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STATE OF MAINE

BOARD OF ENVIRONMENTAL PROTECTION

Public Hearing

on

Triennial Review of Maine's Water Quality Standards

PUBLIC HEARING reported by Robin J. Dostie, a Notary
Public and court reporter in and for the State of Maine, on
October 16, 2025, held at the Augusta Civic Center, 76
Community Drive, Augusta, Maine commencing at 9:50 a.m.

BEP MEMBERS IN ATTENDANCE:

- ROBERT DUCHESNE, BEP Member - PRESIDING OFFICER
- STEVEN PELLETIER, BEP Member
- ROBERT SANFORD, BEP Member
- BARBARA VICKERY, BEP Member
- ROBERT MARVINNEY, BEP Member

OTHER PERSONS IN ATTENDANCE:

- JACK DAFOE, Assistant Attorney General
- MELANIE LOYZIM, DEP Commissioner
- BILL HINKEL, BEP Executive Analyst
- RUTH ANN BURKE, BEP Administrative Assistant

DEP STAFF IN ATTENDANCE:

- MEAGAN SIMS, Bureau of Water Quality
- BRIAN KAVANAH, Director of Bureau of Water Quality
- WENDY GARLAND, Division Director of Env. Assessment

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PROCEEDINGS

MR. DUCHESNE: Good morning. I now call to order this public hearing of the Board of Environmental Protection. Today is October 16, 2025 and this hearing is being held at the Augusta Civic Center for the purpose of receiving testimony from members of the public regarding the proposed Triennial Review of Maine's Water Quality Standards.

I'm Board member Bob Duchesne and have been designated by Board Chair Susan Lessard to serve as the Presiding Officer in this hearing. To comply with the Clean Water Act-related participation restrictions in 38 M.R.S. Section 341-C(8), Susan Lessard and Betsy Fitzgerald have recused themselves from this matter.

This hearing is being recorded and a copy of the hearing or the recording can be obtained by request made to the Board Clerk after the hearing. Additionally, a written transcript of the hearing prepared by Dostie Reporting will be available following the hearing.

Board members, DEP staff and members of the public are requested to speak clearly and directly into the microphone. Please do not use acronyms or abbreviations unless you have first identified what those shorthand versions mean. For the benefit of all, including our court reporter, please spell any terms or names that may be unfamiliar or unusual.

1 At this time, I ask other Board members to introduce
2 themselves. Also present this -- oh, introduce themselves
3 starting with Mr. Pelletier.

4 MR. PELLETIER: Steve Pelletier, Topsham.

5 MR. SANFORD: Bob Sanford, Gorham.

6 MR. MARVINNEY: Bob Marvinney, Readfield.

7 MS. VICKERY: Barbara Vickery, Richmond.

8 MR. DUCHESNE: And also present this morning DEP
9 Commissioner, Melanie Loyzim; Board Executive Analyst, Bill
10 Hinkel; Board Clerk, Ruth Ann Burke; and Assistant Attorney
11 General, Jack Dafoe is advising the Board on the matter.

12 This hearing is being conducted in accordance with
13 Title 38, Section 464(3)(B), which requires the Board to, at
14 least once every three years, hold a public hearing for the
15 purpose of reviewing the water quality classification system
16 and related standards.

17 Notice of this Board hearing, including a link to
18 the proposed Triennial Review of Maine's Water Quality
19 Standards, was made in accordance with Title 1, Section 406;
20 was posted on the Department's Triennial Review webpage; and
21 was sent to each person who previously subscribed to receive
22 email notice of DEP hearings.

23 If you wish to testify on the proposal and have not
24 yet signed up, please do so. When you are called to provide
25 testimony, please provide your name, the town in which you

1 live and the name of the organization you represent, if any.
2 The Board, Board staff, and counsel to the Board may ask
3 questions of any person testifying.

4 In addition to oral testimony, written comments on
5 the proposal may be submitted until 11:59 p.m. on October 22,
6 2025. At that point the record will close. All written
7 comments should be addressed to Meagan Sims at the DEP, 17
8 State House Station, Augusta, 04333 or via email at
9 trcomments.dep@maine.gov.

10 At this time, I will administer an affirmation of
11 those persons planning to testify. Those who wish to testify
12 should now stand or otherwise make your presence known.

13 Do you solemnly, sincerely, and truly declare and
14 affirm that the testimony you will offer the Board is the
15 truth, the whole truth and nothing but the truth?

16 (Participants affirm.)

17 MR. DUCHESNE: We will begin with Department staff
18 presentation.

19 MEAGAN SIMS: Thank you, Presiding Officer Duchesne
20 and members of the Board for the opportunity to speak today.
21 Can you hear me all right?

22 MR. DUCHESNE: Yes, but hold it nice and close.

23 MEAGAN SIMS: Okay. I think it's as far as it will
24 go.

25 My name is Meagan Sims and I am a Biologist with the

1 Department's Division of Environmental Assessment. I'll
2 provide a brief overview of the process for recommending
3 changes to Water Quality Standards under the Department's
4 Triennial Review followed by a brief summary of the current
5 recommendations.

6 The Triennial Review is governed by Maine statute
7 and the Clean Water Act and consists of the following steps:
8 The Department solicited from the public, including regulated
9 entities, proposals for changes to Maine's Water Quality
10 Standards between March and June of 2024. All proposals were
11 evaluated and a draft set of recommendations was developed,
12 which was available for public comment for approximately four
13 weeks in May and June of 2025. During that time one virtual
14 public information meeting was held by the Department.
15 Department staff then reviewed all comments received and new
16 information obtained to prepare the revised recommendations to
17 present to the Board and to the public for additional comment
18 and testimony.

19 As Presiding Officer Duchesne explained in his
20 opening statement, in addition to receiving oral comments and
21 testimony today written comments on the proposed revisions to
22 Maine's Water Quality Standards may be submitted until 11:59
23 p.m. on October 22, 2025. Following the close of the comment
24 period, Department staff will prepare a list of final
25 recommendations for the Board's consideration at a subsequent

1 meeting. Any recommend changes to Maine's Water Quality
2 Standards must be submitted by the Board to the Legislature
3 for approval. Once the Board votes on its final
4 recommendations, staff will prepare documents to submit to the
5 Joint Standing Committee on Environment and Natural Resources
6 during the second regular session of the 132nd Legislature.
7 Finally, any changes to Maine's Water Quality Standards made
8 by the Legislature must be approved by the Environmental
9 Protection Agency, or EPA, before they may be implemented.
10 Once the legislative process is complete, Department staff
11 will coordinate a review of those changes with the EPA.

12 In terms of the Department staff's recommendations
13 to the Board they are based on proposals received from members
14 of the public and Department staff as well as requests from
15 the EPA. For each proposal to update Water Quality Standards
16 staff evaluated multiple factors such as the complexity of the
17 proposal with respect to the time constraints of the current
18 Triennial Review; the availability of data or information to
19 inform our recommendations; the impact on license wastewater
20 dischargers, including hydropower facilities; and the
21 environmental benefits anticipated from each Water Quality
22 Standards revision.

23 For proposals to upgrade the water quality
24 classification of a water body, staff considered a number of
25 relevant factors such as water quality criteria attainment

1 status; data availability and quality; land use and the
2 presence of conservation land in the watershed; and the
3 presence of license wastewater discharges, including
4 hydropower facilities. The Department considered a total of
5 34 proposed changes to Water Quality Standards and water
6 classifications and many proposal topics overlapped with one
7 another. For the reasons I will discuss in a moment, not all
8 of the proposals received to date have been advanced as
9 recommendations to the Board. Because the primary purpose of
10 today's hearing is to allow the public to provide comment, I
11 will only briefly summarize current recommendations. However,
12 I'm happy to answer questions regarding or elaborate on any of
13 the specific recommendations.

