

## **2008 PROPOSED RECLASSIFICATIONS FOR MAINE WATERS**

### **Introduction**

The reclassification of waters of the State is governed by M.R.S.A. 38 Sections 464.2, 464.2-A and 464.3. This statute requires the Department of Environmental Protection to conduct water quality studies and the Board of Environmental Protection to hold hearings and propose changes to the water classification system to the Legislature for final approval. This is to be conducted from time to time, but at least every three years.

The last comprehensive review of classification occurred in 2002 with final passage by the Maine State Legislature in 2005. The Department has been gathering information through a set of public forums, meetings with interested groups and direct solicitation to various agencies and organizations since the spring of 2008 to produce the new set of recommendations contained in this document. The Board is required to conduct hearing(s) to provide an opportunity to hear comments from the public on the proposals made by the Department, and also for the public to offer other reclassification proposals for consideration. The Board will make a recommendation to the 124<sup>th</sup> Maine Legislature that will become the basis of a legislative document. Additional hearings will be conducted by the Legislature. Final determination of classification is the function of the Legislature.

### **Purpose of Classification**

Maine has had a water classification system since the 1950's. The classification system establishes water quality goals for the State. The classification system is used to direct the State in the management of its surface waters, protect the quality of those waters for the purposes intended by the Legislature, and where standards are not achieved, enhance the quality to achieve those purposes. As directed by the United States Clean Water Act, the classification standards establish designated uses, related characteristics of those uses, and criteria necessary to protect those uses.

While it is desirable for the actual quality of a water to achieve the standards in any proposed classification, classification assignments can and should be made where there is a reasonable expectation for higher uses and quality to be attained. Upgrades to classification are appropriate where it is socially or ecologically desirable to attain higher standards and where the technological and financial capacity exists to achieve those higher standards within a reasonable time. Once a classification assignment is made, and the uses and criteria are achieved, that goal is protected by the antidegradation provisions of the water quality statute, thus the law provides a mechanism for the State to continually move forward in the improvement and protection of water quality. Downgrades to classification have been infrequent and, as directed in State and federal law, are limited to situations where existing conditions do not afford the possibility to achieve the assigned class.

## **Water Quality Classes**

The State has four classes for freshwater rivers, three classes for marine and estuarine waters, and one class for lakes and ponds. The standards for these classes are at the end of this document. The general structure of each standard is that the first paragraph contains designated uses and characteristics, the second paragraph sets water quality criteria and the third paragraph establishes special provisions or restrictions on discharges or other activities.

If one makes a close comparison of the standards, it can be seen that there is actually not much difference between the uses or the qualities of the various classes. All attain the minimum fishable-swimmable standards established in the federal Clean Water Act. The classification system should be viewed more as a hierarchy of risk, rather than one of use or quality; the risk being the possibility of a breakdown of the ecosystem due to either natural or human caused events. Ecosystems that are more natural in their structure and function can be expected to be more resilient to a new stress and to show more rapid recovery. Class AA, GPA and SA involve little risk since activities such as waste discharge and impoundment are prohibited by the Maine water quality classification law. The expectation to achieve natural conditions is high in these waters, and degradation is unlikely. Class A waters allow impoundment and very restricted discharges, so the risk of degradation while small, is greater than for Class AA or SA since there is greater allowance for human activities in Class A waters. Class B and SB have fewer restrictions on activities but still maintain strict water quality criteria. Finally, Class C and SC have the least restrictions on human uses and activities and the lowest (but not low) water quality criteria. Class C and SC waters are still good quality, but the margin for error (degradation) in these waters, in the event of an additional stress being introduced (such as a spill or a drought), is the least. All water quality classifications for Maine waterbodies are designed to attain the Interim Goals of the U.S. Clean Water Act or higher.

