pollution Control Act was originally enacted in 1948, recodified in 1972 and substantially revised in 1977. Since 1977, the Act has commonly been referred to as the Clean Water Act. The Act is currently being considered for reauthorization by Congress.

The Clean Water Act (33 USC §1251 et seq) establishes the basic framework for a comprehensive, federal-state water pollution control program. The Act consists of 2 basic elements -- a declaration of objectives, goals and policies and a regulatory system designed to implement those objectives, goals and policies. The Act's stated objective is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." To achieve that objective, the Act establishes national goals of: (1) achieving a level of water quality which "provides for the protection and propagation of fish, shellfish, and wildlife: and "for recreation in and on the water" by July 1, 1983 (the so-called fishable-swimmable goal) and (2) eliminating the discharge of pollutants into waters of the United States by 1985. It is the policy of the Act that the States be primarily responsible for implementation of the goals and objectives with financial and technical assistance to be provided by the federal government.

II The Clean Water Act

As stated, the Clean Water Act establishes a comprehensive program for the control of water pollution. That program consists of several elements. Among them are:

1. Water quality standards for particular bodies of water which consist of rules establishing a required quality for the ambient water of that water body, such as 5 parts per million of dissolved oxygen. The standards are based on technical information which determine the minimum requirements necessary to support various uses of water bodies.

2. Effluent standards for discharges, which are generally uniform for each industry and various other types of discharges. They are based on available pollution control technology.

3. A permit system (National Pollutant Discharge Elimination System -- NPDES) which requires dischargers to disclose the volume and nature of their discharges, authorizes EPA to impose limits on the discharges, requires dischargers to monitor and report on their compliance with the limitations, and gives EPA enforcement powers. EPA is the issuing authority for NPDES permits until a state elects to take over administration of its program and obtains EPA approval.

4. Specific provisions applicable to certain pollutant discharges of particular concern or special character such as discharges of oil hazardous substances or toxic chemicals.

5. A grant program to fund publicly owned treatment works for the clean up of municipal waste discharges.

The Energy and Natural Resources Committee in its review of LD 1503 is dealing with the first of those elements -- the establishment of water quality standards for bodies of water in Maine. The establishment of those standards is important because it allows the State the opportunity to establish as a policy the level of protection it desires for each body of water in the State and to layout the guidelines for achieving that level of protection. Under the Clean Water Act all discharges are required to meet uniform technology-based effluent standards as a minimum. Since each body of water also has a water quality standard, a discharger may be required to make additional discharge reductions to meet the water quality standard which has been established for the body of water into which he discharges.

III The Water Classification System

The Clean Water Act (section 303) and the Code of Federal Regulations (40 CFR Part 131) promulgated under authority of that section requires each state to develop water quality standards for water bodies within its borders which are at least as stringent as the federal water standards. Those standards are to consist of designated uses for the waters involved and water quality criteria for the waters based on those uses. That is, a particular class of water might be

suitable for navigation, certain industrial and recreational uses and for fish and other aquatic life habitat. A higher class might be suitable for the uses of the lower classification, plus water contact recreation and drinking water supply after disinfection.

The water quality criteria establish permissible amounts of various substances allowable or required in a segment of a water body based on the quality of water necessary to support the uses permitted in that segment. The water quality criteria must protect the designated uses and must be based on sound scientific rationale. The administrator of EPA is required to prepare informational guidelines to assist the states in meeting their responsibilities under the Act. According to 40 CFR, Part 131, water quality standards (consisting of designated uses and water quality criteria) serve a dual function -- they establish water quality goals for specific bodies of water; and they serve as the regulatory basis for the establishment of water treatment controls over and above the uniform effluent controls required elsewhere in the Act.

The surface water classification scheme established in pages 1-9 of LD 1503 are the water quality standards required by federal law. The remainder of the bill applies those standards to specific water bodies.

The federal law and regulations establish a procedure for review of state water quality standards (including revision of existing standards) by the administrator of the EPA. If the standards do not satisfy the review criteria specified in 40 CRF §131.5, the EPA must disapprove the state water quality standards and promulgate a federal standard which is consistent with federal law. At present federally promulgated water quality standards are in effect for two states.

IV Anti-degradation Policy

Based on the declared policy of the Clean Water Act to "restore and maintain" the integrity of the nation's waters, 40 CRF §131.12 (copy attached) contains a fairly strongly worded anti-degradation policy. States are required to adopt a statewide policy and identify methods for its implementation. As with the water quality standards generally, failure to do so would result in disapproval of that part of Maine program and promulgation of an acceptable policy by EPA.

The most pertinent parts of the federal anti-degradation regulation require:

(1) Protection and maintenance of existing water uses and of the water quality necessary to support those uses, and

(2) Where existing water quality of a water body exceeds the level necessary to support the propagation of fish, shellfish and wildlife and recreation in and on the water, "that quality shall be maintained and protected, unless the State finds ... that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located." Even where lower water quality is found necessary, existing uses must be protected.

DCE/lk/3551

§ 131.12 Antidegradation policy.

(a) The State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart. The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:

(1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(2) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(3) Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(4) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Act.

§ 131.13 General policies.

States may, at their discretion, include in their State standards, policies generally affecting their application and implementation, such as mixing zones, low flows and variances. Such policies are subject to EPA review and approval.

HELEN T. GINDER, DIRECTOR
HAVEN WHITESIDE, ASST DIRECTOR
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ANDREA COLNES, RES. ASST.

MEMORANDUM

TO: William Ball, Acheron Engineering Co.
FROM: Tim Glidden, Legislative Assistant

SUBJECT: Water Quality Reclassification Study
DATE: September 3,1985

In response to your telephone message, I have added your name and Mr. Ellis' to the mailing list for notification of subcommittee meetings on the water quality study. I have also enclosed a copy of LD 1503 which was introduced in the last legislative session. The subcommittee will be developing amendments to this bill for consideration by the Legislature in 1986.

