



Maine Department of Environmental Protection

2018 Water Quality Re-classification Initiative

Summary of Public Comments and Responses

The Department posted draft water quality re-classification proposals for public comment on April 20, 2018. The draft proposals were posted on the Department's website and public notice was provided as described below. Two public meetings were held: May 22 in Augusta and May 24 in Millinocket. The Department's presentation from the public meetings was also posted on the Department's website. The Department accepted written public comments until June 5, 2018. For later stages of the re-classification initiative, the Board of Environmental Protection will have a public hearing and a public comment phase for written comments. If the Legislature accepts a re-classification bill for consideration, an additional opportunity for comment will be available in that venue.

Notice of the draft proposals and public meetings were sent by e-mail to approximately 300 stakeholders, including officials from all cities and towns that were in the watershed of any re-classification candidate; the Land Use Planning Commission (for unorganized towns); state natural resource agencies; a number of non-profit organizations; the four federally recognized Indian tribes in Maine; businesses that were potentially affected by proposals (e.g. dischargers, developers, hydropower owners); Soil and Water Conservation Districts; consultants; state agencies, and a number of private persons. There were also e-mail notices sent to interested persons on two Department subscriber lists, one for general DEP announcements and one specifically for public meetings, as well as a tweet to Department Twitter followers. All of these notices were sent out at the commencement of the public comment period on April 20, 2018.

The Department received a number of comments during the official public comment period and wishes to thank all persons who provided input. Comments below are grouped according to topic, and may be abbreviated, paraphrased, and/or consolidated. In some cases, typographical or other minor errors in comments have been corrected.

General Comments

Decisions on Recommendations

Comment from:

- Kelly Maloney, Brookfield Renewable Energy

Several proposals were identified as having issues, and some were recommended for upgrade, others were not. How do you overcome the issues that were identified and recommend an upgrade?

MDEP Response:

Each proposal was analyzed carefully by considering a number of factors, including water quality standards attainment status, data availability and interpretation, potential impact on licensed dischargers and hydropower facilities, landuse in the watershed, presence of conservation land, value of waterbody as endangered species habitat (e.g. for Atlantic salmon), and classification of adjacent water bodies. Where appropriate, Department staff also ran water quality models to inform the decision-making process. Whenever potential concerns were encountered, the Department determined whether the concerns were justified in light of the existing data. If these additional analyses indicated that concerns were not justified, the proposal was recommended for upgrade. If additional analyses indicated that concerns were justified, the proposal was amended or classified as 'not recommended for upgrade'.

Effective Date of Upgrades

Comment from:

- Kelly Maloney, Brookfield Renewable Energy

If a waterbody is upgraded while a permit or license application is pending, which classification applies?

MDEP Response:

Under water regulations (38 M.R.S. § 344(1-A)), a license is issued based on the rules and laws that are in effect on the date the license is issued, not based on those in effect on the date when the application was submitted or accepted.

Comments on Specific Proposals - Recommended for Upgrade

Tributaries to Webb Lake/Webb River (Department)

No comments received.

East Branch Wesserunsett Stream Above Downstream Rt. 150 Crossing, and all Tributaries (Department)

Comment from:

- Paul Porada, Woodard & Curran

In the basis statement for the proposed upgrade to East Branch Wesserunsett Stream the Department addresses the question of how the proposed change will affect other users of the

waterbody, including holders of wastewater or stormwater discharge permits or holders of land development permits, by saying “there are no discharges in the watershed and few land development permits.” As indicated to the Department at the May 22 information meeting this statement is incorrect as there are an active Maine Pollutant Discharge Elimination System (MEPDES) Permit as well as a Multi Sector General Permit for stormwater discharge in the lower section of the main stem. The permit holder requests that their wastewater discharge be correctly presented in the reclassification proposal to be used for decision making by the Board of Environmental Protection and the Legislature.

A resolution to the license presence may be a more discrete delineation of the class transition point. We would support the classification change proposal be modified to upgrade the East Branch of the Wesserunsett Stream and its tributaries from Class B to Class A at locations upstream of the bridge at Harmony Road, State Route 150 while retaining Class B downstream of this location.