14 Beginning with Water Quality Standards proposals,
15 the Department considered a total of 23 proposed updates to
16 Water Quality Standards following four subcategories. The
17 first subcategory is proposed updates to Water Quality
18 Standards recommended by the Department. Of the 23 proposals
19 submitted for Water Quality Standards changes, seven are being
20 recommended by the Department staff to the Board for
21 advancement as recommendations to the Legislature. Proposed
22 updates recommended by Department staff include revisions to
23 fresh water dissolved oxygen criteria, the addition of pH
24 criteria to several fresh and marine water classes, and the
25 clarification of aquatic life criteria for several water

1 classes.

2 The second subcategory is proposed updates to Water
3 Quality Standards not recommended by the Department. Of the
4 remaining 16 proposals that were submitted for Water Quality
5 Standard changes, nine are not being recommended by Department
6 staff. For several proposals staff determined that their
7 recommended Water Quality Standards are already adequately
8 addressed by existing statutes and rules. Additionally,
9 several requests were outside the scope of this Triennial
10 Review process. For more information, see pages 34 through 52
11 of your packet.

12 The third subcategory is proposed updates to Water
13 Quality Standards that will be addressed through rulemaking
14 efforts. Five of the 23 proposed changes fall into this
15 category. Three are proposals from the EPA that the
16 Department intends to address in future rulemaking efforts.
17 One is for a recently adopted rule for freshwater nutrient
18 criteria and one is for a development of a new rule.
19 Rulemaking follows a separate public process and, therefore,
20 proposals addressed through rulemaking are excluded from the
21 Triennial Review.

22 And the fourth subcategory are proposed updates to
23 Quality Water Standards that require further review. The
24 remaining two proposed changes to Water Quality Standards are
25 complex in nature and require further research and

1 consideration before a recommendation to the Board can be
2 made, therefore, Department staff are not recommending changes
3 to Water Quality Standards at this time for the proposals
4 discussed on pages 59 through 61 of your packet.

5 Moving on to classification proposals. Department
6 staff considered a total of 11 proposals for upgrades to the
7 water classification of rivers and streams and marine and
8 estuarine waters. Department staff provide recommendations
9 and information to the Board and Legislature to consider
10 during the decision-making process, including regulatory
11 implications. Neither the Board nor Legislature are limited
12 by Department staff recommendations. Department staff
13 generally recommend upgrades for waters that meet water
14 quality criteria and statutory requirements for the next
15 highest class; for waters where the water quality criteria and
16 statutory requirements for the next highest class may not be
17 met but -- or they're -- in the absence of data there is an
18 assumption that those criteria and statutory requirements are
19 met, excuse me, based on land use, including conservation
20 land; or where waters do not meet the criteria and statutory
21 requirements for the next highest class but there is a clear
22 path forward and the technological and financial capacity
23 exists to achieve those higher standards within a reasonable
24 time.

25 The Department staff generally do not recommend

1 upgrading waters when attainment isn't expected because those
2 waters may then be listed as impaired under the higher
3 classification. Department staff recommend fully upgrading
4 three proposed water bodies, partially upgrading two water
5 bodies, recommends against upgrading the remaining six water
6 bodies. There are three general reasons for the Department's
7 recommendations against upgrades.

8 The first is incompatibility with statutory
9 requirements. Department staff considered statutory
10 requirements for each water body proposed for upgrade as part
11 of our review process, including the high bar required for
12 waters proposed for upgrade to Maine's highest water classes
13 for rivers and streams, Class AA; in marine and estuarine
14 waters, Class SA, which are considering -- considered
15 outstanding natural or natural resource waters. Staff
16 determined that two of the proposed water bodies, which are
17 Chandler Bay and a portion of the Sheepscot River, are not
18 compatible with requirements for the higher class proposed
19 upgrade. Insufficient information is available for one water
20 body, which is the Upper Union River and tributaries, to
21 determine its compatibility with Class AA statutory
22 requirements.

23 The second reason the Department recommends against
24 an upgrade is for non-attainment of water quality criteria.
25 After evaluating available water quality data, staff

1 determined that several segments proposed for upgrades either
2 do not meet one or more water quality criteria for their
3 currently assigned class or do meet the current criteria for
4 their currently assigned class but do not meet one or more
5 criteria for the next higher class. Additionally, for the
6 upgrade request submitted for the upper and lower Androscoggin
7 River and the lower Presumpscot River, Class C to Class B, the
8 Department's analysis indicates that these river segments
9 cannot meet Class B dissolved oxygen criteria at all times
10 during critical conditions of high water temperature, low
11 flow, and maximum license discharge level.

12 And the third reason is insufficient information.
13 For several water bodies proposed for upgrade, Department
14 staff determined that available monitoring data are
15 insufficient to allow for a comprehensive assessment of
16 attainment of narrative and numeric criteria, including
17 recently adopted fresh water nutrient criteria. In many
18 cases, available data are either outdated or not of sufficient
19 quality and quantity for assessment.

20 This concludes my overview of the Triennial Review
21 recommendations. Does the Board have any questions or need
22 any clarification at this time?

23 MR. DUCHESNE: Questions from the Board? Just two
24 quick ones, I guess. When something isn't in attainment, we
25 don't upgrade it and that's -- and no one really argues about

1 that. When it is clearly ready to be upgraded, if that
2 happens, the arguments usually come when it's close but no
3 cigar. So I look at the rivers this year when things have
4 been so dry and wonder how much that affects the ability of a
5 river to -- to attain even the classification of a table, let
6 alone going up. How did the Department treat these nuances
7 that separate the close but not close enough or do you expect
8 perfection? Because we're going to be hearing more about
9 this.

10 WENDY GARLAND: Well, I guess I would add or note,
11 and Brian will probably take the discharge related ones, but
12 just -- just to point out that we do have under 38 M.R.S. 464
13 a natural provisions -- conditions provision so that there is
14 an allowance for waters to not meet criteria and -- due to
15 natural condition, so an extraordinary drought might be one of
16 those conditions that we would consider and maybe not expect a
17 stream to meet its DO criteria. That might be separate from
18 water bodies with discharges.

19 And I guess in terms of this year, and in most cases
20 we're looking at past data, so I know for the Androscoggin
21 there was data collection that I think we'll hear about this
22 year, which will be interesting to consider.

23 BRIAN KAVANAH: Yeah, I guess -- Brian Kavanah,
24 Director for the Bureau of Water Quality. First, I'll note
25 that this is an extremely dry year obviously and I know there

1 is some data that's been collected with these conditions which
2 is good data that really helps us see what the rivers are like
3 under these extreme conditions. But the law is actually
4 structured, you know, when we look at a waste discharge
5 license the law is structured to protect even under extreme
6 conditions what we call the 7Q10 flow, the low seven day flow
7 you'd expect to see with probability of every 10 years. So
8 when we established license limits it's structured so that
9 even under those conditions you should have attainment. And
10 we recognize that it looks like we're really kind of
11 nitpicking on some of these when it's so close, but I'll note
12 that it's -- on most of these it's not just a DO issue. There
13 is multiple criteria that are generally not met or we don't
14 have sufficient data. We're looking at DO, we're looking at
15 phosphorous, bacteria, and biocriteria and in a lot of these
16 instances it's not just DO. It's 1, 2, or 3 or 4 of those.

