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MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
2025 TRIENNIAL REVIEW OF WATER QUALITY STANDARDS

SUMMARY OF PUBLIC COMMENTS AND RESPONSES

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SUMMARY OF PUBLIC COMMENTS AND RESPONSES

Introduction

The Maine Department of Environmental Protection (the Department or MDEP) posted draft recommendations for water quality standards (WQS) changes, including water quality classification upgrades, considered under the Triennial Review (TR) for public comment on May 28, 2025. The recommendations were posted on the Department's website www.maine.gov/dep/water/wqs/triennial-review.html and public notice was provided as described below. One virtual public meeting was held on June 23, 2025. The Department's presentation from the public meeting was also posted on the website. The Department accepted written public comments until June 30, 2025. For later stages of the TR process, the Board of Environmental Protection will have a public hearing and a public comment phase for written comments. If the Legislature accepts a TR bill for consideration, an additional opportunity for comment will be available in that venue.

Notice of the draft recommendations and public meeting/public comment opportunities were sent by e-mail to approximately 2,650 stakeholders, including all entities that had provided TR proposals in the spring of 2024 or supported them; officials from all cities and towns in Maine; the Land Use Planning Commission (for unorganized towns); State natural resource agencies; a number of non-profit organizations; the four federally recognized Tribes in Maine; businesses that were potentially affected by proposals (e.g. dischargers, hydropower owners); Soil and Water Conservation Districts; County commissioners; consultants; and a number of private persons. Follow-up e-mails noting the relevance of the e-mail to recipients were sent to any cities and towns located in the watershed of any upgrade candidate as well as any organization included in the prior mailing. Electronic GovDelivery notices were sent to interested persons on two Department subscription lists, one for Opportunities for Comment and one specifically for public meetings. The GovDelivery notice regarding the Opportunities for Comment was sent to all Maine legislators. These notices were sent out at the start of the public comment period which began on May 28, 2025.

The Department received a number of comments during the official public comment period and wishes to thank all persons who provided input. All written and oral comments received are briefly listed in Table 1. During the public meeting, and as part of email notifications for the Department's initial public comment period, the Department requested that commenters submit any information in writing they wished to be considered and responded to during the public comment period, therefore, oral comments shared during the June 23rd public meeting are not summarized as part of this response to comments.

Written comments are presented in detail in the remainder of the document in the order proposals were included in the Department's draft recommendations document. Where applicable, comments are grouped by proposal. In some cases, typographical or other minor errors in comments have been corrected. A list of proposals for which no public comments were received

can be found below Table 1. The Department considered all comments in their entirety but have included the most relevant portions in this document in the interest of brevity and clarity. Full written comments are provided in a separate public comments document.

Table 1. List of public comments received between May 28 and June 30, 2025. For the 'Position on Original Proposal' column, an asterisk (*) indicates where the commenter's position differs from the Department's initial recommendation. For instances where comments were provided or questions asked, but no position was provided, this column was left blank.

#	Affiliation	Original Proposal	Position on Original Proposal
Written comments received (listed in in order received)			
1	City of Lewiston	Upgrade Lower Androscoggin River	Support*
2	Lewiston Falls and Jay Sewer Departments	Upgrade Androscoggin River Upgrade Lower Androscoggin River	Oppose Oppose
3	Grow L+ A	Upgrade Lower Androscoggin River	Support*
4	Eastern Maine Conservation Initiative	Upgrade Chandler Bay	Support*
5	Midcoast Conservancy	Upgrade Sheepscot River	Support*
6	The Nature Conservancy	Add Freshwater Nutrient Criteria Amend Freshwater Dissolved Oxygen Criteria Clarify Aquatic Life Criteria Upgrade Abbott Brook and Tributary Upgrade Mt. Blue Stream and Tributaries Upgrade Pleasant River Middle Branch and Tributaries Upgrade Sandy River and Tributaries Upgrade Temple Stream and Tributaries Upgrade Sheepscot River	Support Support Support Support Support Support Support* Support* Support*
7	Hancock County Soil and Water Conservation District	Add Freshwater Nutrient Criteria Develop Turbidity Criteria Add Freshwater pH Criteria Upgrade Upper Union River	Support Support* Support Support*
8	Citizen	Upgrade Chandler Bay	Support*
9	Rumford-Mexico Sewerage District	Amend Class B Dissolved Oxygen Criteria Upgrade Androscoggin River Upgrade Lower Androscoggin River	Support Oppose Oppose
10	Friends of the Presumpscot River and American Rivers	CLF, FOCB, and ARWC Reclass and WQS Proposals Upgrade Lower Presumpscot River	Support Support*
11	Friends of Merrymeeting Bay	Upgrade Lower Androscoggin River Develop New Water Quality Class	Support* Oppose
12	Roque Island Homestead	Upgrade Chandler Bay	Support*
13	Atlantic Salmon Federation	Upgrade Mt. Blue Stream and Tributaries Upgrade Pleasant River Middle Branch and Tributaries Upgrade Sandy River and Tributaries Upgrade Temple Stream and Tributaries Upgrade Sheepscot River Upgrade Upper Union River Upgrade Lower Androscoggin River	Support Support Support* Support* Support* Support* Support*
14	Lewiston Auburn Clean Water Authority	Upgrade Androscoggin River	Oppose Oppose

#	Affiliation	Original Proposal	Position on Original Proposal
		Upgrade Lower Androscoggin River Amend Class B Dissolved Oxygen Criteria	Support
15	Green Ellsworth	Add Freshwater Nutrient Criteria Develop Turbidity Criteria Add Freshwater pH Criteria Upgrade Upper Union River	Support Support* Support Support*
16	Maine Forest Products Council	General Comments Upgrade Androscoggin River Upgrade Lower Androscoggin River Rulemaking - Chapter 584 (Toxics) Add pH Criteria	 Oppose Oppose Oppose Oppose*
17	Citizen	General Comments Amend Class B Dissolved Oxygen Criteria Exemption for Topographic Areas in Riverine Impoundments	
18	Citizen	Upgrade Chandler Bay	Support*
19	Eastern Maine Conservation Initiative	Upgrade Chandler Bay	Support*
20	The Kestrel Foundation of Maine	Upgrade Chandler Bay	Support*
21	Androscoggin River Watershed Council	Develop New Water Quality Class Upgrade Androscoggin River Upgrade Lower Androscoggin River Exemption for Topographic Areas in Riverine Impoundments	Support* Support* Support* Support*
22	Natural Resources Council of Maine	Upgrade Abbott Brook and Tributary Upgrade Mt. Blue Stream and Tributaries Upgrade Pleasant River Middle Branch and Tributaries Upgrade Sandy River and Tributaries Upgrade Temple Stream and Tributaries Upgrade Lower Androscoggin River Amend Class B Dissolved Oxygen Criteria Add Odor to Discharge Provisions Rulemaking – Chapter 584 (Toxics); Mixing Zones Develop or Adopt Cyanotoxin Criteria Add Freshwater and Marine pH Criteria Develop Nitrogen Criteria	Support Support Support Support* Support* Support* Support Support* Support Support Support Support
Oral comments received at June 23, 2025 virtual public meeting (listed in in order received)			
1	Auburn Public Services	Upgrade Lower Androscoggin River Upgrade Androscoggin River	Support* Support*
2	Grow L+A	Upgrade Lower Androscoggin River	Support*
3	Friends of the Presumpscot River	Amend Class B Dissolved Oxygen Criteria Upgrade Lower Presumpscot River	Support Support*
4	Androscoggin River Watershed Council	Exemption for Topographic Areas in Riverine Impoundments	
5	Androscoggin River Watershed Council	Amend Class B Dissolved Oxygen Criteria Develop New Water Quality Class Upgrade Androscoggin River Upgrade Lower Androscoggin River	Oppose* Support* Support* Support*

#	Affiliation	Original Proposal	Position on Original Proposal
6	Hancock County Soil and Water Conservation District	Develop Turbidity Criteria Upgrade Upper Union River	Support* Support*
7	Maine Rivers	Amend Class B Dissolved Oxygen Criteria General Comments on Upgrade Proposals	
8	Eastern Maine Conservation Initiative	Upgrade Chandler Bay	Support*
9	Citizen	Upgrade Chandler Bay	Support*
10	Citizen	Upgrade Chandler Bay	Support*
11	Lewiston Auburn Metropolitan Chamber of Commerce	Upgrade Lower Androscoggin River	Support*

Proposals for which no public comments were received:

- Natural Conditions Provisions for Criteria Designated to Protect Human Health
- Amend and Expand Finfish Aquaculture Permitting Provisions
- Expand Descriptors for General Descriptors for General Condition of Surface Waters to Include Those Related to Oil and Grease, Color, Taste, Odor, Turbidity, Toxicity, Radioactivity, and Nutrients
- Review Seasonal Applicability of Recreational Bacteria Criteria in Water Quality Classes B, C, SB and SC
- Regulations Relating to Water Quality Evaluations (deferred rulemaking)
- Amend Regulations Relating to Tidal Temperature (deferred rulemaking)
- Update Statute for Standards for Classification of Estuarine and Marine Waters - Class SC Waters to Clarify Designated Uses.
- Clarify Waterbody Name in Location Description (Kennebec River Basin)
- Clarify Road Name in Location Description (Penobscot River Basin)

WRITTEN COMMENTS RECEIVED

GENERAL COMMENTS

Comments from:

- Krysta West, Maine Forest Products Council

Based on our understanding of the various proposals discussed at the Triennial Review public meeting, the Council is in general agreement with MEDEP regarding the proposals that are not recommended for adoption at this time.

- Will Plumley, Friends of the Presumpscot River (with assistance from American Rivers)

We are very supportive of the various proposals put forward by the DEP in particular the significant additions to Class AA waters. This classification protects the highest quality waters and is based on a nationally significant biological definition of aquatic health.

We support the other reclassification and water quality standards proposals submitted by CLF, FOCB, and the Androscoggin River Watershed Council.

- Barry Mower, Citizen

Please keep foremost in your minds the foundation of the WQS, i.e. the goals and objectives of the US Clean Water Act and Maine's Water Classification Program at 38 MRS sec 464. Those are the bases for everything you do.

MDEP Response:

The Department thanks the commenters for their input.

COMMENTS ON PROPOSALS FOR CHANGES TO WATER QUALITY STANDARDS - RECOMMENDED

Names provided in parentheses after each item identify the organization(s) that submitted the original proposal.

Class B Dissolved Oxygen Criteria (Friends of Casco Bay, Conservation Law Foundation, MDEP)

Comments from:

- Molly Payne Wynne, The Nature Conservancy (TNC)

TNC agrees with and supports the Department's proposed amendments to dissolved oxygen standards for Class AA, A, B and C waters including the clarification of the term "as naturally occurs."

- Roland Arsenault, Rumford-Mexico Sewerage District (RMSD)

We appreciate DEP's ongoing work to align water quality standards with evolving scientific understanding and practical implementation concerns. RMSD supports DEP's proposal to revise the Class B DO criteria--currently requiring both a minimum of 7.0 mg/L and 75% saturation--to allow for brief excursions below 7.0 mg/L, provided the daily average of 7.0 mg/L is maintained and levels do not fall below 6.0 mg/L. This proposed revision acknowledges natural diurnal variation and provides an important measure of flexibility in assessing waterbody health.

However, we are concerned that the proposed revisions do not address a critical issue: the reliance of certain waterbodies on artificial oxygenation systems to meet DO criteria. Without appropriate safeguards, the proposed revisions could inadvertently result in the reclassification of such waterbodies to Class B, despite their inability to meet DO criteria under natural conditions.

I. Artificial Oxygenation in the Androscoggin River: Gulf Island Pond System
A clear example of this concern is the reach of the Androscoggin River between the confluence with the Ellis River at Rumford Point and the Worumbo Dam in Lisbon Falls. This stretch is heavily influenced by a mechanical oxygenation system located in Gulf Island Pond, which injects oxygen into the river during critical periods to maintain compliance with DO standards for Class C waterbodies. The system compensates for naturally low oxygen levels caused by the river's morphology (impounded, slow-moving waters), nutrient and organic loading, and warm summer temperatures.

Without continuous operation of this oxygenation system, this reach of the Androscoggin would not be capable of meeting the existing or proposed Class B DO criteria. The attainment of DO thresholds in this reach is not a reflection of natural assimilative capacity but of sustained, artificial intervention. Simply put, the mechanical bubbler has effectively created artificial conditions that would not otherwise exist in this stretch of the river.

II. Potential Regulatory and Economic Consequences
Upgrading this reach of the Androscoggin River to Class B based on DO levels achieved through artificial means would be inappropriate and misleading. It would also impose significant and unnecessary burdens on local dischargers, including RMSD. A Class B designation would trigger stricter effluent limitations and potentially costly upgrades to wastewater treatment infrastructure--burdens that would fall on the District and its ratepayers despite no corresponding improvement in the river's natural condition or water quality.

II. Recommended Regulatory Language
To preserve the integrity of the classification system and ensure equitable implementation, RMSD urges DEP to incorporate the following language into the Water Quality Standards DO criteria:

> *"Waterbodies that attain the dissolved oxygen criteria for Class B classification solely as a result of artificial aeration, oxygenation, or other mechanical or chemical enhancement shall not be eligible for reclassification to Class B. Classification decisions shall be based on a waterbody 's natural ability to meet dissolved oxygen criteria without reliance on continuous artificial intervention."*

This language would appropriately prevent upgrades based on engineered or temporary conditions that do not reflect the true ecological status of the waterbody.

- Travis Peaslee, Lewiston-Auburn Clean Water Authority (LACWA)

We also agree with the justification and reasoning behind the Department's proposal to update Dissolved Oxygen criteria for class B waters.

- Barry Mower, Citizen

Regarding DEP's proposal to update the DO criteria for Class B freshwaters to clarify the magnitude, duration, and frequency, I acknowledge that the existence of more data requires new thinking about the criteria. However, I don't see any specific proposal relative to magnitude, duration, and frequency in the DEP's initial online proposal. I did see a reference to a magnitude of 6.0 ppm in the link to the public meeting, but no mention of duration and frequency. Those need to be specified before anyone can make an informed comment.

I urge the DEP to confer with DIFW fishery division for input on all three factors. But keep in mind that DIFW's mandate is different, to manage fisheries which, in addition water quality, includes many other factors, such as predator/prey availability, budget, angler demand, and their management is often limited to single species. DEP's mission is to manage water quality for fish and other aquatic life as specified in the WQS, regardless of what species DIFW actively manages. And DEP's long standing interpretation of the WQS is that records exist to document that cold water fish are indigenous to essentially all flowing freshwaters of the State.

Any changes should follow 464 and not just be based on trying to make it easier for upgrades of certain waters, no matter how desirable by certain groups.

- Luke Frankel, Natural Resources Council of Maine (NRCM)

We agree with Friends of Casco Bay (FOCB) and the Conservation Law Foundation (CLF) [originally submitted proposals] that the current dissolved oxygen standards need to be updated to clarify how the law is interpreted and better align the standards with modern field practices (e.g., continuous monitoring). We support the language revisions recommended by DEP to affirm its established practice of requiring that both concentration and percent saturation are to be met for Class A, Class B, and Class C waters. However, NRCM has three recommendations to improve the Department's final proposal.

First, in addition to the proposed change to a daily average of 7 ppm and 75% saturation with a minimum concentration of 6 ppm for Class B waters, NRCM advocates for similar updates to Class A and Class C dissolved oxygen standards for consistency. The interpretation and application of dissolved oxygen standards for these two classes remain unclear, and the inclusion of similar methodological language (i.e., daily average and minimum concentration) would bring clarity and also better align the standards with modern field practices (e.g., continuous monitoring).