MDEP Response:

The Department acknowledges the omission. In response, the discharge was noted in the East Branch Wesserunsett Stream proposal and the upgrade recommendation for the Stream and its tributaries was revised to exclude the main stem below the downstream crossing of Rt. 150. (Rt. 150 crosses the main stem a second time in Athens, approximately 1.2 stream miles further upstream.) All tributaries continue to be included in the upgrade as none of them are affected by the discharge.

Penobscot River, Confluence of East and West Branches to Confluence with Mattawamkeag River (Penobscot Nation and The Nature Conservancy)

Comment from:

- Dan Kusnierz, Penobscot Nation

As you are aware, most of the Penobscot River watershed proposals in the MDEP proposal package resulted from recommendations that were made by the Penobscot Nation when the MDEP solicited proposals in the fall of 2017. Therefore, we support this proposal.

MDEP Response:

This comment is in support of the proposal. No response is necessary.

West Branch Penobscot River from the Outlet of Quakish/Ferguson Lakes to its Confluence with the East Branch Penobscot River (Penobscot Nation)

Comment from:

- Dan Kusnierz, Penobscot Nation

Ambient water quality data collected by the Penobscot Nation demonstrate that this segment currently attains Class B criteria for dissolved oxygen and bacteria, and has for at least the past 5 years. The improved water quality is the result of the closure of paper mills in Millinocket and East Millinocket.

We understand that there may be some concerns that this upgrade, and the one to Millinocket Stream, could potentially affect future discharges to the area. However, water quality data the PN collected while the two mills were operating demonstrate that Class B criteria were met at that time. Furthermore, modeling by MDEP using 2005-2009 discharge levels indicates that Class B criteria will be met.

It is also important to point out that the upper main stem Penobscot River contains habitat that is critical for the efforts to restore Atlantic salmon and other diadromous fish species to the Penobscot, including the East Branch, and tributaries. Upgrading the lower West Branch is important to safeguard water quality improvements that have been made and to support the restoration of these fish.

MDEP Response:

This comment is in support of the proposal. No response is necessary.

Comment from:

- Jim Busque, Millinocket Fin & Feather Club

What is the impact of going from Class C to Class B on municipal discharges? Why change the class before the license for the West Branch Canal Dam expires?

MDEP Response:

Wastewater treatment facilities from Millinocket and East Millinocket will not be affected by an upgrade because their current discharge levels allow them to meet Class B criteria. There are no discharges above the confluence with Millinocket Stream.

The segment below the outlet of Quakish Lake has been listed as impaired for non-attainment of aquatic life criteria in Maine's Integrated Water Quality Monitoring and Assessment [303(d)] Report for many years. This problem will need to be addressed during relicensing of the West Branch Canal Dam (as part of the Penobscot Mills Project) regardless of class. The same standard applies for assessing attainment of aquatic life use criteria to both classes: there needs to be habitat for fish and other aquatic life, which based on rule and policy (06-096 CMR Chapter 581 section 5 and DEP Hydropower Project Flow and Water Level Policy dated 2/4/2002) means that the wetted width of the stream must equal 75% of the channel width. If

this upgrade proposal takes effect it would most likely not affect dam relicensing because this problem will need to be addressed anyway during the re-licensing process.

Millinocket Stream, Confluence of West Branch Canal to Confluence with West Branch Penobscot River (Department)

Comment from:

- Dan Kusnierz, Penobscot Nation

The Penobscot Nation supports this proposal as it complements our proposal for the upgrade of the lower West Branch Penobscot River.

MDEP Response:

This comment is in support of the proposal. No response is necessary.

Comment from:

- Jim Busque, Millinocket Fin & Feather Club

What is the impact of going from Class C to Class B on future development and discharges at the former mill site? Would discharges at historic (1980s) levels still be possible? Would development of a data center that would require a temperature discharge be possible? We have had many issues in this area that are driving us right out of business and this upgrade proposal is a red flag for us. We are opposed to this upgrade because of its possible effect on licensing, and because it means more restrictions or regulations.

Development efforts are underway and good jobs are coming to Millinocket, so the timing of this upgrade is terrible – is this intentional? Why not keep the current Class C classification? Is the next step proposing an upgrade to Class A or Class AA?

Does an upgrade impact how close to the stream development can occur?

Who made this proposal? What role did the Penobscot Nation play?