The study subcommittee is in the midst of its review of LD 1503 at this point. Comments are being solicited along with suggestions for specific changes (see copy of attached letter). The deadline for initial comments is September 6th. In view of the date of your request, I would suggest sending any comments you may have as soon as possible. The subcommittee has tenatively scheduled its next meeting to consider comments on September 23rd at 10AM in room 120 of the State Office Building. I will send confirmation of that date in the near future.

Please call if you have any questions or if I can be of any further assistance.

Enclosures
3457M

HELEN T. GINDER, DIRECTOR
HAVEN WHITESIDE, ASST. DIRECTOR
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MEMORANDUM

TO: Barry Ellis, Guilford Industries
FROM: Tim Glidden, Legislative Assistant TG

SUBJECT: Water Quality Reclassification Study
DATE: September 3,1985

In response to Mr Ball's request, I have added your name to the mailing list for notification of subcommittee meetings on the water quality study. I have also enclosed a copy of LD 1503 which was introduced in the last legislative session. The subcommittee will be developing amendments to this bill for consideration by the Legislature in 1986.

The study subcommittee is in the midst of its review of LD 1503 at this point. Comments are being solicited along with suggestions for specific changes (see copy of attached letter). The deadline for initial comments is September 6th. In view of the date of your request, I would suggest sending any comments you may have as soon as possible. The subcommittee has tenatively scheduled its next meeting to consider comments on September 23rd at 10AM in room 120 of the State Office Building. I will send confirmation of that date in the near future.

Please call if you have any questions or if I can be of any further assistance.

Enclosures
3457M

August 9,1985

Dear

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and interested members of the public to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. You are invited to send any suggestions you or your clients, Maine Public Service Co. and Bangor Hydro Co., may have for the committee's consideration. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

I have enclosed a copy of the original bill for your use. Thank you for your interest. Please forward any comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden
Legislative Assistant

HELEN T. GINDER, DIRECTOR
HAVEN WHITESIDE, ASST. DIRECTOR
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ANDREA COLNES, RES. ASST.

August 23,1985

John M. Kerry
Director
Office of Energy Resources
State House Station #53
Augusta, Maine 04333

Dear Director Kerry:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and other interested parties to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. You are invited to send any suggestions you may have for the committee's consideration. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

Thank you for your interest. Please forward any comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

cc: Arthur Lerman

3364M

HELEN T. GINDER, DIRECTOR
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ANDREA COLNES, RES. ASST.

August 23,1985

Stuart M. Smith
Commissioner
Department of Agriculture, Food and Rural Resources
State House Station #28
Augusta, Maine 04333

Dear Commissioner Smith:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and other interested parties to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. You are invited to send any suggestions you may have for the committee's consideration. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

Thank you for your interest. Please forward any comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

3365M

HELEN T. GINDER, DIRECTOR
HAVEN WHITESIDE, ASST. DIRECTOR
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ANDREA COLNES, RES. ASST.

August 23,1985

Spenser Apollonio
Commissioner
Department of Marine Resources
State House Station #21
Augusta, Maine 04333

Dear ~~Commissioner~~ Spenser Apollonio:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and other interested parties to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. You are invited to send any suggestions you may have for the committee's consideration. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

Thank you for your interest. Please forward any comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden
Legislative Assistant

3363M

HELEN T. GINDER, DIRECTOR
HAVEN WHITESIDE, ASST. DIRECTOR
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ANDREA COLNES, RES. ASST.

August 20,1985

The Honorable John L. Martin
Speaker of the House
Maine Legislature
Augusta, Maine 04330

Dear Speaker Martin:

The Subcommittee on Water Reclassification will meet on Monday, September 23rd at 10AM in room 120 of the State Office Building. The purpose of this meeting will be to consider recommendations from any interested parties for revisions or additions to LD 1503.

I will be working with Senator Usher and Representaive Michaud to prepared a digest of comments and recomendations along with an agenda for initial discussion. I will try to get you a copy of this material prior to the meeting.

I have enclosed a preliminary list of issues under consideration. These were drawn from the public hearing testimony last spring. Please call if I can be of any assistance.

Sincerely,

Tim Glidden
Legislative Assistant

3344M

HELEN T. GINDER, DIRECTOR
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ANDREA COLNES, RES. ASST.

August 20,1985

The Honorable Charles P. Pray
President of the Senate
Maine Legislature
Augusta, Maine 04330

Dear President Pray:

The Subcommittee on Water Reclassification will meet on Monday, September 23rd at 10AM in room 120 of the State Office Building. The purpose of this meeting will be to consider recommendations from any interested parties for revisions or additions to LD 1503.

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Legislative Assistant

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MARTHA FREEMAN
CHRISTOS GIANOPOULOS
WILLIAM T. GLIDDEN, JR.

STATE OF MAINE
OFFICE OF LEGISLATIVE ASSISTANTS
ROOM 101
STATE HOUSE, STATION 13
AUGUSTA, MAINE 04333
TEL.: (207) 289-2486

SARAH HOOKE
JULIE S. JONES
JOHN B. KNOX
EDWARD POTTER
MARGARET J. REINSCH
LARS RYDELL
JOHN SELSER
ANDREA COLNES, RES. ASST.

TO: Interested Parties
FROM: Tim Glidden, Legislative Assistant

SUBJECT: Water Quality Reclassification Issues
DATE: August 19,1985

As you requested, I am sending a copy of the issue summary sent by the water quality subcommittee to Commissioner Warren at the DEP. This summary is not exhaustive but does cover all of the major issues raised at the public hearing on LD 1503 in the spring of 1985. Issues other than those on the enclosed list may be discussed by the subcommittee in the future.

Thank you for your interest and participation. Please contact me if you have any questions or further requests.

3340M

TO: Members, Subcommittee on Water Reclassification
FROM: Tim Glidden, Legislative Assistant

SUBJECT: DEP Presentation at the 8/19 Meeting
DATE: August 13,1985

DEP has suggested that a brief (1/2 hour) overview of the proposed "biological" water quality standards would be useful. This does fit well with the general concerns raised by the committee and public testimony over the lack of statutory specificity in the LD 1503 water quality classifications. In essence, the DEP presentation would shed some light on the kind of regulations DEP would adopt <u>if</u> LD 1503 passes. I have asked them to make the presentation during our upcoming meeting on the 19th of August.