Second, while we appreciate DEP's implementation of a daily average in its proposed update to Class B standards, NRCM recommends that DEP consider the more biologically accurate hourly window approach recommended by FOCB and CLF. Under this approach, dissolved oxygen concentrations need to remain greater than or equal to 7 ppm for at least 20 hours during any 24-hour period. This approach better aligns with DEP's practice of evaluating WQS under worst-case scenarios (e.g., lowest daily dissolved oxygen concentrations during critical flow conditions), is consistent with methods used by EPA and other states (Table 4), and better captures exceedances of WQS in systems impacted by eutrophication where large swings in dissolved

oxygen exist due to high photosynthesis during the day and respiration at night.

To compare the two methods, we examined continuous dissolved oxygen data collected by DEP in Chenery Brook in 2019 as part of the 2022 Falmouth Study Streams Stressor Report. Chenery Brook is a Class B waterbody that exhibits large diurnal swings in dissolved oxygen and is therefore a good candidate for this case study. In the full time series of data, it is apparent that the majority of observations are above the Class B threshold of 7 ppm, however, there are some values that are below 7 ppm due to diurnal variability (Figure 9). When the DEP-proposed standard of a 7-ppm daily average and 6-ppm floor are applied, there are a total of three days where the daily average falls below 7 ppm or a single daily value falls below 6 ppm (Figure 10). When the 20-hour standard proposed by FOCB and CLF is applied, there are a total of 14 days containing dissolved oxygen exceedances (not including the flagged days in the beginning and end of the time series that lack data; Figure 11). Taken altogether, we believe that the 20-hour standard displayed in Figure 11 better captures the periods under which aquatic life would be stressed due to low dissolved oxygen levels and is therefore better suited for the criteria.

Third, we want to reaffirm the inclusion of a 6-ppm dissolved oxygen floor as recommended by DEP and FOCB. NRCM strongly supports this provision and recommends that it be included regardless of the method chosen to evaluate attainment of the 7-ppm threshold. Many other New England states implement a floor to ensure protection from large dissolved oxygen swings associated with eutrophication (Table 4). The FOCB proposal states that a 6-ppm floor "would still be protective and high enough to account for impairments caused by anything other than natural causes." To provide some context for this value, we can examine dissolved oxygen thresholds of common adult fish in Maine (Table 5). As outlined in the table, salmon thrive in water with dissolved oxygen conditions greater than 6.5 ppm but begin to experience harmful effects at 4 ppm and can suffer fatalities at 3 ppm. The 6-ppm floor is important because it disqualifies harmful dissolved oxygen levels for adult fish and protects the next generation of aquatic life as well. Studies show that when dissolved oxygen drops below 6 ppm, trout and salmon eggs perish and the reproduction of other sensitive freshwater fish is stunted. Thus, NRCM deems a 6-ppm floor for both Class A and Class B waters as critical.

MDEP Response:

The comments submitted by TNC, LACWA, and RMSD support the Department's recommendation, and no general response is necessary. The Department wishes to respond to the proposal by RMSD to consider revising statutory language to specify that waters relying on artificial oxygenation systems to attain DO water quality criteria, including engineered or temporary conditions, should be excluded from consideration for water classification upgrades. The Department acknowledges that this proposal highlights the complexities associated with the current and historic water classification upgrade proposals submitted for the Androscoggin River and raises legitimate questions about the extent that aeration contributes to DO levels below Gulf Island Pond. The Department agrees that waters should not be upgraded if attainment is based on artificial oxygenation and is generally in agreement with the overall concept of the proposed language. That said, this statutory change may not be absolutely necessary and the lack of such language in Maine statutes does not prevent the Department from excluding waters that are only able to meet dissolved oxygen (DO) criteria through means of artificial aeration from upgrade consideration, as appropriate.

The Department does not recommend adoption of the recommended language under the current TR but commits to studying the overall issue as resources allow. Developing a new WQS is typically a significant undertaking, and modifying existing standards can be easier but must still

be done thoughtfully. WQS have far-reaching implications on several issues (such as pollution prevention, permitting, enforcement, and remediation) and must therefore be developed carefully. The Department is evaluating several new or modified WQS proposed as part of this TR process, and additional time is needed to consider existing and proposed statutory provisions and to consult with EPA, other agencies, and stakeholders, as needed, prior to any potential statutory changes, if deemed necessary.

One commentor noted that the draft recommendations provided by the Department did not clearly include magnitude, duration, and frequency components as part of the recommended revisions for Class B DO criteria. In the Department's recommended criteria, the magnitude component is represented by the 7 ppm daily average value and the lower limit of 6.0 ppm below which no excursions are allowed. The duration component is represented by the daily average. The frequency component, indicating how often the DO magnitude can be exceeded, is also addressed by the daily average. As explained in the Department's recommendations, as long as the daily average remains at or above a magnitude of 7.0 ppm and percent saturation of 75%, there can be excursions below those magnitudes, but DO concentrations may not drop below 6 ppm. The magnitude, duration, and frequency components are further addressed in DEP's Consolidated Assessment and Listing Methodology (CALM), which describes how water quality impairments are determined and subsequently listed in the Department's biennial Integrated Water Quality Monitoring and Assessment Report (Integrated Report).

The Department appreciates the additional analyses provided by NRCM highlighting the need for revised Class B DO criteria that are more closely aligned with modern field collection methods and to provide clarity to long-standing interpretations of these criteria by the Department. Regarding the application of similar revisions to Class A and Class C DO criteria, the Department has focused efforts during this TR process on proposed revisions to Class B DO criteria. To perform a thorough evaluation of the impacts of revising Class A and C DO criteria will require a significant effort that exceeds what can be done during this TR process.

As part of the TR process, the Department explored the hourly window approach initially recommended by Friends of Casco Bay (FOCB) and Conservation Law Foundation (CLF) and highlighted in NRCM's public comment. As part of this effort, the Department evaluated DO data for a range of waters across the state, including high-quality reference streams, small streams, and larger rivers. (Waters considered impaired for DO non-attainment were also evaluated to ensure that they would not meet the proposed criteria.) The Department found that, even in reference streams, many excursions below Maine's existing 7.0 ppm criteria occur for longer than 4 hours and excursions of up to 8 hours or more are not uncommon, indicating the suggested hourly window method may not be an adequate approach for Maine's Class B DO criteria. The Department also evaluated the recommendation submitted by ARWC recommending excursions below 7 ppm for a duration of up to 10 days. This approach would be considerably less conservative and less protective of designated uses than the use of a daily average proposed in the Department's recommendations. NRCM's comment regarding the 6.0 ppm DO floor value supports the Department's recommendations.

After due consideration of all factors, the Department determined that the revisions proposed in the Department's recommendations are better suited for characterizing DO criteria attainment for Maine's waters. These criteria effectively accommodate brief expected excursions below the current instantaneous standard, are conservative enough to ensure the protection of designated uses, and are significantly more conservative than those provided in EPA's 1986 criteria for coldwater species.

Clarification of Narrative Aquatic Life Criteria (MDEP)

Comment from:

- Molly Payne Wynne, The Nature Conservancy

TNC agrees with the Department's proposal to clarify the narrative aquatic life standards for Classes AA, A, and GPA waters.

MDEP Response:

This comment supports the Department's recommendation, and no response is necessary.

Add Criteria for pH of Fresh and Marine Surface Waters (EPA and Hancock County Soil and Water Conservation District)

Comments from:

- Mark Whiting, Hancock County Soil and Water Conservation District (HCSWCD)

Our Conservation District is pleased that the DEP will develop pH criteria for Maine waters that are consistent with EPA criteria . . . .

- Mary Blackstone, Green Ellsworth

We were delighted to see that you are going to create standards for pH . . . .

- Luke Frankel, Natural Resources Council of Maine

NRCM appreciates DEP's consideration and acceptance of the proposal to add pH criteria to Class SB and Class SC marine waters and to Class A, Class B, Class C, and Class GPA fresh waters. This is yet another step forward in protecting water quality and aquatic life in Maine. NRCM understands the addition of pH criteria to Class AA and SA waters can be a significant undertaking especially when there are disparities in the amount of data between classes. As DEP looks to implement the proposal to these two highest classes of marine and fresh waters, it would be helpful if DEP informed stakeholders of how much pH data it currently has for pH in Class AA and Class SA waters and how much additional data it expects would be needed to update WQS so that interested parties can help fill the data gap.

- Krysta West, Maine Forest Products Council (MFPC)

Further, USEPA proposes that MEDEP adopt the 6.5 to 9 pH range as ambient criteria. This appears inconsistent with discharge limitations established in Part 430.22 Subpart B "Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT)" for Bleached Kraft Facilities which establishes a pH range of 5 to 9 for continuous discharges. The implications of USEPA's proposal for existing site-specific criteria and pH are not fully understood and need further evaluation. The

USEPA's eight recommended changes, which include those discussed above, should not be adopted as part of the Triennial Review.

MDEP Response:

The comments submitted by HCSWCD, Green Ellsworth, and NRCM support the Department's recommendation, and no general response is necessary. The Department acknowledges NRCM's request to include stakeholders in future pH criteria development efforts for Class AA and SA waters. Consultation with EPA, other agencies, and stakeholders will occur as needed prior to criteria adoption, which will follow standard procedures.

Regarding MFPC's comment, Maine has already formally adopted the EPA-recommended ambient pH range of 6.5 to 9.0 for receiving waters associated with permitted discharges (38 M.R.S. § 464(4)(A)(5)).[1] The pH range limitation of 5.0 to 9.0 established in Part 430.22 Subpart B of the National Effluent Guidelines is an end-of-pipe technology-based range limitation. During the permitting process, the Department evaluates whether the technology-based pH range limit will cause the pH of the receiving water to fall outside of the 6.5 to 9.0 ambient water quality criteria range after taking dilution into consideration. If the evaluation concludes that the ambient water quality criteria are met, then the technology-based pH range limitation is established in the discharge permit. If the evaluation concludes that the ambient water quality criteria are not met with the technology-based pH range limitation, a more stringent pH range limitation is established in the discharge permit.

COMMENTS ON PROPOSALS FOR CHANGES TO WATER QUALITY STANDARDS – NOT RECOMMENDED

Names provided in parentheses after each item identify the organization(s) that submitted the original proposal.

Amend Statute to Include a Prohibition on Discharges that Impart Odor (Conservation Law Foundation)

Comment from:

- Luke Frankel, Natural Resources Council of Maine

A common theme across all proposals to update WQS is clarity. For example, DEP is proposing to upgrade dissolved oxygen standards by removing "whichever is higher" for Class A, Class B, and Class C waters to provide clarity that both concentration and percent saturation are evaluated. Under similar reasoning, we support CLF's proposal to add "odor" to statutory language. DEP's reasoning for not including this update is that odor is already considered as one of the "other properties" referenced in statute. Although odor is often an important water quality variable measured during permit compliance monitoring, it is not clear where it fits within existing statute because "other properties" is vague. There are no issues with adding "odor" for clarity,

[1] Title 38 M.R.S. § 464(4)(A)(5) generally prohibits the "[d]ischarge of pollutants to any water of the State that violates sections 465, 465-A and 465-B, except as provided in section 451; causes the pH of fresh waters to fall outside of the 6.5 to 9.0 range; or causes the pH of estuarine and marine waters to fall outside of the 7.0 to 8.5 range."

similar to removing "whichever is higher" for dissolved oxygen, as it reflects a common DEP practice for assessing water quality. For these reasons, NRCM encourages the Department to improve clarity in the statute and incorporate CLF's proposal.

MDEP Response:

As explained in DEP's draft recommendations, the Department considers "odor" as one of the "other properties" referenced in current statutory language (38. M.R.S. § 464(4)(A)(4)) and does not recommend revising the statute to specifically include "odor." The Department is committed to ensuring water quality impairments resulting from pollutants imparting odor are appropriately addressed and will continue to apply existing licensing requirements for the discharge of pollutants imparting odors that would cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class. In the future, if there are instances where the Department is unable to address odor impairments using existing approaches, the Department commits to reevaluating statutory language and considering revisions, where appropriate.

Development of a New Water Quality Class (Androscoggin River Watershed Council)

Comments from:

- Ferg Lea, Androscoggin River Watershed Council (ARWC)

We provide some additional discussion for further consideration by the Department. It appears that the AA, A and C classifications are working reasonably well with any adjustments already proposed by DEP, but for Class B waters there continues to be a conundrum. In parts of the Androscoggin, the biological quality (based on the DEP macroinvertebrate modeling) meets B or higher, but the DO still falls below even the proposed standard of a 7 mg/l for a daily average. For the lower portion of the river, from Lewiston Falls downriver, the opposite is true: the river meets the Department's proposed standard for DO, but has two of five biological monitoring sites that do not meet the Class B criteria. In the lower part of the river, we do not believe the water quality is changing from section to section, but rather the ability of the substrate in certain areas is not suitable to support the diversity of macroinvertebrates required by the modeling. Additional consideration may be warranted for the biological monitoring station located in the Lewiston Auburn downtown section of the river.

Changing Class B as proposed above may address this, but a more holistic approach to Class B may be warranted. ARWC submits that the Department should strongly consider the totality of the criteria rather than using independent criteria whereby if water quality does not meet all three criteria, DO, biologic, or nutrient criteria, it cannot be a Class B water. There would still be a lower DO limit, but the duration of any levels below 7 mg/l would be tempered by the biological criteria.

We propose that Class B be changed to include more variation in DO than the Department's proposed criterion. We propose that excursions below 7 mg/l down to 6 mg/l be allowed for up to 10 days. Outside the Triennial Review process, we encourage the Department to consider a Class B that addresses the totality of the criteria.

- Ed Friedman, Friends of Merrymeeting Bay (FOMB)

We do not support the idea of changing classifications to include something between the current C and B although if it were done, B should stay as is to avoid confusion.

MDEP Response:

As part of the TR process, the Department evaluated the possibility of revising Maine's water classification system as recommended by ARWC to address the issues raised by ARWC and others regarding Class B water quality criteria attainment for waters proposed for classification upgrades. Maine's tiered classification system is well established, and the Department determined that revising the existing classification system to develop a new water quality class would require a significant, multi-year effort on the part of DEP to collect sufficient data and perform extensive analyses to determine the appropriate criteria for any new or revised classes. Water quality standards (WQS) have far-reaching implications for several issues (such as pollution prevention, permitting, enforcement, remediation) and must be developed carefully.

In their comments, ARWC recommends the use of a more holistic approach to Maine's Class B water quality attainment assessments that considers the totality of criteria, rather than assessing criteria individually. Maine's classification system establishes designated uses and criteria for state waters. Criteria represent the specific limits or conditions that must be met to protect the designated uses, and there may be one or more applicable criteria for a given designated use. The Department evaluates applicable water quality criteria independently when determining whether waterbodies attain the designated uses of their assigned class. For example, high levels of bacteria can make a water body unsafe for swimming, even if other parameters like dissolved oxygen meet criteria. That said, a holistic analysis of the totality of criteria for a waterbody is also important in guiding watershed management.

Similarly, biological monitoring results for sampling sites are evaluated independent of other sites sampled to determine class attainment and identify potential stressors for each individual associated reach. The Department does not consider specific sites to be of greater or lesser importance or aggregate results of multiple sites into a single class determination.

If waters do not meet one or more criteria of their assigned class at one or more sites, they may be listed as impaired in the Department's Integrated Report with a requirement to complete a Total Maximum Daily Load (TMDL). Such listings and TMDLs may also impact discharges if the discharges cause or contribute to such impairments.

As detailed in the draft recommendations, the Department determined that there are a number of issues with revising Maine's classification system as proposed by ARWC. The Department determined that revising Maine's existing Class B DO criteria, which was proposed by the Department and two other external entities as part of the TR process, would better address the concerns raised, as these concerns primarily pertain to the stringency of Maine's existing Class B DO criteria.

The comment submitted by FOMB supports the Department's recommendation, and no response is necessary.

Update Dissolved Oxygen for Class AA (Conservation Law Foundation) and Class A Waters (Conservation Law Foundation and Friends of Casco Bay)

Comment from:

- Luke Frankel, Natural Resources Council of Maine

Similarly, it would be helpful if DEP informed stakeholders of current data gaps for dissolved oxygen in Class A and Class AA waters so that interested parties can assist in helping collect the data needed to update dissolved oxygen WQS.