17 MR. DUCHESNE: Speaking of data, when it's submitted
18 privately from an interest group or a scientific organization
19 as opposed to being collected by the Department, how do you
20 treat that data?

21 MEAGAN SIMS: This data are included as part of the
22 evaluation process. We take quality considerations into our
23 conversation process, but many of these groups have
24 long-standing partnerships with the Department and we are --
25 they maintain quality documentation that verifies this data

1 are reliable and accurate that can be used for our
2 assessments.

3 MR. DUCHESNE: Great. Thank you. Mr. Pelletier.

4 MR. PELLETIER: Just a follow-up on that. There
5 is -- just a general comment on staffing and your availability
6 to get people out there to get people to collect data. How
7 are we sitting right now? How is your division sitting?

8 WENDY GARLAND: I'll just comment on that. I'm
9 Wendy Garland. I'm the Director of our Division of
10 Environmental Assessment and our staff are the ones collecting
11 most -- most of these data. And I have heard concerns, we
12 have, you know, as you all know, we -- you all helped, you
13 know, adopt the Chapter 583 Fresh Water Nutrient Criteria this
14 spring and those went into effect in June and our Biological
15 Monitoring Unit are the ones that are going to be taking the
16 lead on collecting those data and there is a lot of data
17 requests and some of them are related to these proposals to
18 inform future upgrades and there are lots of other requests
19 related to that related to relicensing and citizen groups, so
20 I know we are concerned about the staff resources and also the
21 kind of the analytical class of labs to analyze those data.
22 So we're stretched, I would say, and we'll need to sort of
23 think about prioritizing the resources we have.

24 MR. PELLETIER: Do you -- do you have staff now that
25 do some of your taxonomic work or do you put -- is that all

1 contracted out?

2 WENDY GARLAND: Yeah, so our Biological Monitoring
3 Unit, they -- we do hire temp staff that does sample sorting
4 that's sort of the -- the biological monitoring of the
5 macroinvertebrate. They sort out the -- the tridents from the
6 macroinvertebrates and then we send them -- send those samples
7 off to taxonomists.

8 MR. DUCHESNE: Other questions? Thank you very
9 much.

10 So I have one in support and 12 neither for nor
11 against. I will take the one in support. You can clarify,
12 Mr. Krumholz.

13 JASON KRUMHOLZ: Yeah, I -- I put down in support
14 because I'm in support of water quality, but I'm -- I wasn't
15 sure -- I wasn't sure which way to go, so I just kind of put
16 my name down.

17 MR. DUCHESNE: I figured I'd take you first so you
18 can take notes on whatever they say afterwards.

19 JASON KRUMHOLZ: Sure. I think we're all in support
20 of -- of water quality.

21 Thank you very much for -- for having me today. My
22 name is Dr. Jason Krumholz. I'm a professor at the University
23 of Connecticut and I'm the Stewardship Coordinator with the
24 Connecticut National Estuarine Research Reserve. I'm also the
25 Director of Water Quality for Remote Ecologist and that's the

1 hat I'm wearing, I guess, right now. It's a non-profit
2 organization dedicated to democratizing science and scientific
3 data. As an independent consultant, I've worked for a ton
4 of clients from the Navy and the Coast Guard to various
5 government organizations and non-profits, the Nature
6 Conservancy, Audubon, the Shed Aquarium. So as you may know,
7 I, and several of my colleagues, participated in a bunch of
8 the aspects of the modeling and discussion pertaining to the
9 Kingfish Maine permit and the petition to reclassify Chandler
10 Bay as SA water, which is what I'm specifically talking about
11 today. I was up here this week working on an Atlantic
12 Sturgeon project with DMR and so I was asked if I could
13 comment and say a few words on behalf of Chandler Bay.

14 Over the last five years or so, I've had the
15 tremendous privilege of working with many of Maine's state
16 biologists and resource managers and DMR and DEP. Sorry,
17 Department of Marine Resources and Department of Environmental
18 Protection. I'm really thankful for these collaborations and
19 for the tremendous work that the state is doing here to
20 protect Maine's natural resources, which are truly one of a
21 kind.

22 When it comes to this specific reclassification, I
23 respectfully disagree with DEP's position. In previous
24 testimony, DEP indicated that SA waters have coastlines that
25 are typically associated with a large portion of state or

1 federal conservation lands that lend recreational importance
2 to these waters and that -- that criteria was not met in
3 Chandler Bay because it doesn't have those protections. And I
4 kind of -- I get it, right, our resources are limited, we
5 can't conserve everything so we have to focus on places that
6 need it the most. But SA classification, to me it's meant
7 to -- I interpret the law as it's meaning to protect special
8 waters, not special lands. And I would argue that the waters
9 that are associated with already protected lands are probably
10 the least in need of our additional work now because they're
11 already protected. Nobody is getting anywhere trying to build
12 a facility that will discharge more nitrogen than the entire
13 city of Portland inside of Acadia National Park. It's just
14 not going to happen. So the language pertaining to the SA
15 designation also doesn't say anything about a requirement for
16 associated with -- association with protected land, only that
17 the water have outstanding natural resources which should be
18 preserved because of their ecological, social, scenic,
19 economic or recreational importance. Protecting waters
20 interest that are already protected and exclusively protecting
21 waters that are already protected by the land surrounding them
22 seems to go against the spirit of this legislation which is to
23 protect the waters that need to be preserved.

24 Previous testimony on this matter notes that the
25 discharge permits for the Kingfish aquiculture facility as a

1 disqualifying reason for SA while simultaneously pointing out
2 that the facility is not actually discharging. Not only is it
3 not discharging, it hasn't even broken ground. SA waters, as
4 you probably know, must be as naturally occurs with no direct
5 discharge or pollutants. Chandler Bay meets that standard.
6 Not designating waters that are otherwise deserving on the
7 grounds that a future potential discharge might make them
8 ineligible for the classification, that defeats the purpose of
9 having the designation which is to protect deserving waters
10 from future discharges which would reduce their water quality.

11 So in terms of the quantitative stated requirements
12 for SA, number one, no direct discharges other than those that
13 are expressly allowed, and I won't read the full legislation
14 of that list, everybody knows it and you can get it online;
15 dissolved oxygen as naturally occurs; and three, a numeric
16 enterococcus and fecal coliform standard, which I, again, will
17 not read. I will do you pleasure of not directly reading that
18 into the record since it's already there. There are no data
19 suggesting that these waters don't meet this standard.
20 Chandler Bay is relatively remote. It's somewhat data poor,
21 but there are water quality data available. All of the
22 bacteria data I could find are well below the standard and
23 oxygen concentrations are at or near saturation pretty much
24 all of the time. So the waters are pretty pristine. Despite
25 limited data, it's reasonable to assume that these waters

1 consistently meet the standard unless we can find data
2 suggesting otherwise.