I have enclosed a copy of the background material DEP has supplied. This is the same material that DEP will be using in a public informational workshop on the same subject sometime in late September.

See you in Augusta on August 19th at 10AM (Rm120).

3306M

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

August 9,1985

Glenn H. Manuel
Commissioner
Department of Inland Fisheries and Wildlife
State House Station #41
Augusta, Maine 04333

Dear Commissioner Manuel:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and other interested parties to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. You are invited to send any suggestions you may have for the committee's consideration. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

I have enclosed a copy of the original bill for your use. Thank you for your interest. Please forward any comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

3289M

August 9,1985

Richard E. Barringer
Director
State Planning Office
State House Station #38
Augusta, Maine 04333

Dear Mr. ~~Barringer~~ Dick:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and other interested parties to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. As chair of the Land and Water Resources Council, you are invited to send any suggestions you may have for the committee's consideration. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

I have enclosed a copy of the original bill for your use. Thank you for your interest. Please forward any comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

3289M

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

August 9,1985

Richard Anderson
Commissioner
Department of Conservation
State House Station #22
Augusta, Maine 04333

Dear ~~Commissioner~~ Dick Anderson:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and other interested parties to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. You are invited to send any suggestions you may have for the committee's consideration. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

I have enclosed a copy of the original bill for your use. Thank you for your interest. Please forward any comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

cc: Ken Spalding
3288M

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

August 9,1985

The Honorable Charles P. Pray
President of the Senate
Maine Legislature
State House Station #3
Augusta, Maine 04333

Dear President Pray:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and interested members of the public to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. I have sent requests for comments to a wide variety of parties (see attached list).

The committee would welcome any suggestions you may have as sponsor of the bill. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

I have enclosed a copy of the original bill for your use. Thank you for your interest. Please let me know if you have any questions or if there are other groups you would like the committee to contact.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

3286M

Water Quality Study
Proposed List of Commentors

Bangor Hydro Co.
Central Maine Power Co.
Congress of Lake Associations
Great Northern Paper Co.
International Paper Co.
Maine Association of Conservation Commissions
Maine Audubon Society
Maine Chamber of Commerce and Industry
Maine Depts (DEP, DHS, IF&W, SPO, DOC)
Maine Municipal Association
Maine Public Service Co.
Natural Resources Council of Maine
Paper Industry Information Office
Sportsman's Alliance of Maine
Trout Unlimited
U.S Environmental Protection Agency
Wildlife Society

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

August 9,1985

The Honorable John L. Martin
Speaker of the House
Maine Legislature
State House Station #2
Augusta, Maine 04333

Dear Speaker Martin:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and interested members of the public to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. I have sent requests for comments to a wide variety of parties (see attached list).

The committee would welcome any suggestions you may have as sponsor of the bill. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

I have enclosed a copy of the original bill for your use. Thank you for your interest. Please let me know if you have any questions or if there are other groups you would like the committee to contact.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

add a cc
to Andy Michaud
for list

Water Quality Study
Proposed List of Commentors

Bangor Hydro Co.
Central Maine Power Co.
Congress of Lake Associations
Great Northern Paper Co.
International Paper Co.
Maine Association of Conservation Commissions
Maine Audubon Society
Maine Chamber of Commerce and Industry
Maine Depts (DEP, DHS, IF&W, SPO, DOC)
Maine Municipal Association
Maine Public Service Co.
Natural Resources Council of Maine
Paper Industry Information Office
Sportsman's Alliance of Maine
Trout Unlimited
U.S Environmental Protection Agency
Wildlife Society

August 9,1985

Philip W. Haines, Ph.D.
Director, Public Health Laboratory
Department of Human Services
State House Station #11
Augusta, Maine 04333

Dear Dr. Haines:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and interested members of the public to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. You are invited to send any suggestions you may have for the committee's consideration. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

The committee would be particularly interested in any suggestions you would have pertaining to the bacteriological standards incorporated in the proposed classification system. From the public health perspective, perhaps you could explain the rationale for the choice of illness risk levels for each classification.

I have enclosed a copy of the original bill for your use. Thank you for your interest. Please forward your comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

3271M

STATE HOUSE STATION 2, AUGUSTA, MAINE 04333 TELEPHONE 207-289-2096

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

August 9,1985

Henry Magnuson
Executive Director
Paper Industry Information Office
133 State St.
Augusta, Maine 04330

One Monument Sq
Portland Me

Hank
Dear ~~Mr. Magnuson~~:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and interested members of the public to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. You are invited to send any suggestions you may have for the committee's consideration. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

Specific issues of particular interest include several mentioned in your previous testimony. The committee would appreciate specific suggestions on the questions of:

1. improving the specificity of the biological and ecological criteria
2. inclusion of designated uses in water quality classifications (as mandated by the federal Clean Water Act);
3. classification of impoundments;
4. nonpoint source discharges; and
5. "goals" vs "standards" in the classification system.

STATE HOUSE STATION 2, AUGUSTA, MAINE 04333 TELEPHONE 207-289-2096

Suggestions on any other issues your membership may feel are important would also be welcome.