MDEP Response:

The Department acknowledges NRCM's request to include stakeholders in future DO criteria development efforts for Class A and AA waters. Consultation with EPA, other agencies, and stakeholders will occur as needed prior to criteria adoption, which will follow standard procedures.

Develop Narrative Nitrogen Criteria for Class SB and SC Waters (Friends of Casco Bay)

Comment from:

- Luke Frankel, Natural Resources Council of Maine

NRCM appreciates DEP's consideration of adding narrative nitrogen criteria to WQS and the continued effort toward developing numeric nitrogen criteria for marine waters. Nitrogen pollution remains one of the greatest threats to coastal waters here in Maine and around the world. Driven largely by excess nitrogen loading from land, we are hearing more frequent reports of macroalgae blooms from coastal communities across Maine in recent years and are concerned about the risk that these and other harmful algal blooms pose to our marine resources and economies. For this reason, we recommend that DEP make establishing official nitrogen criteria a high priority for future updates to WQS.

While we see pros and cons to both numeric and narrative nitrogen criteria and recognize that this topic is extremely complex, we ultimately encourage DEP to develop criteria that consider the diverse water quality conditions found along Maine's coastline. Similar to the recently adopted freshwater nutrient criteria, the best approach will likely involve a combination of numeric criteria, narrative criteria, and response indicators that can be applied in a flexible manner to account for differences in water quality among Maine's coastal waters.

MDEP Response:

As explained in the draft recommendations, the Department is currently working on a draft rule and anticipates sharing a concept draft and convening a stakeholder meeting in the coming year. The draft rule will be further refined during the stakeholder and rulemaking processes in consultation with stakeholders, including EPA, and NRCM's comments will be considered in the development of the rule. The Department invites NRCM to participate as a stakeholder in that rulemaking process.

Development of Water Quality Standards to Address Turbidity Problems (Hancock County Soil and Water Conservation District)

Comments from:

- Mark Whiting, Hancock County Soil and Water Conservation District

We are disappointed that DEP will not adopt turbidity criteria at this time. The Turbidity problem in the Union River is a 100 year old problem. DEP has not used other pollution criteria or programs to specifically address this. DEP really needs to have criteria for all pollutants, especially the most common issues like pH and turbidity.

Turbidity is a critical environmental concern in lakes and streams. Turbidity significantly impacts aquatic ecosystems, water quality, and human health. Preventing turbidity is essential to maintaining ecological integrity, supporting biodiversity, and ensuring clean water for human use.

One of the most pressing reasons to control turbidity is its harmful effect on aquatic life. Suspended particles reduce light penetration, which is vital for photosynthesis in aquatic plants and algae. When light is blocked, oxygen levels drop, and the food chain is disrupted. Fish and invertebrates also suffer because excessive turbidity can clog gills, impair reproduction, and destroy habitats such as spawning grounds. Over time, a once-thriving ecosystem can collapse, leading to a loss of biodiversity. Specifically, Leonard Lake, a reservoir behind the lower dam in the Union River has seasonal oxygen depletion in deep water. This could be due to turbidity, light extinction, and limited photosynthesis in deeper water.

Turbidity also compromises water quality, making it unsafe for consumption and recreation. Swimmers and boaters cannot see obstructions. Turbid water can harbor harmful bacteria, viruses, and other pathogens. These microorganisms attach to suspended particles, making water treatment more difficult and expensive. Additionally, high turbidity can carry pollutants such as pesticides, heavy metals, and nutrients that contribute to algal blooms and further degrade water quality. This poses health risks to both wildlife and humans who rely on these water bodies for drinking water, fishing, or swimming. These are protected uses under Maine law.

Preventing turbidity is not just an ecological responsibility—it is also a matter of public policy and stewardship. Communities, state and federal policymakers, and individuals must work together to implement these solutions to protect freshwater resources.

In summary, turbidity in lakes and streams is more than just murky water—it is a threat to the health of ecosystems and humans alike. By preventing turbidity, we preserve the natural beauty and function of aquatic environments and ensure clean, safe water for future generations. What should be the legal standard in Maine. Would you settle for less than "clean and clear, and free of settlable solids" for your lake or stream?

- Mary Blackstone, Green Ellsworth

We were delighted to see that you are going to create standards for pH and nutrients, but disappointed that you are not going to do the same for turbidity. Turbidity is the number 1 most significant water quality issue in our area—and we understand that it is a very serious issue elsewhere in the State and the country. We recognize that such standards would be complex to develop and enforce, but other states have such standards so it should be possible for Maine to do the same. If turbidity is the most common cause of compromised water quality, it makes no sense for DEP to not have criteria for measuring and addressing this problem.

MDEP Response:

As explained in DEP's draft recommendations, the Department considered the need for and feasibility of developing numeric turbidity criteria as part of the current TR and the preceding TR processes. After investigating the topic, the Department does not anticipate the pursuit of or adoption of numeric turbidity criteria. The Department will continue to apply regulations to address

industrial and construction-related turbidity impacts, plans to explore potential compliance approaches using Section 413 of Maine's waste discharge law for a broader range of turbidity discharges, and where appropriate, will consider listing waters as impaired. The Department will also continue to evaluate, implement, and support approaches and programs intended to mitigate agricultural runoff and resulting turbidity issues. In addition, the Department will continue to collect and evaluate available turbidity data in context with other existing criteria; explore the cost-effectiveness and efficacy of new technologies for collecting continuous turbidity data; and seek resources to purchase and test new equipment to inform future potential criteria or approaches to addressing turbidity issues.

COMMENTS ON PROPOSALS FOR DEFFERRED OR NEW RULEMAKING

Names provided in parentheses after each item identify the organization(s) that submitted the original proposal.

Amend Surface Water Quality Criteria for Toxic Pollutants Relating to the Protection of Aquatic Life (EPA); Update Mixing Zone Law (EPA)

Comments from:

- Krysta West, Maine Forest Products Council

Concerning water quality standards related to metals, USEPA is proposing substantive changes to regulations for water quality standards for various metals with the purported objective of accounting for site-specific conditions. Generally speaking, site-specific conditions are an important factor when deriving limits for water toxics such as metals; however, the application of these factors is complicated. As an example, ND Paper's Rumford Mill and the former Pixelle Mill in Jay worked with a specialized consultant, MEDEP, and USEPA to develop the field study plan, sampling, chemistry, bioassays, and modeling necessary under Maine Ch. 584 to develop site-specific criteria for aluminum, copper, cadmium, and zinc on the Androscoggin River. The development and adoption of site-specific criteria for this river segment was completed in 2015 after spanning multiple years and costing over $700,000.

The implications of USEPA's proposal for existing site-specific criteria and pH are not fully understood and need further evaluation. The USEPA's eight recommended changes, which include those discussed above, should not be adopted as part of the Triennial Review.

- Luke Frankel, Natural Resources Council of Maine

Overall, NRCM supports DEP's anticipated rulemaking proposals, and we look forward to providing comments once rulemaking for each commences. Of the deferred rulemaking proposals, we would like to highlight three[2] that we view as high priority and would encourage DEP to prioritize if resources allow to address emerging water quality threats:

[2] This item is specific to rulemaking for toxic pollutants and mixing zones. Third item referenced is addressed on page 20 under 'Development or Adoption of Recreational Criteria for the Cyanotoxins Microcystin and Cylindrospermopsin (EPA).'

- *Regulations Relating to Toxic Pollutants: Amend Surface Water Quality Criteria for Toxic Pollutants Relating to the Protection of Aquatic Life (pgs. 53-54)*
- *Mixing Zones: Update Mixing Zone Law (pgs. 56-57)*

MDEP Response:

Rulemaking items, including those related to toxics and mixing zones, are pursued outside of the TR process. The Department is currently undertaking a number of rulemaking updates related to its water quality standards and Maine Pollutant Discharge Elimination System (MEPDES) program and will pursue updates to Chapter 584 and explore the development of a new mixing zone rule as resources allow. Details of rule updates will be determined during the rulemaking process in consultation with stakeholders, including EPA, and MFPC's comments will be considered in the development of the Chapter 584 rule. The Department invites MFPC to participate as a stakeholder in that rulemaking process.

The comment submitted by NRCM supports the Department's recommendation, and no response is necessary.

Include Nutrient Criteria for Class AA, A, B, and C Fresh Surface Waters (Hancock County Soil and Water Conservation District)

Comments from:

- Molly Payne Wynne, The Nature Conservancy

TNC agrees with and supports the need for adoption of nutrient criteria for Class AA, A, B, and C waters.

- Mark Whiting, Hancock County Soil and Water Conservation District

Our Conservation District is pleased that the DEP will develop pH criteria for Maine waters that are consistent with EPA criteria, and will adopt nutrient criteria.

- Mary Blackstone, Green Ellsworth

We were delighted to see that you are going to create standards for pH and nutrients . . . .

MDEP Response:

These comments support the Department's recommendation, and no response is necessary.

COMMENTS ON PROPOSALS FOR CHANGES TO WATER QUALITY STANDARDS REQUIRING FURTHER INVESTIGATION

Names provided in parentheses after each item identify the organization(s) that submitted the original proposal.

Provide a Limited Exemption for Topographic Areas Regarding Measurement of Dissolved Oxygen in Riverine Impoundments (Androscoggin River Watershed Council)

Comments from:

- Barry Mower, Citizen

Regarding the proposal by ARWC to create an exemption for DO criteria in topographically isolated areas of riverine impoundments, I see no definite proposal but rather, in further considerations and recommendations, consultation with stakeholders. As one who worked on the issue for years, I would like to be included as a stakeholder as I may be able to provide some biological perspective that might not be clear to the current DEP staff.

- Ferg Lea, Androscoggin River Watershed Council

It is our belief, from a review of continuous monitoring at the Deep Hole and knowledge of the morphology, that the Deep Hole in Gulf Island Pond cannot sustain significant DO regardless of the water quality entering it. Under low flow and average summer temperature conditions, the water in the Deep Hole is essentially similar to a stratified lake. Further discussion and possibly analysis is needed on the depth at which the surface water classification is separated from the low DO levels of the Deep Hole.

MDEP Response:

The Department is committed to studying the overall issue and carefully considering possible statutory changes, if needed. As part of these efforts, the Department will include both commenters as stakeholders in future criteria revision, interpretation, or implementation discussions. If statutory revisions are pursued by the Department, consultation with EPA, other agencies, and stakeholders will occur as appropriate. The Department is committed to working on this task but acknowledges that resource limitations may delay progress with this effort.

Development or Adoption of Recreational Criteria for the Cyanotoxins Microcystin and Cylindrospermopsin (EPA)

Comment from:

- Luke Frankel, Natural Resources Council of Maine

Overall, NRCM supports DEP's anticipated rulemaking proposals, and we look forward to providing comments once rulemaking for each commences. Of the deferred rulemaking proposals, we would like to highlight three[3] *that we view as high priority and would encourage DEP to prioritize if resources allow to address emerging water quality threats:*

[3] This item is specific to cyanotoxin criteria. Other two items referenced are addressed on page 18 under 'Amend Surface Water Quality Criteria for Toxic Pollutants Relating to the Protection of Aquatic Life (EPA); Update Mixing Zone Law (EPA).'

- *Development of New Water Quality Standards: Development or Adoption of Recreational Criteria for the Cyanotoxins Microcystin and Cylindrospermopsin (pgs. 60)*

MDEP Response:

This comment supports the Department's recommendation, and no general response is necessary.

COMMENTS ON PROPOSALS FOR WATER CLASSIFICATION UPGRADE – RECOMMENDED

Names provided in parentheses after each item identify the organization(s) that submitted the original proposal.

Abbott Brook and Tributary, Parkertown Township (MDEP)

Comments from:

- Molly Payne Wynne, The Nature Conservancy

TNC supports the Department's 3 proposed classification upgrades.

- Luke Frankel, Natural Resources Council of Maine

DEP presented several upgrades to WQC in its recommendations that NRCM fully supports. The proposed upgrade from Class A to Class AA for Abbott Brook and its tributary; Mt. Blue Stream and its tributaries; and the middle branch of the Pleasant River and its tributaries represent important progress toward better protecting natural resources in Maine. The explanations for these upgrades include the attainment of applicable aquatic life criteria and the presence of high-quality habitat for brook trout and/or salmonids, rendering them "outstanding" natural resources.

MDEP Response:

These comments support the Department's recommendation, and no response is necessary. Proposals in question for TNC's comment are Abbott Brook and Tributary, Mount Blue Stream and Tributaries, and Pleasant River Middle Branch and Tributaries.

Mt. Blue Stream and Tributaries, Avon and Weld (MDEP)

Comments from:

- Molly Payne Wynne, The Nature Conservancy

TNC supports the Department's 3 proposed classification upgrades.

- John Burrows, Atlantic Salmon Federation (ASF)

ASF strongly supports the Department's proposed upgrades in water quality classification for a number of river and stream segments that are extremely important for endangered wild Atlantic salmon, including:

- *Mount Blue Stream and Tributaries – Upgrade to Class AA*

ASF and numerous other conservation organizations have worked with local communities, state and federal agencies, tribes, and private landowners to conserve land in many of these areas, and to reconnect and restore river and stream habitat in these rivers and streams. Tens of millions of dollars have been spent to protect and restore the high-quality, coldwater fish habitat in these watersheds and upgrading their water quality classifications will help ensure that this investment will have long-lasting benefits for Atlantic salmon, brook trout, and myriad other native fish and wild species in these watersheds.

- Luke Frankel, Natural Resources Council of Maine

DEP presented several upgrades to WQC in its recommendations that NRCM fully supports. The proposed upgrade from Class A to Class AA for Abbott Brook and its tributary; Mt. Blue Stream and its tributaries; and the middle branch of the Pleasant River and its tributaries represent important progress toward better protecting natural resources in Maine. The explanations for these upgrades include the attainment of applicable aquatic life criteria and the presence of high-quality habitat for brook trout and/or salmonids, rendering them "outstanding" natural resources.

MDEP Response:

These comments support the Department's recommendation, and no response is necessary. Proposals in question for TNC's comment are Abbot Brook and tributary, Mount Blue Stream and tributaries, and Pleasant River Middle Branch and tributaries.

Sandy River and Tributaries, Avon, Freeman Twp., Phillips, Strong, and Other Towns and Townships (MDEP)

Comments from:

- Molly Payne Wynne, The Nature Conservancy

TNC recommends that the Department reconsider its decision not to include the following classification upgrades*. The following are all related to upgrades of waters identified to support, or potentially support, Atlantic salmon, as well as other migratory species and high-quality native brook trout habitat important to our freshwater ecosystems. Ever since the listing of Atlantic salmon in 1999, the State and many conservation organizations have been working to enhance this species' survival and propagation. DEP has been an important contributor to this effort, especially by protecting significant habitat through upgrades to water classification. As stated in the introduction of this triennial review document, Maine's "classification system is a goal-oriented one". It is important that the DEP recognize the importance of using this goal-based approach as part of the State's Atlantic salmon restoration policy and recommend upgrades even where the data record may be incomplete or where the Department's management of wastewater or stormwater may require improvements to assure protection of quality:*

- *Sandy River and tributaries: Class B to A. The Sandy River watershed provides the most significant spawning and rearing habitat in the Kennebec River Basin and is the site of major restoration efforts by DMR and other conservation partners. The DEP has already upgraded many waters within the Sandy River watershed to Class A and AA. Upgrade of additional waters is consistent with the DEP's current and future management of these waters to protect and enhance our Atlantic salmon.*

- John Burrows, Atlantic Salmon Federation

ASF strongly supports the Department's proposed upgrades in water quality classification for a number of river and stream segments that are extremely important for endangered wild Atlantic salmon, including:

- *Sandy River and Tributaries – Upgrade to Class A*

ASF and numerous other conservation organizations have worked with local communities, state and federal agencies, tribes, and private landowners to conserve land in many of these areas, and to reconnect and restore river and stream habitat in these rivers and streams. Tens of millions of dollars have been spent to protect and restore the high-quality, coldwater fish habitat in these watersheds and upgrading their water quality classifications will help ensure that this investment will have long-lasting benefits for Atlantic salmon, brook trout, and myriad other native fish and wild species in these watersheds.