3 Those are the facts of the case and so if you'll
4 briefly entertain my opinion here the decision kind of comes
5 down to whether these waters meet the qualitative standard of
6 having outstanding natural resources which should be
7 preserved. Admittedly, this is subjective. I can't answer
8 that question for you. There is a lot of outstanding places
9 up here in Maine, but I personally think Chandler Bay is one
10 of them. A few reasons why: This area is designated as EFH,
11 essential fish habitat, for 17 species of finfish and
12 shellfish, which I will again do you the privilege of not
13 reading, as well as HAPC, habitat area of particular concern,
14 for juvenile Atlantic Cod and critical habitat for Atlantic
15 Salmon under the Endangered Species Act. I have been on the
16 other side of this table for close to 50 essential fish
17 habitat assessments and National Marine Fisheries
18 consultations on behalf of different action proponents. I'm
19 acutely aware that EFH covers huge swaths of -- of marine
20 waters. Honestly, you'd be hard pressed to find an underwater
21 spot inside the U.S. economic zone that's not EFH for
22 something. But what stands out to me in the designation text
23 by the Fisheries Management Council is that the waters that
24 Chandler/Englishman/Machias complex, which I'll use CEM for,
25 they're specifically named in the language for the majority of

1 those species. Over a dozen of those 17 specifically call out
2 that CEM complex for its -- for its habitat value. That's not
3 that common, not for that many species. We used to see it a
4 lot in Hawaii. They have a reef fish complex that has 200
5 species in it, so seeing 17 there is -- is nothing, but the
6 Northeast Fisheries Management Council only manages 28
7 species, so it's a significant portion of those species.

8 SA designation is primarily about waters. Much of
9 the land surrounding the CEM complex are home to designated
10 rare or exemplary plants and natural communities that are
11 protected by the Maine Natural Areas Program and the Maine
12 Endangered Species Act. It designates essential wildlife
13 habitat for migratory bird species like Roseate Tern and
14 Piping Plover and those bird species are dependent on the
15 marine food webs. There is a lot of species of recreational,
16 commercial and socioeconomic importance which are dependent on
17 the habitats of Chandler Bay and the surrounding areas. There
18 is a good amount of eel grass in this area. Eel grass is
19 tremendously important to habitats throughout New England,
20 especially here in Maine, it's -- it's under decline. We're
21 fighting against eel grass in southern New -- or not fighting
22 against it, fighting to protect it in southern New England
23 where -- where I'm from. It's facing tons of stressors from
24 nutrients to heat to predation and invasive species and it's
25 the same story up here in Maine. It's really, really

1 sensitive. I could go on forever, but I think you already
2 know most of what I'm saying, so I'm going to stop.

3 Is this enough to rise to the standard of
4 outstanding ecological, social or economic or recreational
5 importance? I don't know the answer to that. In most states
6 it would be an absolute slam dunk, but Maine has a lot of
7 really beautiful places that deserve protection. So as
8 resource managers here it's kind of a blessing and a curse.
9 I'm sure there are many difficult decisions that must be made.
10 This is probably one of them. I really appreciate your
11 consideration of my opinion on this matter and I'm sure that
12 you'll carefully weigh the pros and cons en route to your
13 decision. Thanks again to everyone for your time.

14 MR. DUCHESNE: Thank you. Mr. Sanford.

15 MR. SANFORD: Thank you. At one point you say
16 that -- that SA classification is meant to protect water not
17 land, but then you go on to say that water associated with
18 federally protected land is probably least in need of legal
19 protection and to me those two sort of contradict each
20 other --

21 JASON KRUMHOLZ: Yeah.

22 MR. SANFORD: -- because there is definitely
23 land/water connection.

24 JASON KRUMHOLZ: I 100 percent agree with you that
25 there is a land/water connection and that's kind of why I feel

1 that way, right. If we've already protected the land then
2 we're affording the water protection by means of protecting
3 the land because of that connection between the water and the
4 land. And so saying that we're only going to designate SA
5 waters associated with lands that are already protected, that
6 to me feels like that's kind of too narrow of a designation,
7 right, we should be -- we should be protecting those waters.
8 Those should be SA waters, but we also need to consider SA
9 waters that are not associated with lands that have their own
10 habitat value for their -- their marine habitat value.

11 MR. SANFORD: Okay. Thank you. And my second
12 question slash point is that federal protection does not seem
13 to be quite as stable as it once was and can we really have
14 reliance on that?

15 JASON KRUMHOLZ: I'm into that. I totally agree
16 with you. I -- I do think there is still some value in
17 federal protection, but -- but no. I think that's why we're
18 all here. I think the State of Maine is -- tends to be very
19 proactive on environmental issues. We just listened to a
20 great debate about, you know, upgrading recycling programs
21 here. That's fantastic. Maine is really proactive about this
22 and that's why I think the state needs to make this
23 designation here to protect these waters that need protection.

24 MR. SANFORD: Thank you.

25 MR. DUCHESNE: You single out Endangered Species Act

1 protection for migratory bird species like Roseate Tern and
2 Piping Plover. Are there any in Chandler Bay?

3 JASON KRUMHOLZ: There are. I -- I believe --

4 MR. DUCHESNE: Yeah, where?

5 JASON KRUMHOLZ: Well, I don't know. I know that
6 there is habitat designated for them there, right. I'm just
7 going by the federal maps. I have not, I mean, I've been to
8 Chandler Bay, I have not personally seen a Piping Plover in
9 Chandler Bay so I can't stand here under oath and tell you,
10 yes, there are Piping Plovers. I can tell you the habitat is
11 designated. And also it's more of -- by mentioning those
12 species I'm more trying to point out the connections between
13 the land species and the water species that we have a lot of
14 these migratory bird species that come through this area that
15 are dependent on the marine food webs.

16 MR. DUCHESNE: Mmm. There is probably a couple pair
17 on Petit Manan for Roseate Tern. Piping Plovers, they like
18 sandy beaches.

19 JASON KRUMHOLZ: Yeah.

20 MR. DUCHESNE: Good luck with that designation.

21 Other questions? Seeing none, thank you.

22 JASON KRUMHOLZ: Thank you very much.

23 MR. DUCHESNE: Peter Rubins.

24 PETER RUBINS: My name is Peter Rubins. I am with
25 Grow L+A.

1 MR. DUCHESNE: Could you -- yup.

2 PETER RUBINS: My name is Peter Rubins. I am
3 with -- a Board member of Grow L+A and Chair of the Grow L+A
4 River Working Group. I've lived in the Lewiston/Auburn area
5 for 30 years and now reside in Cumberland.

6 MR. DUCHESNE: Let me just clarify for a moment. We
7 have three people up here. Are you all on the --

8 ED FRIEDMAN: He told -- he told us all to come up.

9 MR. DUCHESNE: Oh, and that's fine.

10 SCOTT SELLS: I just out of --

11 MR. DUCHESNE: Ed -- I didn't know if Mr. Friedman
12 intended to come back up again or are you just testifying as
13 one group?

14 SCOTT SELLS: We're testifying in one group. We are
15 representing Friends of Merrymeeting Bay, but we're in support
16 of Grow L+A's proposal --

17 MR. DUCHESNE: Okay.

18 SCOTT SELLS: -- and we'd like to sequentially do
19 the testimony with Peter, Ed, and myself.

20 MR. DUCHESNE: Which is fine. I just wanted to make
21 sure that somebody wasn't going to testify twice intending to
22 come up again later.

23 SCOTT SELLS: Yes.

24 MR. DUCHESNE: Thank you.

25 PETER RUBINS: We're here about the reclassification

1 with the Androscoggin River up to B from the Worumbo Falls up
2 to Gulf Island Dam. To B or not to B.

3 This is the story of data collection for restoration
4 of the Androscoggin River to Class B. During the industrial
5 revolution, paper manufacturing found a perfect home on the
6 Androscoggin with unlimited supply of wood and nonexistent
7 restrictions of polluting wastes into the Androscoggin River.
8 In the early 1900s, the river became one of the top 10
9 polluted rivers in the country.