I have enclosed a copy of the original bill for your use. Thank you for your interest. Please forward any comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

cc: John Delahanty, Pierce Atwood
3272M

SENATE

RONALD E. USHER, DISTRICT 28, CHAIR
JUDY C. KANY, DISTRICT 17
JEROME A. EMERSON, DISTRICT 9

DAVID ELLIOTT, LEGISLATIVE ASSISTANT
WILLIAM T. GLIDDEN, LEGISLATIVE ASSISTANT
ALICE SCHLOSSER, COMMITTEE CLERK

HOUSE

MICHAEL H. MICHAUD, EAST MILLINOCKET, CHAIR
PAUL F. JACQUES, WATERVILLE
JAMES MITCHELL, FREEPORT
VINTON T. RIDLEY, SHAPLEIGH
JAMES REED COLES, HARPSWELL
ANNETTE M. HOGLUND, PORTLAND
EDWARD L. DEXTER, KINGFIELD
DARRYL N. BROWN, LIVERMORE FALLS
MURIEL D. HOLLOWAY, EDGECOMB
STEPHEN J. LAW, DOVER-FOXCROFT

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

August 9,1985

Jim Dow
Natural Resources Council of Maine
271 State St,
Augusta, Maine 04330

Dear ~~Mr. Dow~~ Jim:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and interested members of the public to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. You are invited to send any suggestions you may have for the committee's consideration. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

Specific issues of particular interest include several mentioned in your previous testimony. The committee would appreciate specific suggestions on the questions of:

1. "goals" vs "standards" in the classification system.
2. nonpoint source discharges;
3. anti-degradation language
4. discharges to lakes and their tributaries; and
5. DO levels for individual classifications.

Suggestions on any other issues your membership may feel are important would also be welcome.

STATE HOUSE STATION 2, AUGUSTA, MAINE 04333 TELEPHONE 207-289-2096

I have enclosed a copy of the original bill for your use. Thank you for your interest. Please forward any comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

3275M

SENATE

RONALD E. USHER, DISTRICT 28, CHAIR
JUDY C. KANY, DISTRICT 17
JEROME A. EMERSON, DISTRICT 9

DAVID ELLIOTT, LEGISLATIVE ASSISTANT
WILLIAM T. GLIDDEN, LEGISLATIVE ASSISTANT
ALICE SCHLOSSER, COMMITTEE CLERK

HOUSE

MICHAEL H. MICHAUD, EAST MILLINOCKET, CHAIR
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JAMES MITCHELL, FREEPORT
VINTON T. RIDLEY, SHAPLEIGH
JAMES REED COLES, HARPSWELL
ANNETTE M. HOGLUND, PORTLAND
EDWARD L. DEXTER, KINGFIELD
DARRYL N. BROWN, LIVERMORE FALLS
MURIEL D. HOLLOWAY, EDGECOMB
STEPHEN J. LAW, DOVER-FOXCROFT

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

August 9,1985

Ron Howse
Great Northern Paper Co.
Millinocket, Maine 04462

Dear Mr. Howse:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and interested members of the public to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. You are invited to send any suggestions you may have for the committee's consideration. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

The committee would appreciate suggestions on the specific issues you raised at the hearing concerning determinations of dissolved oxygen contents and related testing procedures. Suggested language on the classification system for impoundments would also be useful.

I have enclosed a copy of the original bill for your use. Thank you for your interest. Please forward any comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

3274M

SENATE

RONALD E. USHER, DISTRICT 28, CHAIR
JUDY C. KANY, DISTRICT 17
JEROME A. EMERSON, DISTRICT 9

DAVID ELLIOTT, LEGISLATIVE ASSISTANT
WILLIAM T. GLIDDEN, LEGISLATIVE ASSISTANT
ALICE SCHLOSSER, COMMITTEE CLERK

HOUSE

MICHAEL H. MICHAUD, EAST MILLINOCKET, CHAIR
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JAMES MITCHELL, FREEPORT
VINTON T. RIDLEY, SHAPLEIGH
JAMES REED COLES, HARPSWELL
ANNETTE M. HOGLUND, PORTLAND
EDWARD L. DEXTER, KINGFIELD
DARRYL N. BROWN, LIVERMORE FALLS
MURIEL D. HOLLOWAY, EDGECOMB
STEPHEN J. LAW, DOVER-FOXCROFT

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

August 9,1985

Jim Grippe
Environmental Services Supervisor
International Paper Co.
Jay, Maine 04239

Dear Mr. Grippe:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and interested members of the public to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. You are invited to send any suggestions you may have for the committee's consideration. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

The committee would appreciate suggestions on the specific issues Mr. Linder raised at the hearing concerning determinations of dissolved oxygen contents and related testing procedures. Suggested language on the classification system for impoundments would also be useful.

I have enclosed a copy of the original bill for your use. Thank you for your interest. Please forward any comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

3273M

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

August 9,1985

Thatcher Turner
Maine Chamber of Commerce and Industry
126 Sewall St.
Augusta, Maine 04330

Dear Mr. Turner:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and interested members of the public to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. You are invited to send any suggestions you may have for the committee's consideration. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

I have enclosed a copy of the original bill for your use. Thank you for your interest. Please forward any comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

cc: Patty Waugh, MCC&I
3276M

STATE HOUSE STATION 2, AUGUSTA, MAINE 04333 TELEPHONE 207-289-2096

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

August 9,1985

Kay Rand
Maine Municipal Association
Community Drive
Augusta, Maine 04330

Dear ~~Ms. Rand~~ Kay:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and interested members of the public to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. You are invited to send any suggestions you may have for the committee's consideration. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

I have enclosed a copy of the original bill for your use. Thank you for your interest. Please forward any comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

3279M

STATE HOUSE STATION 2, AUGUSTA, MAINE 04333 TELEPHONE 207-289-2096

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

August 9,1985

Peter Thompson
Trout Unlimited
New Sharon, Maine 04955

Dear Mr. Thompson:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and interested members of the public to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. You are invited to send any suggestions you may have for the committee's consideration. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

I have enclosed a copy of the original bill for your use. Thank you for your interest. Please forward any comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

3278M

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

August 9,1985

Charles Hewett, Ph.D.
Executive Director, Maine Audubon Society
Gilsland Farm
118 Rte. 1
Falmouth, Maine 04105

Dear Dr. ~~Hewett:~~ Chuck

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and interested members of the public to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. You are invited to send any suggestions you may have for the committee's consideration. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

The committee is particularly interested in the issues raised in your testimony concerning the measurement and control of cumulative impact on water quality and in the application of the antidegradation language.