- Luke Frankel, Natural Resources Council of Maine

Using this same reasoning, NRCM also encourages DEP to follow its initial proposal to upgrade the Sandy River and its tributaries from Phillips to Farmington, and Temple Stream and its tributaries from Class B to Class A. As stated by DEP in its "Department Recommendations" memo, the Sandy River and Temple Stream are both classified as "critical habitat for Atlantic Salmon by the NOAA Fisheries and the US Fish and Wildlife Service Under the federal Endangered Species Act." Given this importance, DEP should continue to safeguard these waterbodies by awarding them more protective water quality standards.

In addition to their importance to Maine's fisheries, these waterbodies should also be upgraded based on their attainment of Class A standards for the vast majority of data across some of the most important water quality indicators. Due to their importance in measuring overall ecosystem health and the presence of well-established criteria, dissolved oxygen, bacteria, macroinvertebrates, and algae are often the most common parameters evaluated when determining attainment of WQS in Maine.

For the Sandy River and its tributaries from Phillips to Farmington, the available data overwhelmingly support an upgrade from Class B to Class A. The macroinvertebrate data collected in 2022 at the three sites within the segment meet Class A standards (Table 1), and 93.2% of all dissolved oxygen collected across 14 sites within the segment meet the Class A standard of 7 mg/L (Figure 1). All 14 sites have average dissolved oxygen values above 7 mg/L, and all values collected within the past five years have been above 7 mg/L (Figure 2). There are no algae or bacteria data within this segment of the river.

DEP cites a lack of data and elevated phosphorus concentrations within an unnamed tributary in 2022 as reasons for not upgrading this segment of the Sandy River and its tributaries. Although

there are substantial data gaps within this segment, we believe that there is sufficient evidence to support an upgrade at this time. Despite some elevated total phosphorus concentrations, 73.0% of all total phosphorus concentrations across 13 sites are below the Class A threshold of 18 µg/L (Figure 3). This fact, in addition to the attainment of Class A standards for macroinvertebrates and the presence of high dissolved oxygen concentrations, suggests that nutrient over enrichment is not a big concern for this stretch of the Sandy River. When it comes to protecting critical habitat for species like Atlantic salmon, we cannot afford to wait until more data is collected when there is sufficient evidence today to support the implementation of additional safeguards.

MDEP Response:

The Department appreciates the support expressed for the proposed upgrade for Sandy River and tributaries to Class A that was not recommended in the Department's draft recommendations. The Department also recognizes state and local salmon restoration efforts and appreciates the information provided about the proposed segment's critical habitat designations[4] and habitat protection and restoration work. As part of the TR process, the Department conducted a comprehensive review of the submitted proposal, including an evaluation of available water quality data and a consideration of statutory requirements for Class A waters.

After considering public comments and NRCM's data analysis supporting the upgrade of waters of the Sandy River and tributaries, an additional evaluation of the watershed was conducted. This evaluation indicated that although water quality data in the watershed are limited, a predominantly forested area in the western portion of the watershed was identified where there is little to no existing residential development and where future development pressures are likely minimal. This area includes all tributaries entering the Sandy River in Avon between Avon Valley Road and Mount Blue Pond Road west of Route 4. Although there are no known monitoring data in this area of the watershed to determine water quality attainment, these tributary waters are expected to attain Class A criteria based on existing land use. The Department therefore revised its draft recommendation to recommend an upgrade for tributaries in this portion of the watershed.

As explained in the draft TR recommendations, the Department believes that further investigation and supporting data are needed for other parts of the watershed to allow for a comprehensive assessment of attainment for narrative and numeric criteria, including recently adopted freshwater nutrient criteria. Although available data indicate good water quality overall, Class A criteria are not met at some sites, and data gaps exist in some developed parts of the watershed. The Department commits to further assessment, including reviewing available data and potential nonpoint watershed pollution sources and collecting new data if deemed necessary and as resources allow.

[4] According to NOAA, over 12,000 miles of Maine river, stream, and estuarine habitat, and 308 square miles of lake habitat, have been designated as critical habitat for the Atlantic salmon Gulf of Maine Distinct Population Segment (GOM DPS). *See* https://www.fisheries.noaa.gov/action/critical-habitat-gulf-maine-dps-atlantic-salmon and https://www.fisheries.noaa.gov/s3/dam-migration/atlanticsalmon-accessible.pdf.

Temple Stream and Tributaries, Avon, Temple, Wilton, and Farmington (MDEP)

Comments from:

- Molly Payne Wynne, The Nature Conservancy

TNC recommends that the Department reconsider its decision not to include the following classification upgrades*. The following are all related to upgrades of waters identified to support, or potentially support, Atlantic salmon, as well as other migratory species and high-quality native brook trout habitat important to our freshwater ecosystems. Ever since the listing of Atlantic salmon in 1999, the State and many conservation organizations have been working to enhance this species' survival and propagation. DEP has been an important contributor to this effort, especially by protecting significant habitat through upgrades to water classification. As stated in the introduction of this triennial review document, Maine's "classification system is a goal-oriented one". It is important that the DEP recognize the importance of using this goal-based approach as part of the State's Atlantic salmon restoration policy and recommend upgrades even where the data record may be incomplete or where the Department's management of wastewater or stormwater may require improvements to assure protection of quality:*

  - Temple Stream and tributaries: Class B to A. A recent dam removal on Temple Stream has finally opened this subwatershed for salmon access.

- John Burrows, Atlantic Salmon Federation

ASF strongly supports the Department's proposed upgrades in water quality classification for a number of river and stream segments that are extremely important for endangered wild Atlantic salmon, including:

  - *Temple Stream and Tributaries – Upgrade to Class A*

ASF and numerous other conservation organizations have worked with local communities, state and federal agencies, tribes, and private landowners to conserve land in many of these areas, and to reconnect and restore river and stream habitat in these rivers and streams. Tens of millions of dollars have been spent to protect and restore the high-quality, coldwater fish habitat in these watersheds and upgrading their water quality classifications will help ensure that this investment will have long-lasting benefits for Atlantic salmon, brook trout, and myriad other native fish and wild species in these watersheds.

- Luke Frankel, Natural Resources Council of Maine

For Temple Stream and its tributaries, the available data also support an upgrade from Class B to Class A. Data from DEP's Biological Monitoring Program collected from 2017-2023 show that the Class A macroinvertebrate standard is attained at two sites, and the Class A algae standard is attained at one site (Table 2). Only one location (Station 1183) did not attain Class A standards for algae, primarily due to a lack of intolerant algae species present. This site is in the most developed part of the watershed and is therefore expected to have the lowest water quality, even though macroinvertebrate data at the site still attain Class A standards. Dissolved oxygen data across 16 sites within the segment meet the Class A standard of 7 mg/L 90.8% of the time,

suggesting water quality throughout the stream is high (Figure 4). There are no bacteria data within this segment of the river.

DEP cites a lack of capacity to perform a thorough review as the primary reason for not upgrading this segment. As with the Sandy River, we believe that there is sufficient evidence to support an upgrade at this time, and that this upgrade is critically important for protecting endangered Atlantic salmon. There is sufficient data to justify this upgrade, including 31 total phosphorus samples, of which 90.3% meet the Class A threshold of 18 µg/L (Figure 5).

MDEP Response:

The Department appreciates the support expressed for the proposed upgrade for Temple Stream and tributaries to Class A that was not recommended in the Department's draft recommendation. The Department also recognizes state and local salmon restoration efforts and appreciates the information provided about the proposed segment's critical habitat designations[5] and habitat protection and restoration work. As part of the TR process, the Department conducted a comprehensive review of the submitted proposal, including an evaluation of available water quality data and a consideration of statutory requirements for Class A waters.

After considering public comments and NRCM's data analysis supporting the upgrade of waters for Temple Stream and tributaries, an additional evaluation of the watershed was conducted. This evaluation indicated that although data in the upper portions of the watershed are limited, two predominantly forested areas in the upper headwaters of the watershed were identified where there is little to no existing residential development and where future development pressures are likely minimal. These areas include the main stem of Temple Stream and associated tributaries above the confluence with Edes Brook and the tributaries to the main stem above the confluence of Temple Stream and the outlet stream of Drury Pond. DEP monitoring data at S-1110, which is located on Temple Stream just above the confluence with the outlet stream of Drury Pond, indicates attainment with Class A aquatic life criteria for algae and phosphorus. The Department therefore revised its draft recommendation to recommend an upgrade for these portions of the watershed.

As explained in the draft TR recommendations, the Department believes that further investigation and supporting data are needed for other parts of the watershed to allow for a comprehensive assessment of attainment for narrative and numeric criteria for all segments proposed, including recently adopted freshwater nutrient criteria. Although available data indicate very good water quality overall, Class A criteria are not met at some sites, and data gaps exist in some developed parts of the watershed. The Department commits to further assessment, including reviewing available data and potential nonpoint watershed pollution sources and collecting new data if deemed necessary and as resources allow.

[5] According to NOAA, over 12,000 miles of Maine river, stream, and estuarine habitat, and 308 square miles of lake habitat, have been designated as critical habitat for the Atlantic salmon Gulf of Maine Distinct Population Segment (GOM DPS). *See* https://www.fisheries.noaa.gov/action/critical-habitat-gulf-maine-dps-atlantic-salmon and https://www.fisheries.noaa.gov/s3/dam-migration/atlanticsalmon-accessible.pdf.

Pleasant River Middle Brach and Tributaries, Ebeemee Twp., Katahdin Iron Works Twp., TB R11 WELS, and Other Towns and Townships (MDEP)

Comments from:

- Molly Payne Wynne, The Nature Conservancy

TNC supports the Department's 3 proposed classification upgrades.

- John Burrows, Atlantic Salmon Federation

ASF strongly supports the Department's proposed upgrades in water quality classification for a number of river and stream segments that are extremely important for endangered wild Atlantic salmon, including:

  - *Pleasant River Middle Branch and Tributaries – Upgrade to Class AA*

ASF and numerous other conservation organizations have worked with local communities, state and federal agencies, tribes, and private landowners to conserve land in many of these areas, and to reconnect and restore river and stream habitat in these rivers and streams. Tens of millions of dollars have been spent to protect and restore the high-quality, coldwater fish habitat in these watersheds and upgrading their water quality classifications will help ensure that this investment will have long-lasting benefits for Atlantic salmon, brook trout, and myriad other native fish and wild species in these watersheds.

- Luke Frankel, Natural Resources Council of Maine

DEP presented several upgrades to WQC in its recommendations that NRCM fully supports. The proposed upgrade from Class A to Class AA for Abbott Brook and its tributary; Mt. Blue Stream and its tributaries; and the middle branch of the Pleasant River and its tributaries represent important progress toward better protecting natural resources in Maine. The explanations for these upgrades include the attainment of applicable aquatic life criteria and the presence of high-quality habitat for brook trout and/or salmonids, rendering them "outstanding" natural resources.

MDEP Response:

These comments support the Department's recommendation, and no response is necessary. Proposals in question for TNC's comment are Abbot Brook and tributary, Mount Blue Stream and tributaries, and Pleasant River Middle Branch and tributaries.

COMMENTS ON PROPOSALS FOR WATER CLASSIFICATION UPGRADE – NOT RECOMMENDED

Names provided in parentheses after each item identify the organization(s) that submitted the original proposal.

Androscoggin River from confluence with Ellis River to Worumbo Dam (Lisbon Falls), Auburn, Canton, Dixfield, Durham, Greene, Jay, Leeds, Lewiston, Lisbon, Livermore, Livermore Falls, Mexico, Peru, Rumford, Turner, and Other Towns and Townships (Androscoggin River Watershed Council);

Androscoggin River from Gulf Island Pond Dam to Worumbo Dam (Lisbon Falls), Lewiston, Auburn, Lisbon, Durham (Grow L+A)

Comments from:

- Nate Libby, City of Lewiston

For many years, river advocates and stakeholders have urged the Maine DEP to recognize the unique conditions of the Androscoggin River between Gulf Island Pond and the Worumbo Dam in Lisbon. This section of the river experiences lower flow rates than larger Maine rivers, licensed discharges are far below their maximum limits, and the unusually deep water at Gulf Island affects water quality readings—among other distinct factors.

Through its volunteer water quality monitoring program, the Androscoggin River Watershed Council has gathered and submitted several years of data to the DEP, demonstrating consistent attainment and ongoing improvement in dissolved oxygen levels in this stretch of the river. The Council has been a leading voice in advocating for reclassification from Class C to Class B, and their data strongly support this upgrade. The ARWC along with Grow L+A have submitted testimony and evidence supporting upgrade, and we agree with their findings.

Our Public Works leadership—responsible for combined sewer overflow (CSO), stormwater discharge, and related regulatory matters—have reviewed this matter and are supportive of the upgrade as well.

City officials strongly support the reclassification effort for this part of the Androscoggin. An upgrade in river classification supports our desire for improved water quality, a healthier river habitat, expanded recreational use, enhanced community image, and future riverfront redevelopment opportunities.

- Mark Holt, Livermore Falls and Jay Sewer Departments

Although upgrading the river to a Class B designation may be a milestone to someday attain, it is a goal which is unrealistic at this time. Although the Class B designation may be helpful in increasing the recreational value and inherent financial gains from the River for the communities along its banks, the added income from the improved water body Class B status is dwarfed by the financial value provided by the class C waterway which allows for electrical power generation, manufacturing, and municipal waste water discharges. If you remove these resources from the River's attributes to attain Class B status, the communities along its banks would not exist. The communities along the River would not survive on the revenues generated by the recreational

opportunities alone. However, with the Class C water quality designation, all of the current resources are available to the communities including extensive recreational opportunities.

I am currently the sole Trustee of the 285-acre farm that I grew up on. This farm has over a mile of waterfront property along the banks of the Androscoggin River. This farm produces potatoes for Lay's Potato Chips. I have a vested personal and financial interest in the water quality of the Androscoggin River. It would great if the River were to meet Class B standards. But it does not. The Androscoggin River is a Class C waterway. It provides a resource for the upstream and downstream communities for manufacturing, regulated municipal waste water discharge, and is a gem for recreational opportunities.

Please do not classify the Androscoggin River as something its not. It is a Class C waterway and we should continue to invest in ways to assure it meets all of the Class C criteria 100% of the time. period!

- Peter Rubins, Grow L+A

I have been working on improving the Androscoggin for the past 50 years. One of my mentors was Dr. Walter Lawrance, appointed River Master by the Maine Supreme Court in 1942-1977 and Senator Ed Muskie, Rumford resident and creator of the Clean Water Act and Clean Air Act of 1972. FRUSTRATION is the only way I can respond to your response to our appeal to Reclassify to B from Gulf Island Dam down to Worumbo.

DATA! The data attached below includes DEP's Sonde testing (see attached) in 2019 at absolute minimum flows required by Brookfield at Gulf Island Dam of 1450 CFS. for 15 days. The two points noted as My Readings on 8/22/2019 shows that our ARWC readings were actually lower than your Sonde readings, all well above 7PPM.

<u>GULF ISLAND POND.</u>
DEP's excuse that GIP's Deep Hole does not allow you to consider your data below the dam is not correct.

There are stratified deep holes in Sebago Lake! DEP's Permanent Station data (see attached) shows that for the past 10 years the FLOW of the pond under the Turner Bridge is well above 7PPM in the low flow month of August. So that same flow exits GIP at the Gulf Island Dam and is aerated even more through the turbans [turbines] all above 7PPM.

Also, I believe we are still a country of Laws. The Clean Water Act and your own DEP regulations demand a GOAL ORIENTED APPROACH. PLEASE READ THESE PAGES FROM OUR APPEAL, and respond to their significance. (see attached)

LEGAL OPINION 6-26-25 Pages 1-2-4-5

Attached is a powerpoint of several graphs.