10 In 1942, the Attorney General submitted to the Maine
11 Supreme Judicial Court complaints from Lewiston/Auburn of
12 toxic unhealthy odors that actually peeled paint off the
13 houses. The court proceeded to appoint Bates College
14 professor Dr. Walter Lawrance as River Master with the job of
15 collecting data and reducing the toxic waste from the mills.
16 The first data collection was eight sniff sites. Eight sniff
17 sites. What do you do if you're given the job to recover the
18 Androscoggin River? A little chemistry professor from Bates
19 College. They started doing the sniff sites at different
20 times of day, different times of year to determine the toxic
21 levels of the air in the -- and their content. This is the
22 time the Androscoggin and -- this is the time that
23 Lewiston/Auburn earned the not enviable name of The Dirty Loo,
24 L-O-O. There was discolored toxic foam piles 8 feet high
25 below the Great Falls and foam continued down the river. The

1 sulfite pulp method was determined to be the cause and it took
2 until 1964 to convert to a less toxic kraft pulping process.

3 In 1972, I graduated from Bates College and, excuse
4 me, Dr. Lawrance was one of my mentors and our Senator Ed
5 Muskie passed the Clean Water Act requiring rivers clean up to
6 be fishable and swimable. Since that time, thousands of us
7 have dedicated our time and energy to push for Muskie's dream.
8 We have come to Augusta and lobbied for legislation, we have
9 worked through the DEP's volunteer testing programs to collect
10 data that shows the Androscoggin River meets B standards. In
11 the last triennial the Board approved Class B from Brunswick
12 up to Worumbo Dam. It only makes sense that if the water from
13 L/A is feeding the water below L/A then the water above meets
14 the same classification.

15 As Chair of Grow L+A River Working Group, this is
16 our third Triennial Review appeal to classify the
17 Androscoggin from -- Androscoggin to B from Lisbon Falls up to
18 the Gulf Island Dam. The two cities have been fighting the
19 image of The Dirty Loo way too long and want to reimage the
20 great river and the Great Falls for recreation and aesthetics
21 and economic development.

22 We have the data that proves it meets Class B. The
23 law says that it meets Class B thanks to the Androscoggin
24 River Water Council for their continual water testing from the
25 shore for the past 15 years under the guidance of DEP and it

1 shows that it meets Class B.

2 At our request, DEP has run DO tests with the
3 electronic sondes twice in the last two triennials in August
4 and September at low water periods and both have shown the
5 river meets 7 parts per million DO.

6 This year, thanks to Friends of Merrymeeting Bay and
7 Ed Friedman and support from Trout Unlimited, we have
8 commissioned the most compelling helicopter data -- data
9 gathering possible during the lowest flow in 7Q10 parameters.
10 This consisted of seven flights, June through October, to nine
11 specific sites starting at Worumbo Dam up through L/A and
12 finally on Gulf Island Pond, all showed above 7 parts per
13 million DO even in the lowest flows in 20 years.

14 Data collection is science and we feel that the
15 Board of Environmental Protection has a responsibility to
16 reclassify the Androscoggin up to Gulf Island Dam up to Class
17 B. We hope that the Board of Environmental Protection will
18 support Muskie's dream, clean water. Supporters of the
19 upgrade include Brunswick, Topsham, Durham, Lewiston, Auburn,
20 Lisbon, Auburn Sewer District, Friends of Merrymeeting Bay,
21 Grow L+A, Maine Rivers, Conservation Law Foundation, Trout
22 Unlimited, Brunswick/Topsham Land Trust, Friends of Casco Bay,
23 and the Androscoggin Land Trust.

24 We hope that you will look at -- look at this
25 information and respond by reclassifying to B. Thank you.

1 MR. DUCHESNE: Further testimony from you gentlemen
2 or?

3 ED FRIEDMAN: Yeah, I didn't know if anyone had any
4 questions for Peter.

5 MR. DUCHESNE: Okay. Any questions for Peter? No.
6 Mr. Friedman.

7 ED FRIEDMAN: Presiding Officer Duchesne, members of
8 the Board, Commissioner, thank you for the opportunity. I'm
9 Ed Friedman. I live in Bowdoinham. I share Friends of
10 Merrymeeting Bay. We're, excuse me, an organization --
11 organization of -- I got COVID a while ago for the first time
12 ever, so I'm still -- still suffering a little bit. We are
13 about 450 members in the organization. We are unique in that
14 we take a holistic perspective on the environment. A little
15 bit related to what the gentleman before was talking about the
16 concern with the land, the water, and so forth. And we do
17 education, we are a land trust and we do a lot of research and
18 often let that research inform our advocacy.

19 We're here because Grow L+A submitted this proposal
20 and we've, you know, we'd like to -- we wanted to see if we
21 felt it was warranted or not. Looking at the data that --
22 that Grow L+A had submitted back in the spring it seemed kind
23 of sporadic, a little bit of DEP data, a little bit of
24 Brookfield data mostly focus around Lewiston. Our
25 organization has had water monitoring in this section in this

1 reach over the years, but it's been catch as catch can with
2 volunteers. We've had people sampling at the Auburn boat
3 launch for a couple years, probably by people sampling up at
4 the Bates boat house on Gulf Island Pond. We had people up as
5 far as Livermore Falls and we have had someone relatively
6 steady at Durham, but, again, it's a hodgepodge.

7 And in light of the proposal we thought, well, let's
8 get some really good data, comprehensive data, and I thought
9 about this last year and we have an accessible tool, a
10 helicopter with amphibious floats on it that -- that I own as
11 Point of View Helicopter Services and it's really the perfect
12 tool or could be the perfect tool for a proposition like this.
13 And we did a trial run last year to see how it would work
14 sampling -- landing and sampling, going on to the next site
15 and we found it worked really well. We were able to do about
16 10 sites and create a really good longitudinal profile in
17 about an hour-and-a-half from the airport back to the airport,
18 so that was our sort of proof of concept last year. This
19 year, Friends of Merrymeeting Bay and Merrymeeting Bay/Trout
20 Unlimited funded six -- six flights to do this and we did. So
21 our members are using the river photography, excuse me,
22 photography, fishing, obviously the water sampling, so we are
23 on the river.

24 Part of the reason for the helicopter program was
25 that most of our members live further down on the river. And

1 I'll make the distinction between the lower, lower
2 Androscoggin from Worumbo down, which we upgraded -- thank
3 you, Commissioner -- last time and the upper lower river from
4 Worumbo up to -- to Gulf Island Pond. And so, again, you
5 know, could we -- could we do this sampling with fewer people
6 and that's why we tried the helicopter route. And, again, it
7 worked really well. So I think we have the most comprehensive
8 data available for this entire reach. As I mentioned, it's a
9 longitudinal profile. We looked at 10 sites from the upper
10 Worumbo impoundment below where the Sabattus Stream comes in
11 up to Gulf Island Pond and what I'd like to do is it take you
12 through the report that you all have a copy of and I'll just
13 kind of point out some things.

14 So if we go to page 15 -- and some of these page
15 numbers got kind of munched when it got stapled together, but
16 15 is still good.

17 MR. DUCHESNE: And just to clarify, you're not going
18 to read the entire report?

19 ED FRIEDMAN: No, I'm not going to. I'm going to
20 skim through a few high points here and you are going to read
21 the entire report on your vacation.