I have enclosed a copy of the original bill for your use. Thank you for your interest. Please forward any comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

3277M

August 9,1985

John Rowe
Chief Executive Officer
Central Maine Power Co.
Edison Drive
Augusta, MAine 04336

Dear Mr. Rowe:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and interested members of the public to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. You are invited to send any suggestions you may have for the committee's consideration. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

I have enclosed a copy of the original bill for your use. Thank you for your interest. Please forward any comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

cc: Annette Anderson, CMP
3280M

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

August 9,1985

Art Ritter
Wildlife Society
Sylvan Way
Manchester, Maine 04351

Dear Mr. Ritter:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

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I have enclosed a copy of the original bill for your use. Thank you for your interest. Please forward any comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

3284M

STATE HOUSE STATION 2, AUGUSTA, MAINE 04333 TELEPHONE 207-289-2096

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

August 9,1985

Gwen Hilton
Maine Association of Conservation Commissions
c/o Maine Tomorrow
77 Water St.
Hallowell, Maine 04347

Dear Ms. Hilton:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and interested members of the public to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. You are invited to send any suggestions you or your clients may have for the committee's consideration. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

I have enclosed a copy of the original bill for your use. Thank you for your interest. Please forward any comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

3283M

STATE HOUSE STATION 2, AUGUSTA, MAINE 04333 TELEPHONE 207-289-2096

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

August 9,1985

Tom Gordon
Congress of Lake Associations
PO Box 86
East Winthrop, Maine 04343

Dear ~~Mr. Gordon~~ Tom:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

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I have enclosed a copy of the original bill for your use. Thank you for your interest. Please forward any comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

3282M

STATE HOUSE STATION 2, AUGUSTA, MAINE 04333 TELEPHONE 207-289-2096

August 9,1985

Mary Ann Lynch
Verrill & Dana
2 Canal Plaza
PO Box 586
Portland, Maine 04112

Dear Ms. Lynch:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and interested members of the public to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. You are invited to send any suggestions you or your clients, Maine Public Service Co. and Bangor Hydro Co., may have for the committee's consideration. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

I have enclosed a copy of the original bill for your use. Thank you for your interest. Please forward any comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

3281M

STATE HOUSE STATION 2, AUGUSTA, MAINE 04333 TELEPHONE 207-289-2096

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

August 9,1985

David Allen
Executive Director
Sportsman's Alliance of Maine
Hospital St.
Augusta, Maine 04330

Dear ~~Mr. Allen~~ Dave:

During the First Regular Session of the 112th Maine Legislature, the Joint Standing Committee on Energy and Natural Resources held hearings on LD 1503, An Act to Amend the Classfication System for Maine Waters and Change the Classifications of Certain Waters. Because of the complexity of the issues involved and because the bill was introduced late in the session, the committee voted to hold the bill until 1986 and to study it during the summer and fall of 1985.

The committee will be working with the Department of Environmental Protection and interested members of the public to revise the bill. To that end, the committee is seeking specific suggestions for changes or additions to the language of the bill. You are invited to send any suggestions you may have for the committee's consideration. The committee will be meeting in late September to consider suggested revisions. The meeting date and location will be announced at a later time.

I have enclosed a copy of the original bill for your use. Thank you for your interest. Please forward any comments to me by September 6th. I look forward to hearing from you.

Sincerely,

Tim Glidden

Tim Glidden
Legislative Assistant

3287M

HELEN T. GINDER, DIRECTOR
HAVEN WHITESIDE, ASST. DIRECTOR
GILBERT W. BREWER
DAVID ELLIOTT
MARTHA FREEMAN
CHRISTOS GIANOPOULOS
WILLIAM T. GLIDDEN, JR.

STATE OF MAINE
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SARAH HOOKE
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JOHN B. KNOX
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MARGARET J. REINSCH
LARS RYDELL
JOHN SELSER
ANDREA COLNES, RES. ASST.

TO: Members, Subcommittee on Water Reclassification
FROM: Tim Glidden, Legislative Assistant

SUBJECT: Initial meeting
DATE: August 8,1985

The subcommittee on water reclassification will meet with Henry Warren, Commissioner of DEP, and his staff on August 19th at 10AM in Room 120 of the State Office Building.

The purpose of this meeting will be to initiate discussions with the department on the issues raised during the public hearing on LD 1503. Specific issues are listed in the letter of July 31st to Commissioner Warren of which you have all received a copy.

I am now writing to other interested parties to solicit their suggestions for specific changes to the bill. These suggestions will be considered at a subsequent meeting sometime in September. Your suggestions on people to write to for comments are welcome. Please contact me soon if you have any recommendations in this area.

Dave and I look forward to seeing you soon in lovely Augusta.

3266M

HELEN T. GINDER, DIRECTOR
HAVEN WHITESIDE, ASST. DIRECTOR
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ANDREA COLNES, RES. ASST.

July 31,1985

Henry E. Warren
Commissioner
Department of Environmental Protection
State House Station 17
Augusta, Maine 04333

Dear Hank:

I recently received a package of information from Ken Young in response to the Committee's request for initial assistance on the Water Quality Reclassification Study. The information is useful; I look forward to receiving the next packages on existing water quality and the basis of the classification changes.

I might note that I have reviewed the 1984 ENVIRONEWS article that Ken refered to. While the article provides a good overview of the Department's objectives in revising the classification criteria, the basis for the changes is not explained in a way that allows me to understand how the Department will implement and use the new criteria. I fully appreciate the fact that preparing a synopsis of the relevant scientific literature will be time-consuming but I feel that such a synopsis will be of considerable value for the study given the high level of interest in this topic.

As mentioned in the previous letter from the committee chairs, the study subcommittee would like to meet with you to begin discussions about the classification system. After talking with the subcommittee and Ken Young, I have tenatively scheduled this meeting for August 19th at 10 AM. I hope this will be convenient for you. I will confirm the meeting and a room in the near future.

By way of defining an agenda for our discussion, Dave Elliott and I have reviewed the original bill (LD 1503) and the testimony submitted at its hearing. In an attachment to this letter, I have summarized the issues that were raised. The subcommittee is interested in beginning a discussion of the Department's position on these issues.