## **Department Proposals**

The Department has actively been seeking input from a variety of sources throughout the year. This has been done through survey of the DEP staff and other natural resource agencies including the Maine Department of Inland Fisheries and Wildlife, Department of Marine Resources and the Atlantic Salmon Commission, and the U.S. Environmental Protection Agency. Direct outreach, in the form of approximately 45 telephone calls and follow-up email contact, was directed to municipalities with waters under consideration for reclassification; water quality interest groups were also directly contacted and each of the Native American tribes in Maine were contacted by telephone. Other agencies and organizations including the Maine Department of Inland Fisheries and Wildlife, the Western Foothills Land Trust, the Friends of the Basin, the Portland Water District, and the Friends of Merrymeeting Bay contributed data and recommendations for reclassification. Various environmental and conservation groups including The Nature Conservancy, the Natural Resources Council of Maine, Maine Rivers and their affiliates, various watershed councils, watershed associations, and others were contacted for their assistance. Two publicly advertised meetings were held in Lewiston and Presque Isle to allow public input. Comments were heard at those meetings and written comments were received following the meetings.

Initial Reclassification recommendations from the Department are summarized in the following table. These proposals reflect a review of the recommendations made by the aforementioned sources and information provided in water quality studies conducted in recent years (e.g. Biennial Water Quality Assessment Report required by Section 305b of the Clean Water Act, wasteload studies, etc.), management activities such as the construction of wastewater treatment facilities, and the acquisition of lands for recreation and conservation purposes surrounding certain waters. The Department seeks to achieve all the purposes and objectives described in the law including "promoting general welfare; in preventing disease; in promoting health; in providing habitat for fish, shellfish and wildlife; as a source of recreational opportunity; and as a resource for commerce and industry" by establishing a more balanced distribution of water classes statewide, particularly by seeking upgrades to classification in the more populated areas of the State. The Department recommends:

- seventeen proposals for upgrade of water quality classification;
- six proposals to change the classification statute to clarify the classification that applies to specific waterbody segments;
- one segment is recommended by the Department for Use Attainability Analysis to consider lowering of classification due to inability to attain assigned classification; and
- the Department recommends against passage, at this time, of three submitted proposals.

**MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**RECOMMENDED UPGRADES IN WATER QUALITY CLASSIFICATION**

<b>Class Change</b>	<b>Waterbody</b>	<b>Drainage Basin</b>	<b>Proposed by</b>	<b>Recommendations</b>
<b>Marine Coastal</b>				
Class SB to SA (marine)	The Basin Phippsburg	Marine Coastal	The Nature Conservancy and Friends of The Basin	Tidal inlet in the New Meadows River estuary; exceptional ecological and social value; highly productive and economically significant soft-shell clam beds; well-supported, viable upgrade.
<b>Androscoggin River Basin</b>				
Class A to AA	Abbott Brook Lincoln Pltn	Androscoggin	Maine Dept Inland Fish & Wildlife	Trib to Magalloway River. Abbott Brook provides important spawning and rearing habitat for native brook trout from the Magalloway River, which is a brook trout sport fishery of statewide significance.
Class B to A	Aunt Hannah Brook Dixfield	Androscoggin	Maine DEP	Biological monitoring shows that this brook is now attaining the standards of Class A biocriteria (1998 and 2003). The watershed is 90% forested with the remainder in small farms. The primary public use of Aunt Hannah Brook is a managed trout fishery that MDIFW manages as 'children only' fishing.
<b>Kennebec River Basin</b>				
Class C to B	Kennebec River Fairfield-Waterville	Kennebec	Maine DEP	Water quality modeling for the Kennebec indicates that this segment of the river generally is attaining Class B criteria for aquatic life and dissolved oxygen; much of the rest of the mainstem of the Kennebec upgraded to Class B; outstanding recreational fishery of statewide and regional significance, below Shawmut dam. Water quality in this segment is affected by two paper mill discharges, several municipal discharges and