22 So page 15 has a location map of where the sites --
23 where all of our sites were, including last go around, and
24 there are some better image as well. Big picture, there is a
25 report in the beginning. There is location map, which we were

1 just on. There are also Google images of each -- each
2 location, each sampling site. And then there are the USGS
3 Auburn flows for the test dates and one for overall. And then
4 we've got the benthic macroinvertebrate reports which we did
5 last go around. We did six sample sites for that. Four of
6 which are actually in this section, not the last section, and
7 the DEP took our data which we collected with Moody
8 Environmental -- Moody Mountain Environmental, and of the four
9 sites that are in the current proposed area, three of them the
10 DEP modeled as Class B. And the fourth being in the
11 impoundment above Worumbo. And then there towards the end
12 there are the actual notes and sampling data.

13 So -- so going just from the beginning here if you
14 open up to page 2, you'll see the old map of the lower, lower
15 river there, a little bit of overlap on the left up into the
16 current section with the green dots being where we did the
17 macroinvertebrate or benthic macroinvertebrate modeling.

18 The next page you can see the current area localized
19 on page 3, current test sites. And we picked these, you know,
20 not just to create a longitudinal profile, but the first one
21 we're picking up Sabattus Pond, Sabattus Stream. A-2 is kind
22 of an east/west reach there and a little bit of rapid
23 activity, not much. A-3 is basically along the flats straight
24 away of Route 138. Super, super low water there, so that's
25 going to be really hot all of the time, right. So that's

1 different there. And that's also a similar spot to where our
2 Durham boat new monthly sampling takes place, which is just
3 for bacteria. And I'll mention that we've been doing this
4 since 1999 operating under EPA Quality Assurance Plan through
5 Friends of Casco Bay for many years and then move on to the
6 DEP VRMP, the Volunteer River Monitoring Program, so that's --
7 so all of our procedures are sort of based on those quality
8 assurance plans.

9 Go up to A-4, which is actually where our first stop
10 was with the benthic macroinvertebrate sampling and I realized
11 that when we did that sampling that was as far upstream as we
12 could go and it turns out that's the site of the old Eel Weir,
13 so that was what was blocking us then. You then crossed the
14 highway 95. If you look upstream there is a little -- a rapid
15 there called Benner Rips. That was the only place named and
16 that's why this is a BR in the middle of all of the A-1
17 through A-9. There are actually 10 sites. Around the corner
18 from Benton Rips -- Benner Rips is the Lewiston/Auburn
19 wastewater plant. And then A-5 is just above that below the
20 green bridge in Auburn and also picking up the Little
21 Androscoggin comes in there and then we move up into the
22 impoundment -- impoundment of Old Lewiston kind of opposite
23 the boat ramp in that vicinity. And we have A-7, which is up
24 at the very top of that at the base of the Deer Rip -- the
25 actual Deer Rips but in a big eddy there. And then A-8 in

1 Deer Rips impoundment and A-9 up in the pond, so that's where
2 we're at. Perfect year for doing this.

3 Page 4, you see what the flows look like. The blue
4 line is -- is the flows when we were out there versus the
5 upper line is the -- the 96 year median flows. So well below
6 median flows for 4 of the 6 sampling sessions, so I'd say we
7 were at the 7Q -- in the 7Q10 zone. A couple of pictures down
8 below of the helicopter and someone the sampling for bacteria.

9 On the next section I've got kind of the materials
10 methods. I have a detailed sequence of how we -- how we do
11 the sampling. Table -- numerical table of -- of DO in parts
12 per million, milligrams per liter, E. coli for each of the
13 sites. All well above Class B. There is a geomeans for the
14 total. And then on page 6 there is a couple of easy to read
15 graphs, one for DO at the top. Again, well above the 7
16 amendment for Class B and the bottom on for E. coli. And you
17 can see where the Lewiston/Auburn plant is, LAWPCA Plant, and
18 how that does have an influence. So A-4 is -- is -- so BR is
19 below the plant, A-4 is down, you know, a little further down.
20 So there is a mixing zone effect for that bacteria as you move
21 downstream.

22 And then for comparison here is a -- we had a VRMP
23 monthly sampling event a couple of days apart from our regular
24 helicopter sampling event on page 7 there. It just kind of
25 shows the E. coli there. And then because the DEP is

1 considering adding pH to the mix, we actually rented a pH
2 meter from Pine Environmental and did pH on one of the flights
3 here in September and you can see that those numbers there,
4 which do, you know, do meet the proposed parameters for pH.

5 That is a little bit of a segue to something that
6 the Department has proposed and I'm a little confused as to
7 all of the particulars, but changing the parameters for
8 dissolved oxygen monitoring to a continuous monitoring pH
9 requirements and in some cases nutrient requirements of the
10 main concern being phosphorus, which is not part of the
11 current standard by the way. An unintended or intended
12 consequence, I'm not sure, but all of these are very costly to
13 do, very data intensive, that will, I think, put pretty much
14 every volunteer monitoring group out of business. And the
15 Department, as you know, is understaffed and does depend a lot
16 on citizen groups and interacts well with them through the
17 VRMP program. I really caution you when you get to these
18 issues about what the consequences might be for keeping good
19 tabs on Maine's water. I understand the merits, you know, of
20 having a continuous monitor. Last I checked, a HOBO monitor,
21 I think, was like 1200 bucks or something and it turns out a
22 lot of data. You know, if you're doing multiple sites it's
23 very costly. It's cheaper to fly a helicopter, you know, so.

24 This section here is response to comments. You
25 know, there was a lot of supposition from the DEP and others

1 on just what the situation was down in this reach here and our
2 data really go along way to showing oftentimes that that's
3 not -- not the case.

4 A couple of points of interest, you know, why do we
5 test Benner Rips. Last year my thought was that, well, we've
6 got the rapids here, it's going to oxygenate things, right.
7 Let's check and see. Well, it turned out it doesn't really
8 make much of a difference, right. There is the E. coli we
9 could really see, you know, we could see an effect of the
10 Lewiston/Auburn Wastewater Pollution Control Plant there.

11 There was comments from the Rumford/Mexico folks
12 sewer district in the spring and this comment has been out
13 there before. Again, supposition that, well, this whole
14 section would not be Class B were it not for oxygenated water
15 coming out of Gulf Island Pond. Totally the opposite, right.
16 If that were the case, we would expect to see high levels of
17 oxygen in the Deer Rips impoundment just below the pond and
18 then have that taper off as you move down river to some
19 ambient level. In fact, our worst -- we got great DO levels
20 in Gulf Island Pond, but we're only testing like 6, 10 feet
21 down, right, and everyone knows there is more a anoxic layer
22 deeper down. The levels of oxygen of the DO in Deer Rips were
23 easily the worst of any place we checked. And, in fact, we
24 had one point of the like 198 measurements we did where the DO
25 in milligrams per liter dropped to just below 7. The percent,

1 however, was above 75, so it still qualifies under the
2 existing standards which say the higher of the two. But so we
3 were getting lower DO water right below the pond as opposed to
4 the surface of the pond, so we're getting less oxygenated
5 water coming out lower down through the turbines. It's
6 sitting in Deer Rips, starting to absorb oxygen from the
7 surface and then it keeps absorbing as you move downstream and
8 the levels are all -- all A-1. So the pond is not adding
9 oxygen, it's adding not so good stuff, which the atmosphere
10 then compensates for with time and distance.

11 We did also notice that temperature -- air
12 temperatures seem to be a little bit more important than
13 flows. We had super low flows the whole time and, you know,
14 DO was remarkably consistent. You know, we started to see it
15 change a little bit at the end of the season going a little
16 bit higher.