#1 DO dippings, 4 Months ARWC June 4-2022----Sept. 23-2022 USGS shows min amounts required for Brookfield at GIP dam. 1450CFS + Little Andro=2000

Results	*5/3/22*	*6/28/22*	*7/18/22*	*9/23/22*
Festival Plaza	*8.4 DO*	*8.5 DO*	*7.7 DO*	*7.6 DO*
DAM--GID	*8.5 DO*	*8.5 DO*	*7.3 DO*	*8.3 DO*

#2 DEP SONDE GRAPH 2019--GIP, FP, DURHAM LAUNCH 8-13-2019-----8-28-2019

August readings with minimum flows for Brookfield, 1450CFS+LITTLE ANDRO + 2000cfs

ALL ABOVE 7PPM!!!!

#3 DEP data for Permanent Station on Turner Bridge in the month of August. Well above 7PPM DO FOR THE PAST 10 YEARS

I hope that you all will seriously read over pages 1-2-4-5, in attached Legal Opinion, in this email and discuss it and make a decision to be "GOAL ORIENTED" and respond to upgrade the Androscoggin from Gulf Island Dam south to Worumbo!

- Roland Arsenault, Rumford-Mexico Sewerage District

I. Artificial Oxygenation in the Androscoggin River: Gulf Island Pond System
A clear example of this concern is the reach of the Androscoggin River between the confluence with the Ellis River at Rumford Point and the Worumbo Dam in Lisbon Falls. This stretch is heavily influenced by a mechanical oxygenation system located in Gulf Island Pond, which injects oxygen into the river during critical periods to maintain compliance with DO standards for Class C waterbodies. The system compensates for naturally low oxygen levels caused by the river's morphology (impounded, slow-moving waters), nutrient and organic loading, and warm summer temperatures.

Without continuous operation of this oxygenation system, this reach of the Androscoggin would not be capable of meeting the existing or proposed Class B DO criteria. The attainment of DO thresholds in this reach is not a reflection of natural assimilative capacity but of sustained, artificial intervention. Simply put, the mechanical bubbler has effectively created artificial conditions that would not otherwise exist in this stretch of the river.

II. Potential Regulatory and Economic Consequences
Upgrading this reach of the Androscoggin River to Class B based on DO levels achieved through artificial means would be inappropriate and misleading. It would also impose significant and unnecessary burdens on local dischargers, including RMSD. A Class B designation would trigger stricter effluent limitations and potentially costly upgrades to wastewater treatment infrastructure--burdens that would fall on the District and its ratepayers despite no corresponding improvement in the river's natural condition or water quality.

- Ed Friedman, Friends of Merrymeeting Bay

We support the Grow L+A nomination for upgrading the (upper) lower Androscoggin between Worumbo dam and Gulf Island Pond from a C to a B however, it appears the actual past data for the section are a bit sporadic and we hope to change that with our longitudinal profiles from last year (one trial run), this year (expected six profiles) and probably next year. We do not support the idea of changing classifications to include something between the current C and B although if it were done, B should stay as is to avoid confusion. We support the upgrade for this section provided our data and others substantiate it and trust that by the time the Board and certainly the legislature consider this, further data of ours will be in hand.

Water Sampling
In the past, FOMB volunteers have done some sampling (see Site Map for years) above the Gulf Island Pond (GIP) oxygen diffusers (from 982 N. River Rd.) and below them (Bates Boathouse). This was in the early- mid- 2000's. Our years of water quality data are ***here*** *in the Chemical*

section of our Cybrary. We later did a few years of sampling from the Auburn Boat Launch but from the very early days we have sampled in Durham (for O2 and later total and fecal bacteria), first from the boat launch and when access there became a bit obscured, a mile or so down the road in the straight section of river across from the farmland. We have sampled at one of the Durham sites from 2004 through the present.

*In 2021 FOMB contracted with Moody Mountain Environmental for a survey of **Benthic Macro Invertebrates (BMI) in the lower Androscoggin River**, deploying rock baskets at six locations with the first four being above Worumbo dam (1-4) in the current proposed upgrade area and last two (5, 6) between Worumbo dam and Brunswick dam. Aquatic life at Sites 1, 2, and 3 all were appropriate for Class B according to Moody Mountain and the DEP. Site 4 was more appropriate for Class C but being in the upper Worumbo impoundment falls under the hydropower exclusion which elevates the classification to B.*

*Recognizing the paucity of comprehensive data for the proposed upgrade area (the Grow L+A proposal notes relevant Brookfield and DEP data), last summer FOMB, working with **Point of View Helicopter Services**, trialed a comprehensive sampling run using a helicopter equipped with amphibious floats.*

Our helo sampling sites began below the mouth of Sabattus Stream at our BMI Site 4 and went up into GIP. They also included BMI Sites 1-3. FOMB and Merrymeeting Bay Trout Unlimited (MMBTU) are funding six sampling flights this year and hopefully in 2026. We are focused on times of low flows and hot weather with tentatively one flight in June, two in July, two in August and one in September. Just last week we made the first 2025 flight and data from this and the 2024 trial are attached. Of note from these two samplings are the relative homogeneity of DO and bacteria levels throughout, which does provide an argument for limited site sampling being sufficient.

Classification
Unfortunately the Department continues to misinterpret state and federal statute by insisting all sections of river must meet the proposed classification 100% of the time. The Department also conflates classification with discharge permitting and ignores the statutory language around allowance for natural conditions.

*We have attached two legal opinions (Conservation Law Foundation [CLF] and **Greenfire Law**), also presented during the previous upgrade efforts. Aside from particulars regarding data on the section from Worumbo to the Bay, the analyses regarding federal and state law remains the same.*

Conclusion
In conclusion, the DEP should present to the Board of Environmental Protection and the legislature the factual basis for the lower Androscoggin's attainment of Class B criterion and character and refrain from including within that recommendation any argument that might be construed as a Use Attainability Analysis.

- John Burrows, Atlantic Salmon Federation

Lastly, we support the proposal from Grow L+A to upgrade the Lower Androscoggin from Class C to Class B. ASF has long-supported this upgrade, and we hope that the Department will finally support this reclassification given the large amount of data that shows this stretch of the Androscoggin almost always meets or exceeds Class B standards.

- Travis Peaslee, Lewiston Auburn Clean Water Authority

Although reclassification is a goal of the legislature, the DEP has legal requirements to ensure 100% attainment of any reclassification through permitting means on all dischargers on the Androscoggin, and the EPA has ultimate oversight on these permits, meaning discharge permit impacts, and public cost impacts are truly unknown at this time and subject to interpretation. If a reclassification were to happen without certainty of future attainment, then a TMDL would likely be a result, which has the potential to trigger additional cost and uncertainty for our facility. Additionally, consideration doesn't seem to be given to the artificial oxygenation system within the watershed, and whether or not "credit" should be given to such an unnatural intervention, as attainment of class B standards seems highly unlikely without it. Having no control over a significant factor in classification attainment, such as the artificial oxygenation system, creates tremendous trepidation on our part given the potential ramifications it could have if not operational at any point in the future.

The Cities of Lewiston and Auburn have made and continue to make, significant investments in their wastewater treatment infrastructure, including Combined Sewer Overflow (CSO) abatement. We are currently facing infrastructure needs over the next 2-5 years of approximately $10-15 Million to address biosolids PFAS impacts, and are currently in the middle of a $32 Million project to build a CSO storage tank. While we support the recognition of improved water quality, we also worry that the regulatory burden to comply with such a reclassification could add additional financial burden to the citizens of the twin cities. Additionally, any reductions in our permitted discharge have the potential of impacting future community and business growth, which appears to be counter to some of the upgrade proposal advocate's intent. Because the draft review generally references potential impacts to facilities such as ours, I would like to formally request that the Department describe to us in writing any potential license changes for our facility that may be needed for an upgrade of classification on the Androscoggin River, under the current dissolved oxygen criteria and under the DEP proposed dissolved oxygen criteria.

LACWA largely supports the intent of the Androscoggin River classification upgrade proposals, and recognizing the tremendous improvements made to Androscoggin River water quality, but also agrees with the Departments recommendation to not support the upgrade proposals for the Androscoggin River from class C to class B, at this time. We also agree with the justification and reasoning behind the Department's proposal to update Dissolved Oxygen criteria for class B waters. Ultimately, we strongly support all efforts to provide the best water quality reasonably possible throughout the State of Maine: however, we are concerned with the unknown regulatory requirements that will become legally binding on our facility as a result of reclassification, the practical attainment of the new water quality requirements, and the lack of transparency with the public on what the costs associated with such an attainment would be. Ideally, before setting such a goal, all parties involved in the process from proposing changes, to making final determinations on classification upgrades, ensure that the new standards are attainable, and that the full cost impacts are understood and made transparent. Ideally, the DEP would be able to ensure that Class B standards in all sections of the Androscoggin River are reasonably and technically feasible to attain, and that the cost to do so is negligible for all impacted communities, creating a win for all interested parties, including those that live, work, and recreate on this wonderful river.

- Krysta West, Maine Forest Products Council

We are aware of multiple proposals to upgrade the classification of segments of the Androscoggin River. One proposal recommends upgrading a lengthy segment of the Androscoggin from Class

C to Class B, which encompasses 15 municipalities with multiple municipal, commercial, and industrial dischargers and several dams. Our understanding is that although there are claims that monitoring data indicates attainment with Class B, this entire length of river has not been modeled to determine if Class B standards can be met. An upgrade of this broad river segment is expected to have consequences for the many stakeholders involved due to the existing Class B criteria being more stringent than Class C.

With regard to adjustment of the classification of river segments based upon dissolved oxygen levels, multiple parties, including MEDEP, propose modifications to the Class B water quality standards that suggest a different methodology to account for dissolved oxygen levels that may occasionally drop below the minimum regulatory criteria. The objectives of these proposals are good; however, the long-standing differentiation between water quality monitoring and water quality modeling must remain consistent. For MEDEP to assess attainment of a water quality classification, a waterbody is modeled by the MEDEP with all discharges at maximum permitted levels at critical warm temperatures and low flow conditions.

This is not the same as monitoring water quality parameters, which do not reflect these same critical conditions at the time of measurement. Although a waterbody may have monitored levels that meet the standards for a higher classification on any given day, this is not the same as designating the waterbody in attainment of the higher regulatory classification under worst-case, critical conditions. If the proposed changes to the dissolved oxygen criteria for Class B or C move forward, the MEDEP must still use water-quality modeling to determine if the waterbody is attaining the standards of the classification (perhaps utilizing newly proposed, modified water quality standards). If the modeling does not show attainment, the segment should not be upgraded.

- Ferg Lea, Androscoggin River Watershed Council

In parts of the Androscoggin, the biological quality (based on the DEP macroinvertebrate modeling) meets B or higher, but the DO still falls below even the proposed standard of a 7 mg/l for a daily average. For the lower portion of the river, from Lewiston Falls downriver, the opposite is true: the river meets the Department's proposed standard for DO, but has two of five biological monitoring sites that do not meet the Class B criteria. In the lower part of the river, we do not believe the water quality is changing from section to section, but rather the ability of the substrate in certain areas is not suitable to support the diversity of macroinvertebrates required by the modeling. Additional consideration may be warranted for the biological monitoring station located in the Lewiston Auburn downtown section of the river.

Classification of the Androscoggin River
ARWC proposes that the river from Ellis River to Center Bridge be reclassified as the ARWC proposed B classification. Gulf Island Pond would remain as Class C until issues with the Deep Hole are addressed. It is our belief, from a review of continuous monitoring at the Deep Hole and knowledge of the morphology, that the Deep Hole in Gulf Island Pond cannot sustain significant DO regardless of the water quality entering it. Under low flow and average summer temperature conditions, the water in the Deep Hole is essentially similar to a stratified lake. Further discussion and possibly analysis is needed on the depth at which the surface water classification is separated from the low DO levels of the Deep Hole.

ARWC further proposes that the portion of the river from the Gulf Island Dam to the Worumbo Dam be upgraded to B provided that either our proposal for Class B or the Department's proposal

for Class B be enacted. As previously noted, we do not believe the water quality below Gulf Island Dam varies between the dam and the Worumbo Dam, but rather the existing conditions of the river substrate and morphology make it improbable that the macroinvertebrate model criteria can be met.

We submit that the upgrade(s) should be granted even though nutrient data is lacking. There are undoubtedly a number of surface waters classified as B where nutrient data is not available.

We encourage the Department to inform the Board of Environmental Protection and the Legislature that the proposed change in the B Classification will allow sections of the Androscoggin River and other surface waters to be upgraded to B, and we further encourage the Department to identify the river sections with a recommendation for the upgrade.

Comments for Consideration

Concerning modeling primarily to determine discharge licenses as related to classification, we know that modeling is not an exact science. The natural system is relatively chaotic. Funding and time constraints do not provide for real time data necessary to model such a system with a high degree of accuracy. Modeling should be tempered with real time knowledge to determine how water quality classification and discharges interact. At this point in time, our belief is that the river classification can be upgraded to the proposed Class B without significantly impacting dischargers on the river. This is true for the upgrade of the lower river using the proposed DEP criteria for Class B, or for portions of the upper river using the ARWC proposed Class B criteria.

- Luke Frankel, Natural Resources Council of Maine

In addition to the proposed upgrades submitted by DEP in the Kennebec River watershed, NRCM also supports the proposed upgrade of the lower Androscoggin River (Gulf Island Pond Dam to Worumbo Dam) from Class C to Class B. This segment of the Androscoggin River has seen dramatic improvements in water quality through the years as both point and non-point pollution sources have been addressed, and recent water quality data show that Class B standards are met in the majority of instances.

Of the available DEP Biological Monitoring Program data collected within this segment since 2000, three out of six sites meet the Class B macroinvertebrate standard (Table 3). The other three sites meet the Class C standard, with two of them located within 300 feet of one another and sampled during the same period (Stations 1226 and 1227). If only one of these two adjacent sites is considered, then a majority of stations within the segment attain Class B macroinvertebrate standards.

For dissolved oxygen within this segment of the Androscoggin River, 90.8% of the data across 17 sites are at or above 7 mg/L, which is the current criterion for Class B waterbodies, and 100% of the data are above 6 mg/L, which is the floor presented in DEP's proposed change to Class B WQS (Figure 6). Of the 10 sites that have at least 3 dissolved oxygen measurements, 9 have averages above 7 mg/L with the other site averaging 6.98 mg/L (Figure 7). This suggests that water quality across this segment of the river meets Class B criteria under current pollutant loading conditions. This is supported by total phosphorus concentrations where 90.0% of samples across eight sites within the segment are below the Class B threshold of 30 µg/L (Figure 8).

In summary, we support the proposed upgrade of the lower Androscoggin River from Class C to Class B because the vast majority of current water quality data attains Class B standards and is projected to continue doing so under proposed changes to WQS. DEP's opposition to this

upgrade is based on worst-case scenario modeling under low flow conditions where the results indicate that Class B standards would not be met. Even if it is DEP's practice to focus on critical flow conditions due to statutory provisions, WQC are designed to be goal-based, allowing for the possibility of an upgrade even if modeling shows non-attainment. Based on existing water quality data, the goal of 100% attainment of Class B standards in this segment of the river under real-life conditions is entirely feasible.

MDEP Response:

The Department appreciates the support expressed for the two proposed upgrades for the Androscoggin River that were not recommended in the Department's draft recommendations. These upgrade proposals include the segment extending from the confluence with the Ellis River Rumford Point to the Worumbo Dam in Lisbon Falls and the segment extending from Gulf Island Pond (GIP) Dam to the Worumbo Dam. The Department also commends the efforts of all stakeholders to improve water quality in the Androscoggin River and acknowledges the concerns voiced by various parties opposing the upgrade proposals. As part of the TR process, the Department conducted a comprehensive review of both originally submitted proposals, including evaluations of available water quality data and considerations of statutory requirements for Class B waters. The Department also considered the revised proposal submitted by ARWC as part of the public comment period requesting an upgrade to Class B for a segment extending from the confluence with the Ellis River in Rumford Point to Center Bridge in Turner.