				two impoundments. The deeper areas of some impounded sections may show excursions of water quality criteria at times.
Class C to B	Tidal tributaries to Kennebec River including Bond Brook, Cobbossee Stream, Togus Stream and minor drainages. Augusta, Randolph, Gardiner, others	Kennebec	Maine DEP	Classification oversight when the lower Kennebec was upgraded to Class B; Tidal segments of tributaries were left as Class C. Tidal portions of the Eastern River to remain Class C due to water quality attainment issues.
<b>Penobscot River Basin</b>				
Class B to A	Alder Stream, tributary to Piscataquis River Milo and area towns	Penobscot	The Nature Conservancy; Sweetwater Trust	Upgrade is recommended based on documentation of special concern species; watershed is 88% natural cover. The potential exists for significant ocean connectivity value for anadromous/diadromous fish due to hydrological connection to the Penobscot River and restoration project.
Class B to A	Tributaries to Seboeis Stream Sebois	Penobscot	The Nature Conservancy	Tributaries mistakenly left out of Seboeis River upgrade to Class A. Ocean connectivity fishery values; habitat for alewife, American eel, blueback herring and Atlantic salmon exists in the Seboeis but tributaries were not specified for upgrade.
B to A	Tributaries to Mattamiscontis Stream Lincoln	Penobscot	The Nature Conservancy	Tributaries mistakenly left out of Mattamiscontis Stream upgrade to Class A. Ocean connectivity fishery values. The proposal is to clarify that Mattamiscontis Stream and all tributaries are Class A.
Class B to A	West Branch Souadabscook, Browns Bk., tributaries to Souadabscook. Hampden	Penobscot	Maine DEP	Souadabscook upgraded to Class AA for Atlantic salmon “above head of tide”; tributaries left as Class B. DMR confirms that West Branch and Browns Brook are high value habitat resource for Atlantic salmon

**Presumpscot River Basin**

Class A to AA	Crooked R Harrison	Presumpscot	Maine Dept Inland Fish & Wildlife, Portland Water District and four non- governmental organizations	Proposed for upgrade to AA due to outstanding fishery and recreational values and importance as major tributary to Sebago Lake. The upgrade proposal is contingent on a pending decision on a pre-existing dam reconstruction application.
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**Saco River Basin**

Class B to A	South River, tributary to Ossipee River Porter	Saco	The Nature Conservancy	The South River is a significant tributary to the Ossipee River. Emerson Brook, the headwaters of the South River in Maine is Class A due to a high quality native brook trout fishery identified by MDIFW. A significant portion of the South River watershed is protected as conservation land by the Pine River Matrix and the watershed is largely intact, natural cover. Opportunity to increase Class A river segments in the southern Maine region.
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**Salmon Falls River Basin**

Class B to A	Little River No. Berwick; Lebanon	Salmon Falls	The Nature Conservancy	The Little River is a significant tributary to the Salmon Falls River. Biological monitoring shows attainment of Class A biocriteria in two sampled locations (No. Berwick and Lebanon). The watershed is largely intact, natural cover. Opportunity to increase Class A river segments in the southern Maine region.
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<b>St. John River Basin</b>				
Class B to A	Beaver Brook T14 R6 WELS, T14 R5 WELS, T13 R5 WELS, Portage Lake, Ashland, Castle Hill	St. John	The Nature Conservancy	Recommended by the Nature Conservancy as an example of a high quality, natural, ecological resource, worthy of preservation. The Beaver Brook watershed is predominantly in natural land cover.
Class B to A	Gardner Bk Wade Twp	St. John	Citizen proposal	Gardner Brook showed attainment of Class A biocriteria in 2004. The Gardner Brook watershed is predominantly in natural land cover. High quality, natural, ecological resource worthy of preservation.
Class B to A	Violette Stream, from source to the confluence with Caniba Brook. Van Buren	St. John	The Nature Conservancy	Proposal is for upper watershed of Violette Stream only; has predominantly natural land cover. Class A biocriteria attained. The stream was noted by The Nature Conservancy as the only representative of its type in the St. John watershed.
<b>Minor Drainages</b>				
Class B to A	Pemaquid R. Bristol	Damariscotta- coastal drg	The Nature Conservancy	The Pemaquid River connects a chain of Class GPA ponds with good water quality. This upgrade will preserve lake water quality.
Class B to A	Tributaries to Ducktrap River (Black, Kendall Tucker) Lincolville and area towns	Sheepscot- coastal	The Nature Conservancy	The Ducktrap River was upgraded to Class AA for preservation of endangered Atlantic salmon. DMR reports that the tributaries also have important salmon and other coldwater fishery values but are currently designated Class B.