MDEP Response:

MDEP ran models using the average discharges for Total Phosphorus and Biochemical Oxygen Demand between 2005 and 2009, when the West Katahdin mill was still actively discharging, and results showed that a new discharge license at those or slightly higher levels will not prevent attainment of Class B criteria. A positive factor to consider is the large dilution in Millinocket Stream, which allows greater discharges to occur than expected for a stream with this size watershed. A discharge at historic (1980s) levels, however, could not be licensed regardless of whether the upgrade occurs or not. Temperature criteria are the same regardless of class, so licensing of a temperature discharge would not be affected by an upgrade. MDEP is committed to working with the community and local businesses to enable development to occur under Class B water quality conditions.

Per U.S. Clean Water Act and Maine statute, MDEP needs to review state water quality classifications every few years. The last time this occurred was in 2009, so the current effort is overdue. A prior attempt to begin a re-classification initiative did not come to fruition for a variety of reasons. These reasons have meanwhile been resolved so conditions were conducive to initiating a re-classification review in 2018. The timing is independent of the current redevelopment efforts occurring in Millinocket. Furthermore, the Clean Water Act and Maine statute require that a waterbody that is attaining the next higher classification, as is the case in Millinocket Stream, is considered for upgrade to that higher classification. An upgrade to Class A or AA is not under consideration. For that to occur, Class A or AA standards would either have to be already attained or there would have to be a reasonable expectation that they will be attained with reasonable effort and within a reasonable timeframe. At this time, there is no expectation that higher standards will be attained in the foreseeable future. Furthermore, MDEP has not recommended that waters below discharges be upgraded to Class A or AA.

Waterbody classification does not guide proximity of development to a stream. There are, however, other regulations, for example those guiding land development under the Natural Resources Protection Act, the local shoreland zoning ordinance and the Mandatory Shoreland Zoning Act which do regulate such factors.

The Department proposed this upgrade; the Penobscot Nation was not involved in this particular proposal.

West Branch Mattawamkeag River (Department)

Comment from:

- Chris Johansen, State of Maine Representative, House District 145

Will any of the proposed upgrades affect a potential mining development on Pickett Mountain in Mount Chase, T6 R6 WELS, Moro Plantation and Hersey? Will this upgrade affect a low-head power project at the site of an old dam on the River that is being discussed?

MDEP Response:

To the north, Pickett Mountain drains to Pickett Mountain Pond, which drains into the West Branch Mattawamkeag River in Moro Plantation. To the south, Pickett Mountain drains into Seams Brook, which drains into Alder Brook and then the West Branch Mattawamkeag River in Island Falls. The total mileage of streams that Pickett Mountain drains into before it reaches the start of the segment proposed for upgrade, which is <0.2 miles downstream of the Alder Brook confluence, is 48.5 miles. All of these waters are already Class A per 38 M.R.S. § 467(7)(D)2) Any potential mining project on Pickett Mountain would need to demonstrate that Class A water quality standards will be met in these waters before the Department would issue a permit. Upgrading a segment of the West Branch Mattawamkeag River almost 50 stream miles downstream of Pickett Mountain would not affect a potential mining project.

Re-development of an existing, derelict dam should not be affected by this upgrade because dams are permitted on Class A waters. However, without knowing the details of the dam re-development it is not possible to provide a definite assessment of the situation at this stage.

Comment from:

- Dan Kusnierz, Penobscot Nation

While we do not collect water quality data in this segment, we support this proposal because it recognizes and maintains water quality improvements that have occurred in the Penobscot watershed.

MDEP Response:

This comment is in support of the proposal. No response is necessary.

Fish Stream Above I-95 (The Nature Conservancy)

Comment from:

- Dan Kusnierz, Penobscot Nation

While we do not collect water quality data in this segment, we support this proposal because it recognizes and maintains water quality improvements that have occurred in the Penobscot watershed.

MDEP Response:

This comment is in support of the proposal. No response is necessary.

Back Brook and Tributaries (Department)

No comments received.

Salmon Brook and Tributaries above Rt. 228 Crossing on Main Stem in Perham, and West Branch Salmon Brook and Tributaries Above Washburn/Wade Town Line (The Nature Conservancy and the Department)

No comments received.

Tunk Stream and Tributaries, Upstream of Route 1(Steuben) (Department)

No comments received.