Comments submitted by LF and Jay Sewer, RMSD, LACWA, and MFPC support the Department's recommendation, and no general response is necessary. The Department addressed most of the key points raised in support of the original proposal in the draft recommendations, and in the interest of brevity, refers readers to that document for a complete response.

The Department appreciates the documentation and analyses submitted as part of the public comment period by FOMB, Grow L+A, and NRCM highlighting water quality conditions and improvements in the Androscoggin River. The Department also recognizes and supports the ongoing efforts by various stakeholders to gather additional data to fill current data gaps. Several commenters stated that water quality criteria are, largely but not always, attained in segments of the river proposed for upgrade. NRCM noted that the lower Androscoggin River (GIP Dam to Worumbo Dam) meets current Class B dissolved oxygen criteria most of the time under current pollutant loading conditions, and the majority of total phosphorous concentrations were below the Class B threshold.

The Department agrees that water quality in the Androscoggin River has significantly improved and that segments proposed for upgrade meet most of their current Class C water quality criteria. However, Class B criteria are not always met for bacteria, aquatic life (biomonitoring), DO, and phosphorus. As explained in the draft recommendations, the Department evaluated available water quality data for the upper river (Ellis River to GIP Dam), which includes the revised segment proposed by ARWC, and the lower river (GIP Dam to Worumbo Dam). Although data for the upper river are limited, results indicate that this segment meets Class C DO criteria but does not fully meet Class B criteria for DO. Aquatic life (biomonitoring) data in the upper river mostly meet Class B and Class C criteria but are very old, and there are no data available for this segment to evaluate bacteria attainment. Data for the lower river indicate that this segment largely meets its current Class C criteria, but it does not fully meet all Class B criteria for aquatic life and DO. Bacteria data for this segment are limited, but available data indicate this segment may not meet either Class B or Class C criteria. Most of the available phosphorus data for the Androscoggin River was

collected in 2010, and very little data have been collected since that time. Results indicate that the river segments proposed meet Class C freshwater nutrient criteria and mostly meets Class B criteria. However, data for several sites in both the upper and lower river segments were above the Class B phosphorus criteria of 30 ppb. Additional data are needed to determine phosphorus criteria attainment.

If these waters are upgraded but do not attain Class B criteria, they may be listed as impaired in the Department's Integrated Report with a requirement to complete a Total Maximum Daily Load (TMDL). Such listings and TMDLs may also impact discharges if the discharges cause or contribute to such impairments.[6]

In addition, the Department evaluated the potential implications of a Class B upgrade to existing waste discharge licenses under critical conditions of high water temperature, low flow, and maximum licensed discharge levels as required by 38 M.R.S § 464(4)(D) and Department rule, Chapter 523, *Waste Discharge License Conditions*. The Department has derived, via existing computer models and best professional judgment, potential reductions in discharge limits for certain entities in the river above GIP and in the lower river that would be required in order to license these discharges to meet Class B criteria. There are a variety of license limit allocation scenarios that are possible, and the final limits would be derived through a formal licensing process. An example allocation based on a 54% reduction in biochemical oxygen demand (BOD_5) limits for all three mills above Gulf Island Pond is summarized below. Note that operational changes at the former Jay mill will affect this allocation and limits.[7]

Example reduction in BOD_5 limits that would be required to ensure water flowing over or through Gulf Island Dam contains 7 ppm of dissolved oxygen during critical low flow (7Q10) river flows. Reductions based on a 54% reduction for limits for all three mills.

Facility	**Current Permit Limit** (lbs/day weekly average)	**New Permit Limit** (lbs/day weekly average June1-Sept. 30)	**Actual discharge for last 3 years at 95th percentile** (June 1-Sept. 30)
JGT2 Redevelopment LLC (former Jay mill)	6,400	2,944	1,700
Nine Dragons (Rumford)	12,500	5,750	7,800
White Mountain Paper Co. (Gorham, NH)	10,298	4,737	5,000

If the lower Androscoggin is upgraded to Class B, the Department will be required to lower existing discharge limits on certain discharges. The Lewiston Auburn Clean Water Authority is the wastewater treatment facility that serves Lewiston and Auburn. To address the predicted impacts of the LACWA discharge on dissolved oxygen levels, a BOD_5 limit reduction of 33% is expected to be required.

[6] It is noted that waste discharge is not a designated use nor an existing use under Maine law. Information on potential impacts to licensed discharges is included to provide full context for any upgrade decisions.
[7] Relicensing of the former Jay mill for revised operation is pending and the type of future operation at the site is currently uncertain.

Facility	**Current Permit Limit** (lbs/day weekly average)	**New Permit Limit** (lbs/day weekly average June1-Sept. 30)	**Actual discharge for the last 3 years at 95th percentile** (June 1-Sept. 30)
LACWA	5,329	3,570	1,800
	Current Permit Limit lbs/day monthly avg.	New Permit Limit lbs/day monthly avg. (June 1 - Sept. 30)	Actual discharge for last 3 years at 95th percentile (June 1 - Sept. 30)
	3,553	2,380	1,000

Additional effluent and ambient phosphorus data are needed to determine any phosphorus limits that would be required.

Regarding comments that the upgrade is legally required under 38 M.R.S. § 464(4)(F)(4), the Department's long-standing interpretation of Maine's antidegradation policy, based on its expertise and authority to interpret the water quality standards it is charged with implementing, continues to be that the antidegradation provision must be read in the full context of water quality laws, including those pertaining to waste discharge licensing. Under this interpretation, which is reflected in DEP's Antidegradation Program Guidance (Appendix B), exceeding the minimum standards of the next highest classification, such as for DO, must occur under critical water quality conditions to trigger the reclassification requirement pursuant to 38 M.R.S. § 464(4)(F)(4). (And, as explained in the draft recommendations, modeling indicates that Class B DO criteria would not be attained in the segments in question during critical water quality conditions.) The Department's interpretation of the antidegradation policy does not consider a wastewater discharge to be a designated use nor an existing use, but it does recognize the legal conditions created when a waste discharge license is issued. Licenses are issued based, in part, on a determination by the Department that a discharge will not lower the water quality of the receiving water below its classification. That determination is in part based on statutory and regulatory provisions (38 M.R.S. § 464(4)(D) and Department rule, Chapter 523, *Waste Discharge License Conditions*) that specify consideration of critical flow conditions and full licensed loads in discharge permitting. Therefore, the Department's position is and has been that monitoring data showing that Class B criteria are sometimes, but not always, attained in the Androscoggin River segments in question during non-critical conditions does not trigger the requirements of 38 M.R.S. § 464(4)(F)(4). The Department's position regarding the issuance of waste discharge licenses was confirmed in consultation with EPA in June 2021, when EPA stated that discharge licenses must be written to ensure that applicable water quality standards are attained during critical conditions.[8]

For the reasons noted in this response and in the Department's recommendations document, the Department does not recommend an upgrade for any segments of the Androscoggin River proposed for upgrade.

[8] It is noted that the BEP can recommend an upgrade, and the legislature can upgrade a water classification, even if the requirement to do so under 38 M.R.S. § 464(4)(F)(4) is not triggered.

Several commenters provided input or questions regarding specific actions or data clarifications. The Department offers the following responses for those items:

1) During the public meeting held on June 23, 2025, Grow L+A requested that the Department explore whether hydropower entities associated with segments in question could be required to conduct DO monitoring below Gulf Island Pond Dam to collect data to inform water classification upgrade decisions as part of conditions of relicensing. This request was discussed with the Department's Hydropower Coordinator who clarified that the entities affected, including the Gulf Island and Deer Rips Hydroelectric Projects, continuously monitor DO at Turners Bridge and in the Deep Hole in the impoundment as a part of license requirements, and neither are undergoing relicensing at this time. The Lewiston Falls Hydroelectric Project is currently undergoing relicensing, but the proposed monitoring site is not part of the project area.

2) ARWC recommended that the Department inform the Board of Environmental Protection and the Legislature that the proposed change in the B Classification will allow sections of the Androscoggin River and other surface waters to be upgraded to B. As part of this TR, the Department is not recommending the revision to Maine's water classification system proposed by ARWC. ARWC's recommendations pertaining to Maine's classification system were addressed in a separate response (page 14) and the Department refers readers to that response for additional information.

3) The Department acknowledges the comments submitted by LACWA and RMSD regarding the complexities with upgrading waters reliant on artificial oxygenation systems and RMSD's recommended statutory language revisions to address these concerns. The Department addressed RMSD's recommendations in detail in a separate response for Class B DO criteria (page 7) and refers readers to that response for additional information. Though the Department does not recommend adoption of the recommended language under the current TR, the Department agrees that waters should not be upgraded if attainment is based on artificial oxygenation, is generally in agreement with the overall concept of the proposed language, and commits to studying the overall issue as resources allow.

4) The Department wishes to respond to the request by LACWA to provide any potential license changes for their facility that may be needed for an upgrade of classification for the Androscoggin River under the current dissolved oxygen criteria and under the proposed revised Class B DO criteria detailed in the Department's recommendations. As stated above, it is expected that to address the predicted impacts of the LACWA discharge on dissolved oxygen levels, a 33% reduction in biochemical oxygen demand (BOD_5) would be required with either the current or proposed Class B DO criteria. In terms of nutrient criteria, the Department conducted a reasonable potential analysis based on limited available data and found that no reductions in phosphorus may be needed to maintain concentrations in the river at or below the Class B criterion of 30 ppb. Additional effluent and ambient data would be needed to confirm.

5) Several comments were received regarding biomonitoring station results for various segments of the Androscoggin River. Comments are shown in italics and the Department's responses are shown below each item.
   - *Site 4 was more appropriate for Class C but being in the upper Worumbo impoundment falls under the hydropower exclusion which elevates the classification to B.*

For purposes of water quality certification related to a hydropower project, 38 M.R.S. § 464(10) provides that habitat characteristics and aquatic life criteria of for Class A or B impoundments are deemed to be met if Class C criteria are attained. This provision does not otherwise apply to water quality class attainment. Therefore, the Department would like to correct the statement above and note that final class attainment determination is **not** "elevat[ed]… to Class B."

- *In the lower part of the river, we do not believe the water quality is changing from section to section, but rather the ability of the substrate in certain areas is not suitable to support the diversity of macroinvertebrates required by the modeling.*
  Department staff reviewed the substrate characterizations recorded in the field and found that substrate composition at all sites in question was appropriate for macroinvertebrate sampling using the rock bag/basket/cone method based on DEP's standard protocols.

- *The other three sites meet the Class C standard, with two of them located within 300 feet of one another and sampled during the same period (Stations 1226 and 1227). If only one of these two adjacent sites is considered, then a majority of stations within the segment attain Class B macroinvertebrate standards.*
  The DEP Biological Monitoring Program considers data for all sites sampled independently and does not drop, combine, or aggregate results when making class attainment determinations. In this case, two sites were sampled in close proximity to determine if there were potential differences in the macroinvertebrate community between river left and river right due to hydropower project operations.

Presumpscot River from Saccarappa Falls to Head of Tide at Presumpscot Falls, Westbrook, Portland, and Falmouth (Friends of the Presumpscot River)

Comments from:

- Will Plumley, Friends of the Presumpscot River (FOPR) (with assistance from American Rivers)

Friends of the Presumpscot River (FOPR) and American Rivers (AR) disagree with and are disappointed by DEP's initial finding that the lower Presumpscot River does not deserve reclassification at this time. We made a valid case for reclassification.

Further Comments and Questions on DEP's initial Presumpscot recommendation:

Concern about representativeness of two monitoring stations

The biological monitoring site above the discharges was set in the Cumberland Mills Impoundment near the top of a well-known eddy backwater area whose upstream flow occasionally produces massive ice disks in winter. We question the suitability of this site for accurately depicting the biological health of this section of the river. We also question the suitability of the site near State Highway 302 due to the highway's influence. Monitoring at both sites returned Class C results, and we believe both sites are compromised by their locations. We look forward to discussing this issue with the DEP as part of the work being launched by the CBEP.

The third and final biological monitoring site was at the end of the fresh water just above head of tide. This site returned Class B results. This means that at the end of its journey to the

estuary, the river meets Class B criteria for biological health. Isn't that what really matters most? Given this attainment, we continue to believe that an aspirational reclassification of the river to Class B is appropriate and will not adversely impact existing dischargers to the river.

Existing license limits can be reduced

DEP's critical condition analysis includes maximum permissible discharges from both PWD and Sappi. We reject this calculation because Sappi's license is overdue for renewal, and we expect that renewal should, and will, reduce Sappi's maximum permissible discharge by more than 50%. We understand the concerns expressed by dischargers when there are proposals to reduce maximum discharges, but we believe that unless reasonable and significant reductions in allowable discharges are not imposed on Sappi there will never be an opportunity for the river to attain Class B standards because the worst-case scenario calculation will continue to be flawed and not representative of an actual worst-case scenario.

DEP's Antidegradation policy does not support the current DO levels being attained in the lower river. In the most recent analysis, the policy will only protect about 70% of the current DO and could allow water quality to backslide significantly to minimum Class C requirements. This is unacceptable.

Page 75, first paragraph includes this: planned discharge reductions to the Pleasant River, which is a tributary to the segment proposed for upgrade. NOTE: The Pleasant River does not flow into the segment proposed for an upgrade. The Pleasant flows into the Presumpscot about 7 miles upstream from the segment proposed for upgrade.

The map on page 79 shows a dam at Saccarappa where there is no dam today.

MDEP Response:

The Department appreciates the support expressed for the proposed upgrade for the Presumpscot River from Saccarappa Falls to the head of tide at Presumpscot Falls that was not recommended in the Department's draft recommendations. The Department commends the efforts of FOPR, AR, and other stakeholders to work collaboratively towards improving water quality in the Presumpscot River and appreciates any opportunities to participate in future efforts. As part of the TR process, the Department conducted a comprehensive review of the submitted proposal, including an evaluation of available water quality data and a consideration of statutory requirements for Class B waters.

The Department addressed most of the key points raised above in the draft recommendations and in the interest of brevity refers readers to that document for a complete response. As explained in the draft TR recommendations, the lower Presumpscot River meets its current Class C criteria, but it does not fully meet all Class B water quality criteria for bacteria, aquatic life (biomonitoring), dissolved oxygen, and possibly phosphorus.

In addition, the Department evaluated the potential implications of a Class B upgrade to existing waste discharge licenses under critical conditions of high water temperature, low flow, and maximum licensed discharge levels as required by 38 M.R.S § 464(4)(F)(4) and Department rule, Chapter 523, *Waste Discharge License Conditions*. There are a variety of license limit allocation scenarios that are possible, and the final limits would be derived through a formal licensing process. That said, the Department determined that a 25% reduction in biochemical oxygen demand (BOD) may be required for the discharges to have a negligible effect on DO. In terms of nutrient criteria, a reasonable potential analysis based on limited available data indicates that a

55% reduction in phosphorus may be needed to maintain concentrations in the river at or below the Class B criterion of 30 ppb. Available effluent data indicates that there may not be adequate dilution to meet the Class B phosphorus criterion under critical conditions without impacts to Sebago Lake's water levels or requiring expensive modifications to existing treatment facilities. The Department's Chapter 583 rule, *Nutrient Criteria for Class AA, A, B, and C Fresh Surface Waters,* allows site-specific nutrient criteria to be developed in some cases, but additional data would be needed to determine if this would be an option.