### **RECOMMENDED STATUTORY CLARIFICATION OF ASSIGNED CLASSIFICATION**

Class B to GPA	Grand Falls Flowage	St. Croix	Maine DEP	Previously existing wastewater discharges have been discontinued and the ecological functioning of this section of the St. Croix is more
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	Princeton, Indian TWP Reservation, Baileyville, Fowler TWP			similar to a great pond than a river but 38 MRSA § 467.13 designates this as riverine Class B. Water quality management of the Grand Falls Flowage is more appropriately based on its lake-like characteristics
Class B to Class C Fragmented classification	Long Creek, excluding tributaries So. Portland, Westbrook	Fore	City of Westbrook	Fragmented classification - two different classes are designated within a distance of less than 0.3 mile. Due to default wording in the classification law Long Creek changes from Class C in So. Portland, to a 0.3 mile long segment in Westbrook that is Class B, and then back to Class C in Portland and So. Portland.
Class C to B Fragmented classification	Nonesuch River Scarborough Gorham	Fore	Maine DEP	Propose upgrade of upper reaches of the Nonesuch River to a point 0.5 mile downstream of Mitchell Hill Rd, Gorham, to Class B Due to default wording in the classification law the Nonesuch River changes from Class C to Class B and then back to Class C across town lines within the distance of less than 1 mile in Scarborough and Gorham.
Ambiguous language, clarify Class B	Stroudwater R including So. Branch, Fogg and Silver Brooks Scarborough	Fore	Maine DEP	Ambiguous language in statute implies Scarborough tributaries are Class C; clarify all Stroudwater is Class B
Clarify landmark used to designate Class change from A to B	St John River Fort Kent	St. John	Maine DEP	Propose to move the landmark used to designate class change from Class A to B ½ mile upstream. 38 MRSA § 467.13 currently designates the Canada-U.S. International Bridge in Fort Kent as the landmark used to mark the classification transition from Class A to Class B on the St. John River. The International Bridge is scheduled to be re-located downstream, with the potential consequence that the outfall of the Fort Kent POTW, now discharging to Class B water, will illegally discharge to Class A water.



Ambiguous language, clarify Class C	Trout Brook So Portland- Cape Elizabeth	Fore	Maine DEP	Ambiguous language in statute. Trout Brook is assigned to two classes along a town boundary that runs through the mid-channel of the brook. Waters draining into tidal waters of Cumberland County are Class B by default, except that all minor drainages in South Portland are classified as Class C. Clarify that the segment of Trout Brook that serves as the town-border between Cape Elizabeth and So Portland is Class C.

### **RECOMMENDED LOWERING OF WATER QUALITY CLASSIFICATION**

Class B impaired stream to Use Attainability Analysis (UAA to establish attainable, site-specific goals)	Jepson Brook Lewiston	Androscoggin	City of Lewiston	Jepson Brook in Lewiston is designated Class B but the stream is confined to a concrete channel for more than 80% of its length. The lower 800 feet before the confluence with the Androscoggin River remains as natural channel. City of Lewiston has petitioned for UAA; Class B is not attainable. Class C <i>may</i> be attainable in the 800 foot natural channel section with improved flow, stormwater and water quality management in the watershed. UAA needed to establish site-specific, highest attainable goals for stream.
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### **PROPOSALS THAT ARE NOT BEING RECOMMENDED BY THE DEPARTMENT AT THIS TIME**

Class C to Class B	Androscoggin River mainstem Durham, Topsham, Brunswick	Androscoggin	Friends of Merrymeeting Bay	Upgrade mainstem from Durham Boat Launch or Worumbo Dam, to mouth of the Androscoggin in Merrymeeting Bay (line between Pleasant Pt., Topsham and North Bath). FOMB data documents instantaneous and long-term average attainment of dissolved oxygen at operational loads. Information is lacking about the likelihood of attainment of Class B criteria at maximum licensed loads. Additional monitoring data and an updated
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				water quality model needed to determine the likelihood of attainment at licensed loads.
Class C to B	Aroostook River from Washburn to Caribou Washburn, Presque Isle, Caribou	St. John	Citizen proposal	While attainment of water quality standards has been documented, waste water loads at the time of the monitoring, in 2001, were low (<10% of licensed loads). Strength of attainment relative to worst case conditions is not documented due to data gaps. Need to consider pending nutrient rule.
Class C to B	Aroostook River, Caribou to international border Caribou, Fort Fairfield	St. John	Citizen proposal	While attainment of water quality standards has been documented, waste water loads at the time of the monitoring, in 2001, were low (<10% of licensed loads). Strength of attainment relative to worst case conditions is not documented due to data gaps. Need to consider pending nutrient rule.