Comments on Specific Proposals - Amendment of Classification Language

Penobscot River, from Milford Dam to Veazie Dam – Expansion of Free-Flowing Language

Comment from:

- Andrew Rudzinski, City of Bangor Wastewater Treatment Plant

It has been proposed to amend the statutory language for the lower Penobscot River (from Milford Dam to former Veazie Dam) to establish new boundaries for this segment with a “free-flowing habitat” designation”. What is that designation understood to mean? If there is no official definition of the term “free-flowing habitat” in DEP parlance, has either of these organizations provided a definition? Also, does the designation “free-flowing habitat” confer protections other than those that currently protect these areas under state and federal law? Lastly, how would such designation impact MEPDES permittees downstream of such habitats?

MDEP Response:

While there is no official definition of the term, in the past, the Department has interpreted other “free flowing” habitat language to generally mean flow that is not materially restricted or impeded by human activity. As such, areas that have a free-flowing designation are protected from significant flow obstructions in addition to the protections inherent in their water quality classification. The free-flowing designation does not affect downstream discharges.

Comment from:

- Dan Kusnierz, Penobscot Nation

The recent removal of the Great Works and Veazie dams, as well as improved fish passage and efforts to restore anadromous fish throughout much of the Penobscot River watershed make it very important to protect the free-flowing habitat of the lower Penobscot. Many millions of dollars have been spent to remove barriers to restore these species. The fish returns since removal of these two main stem dams demonstrate the rapid success and how important it is to keep this segment free-flowing. Therefore, we support this proposal.

MDEP Response:

This comment is in support of the proposal. No response is necessary.

Comments on Specific Proposals - Correction of Classification Error

East Branch Penobscot River, Mattaceunk Impoundment (Department)

Comment from:

- Dan Kusnierz, Penobscot Nation

We support this proposal as it is apparent that a mistake was made in upgrading this segment to Class AA at a time when the Mattaceunk impoundment was in place. We request however that the Department include clarifying language about the extent of the impoundment at the time of the upgrade so that the impoundment is not extended beyond what existed at the time of the original re-classification.

MDEP Response:

The Department agrees with the comment and has amended the proposal by inserting the date when re-classifications from the 1989/1990 re-classification initiative became effective (i.e. July 14, 1990) to ensure that the impoundment is not expanded.

Comments on Specific Proposals – Not Recommended for Upgrade

Androscoggin River, Worumbo Dam in Lisbon Falls to Merrymeeting Bay (Friends of Merrymeeting Bay)

Comment from:

- Ed Friedman, Friends of Merrymeeting Bay (FOMB)

Both the Clean Water Act (CWA) and Maine statute are goal-oriented and thus provide a stimulus to upgrade a waterbody when its water quality is close to attaining a higher goal. On the lower Androscoggin River, water quality has been largely good for years, although sometimes criteria are exceeded by a little bit (generally when there is an anomaly) but that probably happens in every waterbody in the state. When will the Department act in a goal-oriented manner on bodies of water like this and others?

MDEP Response:

While FOMB data generally indicate attainment of water quality standards, they also document some criteria exceedances. Data the Department has collected on a broader range of indicators and in more diverse locations document more significant problems with criteria attainment. Upgrades to a higher classification can occur where either higher standards are already attained, which is not the case in the segment in question, or when there is a reasonable expectation that criteria can be attained with reasonable effort and within a reasonable timeframe. The results of a modeling study conducted by MDEP indicated that non-attainment of water quality standards was attributable to upstream sources (including sources affecting tributaries), non-point sources and the effects of the three dams located in this section

of the river. When licensed discharges (wastewater treatment plants in Lewiston-Auburn and Brunswick) were removed from the model, standards were still not met. Below the Brunswick-Topsham Dam, incoming tides from Merrymeeting Bay and Sediment Oxygen Demand further contributed to classification non-attainment. While some of these issues can be addressed, it will take time and significant resources to do so. Other issues, such as dams or low dissolved oxygen levels in Merrymeeting Bay will be very difficult and costly to address. Therefore, the Department is not recommending an upgrade at this point.

Blackman Stream and Tributaries (The Nature Conservancy)

No comments received.

Limestone Stream, Below Long Road Crossing (Citizen)

No comments received.