If the lower Presumpscot were to be upgraded to Class B, there may be an impact to discharges because of occasional, short-term low DO values that exceed existing Class B criteria. Additionally, if these waters are upgraded but do not meet Class B nutrient (or other) criteria, they may be listed as impaired in the Department's Integrated Report with a requirement to complete a Total Maximum Daily Load (TMDL). Such listings and TMDLs may also impact discharges if the discharges cause or contribute to such impairments.[9]

Regarding FOPR's list of requested actions, the Department offers the following responses:

1) *Concern about representativeness of two monitoring stations.* Biomonitoring station S-295 is located approximately 0.1 km above the Westbrook POTW, in the Cumberland Mills Impoundment. This reach of the Presumpscot River is located in an area of dense residential and commercial development and is also downstream of some agricultural lands and two golf courses. Biomonitoring station S-72 is located just upstream of the Route 302 bridge in a similar land use setting consisting mainly of residential and commercial development. S-72 is a long-established DEP monitoring site, which has been sampled periodically since 1984. In 2023, the macroinvertebrate communities at S-295 and S-72 were very similar in structure and function to each other. Based on the Department's statistical model used to inform decisions about water quality class attainment, the probability of attaining Class C was 99% at station S-295 and 92% at station S-72. Water quality parameters were also similar between the two sites. Based on these results, it is likely that a combination of urban NPS runoff and nutrient enrichment are the primary stressors for the macroinvertebrate communities at both sites. The consistent results between these two sites help validate that the choice of sampling locations was appropriate and results reflect the influence of nonpoint source pollution in the watershed.

   Station S-802 is located just upstream of the I-295 bridge in Falmouth in an area with land uses consisting of residential/commercial development (although somewhat less dense than the upstream sites), a significant amount of agriculture, and the Riverside Municipal Golf Club. Although macroinvertebrate sampling results in 2023 were Class B, the community structure showed evident signs of nutrient enrichment. Total phosphorus was also relatively high at 23 ppb compared to results for station S-295 (12 ppb) and station S-72 (19 ppb). Note that when S-802 was sampled in 2021, the result was Class C with a probability of 100%, and there were indications of significant nutrient enrichment. Future sampling would be helpful to determine if the site will continue to consistently meet Class B.

[9] It is noted that waste discharge is not a designated use nor an existing use under Maine law. Information on potential impacts to licensed discharges is included to provide full context for any upgrade decisions.

Regarding the comment indicating priority should be placed on biomonitoring results at downstream locations, results of sampling sites are evaluated independently from other sites sampled to determine class attainment and identify potential stressors for each individual associated reach. The Department does not consider the most downstream site to be of greater or lesser importance or aggregate results of multiple sites into a single class determination.

2) *Existing licensing limits can be reduced*. For any waste discharge license, discharge limits are maintained for the duration of each license. Sappi's license conditions will be revisited during the next renewal, which the Department plans to begin in early 2026. Until that time, the Department's critical condition analysis calculation will continue to use maximum permissible discharge concentrations for this facility.

3) *DEP's Antidegradation policy does not support the current DO levels being attained in the lower river.* In accordance with the Department's antidegradation policy, the Department issues licenses to ensure compliance with the water quality classification in effect at that time. Where any criterion of water quality exceeds the minimum standards of the next highest classification under critical water quality conditions, then that higher water quality criterion must be maintained and protected.

4) *Pleasant River correction and map error for Saccarappa dam.* The Department agrees with comments regarding the reference to the location of the Pleasant River and acknowledges the mapping error described on page 79 of the recommendations document showing a dam at Saccarappa where there is no dam today. The Department has revised the recommendations document to clarify the location of Pleasant River in relation to the segment proposed for upgrade and to include an updated map referencing Saccarappa Falls, not the dam.

Sheepscot River (Route 17 Crossing/Whitefield to Somerville/Palermo Town Line) (Midcoast Conservancy)

Comments from:

- Melissa Cote, Midcoast Conservancy

Midcoast Conservancy is disappointed that DEP is not recommending an upgrade based on its proposal for the segment of the mainstem Sheepscot River from Route 17 in Whitefield to the Palermo/Somerville town line from Class B to Class A. At a minimum, Midcoast Conservancy believes that the Department should recommend an upgrade from Class B to Class A for the section of the Sheepscot River from Route 17 to Long Pond based on the following:

1. *The Coopers Mills Dam, located on the mainstem just above Route 17, was removed in 2019 and the impoundment above the dam was restored to natural riffle-run habitat. The removal of the dam restored the river to a naturally free-flowing river and provided river herring unimpeded access to Long Pond to spawn.*
2. *The Sheepscot River is home to the southern-most genetically distinct population of federally endangered Atlantic salmon. The population of Atlantic salmon in the Sheepscot River is one of 8 remaining genetically distinct populations within the Gulf of Maine Distinct Population Segment listed under the Endangered Species Act. An upgrade from Class B to Class A in this section of river is an opportunity to add protections to this endangered species. Between*

Route 17 and Long Pond there is Atlantic salmon habitat throughout. According to the Maine Stream Habitat Viewer there are 12,727.86 units (1 unit = 100 square meters) of rearing habitat and 2,462.16 units of spawning habitat. The Department of Marine Resources fry stocks Atlantic salmon in the reach above Route 17 and below the former Coopers Mill dam site. It would be a disservice to this iconic and endangered species to not upgrade this section of river.

3. *The bacteria data from just below the former Coopers Mill dam site showed attainment of Class A waters from 2019 to 2023 that Midcoast Conservancy submitted in its original proposal.*

- Molly Payne Wynne, The Nature Conservancy

TNC recommends that the Department <u>reconsider</u> its decision not to include the following classification upgrades*. The following are all related to upgrades of waters identified to support, or potentially support, Atlantic salmon, as well as other migratory species and high-quality native brook trout habitat important to our freshwater ecosystems. Ever since the listing of Atlantic salmon in 1999, the State and many conservation organizations have been working to enhance this species' survival and propagation. DEP has been an important contributor to this effort, especially by protecting significant habitat through upgrades to water classification. As stated in the introduction of this triennial review document, Maine's "classification system is a goal-oriented one." It is important that the DEP recognize the importance of using this goal-based approach as part of the State's Atlantic salmon restoration policy and recommend upgrades even where the data record may be incomplete or where the Department's management of wastewater or stormwater may require improvements to assure protection of quality:*

  - *Sheepscot River: Class B to A. The Sheepscot River is home to the southernmost genetically distinct population of federally endangered Atlantic salmon. The population of Atlantic salmon in the Sheepscot River is one of 8 remaining genetically distinct populations within the Gulf of Maine Distinct Population Segment listed under the Endangered Species Act. An upgrade from Class B to Class A in this section of river is an opportunity to add protection to this endangered species. Between Route 17 and Long Pond there is Atlantic salmon habitat throughout. According to the Maine Stream Habitat Viewer there are 12,727.86 units (1 unit = 100 square meters) of rearing habitat and 2,462.16 units of spawning habitat. The Department of Marine Resources fry stocks Atlantic salmon in the reach above Route 17 and below the former Coopers Mill dam site. It would be a disservice to the work of the Midcoast Conservancy, TNC and others and to this iconic and endangered species to not upgrade this section of river.*

- John Burrows, Atlantic Salmon Federation

In addition to these upgrades, ASF respectfully recommends that the Department include the proposal from the Midcoast Conservancy to reclassify a portion of the mainstem of the Sheepscot River in the Towns of Whitefield, Windsor, Jefferson, and Somerville from Class B to Class A. This stretch of the Sheepscot is vitally important for Atlantic salmon, as it support a large amount of spawning and rearing habitat, as well as important coldwater refugia, all of which was made fully accessible following the removal of the Coopers Mills Dam in 2018. The Sheepscot supports the southernmost, genetically distinct population of Atlantic salmon remaining in North America and upgrading the water quality classification for this stretch of the river will help in the effort to prevent the extinction of this extremely valuable salmon population.

MDEP Response:

The Department appreciates the support expressed for the proposed upgrade for the mainstem of the Sheepscot River from Route 17 in Whitefield to the Palermo/Somerville town line that was not recommended in the Department's draft recommendations. The Department also recognizes state and local salmon restoration efforts and appreciates the information provided about the proposed segment's critical habitat designations[10] and habitat protection and restoration work. As part of the TR process, the Department conducted a comprehensive review of the submitted proposal, including an evaluation of available water quality data and a consideration of statutory requirements for Class A waters. As part of this evaluation, the Department considered whether any portion of the proposed segment would be eligible for upgrade, including the segment of the Sheepscot River from Route 17 to Long Pond recommended by Midcoast Conservancy during the preliminary public comment process.

As explained in the TR recommendations, based on the current status of the wastewater discharge permit held by the Palermo Rearing Station, the segments proposed are not consistent with Class A water quality standards. As defined in 38 M.R.S. § 465(2)(C), Class A waters are incompatible with this type of discharge, and existing discharges are allowed to continue only until practical alternatives exist.

Furthermore, the Department does not foresee the ability to ensure attainment of Class A standards in any portion of the proposed segment under critical conditions of low flow, high water temperature, and maximum licensed discharge levels. If either proposed segment of the Sheepscot River were to be upgraded to Class A, there would likely be an impact to effluent discharge limits for the Palermo Rearing Station to ensure the facility is in compliance with more stringent discharge limits for total phosphorous based on recently-adopted freshwater nutrient criteria for Class A waters. Additionally, if these waters are upgraded but do not meet Class A nutrient (or other) criteria, they may be listed as impaired in the Department's Integrated Report with a requirement to complete a Total Maximum Daily Load (TMDL). Such listings and TMDLs may also impact discharges if the discharges cause or contribute to such impairments.

For the reasons noted in this response and in the Department's recommendations document, the Department does not recommend an upgrade for either segment of the Sheepscot River proposed. If future changes for the rearing station result in the removal of the upstream discharge to waters being proposed for upgrade, the Department commits to reevaluating the applicability of an upgrade of these segments to Class A.

Upper Union River, Amherst, Aurora, Great Pond, Mariaville, Osborn, T39 MD, T40MD, and Other Towns and Townships (Hancock County Soil and Water Conservation District)

Comments from:

- Mark Whiting, Hancock County Soil and Water Conservation District

[10] According to NOAA, over 12,000 miles of Maine river, stream, and estuarine habitat, and 308 square miles of lake habitat, have been designated as critical habitat for the Atlantic salmon Gulf of Maine Distinct Population Segment (GOM DPS). *See* https://www.fisheries.noaa.gov/action/critical-habitat-gulf-maine-dps-atlantic-salmon and https://www.fisheries.noaa.gov/s3/dam-migration/atlanticsalmon-accessible.pdf.

We still want the West Branch of the Union River upgraded to AA but agree that less is known about the Middle and East Branches. Can we amend our proposal to list the West Branch of the Union as AA now, and then take some time to study the Middle and East Branches? It would help us if we knew more about what information the DEP specifically needs for an upgrade.

- John Burrows, Atlantic Salmon Federation

ASF also strongly supports the proposal submitted by the Board of Supervisors of the Hancock County Soil & Water Conservation District to reclassify portions of the upper Union River watershed – the West, East, and Middle Branches – from Class A to Class AA. These waters are designated as critical habitat for Atlantic salmon and they also support a number of other rare species. The upper Union River watershed is also a highly climate resilient watershed, so upgrading to Class AA will prevent future degradation of this important habitat.

- Mary Blackstone, Green Ellsworth

We were pleased that you entertained the prospect of raising the upper Union River to AA status. As you noted, it will take some time for DEP to undertake the data collection and onsite assessments necessary for such action. However, there is already a substantial body of data for the most accessible of the three Union River branches—the West Branch. On the basis of this data, we would suggest that the West Branch of the river be designated AA now as a follow up to the Triennial review and that you provide us with a list of the data that you would need to elevate the other two branches. Our Action Team is blessed with Master Naturalists and botanists who hold graduate degrees, and we regularly hire summer interns with substantial credentials who could be supervised to assist with data collection. We could potentially partner with DEP to move data collection forward. Our intern this summer is focused on shoreline restoration and eDNA work, but in future we could secure a graduate student with the necessary credentials to help with Union River data collection.

MDEP Response:

The Department appreciates the support expressed for the upgrade proposal for the Upper Union River to Class AA that was not recommended in the Department's draft recommendations. The Department also recognizes state and local salmon restoration efforts and appreciates the information provided about the proposed segment's critical habitat designations[11] and habitat protection and restoration work. As part of the TR process, the Department conducted a comprehensive review of the submitted proposal, including an evaluation of available water quality data and a consideration of statutory requirements for Class AA waters.

In addition, the Department considered HCSWCD's comments regarding the West Branch of the Upper Union River. As explained in the draft TR recommendations, the Department believes that further investigation and supporting data are needed for the West Branch and remaining portions of the Upper Union River to allow for a comprehensive assessment of attainment for narrative

[11] According to NOAA, over 12,000 miles of Maine river, stream, and estuarine habitat, and 308 square miles of lake habitat, have been designated as critical habitat for the Atlantic salmon Gulf of Maine Distinct Population Segment (GOM DPS). *See* https://www.fisheries.noaa.gov/action/critical-habitat-gulf-maine-dps-atlantic-salmon and https://www.fisheries.noaa.gov/s3/dam-migration/atlanticsalmon-accessible.pdf.

and numeric criteria for all segments proposed, including recently adopted freshwater nutrient criteria, and the high bar as an "outstanding national resource" for Class AA waters. For this reason, the Department does not recommend the proposed upgrade to Class AA. However, the Department notes the offers from HCSWCD and Green Ellsworth to gather additional information and data to support similar requests for a potential upgrade in the future. The Department will work with these entities outside of the TR process to advise on the types of data and supporting information that would be useful for future proposals for waters where Class AA upgrades may be applicable based on statutory requirements.

Chandler Bay, Jonesport (Eastern Maine Conservation Initiative)

Comments from:

- Sean Turley, Eastern Maine Conservation Initiative (EMCI)

*Despite this compelling evidence that Chandler Bay currently meets the criteria to be designated as Class SA in accordance with 38 M.R.S.A. § 465-B, DEP staff has recommended that Chandler Bay not be reclassified, reasoning that the mere issuance by the department of a Maine Pollutant Discharge Elimination System permit (the "**Permit**") to Kingfish Maine, Inc. ("**Kingfish**") that might result in discharges into Chandler Bay at some unspecified time in the future prevents Chandler Bay from satisfying the standards for a Class SA waterbody.*

*I write on EMCI's behalf to comment on that grounds for department's recommendation and explain that it is based on a misinterpretation of the statutes implementing Maine's Water Quality Standards (the "**Standards**"). As the department recognizes in its report entitled "Maine Department of Environmental Protection 2025 Triennial Review of Water Quality Standards, Department Recommendations" dated May 2025 (the "**Report**"), the purpose of the Standards is to "restore and maintain the chemical, physical and biological integrity of the State's waters and to preserve certain pristine state waters." This language closely tracks the Legislature's announcement of its intent in implementing the Standards in 38 M.R.S.A. § 464(1), which "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."*

Despite its obligation to interpret and apply the Standards in accordance with their stated purpose, the department has taken a position that conflicts with the Legislature's directive. In order to "maintain" the integrity of Chandler Bay the department needs to consider (a) its current condition and (b) whether that condition satisfies the standards that apply to Class SA waterbodies. That is because the emphasis is on the maintenance and preservation of that waterbody as it currently exists—not as it could conceivably exist based on speculation as to the potential effects of a particular use of that waterbody that may never occur. To "maintain" something means to "keep in an existing state" or "preserve from failure or decline." Likewise, "preserve" is defined as acting to "keep" something safe from "injury, harm or destruction." The objective, then, in classifying waterbodies is to identify the classification that reflects that waterbody's current conditions because it is those conditions that must be, at a minimum, maintained and preserved.

That is the principle that should guide the department's recommendation. EMCI presented data in the Request that demonstrates that Chandler Bay, in its current state, satisfies the definition of a Class SA marine waterbody. In spite of this evidence, DEP staff recommends against reclassification because it is conceivably possible that there may be discharges into Chandler Bay in the future by Kingfish. By doing so, the department has erred because it has assigned greater

value to the possible future condition of Chandler Bay than to its current, pristine condition. That weighing is particularly problematic when, as here, it is highly unlikely that the future condition will ever occur.

