

STATE OF MAINE

 IN THE YEAR OF OUR LORD

TWO THOUSAND NINETEEN

 H.P. 1262 - L.D. 1775

An Act To Protect Sustenance Fishing

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

Sec. 1. 38 MRSA §420, sub-§1-B, ¶A, as enacted by PL 2001, c. 418, §3, is amended to read:

A. The ambient criteria for mercury are as follows:

(1) Ambient water quality criteria for aquatic life:

(a) Freshwater acute: 1.7 micrograms per liter;

(b) Freshwater chronic: 0.91 micrograms per liter;

(c) Saltwater acute: 2.1 micrograms per liter; and

(d) Saltwater chronic: 1.1 micrograms per liter; and

(2) Fish tissue residue criterion for human health: 0.2 milligrams per kilogram in the edible portion of fish for all waters, except for those water body segments subject to a sustenance fishing designated use pursuant to article 4-A, which must have a fish tissue residue criterion for human health of 0.03 milligrams per kilogram in the edible portion of fish.

Sec. 2. 38 MRSA §465-A, sub-§1, ¶C, as amended by PL 2013, c. 193, §4, is further amended to read:

C. There may be no new direct discharge of pollutants into Class GPA waters. The Notwithstanding paragraph D, section 466-A or any other provision of law to the contrary, the following are exempt from this provision:

(1) Chemical discharges for the purpose of restoring water quality approved by the department;

(2) Aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species;

- (3) Storm water discharges that are in compliance with state and local requirements;
- (4) Discharges of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety using materials and methods that provide for protection of nontarget species. When the department issues a license for the discharge of aquatic pesticides authorized under this subparagraph, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website; and
- (5) Discharges of pesticides approved by the department that are:
 - (a) Unintended and an incidental result of the spraying of pesticides;
 - (b) Applied in compliance with federal labeling restrictions; and
 - (c) Applied in compliance with statute, Board of Pesticides Control rules and best management practices.

Discharges into these waters licensed prior to January 1, 1986 are allowed to continue only until practical alternatives exist. Materials may not be placed on or removed from the shores or banks of a Class GPA water body in such a manner that materials may fall or be washed into the water or that contaminated drainage may flow or leach into those waters, except as permitted pursuant to section 480-C. A change of land use in the watershed of a Class GPA water body may not, by itself or in combination with other activities, cause water quality degradation that impairs the characteristics and designated uses of downstream GPA waters or causes an increase in the trophic state of those GPA waters.

Sec. 3. 38 MRSA §465-A, sub-§1, ¶D is enacted to read:

D. The following waters are subject to a sustenance fishing designated use pursuant to section 466-A: Conroy Lake in Monticello; Grand Lake Matagamom in Trout Brook Township and T.6 R.8 W.E.L.S.; Mattamiscontis Lake in T.3 R.9 N.W.P. and T.2 R.9 N.W.P.; Grand Falls Flowage, Berry Brook Flowage, George Brook Flowage, Huntley Brook Flowage, Lewey Lake, The Basin, The Narrows, Long Lake and Big Lake, adjacent to Indian Township; and Sysladobsis Lake in T.5 N.D.

Sec. 4. 38 MRSA §466, sub-§10-A is enacted to read:

10-A. Sustenance fishing designated use. "Sustenance fishing designated use" is a subcategory of the applicable fishing designated use that protects human consumption of fish for nutritional and cultural purposes and applies only to those water body segments that are identified in this article as subject to a sustenance fishing designated use.

Sec. 5. 38 MRSA §466-A is enacted to read:

§466-A. Sustenance fishing designated use

1. Water quality criteria. To protect the sustenance fishing designated use designated under this article, the department shall calculate and establish water quality

criteria for human health using a fish consumption rate of 200 grams per day and a cancer risk level of one in 1,000,000, except that the cancer risk level for inorganic arsenic is governed by section 420, subsection 2, paragraph J.

2. Criteria deemed protective. For all purposes, the sustenance fishing designated use established under this article is deemed protected through the water quality criteria for human health calculated and established by the department for the water body segments subject to a sustenance fishing designated use under this article.