17 So I -- I am happy to answer any questions from the
18 Board whether it's about the flying or data or any of this
19 stuff.

20 MR. DUCHESNE: Mr. Sanford.

21 MR. SANFORD: Did you follow DEP SOPs for the DO in
22 other sampling?

23 ED FRIEDMAN: Yeah, we're actually using a DEP
24 issued meter --

25 MR. SANFORD: Mmm Hmm.

1 ED FRIEDMAN: -- to our, you know, the volunteer
2 monitoring program. There is a, you know, again, section in
3 here a sort of outline step-by-step more or less of what we
4 do. But, yes, following our quality assurance DEP protocols
5 and the -- the type of the bacteria monitoring we do utilize
6 as IDEXX Colilert process, which is EPA certified, the Maine
7 Environmental Health Testing Lab uses it as well and we've
8 been doing it for many, many years.

9 MR. SANFORD: Thank you.

10 MR. DUCHESNE: Mr. Marvinney.

11 MR. MARVINNEY: Is it correct that most of your DO
12 data you collected was kind of after the DEP went through
13 their process and determination of -- of what would be in this
14 report?

15 ED FRIEDMAN: Yeah, so -- so their comments came
16 out, you know, other than our initial sampling run last year
17 as a trial, it did come -- we did our work after the DEP's
18 initial comments and I kind of hoped because I have -- I fed
19 them data through the summer as we would go that maybe seeing
20 the data they would change their tune by the time we got here,
21 but so far no.

22 MR. MARVINNEY: Okay.

23 MR. DUCHESNE: Mrs. Vickery.

24 MS. VICKERY: Thank you. So thank you, that's a
25 whole lot of data and I'm sure DEP is really appreciative of

1 that additional data. It's interesting and it's way more than
2 I can digest right this minute even with your careful
3 explanation. So I -- I want to just get to the summary of the
4 DEP recommendation about this DEP stretch says that this
5 stretch does not fully meet all Class B water quality criteria
6 for bacteria, aquatic life, and dissolved oxygen. I'm going
7 to take this in pieces. Do you believe that the 2025 data
8 that you've collected would --

9 ED FRIEDMAN: Contradicts that.

10 MS. VICKERY: -- contradict that?

11 ED FRIEDMAN: I do. Absolutely.

12 MS. VICKERY: All right. Next, furthermore,
13 Department's analysis indicates that the river cannot meet
14 Class B criteria at all times during critical conditions of
15 high water temperature, low flow, and a maximum discharge --
16 maximum licensed discharged levels.

17 ED FRIEDMAN: I -- I -- I disagree with most of that
18 in that we were out there at under 7Q10 conditions, super high
19 temps, super low flows, we got great data. The maximum
20 licensing is something -- maximum license load is an issue
21 that we brought up the last triennial and I submitted a chart
22 that I made that showed maximum license loads, actual
23 discharging by the different dischargers and what the percent
24 differences were. There are huge buffers built in to those
25 maximum license loads which actually never happened. And I

1 think that Attorney Scott Sells is going to delve into the
2 legal aspects of this and will probably mention that as well.
3 I did not include that chart this time. It's in the record
4 from last time, but it's a -- you know, those -- it's
5 interesting and it's too bad that it doesn't seem like
6 those -- it doesn't seem that actual dischargers get revisited
7 very often by the Department. There are these maximum license
8 loads which never happen. They have up to 30, 50 percent
9 buffers built into them and -- and so that's -- that's the
10 piece Barbara that I, you know, I can't say I disagree totally
11 with, but I'll qualify my disagreement because of the way
12 those are issued, so.

13 MS. VICKERY: So the last piece I just wondered if
14 you've commented on is the comment in the -- in the staff
15 recommendation that if the lower Androscoggin were to be
16 upgraded to Class B, Department determined that a 54 percent
17 reduction in BODs would be required for the three discharges
18 above Gulf Island Pond and a 33 percent reduction in BODs for
19 LAWPCA. I can't remember what that stands for. So what's
20 your response to that?

21 ED FRIEDMAN: Yeah, I -- I'm not a modeler and --
22 and reclassification is supposed to be based on actual water
23 quality conditions, so you're getting into a modeling exercise
24 there to come up with these -- these license discharge limits,
25 which is a permitting issue, so they're related but they are

1 different, very different. They are distinctly different. I
2 don't think that's the case. As we've shown under these
3 horrible conditions everyone knows this is one of the worst
4 droughts we've ever had and we are meeting Class B with room
5 to spare.

6 MS. VICKERY: Thank you.

7 MR. DUCHESNE: Mr. Pelletier.

8 MR. PELLETIER: Thank you. Can you elaborate on
9 your comment about continuous monitoring? The helicopters are
10 expensive and even though you may have one, you know, and HOBO
11 meters are collecting data all of the time. Why would they
12 be -- why would that use be more expensive?

13 ED FRIEDMAN: Well, I think -- well, again, maybe
14 you know -- you probably did know better than I, I don't know
15 if you still do --

16 MR. PELLETIER: I still don't know.

17 ED FRIEDMAN: -- the price of HOBO meters are pretty
18 expensive, I think, or the last I looked, and they also are
19 turning out a ton of data, so there is the issue of how do you
20 deal with the data and how many of these things are you going
21 to have. You know, if you're sampling in one spot it's --
22 it's probably great. If you're doing what our group does and
23 sample like we have, I think, like 15 spots down in the lower
24 section and then we just did 10, that's a fair bit of change
25 and a lot of data that someone has to deal with.

1 MR. PELLETIER: Makes sense. Thank you.

2 ED FRIEDMAN: So if -- if the DEP, you know, right
3 now with the -- with the VRNP program, the DEP gives us meters
4 every year to use and they quality check them every year,
5 calibrate them aside from our daily calibration. So, you
6 know, if the Department wanted to do that and make these
7 things available to citizen groups and have someone available
8 to deal with 24/7 data for the whole summer we could probably
9 go deploy them, you know, but it's a lot to deal with for a
10 citizen group with no staff or minimal staff.

11 MR. PELLETIER: And the parameters we would be
12 talking about would be DO, pH, anything else?

13 ED FRIEDMAN: Yeah, and the pH, you know, we rented
14 the meter for like \$150 per day to do that. And then there is
15 some talk about phosphorous, I think -- I think that falls
16 under nutrient criteria and, again, there is almost an
17 implication when some of the Department folks are talking
18 about that phosphorous is part of the equation now but it's
19 not part of the water quality standard parameters. It's
20 aquatic live standard, it's DO, and it's bacteria, E. coli.

21 MR. PELLETIER: Thank you.

22 MR. DUCHESNE: Quick explanation from the Presiding
23 Officer. I'm being very lenient with time because the Board
24 traditionally has always had to dig into this issue,
25 particularly on this section of river, a lot and we're likely

1 to do so later on when we give conversation to what
2 recommendations to make, so I am being lenient on that. I
3 realize people have other rivers they wish to discuss and I am
4 cognizant of that too, so I would invite as much brevity as
5 possible, but this is an important one that the Board is going
6 to pay a lot of attention to as we will the others as well,
7 but this one is recurring, so dig right in, Mr. Sells.

8 SCOTT SELLS: Thank you and good morning, Presiding
9 Officer Duchesne, members of the Board, Commissioner and
10 Attorney Dafoe. I will try and be as succinct as I can. I
11 don't want to spend all -- all of the time just reading
12 word-for-word my comments, but there is an important legal
13 issue that I think needs to be considered because it does keep
14 recurring and it came up during the last Triennial Review for
15 the stretch of the Androscoggin below that was subsequently
16 upgraded to B and it's come up again here now and I -- I think
17 that it's worth taking just a little bit of time on this
18 because it also is unique to what obligations the Board has
19 when a stretch of water meets from the demonstration of actual
20 data the higher classification and what it must do.