*As of the writing of this letter, Kingfish has not engaged in any activities under the Permit resulting in the discharge of any pollutants into Chandler Bay. Although Kingfish received the Permit over four years ago, the site of its proposed industrial aquafarm facility (the "**Facility**") on Dun Garvin Road in Jonesport (the "**Site**") remains completely undeveloped. No structures have been erected, no infrastructure has been installed, and no improvements of any kind have been made on the Site. It exists today in virtually the same state as when the department issued the Permit on June 25, 2021. Given these facts, it is incredibly unlikely that the Facility will be operational—let alone that any discharge will take place—prior to either the expiration of the Permit on June 25, 2026 or the Legislature's vote on the proposed reclassification of the State's waterbodies during its next session.*

If no construction has taken place by the date the Permit expires, any application Kingfish might submit to renew the Permit would be "subject to the procedural and substantive requirements in effect at the time of acceptance of the renewal application." This vulnerability to potential changes in the law, including the reclassification of Chandler Bay, continues to exist unless Kingfish vests its rights in the Permit, which it has thus far failed to do.

Consequently, the issuance of the Permit is not a reasonable justification for the department to refuse to recommend to reclassify Chandler Bay as a Class SA waterbody. The department is not bound by the consequences of the decision to issue Kingfish a MEPDES permit because Kingfish never took— and is unlikely to take—the steps necessary to protect that permit from future changes to statutes and regulations that might prevent it from developing the Facility. Unlike a discharge into a waterbody that presently exists, the hypothetical discharge of pollutants into that waterbody by a licensee who is likely to lose its rights in the discharge permit because of its voluntary inaction is not grounds to recommend against reclassifying that waterbody. The Permit is in a far too tenuous position for the department to offer recommendations as if discharges into Chandler Bay from the Facility are a foregone conclusion. Rather than acting as if its hands are tied by the existence of a permit authorizing discharges that will likely never occur, the department should revise its recommendation to support the reclassification of Chandler Bay to a Class SA marine waterbody because its current condition obligates the department to take that position.

- Carrie Peabody, Citizen

My name is Carrie Peabody and I am the wife of a 4th generation Jonesport-Beals fisherman. I am concerned about the impact water quality degradation will have upon our vital fishing industry in Jonesport, Maine. Revenue generated by the Zone A lobster sector, licenses held, and landing reports documented by County (2024-2025) detail the dependency our area has upon the pristine water quality of Chandler Bay. Changes in the Bay's water quality health could threaten the eco-system dependent upon it, thus affecting jobs and revenue.

Given that there has been little data produced on Chandler Bay's water quality until water testing was required for the Kingfish permit, the existing determination of SB water should be challenged. There are many SA water bodies that feed into Chandler Bay or surround it. The criteria for SA vs. SB is muddy given the DEP is planning to allow Kingfish to discharge 28 million gallons/day of exchange water, 1580 pounds of nitrogen/day, and 399 pounds of phosphorus/day into Chandler Bay using an open recirculating aquaculture system (RAS). Kingfish is not a closed-

loop or land-based operation. Based on the attached chemical list of planned discharge agents, shouldn't the Bureau be concerned about the effects this will have on the Bay's water quality in general?

When did the Bureau of Water Quality make the decision to incorporate the DEP recommendation to over-ride existing water quality standards? Clearly the standards are breached if the DEP gives exception to Kingfish by allowing them to discharge a daily maximum flow of 28.7 MGD of treated wastewater into Chandler Bay. Per the attached effluent chart, why would the DEP allow Kingfish to pollute Chandler and risk the loss of a viable and prosperous seafood industry? Jonesport is one of the top lobster and seafood producers in the state!

In conclusion, the fishing industry, particularly the lobster sector, plays a vital role in the economic landscape of Jonesport, Maine. As we move forward, it is essential to continue supporting our local fishermen by promoting sustainable practices to ensure the longevity of this important industry. Sustainable practices should include upholding water quality standards as defined in the Clean Water Act, EPA guidelines and Maine water quality standards/laws.

The Kingfish permit has absolutely no measure in the classification process, neither should economic conditions. The Bureau of Water Quality must be vigilant in remaining independent from outside influence and base its decisions purely on science and current water quality data. Scientific analysis of the water quality in Chandler Bay strongly indicates the water quality is worthy of an upgrade from SB to SA.

- Jason Herrick, Roque Island Homestead

We are writing in strong support of the Eastern Maine Conservation Initiative's (EMCI) petition to reclassify Chandler Bay in Jonesport from Class SB to Class SA. This reclassification aligns with all of the conservation activities that the Roque Island archipelago has supported for decades and is currently engaged in.

Chandler Bay is not only an ecological asset but also a vital resource for the surrounding communities, who depend on its waters for their livelihoods as well as recreation. In fact, Jonesport and Beals combined have the number one lobster landings in the state for several years in a row. It is of grave concern to us that Chandler Bay would be denied an SA classification due to a permit having been mistakenly granted to the industrial fish farm Kingfish Maine (KM) using untested technology at an unprecedented scale. In any case, this facility has not been built despite having all its permits and has not demonstrated any capacity to be built in the foreseeable future.

The investment in the project so far has been minimal compared to the estimated cost of the facility and the cost, should the untested technology and business model fail. There is clean fully-land based technology available that does not run these risks. We ask that you seriously reconsider sacrificing a pristine body of water that has provided meaningful livelihoods for the community through fishing and harvesting for generations to be polluted by a non-existent massive industrial aquaculture/wastewater treatment facility. If the quality of Chandler Bay's water had been known prior to KM's permit, it would not have been granted. Chandler Bay was given an SB class by default because no studies had been conducted yet.

In addition, the recreational value of having such pristine waters is at the heart of Maine's commitment to enjoying the great outdoors and Jonesport's mission to attract people to participate in its undeveloped natural beauty. This area has been a huge draw to sailors, boaters, kayakers,

and swimmers for generations. In fact, the preponderance of indigenous artifacts from several tribes in this area is proof of the value of the water and its invaluable bounty for hundreds of years.

We ask that you reclassify Chandler Bay to the SA class based on the extensive scientific data that has been presented proving it as such, along with recognition of the importance of its health to the local community and state.

- Cynthia Beauvais, Citizen

This letter is sent to show upgrading Chandler Bay to SA water quality is in line with Jonesport's Comprehensive Plan; the Plan that shines the light on our town's future and impacts not only this area but the whole state.

There is a mandate by Jonesport's residents. By not upgrading the water quality of Chandler Bay from SB to SA, the people's choices and voices are not being heard or taken into consideration.

There is currently a permit allowing a foreign company to discharge 28,700,000 gallons of effluent into Chandler Bay daily. This permit can be pulled at any time based on the many pages of new information which have been submitted to the Commissioner. Wouldn't it be advantageous to preserve the high quality waters of Chandler Bay now rather than try to play catch up by having to clean/restore an once immaculate water body?

Why wouldn't an upgrade be granted when all requirements are met or exceeded? The proof exists.

- Ariana Fischer, EMCI

I am writing to provide further information per the recommendations made by the Triennial Water Quality Review as it pertains to the (1) interpretation of coliform data as it relates to shellfish harvesting, (2) the recreational uses of Chandler Bay, and (3) threats to the bay as they are relevant to the proposed reclassification of Chandler Bay to Class SA.

1. Water Quality and Coliform Data:
Data collected regarding Chandler Bay's water quality (from 2022-2024) met Class SA standards for all parameters measured, as documented in the University of Maine's Darling Marine Center (DMC) monitoring report. The bay and its tributaries qualify as "outstanding ecological importance" due to their high quality, eelgrass beds, and designation as essential fish habitat for numerous species, including the endangered Atlantic salmon. These characteristics fulfill the requirements for SA waters which call for the highest level of protection for waters of exceptional ecological, social, scenic, economic, or recreational value. [See attached document – Chandler Bay Water Quality by Dr. Jamie Vaudrey]

Given the data provided by the DMC demonstrates the extremely high quality of the water in Chandler Bay and as no data is suggesting otherwise, it stands to reason that the State's Entero standards would not be violated in Chandler Bay.

2. Recreational and Economic Uses
Chandler Bay is a cornerstone of the Jonesport community, supporting a wide range of recreational and commercial activities. Chandler Bay is protected by state and municipal policies that prioritize public access and traditional marine uses, including: . . . .

3. Existing Discharge Permit
Regarding the issue of existing discharge permits, it is important to clarify that the only active wastewater discharge permit in Chandler Bay is for the proposed Kingfish Maine aquaculture facility. However, Kingfish Maine has not taken any active steps to vest their rights in this permit, as construction has not commenced, and their municipal permit is set to expire no later than August 13, 2024. While DEP staff note that Kingfish currently holds all necessary permits, it is likely that not all permits will remain valid prior to the decision on this reclassification request. Moreover, the presence of this permit should not be considered an impediment to reclassification, especially as the facility has not even begun construction, has not date set to do, and is therefore, not operational nor has any discharge has occurred.

While potential threats such as overboard discharge from boats, agricultural runoi, and other land-based activities exist, there is no evidence that these have compromised water quality in Chandler Bay. All evidence is to the contrary, Chandler Bay remains of the highest quality and is pristine. The bay remains free of active wastewater or stormwater discharges (apart from the nonoperational Kingfish permit), landfills, or hazardous waste sites. The greatest threat to the bay's vitality is the pollution that would be emitted by Kingfish Maine; not only will it destroy the bay and threaten the local fish harvesting community, the costs for remediation, if necessary, will be an excessive burden for the state.

The request to reclassify Chandler Bay to Class SA is supported by comprehensive water quality data, the bay's outstanding ecological, economic, and recreational importance, and strong legal justification. All relevant data have been provided, and the small data gaps should not preclude reclassification when a viable proxy measurement suggests that it is very unlikely that the missing data would be likely to violate SA standards. The available Coliform data suggest that it is very unlikely the class SA Enterococcus standard would be violated. The existence of a non-vested, soon-to-expire discharge permit should not delay this action. Chandler Bay's continued protection as a Class SA waterbody is essential for the community, the environment, and the state.

- John Higgins, The Kestrel Foundation of Maine

On behalf of the Kestrel Foundation of Maine, I am writing to express our strong support for the proposal to reclassify Chandler Bay from Class SB to Class SA waters. We urge the Department to adopt this change during the current Triennial Review process.

Importance of Chander Bay Reclassification:
Chandler Bay is a vital ecological asset for Eastern Maine, supporting diverse marine life, local fisheries, and recreational opportunities. Upgrading its classification to SA-the highest water quality standard for marine and estuarine waters-would provide the strongest legal protection against pollution and degradation. This reclassification will:

- *Preserve critical habitat for endangered and commercially important species.*
- *Safeguard water quality for shell fishing, recreation, and tourism.*
- *Support the resilience of local communities and economies that depend on a healthy marine environment.*

Alignment with Conservation Initiatives:
We wish to highlight and endorse the original petition by Eastern Maine Conservation Initiative (EMCI), which provided a compelling case for Chandler Bay's eligibility for SA classification based on water quality data, ecological value, and community support. Their petition reflects the type of

science-based, community-driven advocacy that aligns with Kestrel's philosophy and the best practices for positive environmental impact.

Why This Upgrade Matters:
Reclassifying Chandler Bay to SA status is not only a recognition of its existing high water quality, but also a proactive step to ensure its long-term protection. It will help prevent future degradation, promote sustainable use, and set a standard for stewardship across Maine's coastal waters. As the Department considers proposals during this Triennial Review, we urge you to prioritize actions that deliver lasting benefits for Maine's environment and communities.

MDEP Response:

The Department appreciates the extensive support expressed for the upgrade proposal for Chandler Bay to Class SA that was not recommended in the Department's draft recommendations. The Department also appreciates the additional documentation provided during the preliminary public comment period by interested parties to address data gaps, particularly those noted in the draft recommendations for Enterococci bacteria. As part of the TR process, the Department conducted a comprehensive review of the submitted proposal, including an evaluation of available water quality data and data gaps and, as noted in the draft recommendations, the Department acknowledges that based on available data, water quality conditions are very good in Chandler Bay.

In addition to existing water quality data and data gaps, the Department considered statutory requirements for Class SA waters. Originally established in the 1950s, Maine's water classification system has undergone several revisions, the most comprehensive of which occurred in the mid-1980s in response to significantly improved water quality throughout the state and new federal law requirements. Since 1985, Maine's existing tiered water classification system has been comprised of three marine water classes (SA, SB, and SC) with differences between the designated uses, criteria, and discharge allowances in each class. Through historical reclassification efforts, the Department has designated certain marine waters and tidal estuaries as Class SA for their exceptional ecological, economic, scenic, or social value. As part of this process, the Department established conservative boundaries around Class SA waters to ensure adjacent discharges and activities would not impact waters assigned to this highest class.

Several commenters stated that Chandler Bay was, by default, designated as a Class SB waterbody because no water quality data were available to determine Class SA water quality criteria attainment when the Bay's classification was originally determined. The Department agrees that during the mid-1980s reclassification process, most marine waters were designated as Class SB. The Department's classification recommendations for all water classes were informed by available water quality monitoring and land use data, considerations for water quality management and allowance for human activities, and the presence of ecologically and socially important public and private uses. The majority of Class SA waters in existence today were originally designated as Class SA during the mid to late-1980s reclassification process. As part of subsequent reclassification processes, the Department has periodically reevaluated waters and, when applicable, recommended waters for upgrade that meet statutory requirements for the next highest class. Presently, 8.8% of Maine's marine and estuarine waters are designated as Class SA, 90.2% as Class SB, and 1.0% as Class SC.

According to Maine statute (38 M.R.S. § 465-B(1), the highest estuarine and marine water classification (Class SA) should be applied to waters that are considered "outstanding natural resources and which should be preserved because of their ecological, social, scenic, economic

or recreational importance." Class SA criteria include "natural" habitat and aquatic life "as naturally occurs" (38 M.R.S. §465-B(1)(A) and (B)). Additionally, in accordance with 38 M.R.S. § 464(4)(F)(2), all Class SA waters are considered outstanding national resources unless otherwise specified under Section 469.

Most Class SA waters share a significant portion of coastline with State and Federal conservation lands, while a few are associated with longstanding private preserves or other small preserves, lending significant scenic and recreational importance to these waters.[12] Protected status and watershed land uses also inform the likelihood of meeting Class SA criteria for "natural" habitat and aquatic life of "as naturally occurs." As described in the Department's recommendations, Chandler Bay's watershed includes a variety of land uses including 2.4% conserved land, agriculture, developed areas, and areas with forestry activities. Given these factors, the Department's position is that Chandler Bay does not meet statutory requirements for Class SA waters, including the high bar as an "outstanding national resource."

Numerous commenters discussed the Department's original issuance of the discharge permit held by Kingfish Maine. As explained in the draft recommendations, based on the current status of the wastewater discharge permit held by Kingfish Maine, Chandler Bay does not meet statutory requirements in 38 M.R.S. § 465-B(1)(C) stating there may be no direct discharges of pollutants to Class SA waters, with specifically delineated exceptions not relevant here. The Department approved Kingfish's application for a combined Site Location of Development and Natural Resources Protection Act permit on November 12, 2021 (Kingfish Permit). An appeal of the waste discharge license to the Board of Environmental Protection was dismissed. The Kingfish Permit was appealed by various parties to the BEP, Superior Court, and the Maine Supreme Judicial Court sitting as the Law Court. On April 10, 2025, the Law Court upheld the Department's issuance of the Kingfish Permit. This decision exhausted any further opportunity for appeals. If approved, an upgrade for Chandler Bay to Class SA would prohibit Kingfish Maine from executing the aforementioned discharge permit. For this reason and for the reasons stated above and those previously provided in the draft recommendations document, the Department does not recommend an upgrade for Chandler Bay to Class SA.

[12] The Department's geographic analysis indicates that there are 32 distinct Class SA polygons with a total area of 251 square miles. Of these, 28 (or 234 sq. mi) share a large portion of coastline with at least one State or National conservation land and the remaining four are associated with local preserved lands. A webmap visually illustrating Maine's marine water classes in relation to these conserved lands is available here: https://maine.maps.arcgis.com/apps/mapviewer/index.html?webmap=78b1bfe1adf743b9a6842286eed1a506.