3. Limitation; construction. Nothing in this section and nothing in the designation in this article of a sustenance fishing designated use may be construed to:

A. Create any other right or protection, including a right to any particular quantity or quality of fish;

B. Limit any right or protection otherwise existing in law; or

C. Alter or affect the regulation of mercury in discharges, which is governed exclusively by section 413, subsection 11 and section 420, subsection 1-B.

Sec. 6. 38 MRSA §467, sub-§7, ¶A, as amended by PL 2003, c. 317, §12, is further amended to read:

A. Penobscot River, main stem.

(1) From the confluence of the East Branch and the West Branch to the confluence of the Mattawamkeag River, including all impoundments - Class C B. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(2) From the confluence of the Mattawamkeag River to the confluence of Cambolasse Stream - Class B. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(3) From the confluence of Cambolasse Stream to the West Enfield Dam - Class B. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(5) From the West Enfield Dam, ~~including the Stillwater Branch,~~ to the ~~Veazie Milford Dam,~~ including all impoundments, ~~and the Stillwater Branch~~ - Class B. That portion of this segment upstream of the Milford Dam and upstream of the Gilman Falls Dam at Route 43 is subject to a sustenance fishing designated use pursuant to section 466-A.

(6) From the ~~Veazie Milford Dam,~~ but not including the ~~Veazie Milford Dam,~~ to the Maine Central Railroad bridge in Bangor-Brewer - Class B. Further, the Legislature finds that the free-flowing habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained.

(7) From the Maine Central Railroad bridge in Bangor to a line extended in an east-west direction from a point 1.25 miles upstream of the confluence of Reeds Brook in Hampden - Class B. Further, the Legislature finds that the free-flowing

habitat of this river segment provides irreplaceable social and economic benefits and that this use must be maintained.

Sec. 7. 38 MRSA §467, sub-§7, ¶B, as repealed and replaced by PL 1989, c. 764, §7, is amended to read:

B. Penobscot River, East Branch Drainage.

(1) East Branch of the Penobscot River, main stem.

(a) Above its confluence with Grand Lake Mattagamon - Class A.

(b) From the dam at the outlet of Grand Lake Mattagamon to a point located 1,000 feet downstream from the dam - Class A. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(c) From a point located 1,000 feet downstream from the dam at the outlet of Grand Lake Mattagamon to its confluence with the ~~West Branch~~ Mattaceunk impoundment as it existed on July 14, 1990 - Class AA. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(d) From its confluence with the Mattaceunk impoundment as it existed on July 14, 1990 to its confluence with the West Branch - Class B. Further, there may be no new direct discharges to this segment after January 1, 2019. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(2) East Branch of the Penobscot River, tributaries - Class A unless otherwise specified.

(a) All tributaries, any portion of which is located within the boundaries of Baxter State Park - Class AA.

(b) Sawtelle Brook, from a point located 1,000 feet downstream from the dam at the outlet of Sawtelle Deadwater to its confluence with the Seboeis River - Class AA.

(c) Seboeis River, from the outlet of Snowshoe Lake to its confluence with the East Branch - Class AA.

(d) Wassataquoik Stream, from the boundary of Baxter State Park to its confluence with the East Branch - Class AA.

(e) Webster Brook, from a point located 1,000 feet downstream from the dam at the outlet of Telos Lake to its confluence with Webster Lake - Class AA.

Sec. 8. 38 MRSA §467, sub-§7, ¶D, as amended by PL 1999, c. 277, §11, is further amended to read:

D. Mattawamkeag River Drainage.

(1) Mattawamkeag River, main stem.

(a) From the confluence of the East Branch and the West Branch to the Kingman-Mattawamkeag boundary - Class A.