As a starting point, I'd suggest that the discussion be focused on the objectives of the water quality program and the context within which it operates. The issues on the attached sheet can be used as examples to tie the discussion to specifics of the bill under consideration. For example, preservation of water quality sufficient to support certain uses has always been an objective of the program and, as such, has been included in previous water quality classifications as well as those currently proposed. In addition, the Maine water quality program derives much of its form and substance from the requirements of the federal Clean Water Act. In fact, several aspects of the proposed changes are directly related to federal objectives and timetables.

I look forward to working with you on this study. Please call if you have any questions or suggestions for the upcoming meeting.

Sincerely,

Tim Glidden
Legislative Assistant

cc: Sen. Ron Usher
Rep. Mike Michaud
Rep. Reed Coles
Rep. Steve Law
Ken Young, Deputy Commissioner
Dave Elliott, Legislative Assistant

Encl.

3210M

Preliminary Water Reclassification Issues
July 31,1985

A. There is confusion over the use of the terms, "management goals" and "water quality standards". Part of the confusion may stem from a misunderstanding of the goal-oriented nature of the water quality classification system. In addition, there is concern that "management goals" may not be enforceable if they appear to be separate from the classification standards. Revision or definition of terms may be necessary.

B. The ecological and biological criteria used in the new classification system are not specific and will, apparently require substantial rule-making prior to implementation. Terms such as "natural habitat", "unimpaired habitat" and "naturally occurring" among others may require definition. This will be particularly important in tracking the cumulative impact of waste water discharges on the "structure and function of the aquatic community".

C. The inclusion of "designated uses" in the classification criteria continues to be a subject of some controvery. There is concern that a discharge license might be denied if the Board determines that a designated use of the relevant classification would be negatively affected even if the physical and biological quality criteria were satisfied.

D. The classification system to be applied to impoundments is a subject of concern. The argument has been made that impoundments are hydrologically distinct from lakes and rivers and that, therefore, the classification systems designed for lakes and rivers are not appropriate for impoundments. Closely related to this issue is the question of dissolved oxygen (DO) testing procedures and standards.

E. LD 1503 does not specifically change the statutory definition of the term, "discharge". However, there is some confusion over whether or not non-point sources of pollution are to be considered as discharges for the purposes of the water quality program, particularly the licensing program.

F. The language and anticipated application of the antidegradation language in LD 1503 (Sec. 1. of the LD; §360, sub§3, third paragraph) are not clear. The relationship of this language to the Clean Water Act and related EPA regulations should be clarified.

G. The proposed classification system for lakes contains only one class and includes several prohibitions on discharges. The reason for a shift from a two class system to a single class has been questioned. In addition, it has been suggested that both domestic and industrial discharges should be banned from the tributaries to great ponds.

H. While the rational for the shift in the bacteriological criteria appear scientifically justified, it is not clear why the Department has choosen a risk level of 1 illness per 100 swimmers as an acceptable base (Class C quality). The relationship of this assumption to the existing standards is not clear.

3227M

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

July 18,1985

Henry Warren
Commissioner
Department of Environmental Protection
State House, Station #17
Augusta, Maine 04333

Dear Commissioner Warren:

With the approval of the Legislative Council, the Energy and Natural Resources Committee is beginning its study of the proposed changes in the water quality classification system. A subcommittee, of which we are both members, will be working this summer and fall to develop recommendations for the full committee and the Legislature. We expect to use LD 1503 as the vehicle for these recommendations.

With the DEP's obvious interest in the study, we invite you to work closely with us throughout the study and look forward to your assistance. We will be seeking comments from various interested parties during the course of the study and expect that you will want to be involved in discussions over the specifics of any final proposals.

The study will focus on three related topics. These are:

1. The scientific basis for changes in the water quality criteria and definitions.

2. The legal aspects of changes in the water quality classification system, including the relationship of the proposed changes to the federal Clean Water Act.

3. A comparison of the old and new classifications of Maine waters including examination of the environmental and economic implications of the new classifications.

As initial assistance, we would appreciate it if the Department could supply two items. The first would be a "side-by-side" comparison of the current water quality classifications (stretch by stretch) with the proposed new classifications. Please identify any stretch which is either not meeting its current classification or which exceeds its classification most of the time. Using a copy of the existing statute would be the most useful format for us. The second item would be a synopsis of the scientific literature upon which the Department has relied in changing the definifitions of the classifications. A bibliography would be useful as part of this.

As soon as we have established a specific schedule, we will be in touch with you to set up an initial meeting with the subcommittee. Until that time we would appreciate your cooperation with subcommittee staff. Please contact Tim Glidden with any comments or suggestions you might have with regard to this study.

Sincerely,

Ron Usher RC

Sen. Ron Usher, Senate Chair

Mike Michaud RC

Rep. Mike Michaud, House Chair

3112M

HELEN T. GINDER, DIRECTOR
HAVEN WHITESIDE, ASST. DIRECTOR
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ANDREA COLNES, RES. ASST.

TO: Sen. Ron Usher, chair
Rep. Mike Michaud, chair
FROM: Tim Glidden, Legislative Assistant

SUBJECT: Water Quality Study
DATE: July 8,1985

With all the fun behind us, I know you're just panting to come back to Augusta. Fortunately, there is a good reason for us to get together again soon. We do have an approved study for the Water Quality Reclassification bill with a modest budget and a subcommittee. This memo lays out some of the issues, proposes a study plan and a tenative schedule.

As I see it, there are three major groups of issues. The first has to do with the definition of "clean". What are the scientific criteria that make up the A, B, C, and D classifications? LD 1503 proposes important changes in these definitions including a new classification (AA), the elimination of an old one (D), and changes in the criteria themselves (the kind of bacteria used as measures of cleaniness, etc.). While this is a pretty technical area, it deserves very careful examination.

The second major group of issues are legal. The DEP program exists under both state and federal authority. As far as EPA (federal) is concerned, the legitimacy of the DEP program depends on how well Maine water quality laws meet the requirements of the federal Clean Water Act and the subsequent EPA regulations. EPA has to approve the Maine system before the state can receive any of the federal dollars to build sewage plants and conduct other water quality activities. So far, EPA has found Maine's approach to water quality regulation to be acceptable. There are indications that EPA has comments and suggested revisions for LD 1503 that the committee will want to consider.

Last but not least, the new water quality definitions will be applied to the waters of the State. Because of changes in the classification scheme and in the definitions themselves, there are likely to be some subtle changes in the

classifications of any given piece of water. These changes could have important environmental and economic implications for existing and future uses of that water. Although the bill has been presented as a "side-step" from the old system to the new, it is virtually impossible for the change to be completely neutral (like the impact of federal tax reform on federal tax revenues). There may be stretches of water which are substantially cleaner than their current classification and that should have a higher classification. Conversely, there may be stretches for which the existing classification is an unrealistically high goal.

Judging from the comments of various interested parties at the hearing, there is alot of interest in all of three groups of issues. DEP is, of course, very interested.

Dave Elliott and I will be working together on this study to identify and analyze specific issues. Andi Colnes, our research assistant will also be helping out. We will be able to work on issues that are raised by the subcommittee and by interested parties. I will ask the DEP for a side-by-side comparison of the old and new classification schemes as they are applied to the State's waters. I will also ask the DEP to supply the subcommittee with the backup literature and justification for the proposed changes in the classification definitions. I have enclosed a draft letter to Hank Warren "kicking off" the study and thanking him in advance for his cooperation. I'd suggest that when we have agreement on the approach the study will take, we meet with Hank as soon as possible.

In order to get others involved in the study, I'd suggest that the subcommittee actively solicit specific comments from all interested parties (see attached list; any additions?). I can draft a letter to each outlining the study and seeking their input. We might also want to run a newspaper ad asking for comments in order to avoid any charges of selectivity.

Please give me with any suggestions or comments on this. I'd like to get going on this as soon as possible.

cc: Dave Elliott
Andi Colnes
enclosures

3050M

Water Quality Study
Proposed List of Commentors

U.S Environmental Protection Agency
Natural Resources Council of Maine
Paper Industry Information Office
Maine Audubon Society
Maine Municipal Association
Maine Association of Conservation Commissions
Central Maine Power Co.
Bangor Hydro Co.
Maine Public Service Co.
Maine Chamber of Commerce and Industry
Others testifying at the LD 1503 hearing
Maine Depts (DEP, IF&W, SPO, DOC)

OTHERS????

Place public notice to solicit additional input.

3050M

DRAFT DRAFT DRAFT

July 18,1985

Henry Warren
Commissioner
Department of Environmental Protection
State House, Station #17
Augusta, Maine 04333

Dear Commissioner Warren:

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With the DEP's obvious interest in the study, we invite you to work closely with us throughout the study and look forward to your assistance. We will be seeking comments from various interested parties during the course of the study and expect that you will want to be involved in discussions over the specifics of any final proposals.

The study will focus on three related topics. These are:

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DRAFT DRAFT DRAFT

As initial assistance, we would appreciate it if the Department could supply two items. The first would be a "side-by-side" comparison of the current water quality classifications (stretch by stretch) with the proposed new classifications. Please identify any stretch which is either not meeting its current classification or which exceeds its classification most of the time. Using a copy of the existing statute would be the most useful format for us. The second item would be a synopsis of the rational and scientific literature upon which the Department has relied in changing the definifitions of the classifications. A bibliography would be useful as part of this.

As soon as we have established a specific schedule, we will be in touch with you to set up an initial meeting with the subcommittee. Until that time we would appreciate your cooperation with subcommittee staff. Please contact Tim Glidden with any comments or suggestions you might have with regard to this study.

Sincerely,

Sen. Ron Usher, Senate Chair

Rep. Mike Michaud, House Chair

3050

SENATE

RONALD E. USHER, DISTRICT 28, CHAIR
JUDY C. KANY, DISTRICT 17
JEROME A. EMERSON, DISTRICT 9

DAVID ELLIOTT, LEGISLATIVE ASSISTANT
WILLIAM T. GLIDDEN, LEGISLATIVE ASSISTANT
ALICE SCHLOSSER, COMMITTEE CLERK

HOUSE

MICHAEL H. MICHAUD, EAST MILLINOCKET
CHAIR
PAUL F. JACQUES, WATERVILLE
JAMES MITCHELL, FREEPORT
VINTON T. RIDLEY, SHAPLEIGH
JAMES REED COLES, HARPSWELL
ANNETTE M. HOGLUND, PORTLAND
EDWARD L. DEXTER, KINGFIELD
DARRYL N. BROWN, LIVERMORE FALLS
MURIEL D. HOLLOWAY, EDGECOMB
STEPHEN J. LAW, DOVER-FOXCROFT

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

TO: Rep. John Diamond, Chair
Legislative Council

FROM: Rep. Mike Michaud, House Chair
Joint Standing Committee on Energy and Natural Resources

SUBJECT: Subcommittee membership and meetings for interim studies

DATE: June 25, 1985

I have reviewed the interim study proposals for our committee with Senator Usher. We propose the following membership for the study subcommittees and the number of required subcommittee meetings.

Water Reclassification Study (LD 1503)
(ENR) Sen. Usher, chair — 4 meetings
Rep. Michaud
Rep. Coles
Rep. Law

Subdivision Conformity Study (LD 1229)
(ENR) Rep. Mitchell, chair — 2 meetings
Rep. Hoglund
Rep. Holloway
Rep. Brown

Spruce-fir Management Tax Credits Study (LD 286)
(ENR) Sen. Emerson, chair — 2 meetings
Rep. Dexter
Rep. Ridley
Rep. Michaud

We expect that the full committee will have to meet twice prior to the 2nd Regular Session to review the findings and recommendations of the subcommittees.