- (b) From the Kingman-Mattawamkeag boundary to its confluence with the Penobscot River - Class AA.
- (2) Mattawamkeag River, tributaries - Class A unless otherwise specified.
 - (a) East Branch Mattawamkeag River above Red Bridge - Class B.
 - ~~(b) West Branch Mattawamkeag River from Interstate 95 to its confluence with Mattawamkeag Lake - Class B.~~
 - ~~(c) Fish Stream - Class B.~~
 - (d) West Branch Mattawamkeag River from its source at Rockabema Lake to its confluence with Mattawamkeag Lake - Class A. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

Sec. 9. 38 MRSA §467, sub-§13, as amended by PL 2009, c. 163, §9, is further amended to read:

13. St. Croix River Basin.

A. St. Croix River, main stem.

- (1) Except as otherwise provided, from the outlet of Chiputneticook Lakes to its confluence with the Woodland Lake impoundment, those waters lying within the State - Class A. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.
- (2) Those waters impounded in the Grand Falls Flowage including those waters between Route 1 (Princeton and Indian Township) and Grand Falls Dam - Class GPA. These waters are subject to a sustenance fishing designated use pursuant to section 466-A.
- (3) Woodland Lake impoundment - Class C.
- (4) From the Woodland Dam to tidewater, those waters lying within the State, including all impoundments - Class C.

B. St. Croix River, tributaries, those waters lying within the State - Class B unless otherwise specified.

- (1) All tributaries entering upstream from the dam at Calais, the drainage areas of which are wholly within the State - Class A unless otherwise classified.
- (2) Tomah Stream - Class AA. This stream is subject to a sustenance fishing designated use pursuant to section 466-A.
- (3) Monument Brook - Class A.
- (4) Waters connecting the Chiputneticook Lakes, including The Thoroughfare, Forest City Stream and Mud Lake Stream - Class A.
- (5) Berry Brook, George Brook, Huntley Brook, Musquash Stream, Flipper Creek, Patten Pond Stream and all segments of the West Branch of the St. Croix River between the West Grand Lake Dam and Route 1 - Class A. These waters are subject to a sustenance fishing designated use pursuant to section 466-A.

Sec. 10. 38 MRSA §467, sub-§15, ¶A, as repealed and replaced by PL 1989, c. 764, §16, is amended to read:

A. St. John River, main stem.

(1) From the confluence of the Northwest Branch and the Southwest Branch to a point located one mile above the foot of Big Rapids in Allagash - Class AA. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(2) From a point located one mile above the foot of Big Rapids in Allagash to the international bridge in Fort Kent, those waters lying within the State, including all impoundments - Class A.

(3) From the international bridge in Fort Kent to the international bridge in Madawaska, those waters lying within the State, including all impoundments - Class B.

(4) From the international bridge in Madawaska to where the international boundary leaves the river in Hamlin, those waters lying within the State, including all impoundments - Class C.

Sec. 11. 38 MRSA §467, sub-§15, ¶C, as amended by PL 2017, c. 137, Pt. B, §9, is further amended to read:

C. Aroostook River Drainage.

(1) Aroostook River, main stem.

(a) From the confluence of Millinocket Stream and Munsungan Stream to the Route 11 bridge - Class AA. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(b) From the Route 11 bridge to the Sheridan Dam - Class B. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(c) From the Sheridan Dam to its confluence with Presque Isle Stream, including all impoundments - Class B. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(d) From its confluence with Presque Isle Stream to a point located 3.0 miles upstream of the intake of the Caribou water supply, including all impoundments - Class C. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(e) From a point located 3.0 miles upstream of the intake of the Caribou water supply to a point located 100 yards downstream of the intake of the Caribou water supply, including all impoundments - Class B. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(f) From a point located 100 yards downstream of the intake of the Caribou water supply to the international boundary, including all impoundments - Class C. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(2) Aroostook River, tributaries, those waters lying within the State - Class A unless otherwise specified.

(a) All tributaries of the Aroostook River entering below the confluence of the Machias River that are not otherwise classified - Class B.

(b) Little Machias River and its tributaries - Class A.

(c) Little Madawaska River and its tributaries, including Madawaska Lake tributaries above the Caribou-Connor Township line - Class A.

(d) Machias River, from the outlet of Big Machias Lake to the Aroostook River - Class AA. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(e) Millinocket Stream, from the outlet of Millinocket Lake to its confluence with Munsungan Stream - Class AA.

(f) Munsungan Stream, from the outlet of Little Munsungan Lake to its confluence with Millinocket Stream - Class AA.