cc. Sally Diamond
2961M

STATE HOUSE STATION 2, AUGUSTA, MAINE 04333 TELEPHONE 207-289-2096

SENATE

RONALD E. USHER, DISTRICT 28, CHAIR
JUDY C. KANY, DISTRICT 17
JEROME A. EMERSON, DISTRICT 9

DAVID ELLIOTT, LEGISLATIVE ASSISTANT
WILLIAM T. GLIDDEN, LEGISLATIVE ASSISTANT
ALICE SCHLOSSER, COMMITTEE CLERK

HOUSE

MICHAEL H. MICHAUD, EAST MILLINOCKET, CHAIR
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JAMES MITCHELL, FREEPORT
VINTON T. RIDLEY, SHAPLEIGH
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ANNETTE M. HOGLUND, PORTLAND
EDWARD L. DEXTER, KINGFIELD
DARRYL N. BROWN, LIVERMORE FALLS
MURIEL D. HOLLOWAY, EDGECOMB
STEPHEN J. LAW, DOVER-FOXCROFT

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

May 22,1985

Rep. John Diamond, Chair
Legislative Council
State House
Augusta, Maine

Dear Rep. Diamond:

The purpose of this letter is to request permission to hold and study LD 1503, An Act to Amend the Classification System for Maine Waters and Change the Classification of Certain Waters.

At the public hearing on LD 1503, virtually all testimony indicated the need for careful and unrushed consideration of the many issues contained in the bill. The Committee has voted unanimously to request the holdover due to the late introduction of the bill and its complex nature.

We are prepared to appoint a subcommittee of three to work on the bill during the interim with the staff support of the Office of Legislative Assistants. This subcommittee would report its recommendations to the full committee at the beginning of the next regular session.

Thank you for your consideration of this matter.

Sincerely,

Rep. Michael Michaud
House Chair

Sen. Ronald Usher
Senate Chair

2467M

RECOMMENDED COMMITTEE STUDY

1. COMMITTEE: Energy and Natural Resources

2. SUBJECT OF STUDY:

Revisions to the water quality reclassification system and the actual reclassification of Maine waters. (see LD 1503)

3. PRIORITY NUMBER: First

4. COMPLETION DATE: January 31, 1986

5. ANALYSIS OF THE PROBLEM:

LD 1503 proposes sweeping revisions in the water quality classification system and also changes the classification of waters throughout the State. Testimony at the public hearing on the bill raised a wide range of issues including the classications themselves, the "anti-degradation" provisions, economic impacts, and the appropriateness of specific classifications.

6. REASON FOR STUDY:

For the reasons cited above, the Committee requires adequate time to carefully consider the bill. There is not sufficient time remaining in this session for the committee to responsibly discharge its responsibilities.

7. MEMBERS OF SUBCOMMITTEE:

Subcommittee of three: Not yet selected

Sen. Ronald Usher
342 Saco Street
Westbrook, ME 04092

142
Rep. Michael H. Michaud
P. O. Box W
East Millinocket, ME 04430

140
Rep. James Reed Coles
Rt. 2, Box 59
South Harpswell, ME 04079

49
Rep. Stephen J. Law
RFD#2, Box 54
Dover-Foxcroft, ME 04426

Philip W. Haines, Ph.D., Dir.
Public Health Laboratory
Department of Human Services
State House Station 11

John M. Kerry, Dir.
Off. of Energy Resources
State House Station 53

Henry Magnuson, Ex. Dir.
Paper Industry Inf. Office
133 State Street
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Stuart M. Smith, Commissioner
Department of Agriculture
Food & Rural Resources
State House Station 28

John Delahanty
Pierce Atwood
One Monument Square
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Spencer Apollonio, Commissione
Dept. of Marine Resources
State House Station 21

Jim Dow
Natural Resources Council of ME
271 State St.
Augusta, ME 04330

Glenn H. Manuel, Commissioner
Dept. Inland Fisheries & Wildl
State House Station 41

Ron Howse
Great Northern Paper Co.
Millinocket, ME 04462

Richard Barringer, Director
State Planning Office
State House Station 38

Jim Grippe
Environmental Services Super.
International Paper Co.
Jay, ME 04239

Richard Anderson, Commissioner
Dept. of Conservation
State House Station 22

Thatcher Turner
ME Chamber of Commerce & Industry
126 Sewall St.
Augusta, ME 04330

Honorable Charles P. Pray
President of the Senate
Maine Legislature
State House Station #3

Kay Rand
Maine Municipal Association
Community Drive
Augusta, ME 04330

Honorable John L. Martin
Speaker of the House
Maine Legislature
State House Station 2

Peter Thompson
Trout Unlimited
New Sharon, ME 04955

Andy Michaud
Speaker's Office
Maine Legislature
State House Station 2

Charles Hewett, Ph.D., Ex. Dir.
ME Audubon Soc. (Gilsland Farm)
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John Rowe, Ch. Ex. Officer
Central Maine Power Co.
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Augusta, ME 04336

Art Ritter
RFD#5, Box 300
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corrected on map

Gwen Hilton
ME Assoc. of Con. Commission
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Hallowell, ME 04347

Tom Gordon
Congress of Lake Associations
P. O. Box 86
East Winthrop, ME 04343

Mary Ann Lynch
Verrill & Dana
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William Ball
Acheron Engineering
40 Main Street
Newport, ME 04953

Barry Ellis
Gilford Industries
Gilford, ME 04443

Philip W. Haines, Ph.D., Dir.
Public Health Laboratory
Department of Human Services
State House Station 11

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~~Ron Howse~~ Dale Phenicie ← change to
Great Northern Paper Co.
Millinocket, ME 04462

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Environmental Services Super.
International Paper Co.
Jay, ME 04239

Patti Waugh
~~Thatcher Turner~~
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State House Station 28

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Speaker of the House
Maine Legislature
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Andy Michaud
Speaker's Office
Maine Legislature
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Dana Perkins
Portland Water District
225 Douglas St., Box 3553
Portland, ME 04104

David E. Peakes
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Brattleboro, VT 05301

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§ 131.12 Antidegradation policy.

(a) The State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart. The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:

(1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(2) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(3) Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(4) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Act.

§ 131.13 General policies.

States may, at their discretion, include in their State standards, policies generally affecting their application and implementation, such as mixing zones, low flows and variances. Such policies are subject to EPA review and approval.