(g) Presque Isle Stream and its tributaries above the Mapleton-Presque Isle town line - Class A.

(h) St. Croix Stream from its confluence with Hall Brook in T.9, R.5, W.E.L.S. to its confluence with the Aroostook River - Class AA.

(j) Scopan Stream from the outlet of Scopan Lake to its confluence with the Aroostook River - Class C.

(k) Limestone Stream from the Long Road bridge to the Canadian border - Class C.

(l) Beaver Brook and its tributaries (T.14 R.6 W.E.L.S., T.14 R.5 W.E.L.S., T.13 R.5 W.E.L.S., Portage Lake, Ashland, Castle Hill) - Class A.

(m) Gardner Brook and its tributaries (T.14 R.5 W.E.L.S., T.13 R.5 W.E.L.S., Wade) - Class A.

Sec. 12. 38 MRSA §467, sub-§15, ¶E, as amended by PL 2015, c. 12, §1, is further amended to read:

E. Meduxnekeag River Drainage.

(1) Meduxnekeag River, main stem.

(a) From the outlet of Meduxnekeag Lake to the international boundary - Class B. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(2) Meduxnekeag River, tributaries - Class B unless otherwise specified.

(a) North Branch of the Meduxnekeag River and its tributaries above the Monticello - T.C, R.2, W.E.L.S. boundary - Class A.

(a-1) The North Branch of the Meduxnekeag River and its tributaries, including Dead Stream, from the source in T.8 R.3 W.E.L.S. to the

international boundary are subject to a sustenance fishing designated use pursuant to 466-A.

(b) Moose Brook and its tributaries, upstream of the Ludlow Road in Ludlow - Class A.

(c) South Branch of the Meduxnekeag River and its tributaries, upstream of the Oliver Road in Cary - Class A.

(d) Captain Ambrose Bear Stream and tributaries upstream of the Burnt Brow Bridge in Hammond - Class A.

(e) All tributaries from the outlet of Meduxnekeag Lake to the international boundary are subject to a sustenance fishing designated use pursuant to 466-A.

Sec. 13. 38 MRSA §467, sub-§15, ¶F, as amended by PL 2017, c. 137, Pt. B, §10, is further amended to read:

F. St. John River, minor tributaries, those waters lying within the State - Class A unless otherwise specified.

(1) Except as otherwise classified, all minor tributaries of the St. John River entering below the international bridge in Fort Kent, those waters lying within the State - Class B.

(2) Baker Stream and Baker Branch of the St. John River, from the headwaters at the Upper First St. John Pond to their confluence with the Southwest Branch - Class AA.

(3) Big Black River, from the international boundary to its confluence with the St. John River - Class AA.

(4) Northwest Branch, from the outlet of Beaver Pond in T.12, R.17, W.E.L.S. to its confluence with the St. John River - Class AA.

(5) Prestile Stream from its source to Route 1A in Mars Hill - Class A. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(a) Prestile Stream from Route 1A in Mars Hill to the international boundary - Class B. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(6) Southwest Branch, from a point located 5 miles downstream of the international boundary to its confluence with the Baker Branch - Class AA.

(7) Violette Stream and its tributaries, from its source to the confluence with Caniba Brook - Class A.

Sec. 14. 38 MRSA §468, sub-§8, ¶¶P and Q are enacted to read:

P. Cherryfield.

(1) Tunk Stream and its tributaries - Class A.

Q. Perry.

(1) Boyden Stream - Class B. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

Sec. 15. 38 MRSA §469, sub-§7, ¶H-1 is enacted to read:

H-1. Perry.

(1) Tidal waters south of a line running from Gleason Point easterly to the international boundary, thence southerly to the town line with Quoddy, thence westerly to the Old Eastport Road, including Boyden Stream and the Little River - Class SB. These waters are subject to a sustenance fishing designated use pursuant to section 466-A.

Sec. 16. Rulemaking. The Department of Environmental Protection shall adopt rules no later than March 1, 2020 that calculate and establish water quality criteria protective of human health for toxic pollutants and the sustenance fishing designated use as established pursuant to this Act. Rules adopted under this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

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