21 As Mr. Friedman stated, Friends of Merrymeeting Bay
22 has been extensively involved in this matter on the
23 Androscoggin, submitted detailed comments and by any account
24 has a very long history of water monitoring on the lower
25 Androscoggin, including the most recent data that Ed has

1 collected and submitted from the section of Worumbo to Gulf
2 Island Pond, which is the subject of the current proposed
3 upgrade.

4 The reason for -- that we're in support of
5 reclassification and I've also characterized my comments if it
6 wasn't made clear enough that we are -- although we are
7 Friends of Merrymeeting Bay we are in support of Grow L+A's
8 proposal on this particular stretch.

9 The reason for reclassification to me is pretty
10 straightforward for Androscoggin fisheries and wildlife to
11 re-establish and thrive in the watershed the water quality
12 classification system under federal and state law has to work
13 the way it was intended to work and not continue to be
14 subverted by bad or misinformed agency judgement or excuses
15 that are not exemptions under the statute and that's really
16 key here. At the end of the day our objective is cleaner
17 water and the outcome that the law and the Legislature intends
18 the reclassification scheme in our view drives
19 reclassification to higher classification. It is not -- does
20 not work the other way around and does not require that the
21 status quo be maintained until Class B is met on a continuous
22 basis everywhere in the stretch of the river.

23 I note at the outset there are no specific
24 exemptions under 38 MRSA, 4644 (4) (F) (4) that, one, exceeding
25 the minimum standards of the next highest classification, such

1 as for DO, must occur under critical water quality conditions
2 to trigger the reclassification requirement that the Board
3 must -- must do; two, modeling results which indicate the
4 Class B DO criteria may not be attained in the segments in
5 question during critical water quality conditions is a factor
6 to consider in a reclassification. Again, this is not an
7 exemption to the Board's mandatory determination of whether or
8 not it needs to recommend reclassification to the Legislature;
9 or three, consideration of critical flow conditions and
10 full -- fully licensed loads or that any other condition and
11 NPDES discharge permitting can somehow prevent mandatory
12 reclassification. This is because simply that if the
13 Legislature had wanted any of these exemptions in the
14 reclassification requirement provision it would have said so
15 in enacting the statute.

16 So I am here to summarize why legally the Board is
17 compelled to upgrade the lower Androscoggin below Great Island
18 Pond from Class C to Class B. I say compelled because this
19 reclassification is non-discretionary and the Department has
20 failed to show why it is not. In fact, in the circumstances
21 of this case the actual data showed the Board must reclassify
22 the segment below GIP Dam and the lower Androscoggin to Class
23 B.

24 There is really only two issues for the Board to
25 consider; what the law says it must do and whether there are

1 any statutory interpretation that provides for any exceptions,
2 the circumstances or judgement on the part of the Department.
3 Here, the issues must be resolved in the context of the legal
4 standard in the Clean Water Act that -- that emphasizes that
5 the revision of any classification must be determined by
6 actual water quality data and actual water quality being
7 attained. There is also Maine statutory language which
8 explicitly states what the Department must consider in
9 reclassification, including whether the field data, the actual
10 field data demonstrates the river segment in question meets
11 Class B water quality criteria and whether the actual
12 designated uses are consistent with Class B designation.

13 The Department's recommendation denying an upgrade
14 to Class B violates the standard and ignores the specific
15 criteria in favor of other external factors that are
16 inappropriate and arbitrary when Class B standards are being
17 met by actual field data and the actual uses of the river are
18 consistent with Class B designation. And just to -- as a
19 reminder to, and I do want to read this into the record, the
20 Clean Water Act and Maine's anti-degradation policy requires
21 that, quote, when the actual quality of any classified water
22 exceeds the minimum standards of the next highest
23 classification, that higher quality water quality must be
24 maintained and protected and that the Board shall recommend to
25 the Legislature that the water be reclassified in the next

1 higher classification. The use of the terms must and shall
2 are by any definition non-discretionary and are recognized by
3 the courts as well as settled interpretation of those terms.
4 The plain language of the law is clear. It is a matter of law
5 for the Board to recommend the upgrade to the Legislature if
6 the actual water quality standards are met. Similarly, what
7 the Board can also consider is whether the designated use for
8 the river has been met.

9 So when we go to the Department's recommended denial
10 here we're looking at additional factors that they consider do
11 not trigger the mandatory requirement of the Board. The
12 mandatory reclassification requirement that under modeled
13 critical once-in-a-decade low flow, high temperature
14 conditions, the lower Androscoggin might fail to meet Class B
15 standards; notwithstanding, the actual field data that was
16 collected during a drought year may satisfy this criteria and
17 Ed has just testified to that; that waste discharged permits
18 might have to be altered or might not be allowed at all under
19 Class B designation because the requirement to consider
20 modeled once-in-a-decade low flow, high temperature
21 conditions; and third, that the riverine segment doesn't
22 always meet Class B criteria.

23 None of these factors are appropriate when
24 confronted with a segment of water that actually meets water
25 quality standards and designated uses. Again, there is

1 nothing in the statute that allows for this and the
2 overwhelming legal basis for both clean -- federal Clean Water
3 Act and Maine's anti-degradation statute explicitly say so.
4 There is no time limitations contained within the statutory
5 mandate for the Board. There is no continuous requirement
6 that the stretch in question meet the higher Class B standard.
7 There is no meets criteria all of the time language in the --
8 in the language directing you to reclassify to Class B. And
9 there is no it always must meet Class B requirement at all in
10 that statutory language and that's -- that's very critical
11 here because as to Presiding Officer Duchesne's earlier
12 comment about, well, what do we do with these stretches of
13 river that are close but no cigar. Well, the simple answer to
14 that is to look to the plain language of the statute to
15 determine what you must do and in this case when you have
16 actual data showing that it's meeting Class B you must
17 recommend reclassification to the Legislature.

18 And I -- I say this because I -- I rely, and I'm not
19 going to go through the entire discussion on statutory
20 interpretation, but this Board has heard testimony from the
21 Department's own expert discussing how to divine legislative
22 intent with respect to the language. And, again, I am
23 focusing on the language of 464(F)(4), which mandates that the
24 Board reclassify if there is an indication from actual data
25 that the stretch is meeting water quality of the next highest

1 class. If there are competing statutory arguments here, and
2 there appear to be, because from the Department's denial of
3 the recommended upgrade they're suggesting that your mandatory
4 duty to reclassify in the face of actual data is not
5 triggered. That suggests that they do not see it as a
6 mandatory obligation on the part of the Board and that,
7 therefore, there is a differing interpretation of what you
8 must do as a Board.

9 And, again, I have got a fairly extensive discussion
10 of the statutory interpretation which I used an analysis that
11 was presented by I believe it was Kevin Martin who was then
12 Compliance and Procedures Specialist for the Department in
13 1981 as the framework for my analysis.

14 You have heard Ed Friedman speak about the data
15 that's been collected very recently showing that for the
16 overwhelming majority of time, if not all of it, the segment
17 of the lower Androscoggin section meets Class B standards.
18 Specific DO requirements, they're met here. Specific E. coli
19 requirements, they're met here. Aquatic life and free-flowing
20 non-hydropower impoundment requirements also met here.
21 Legally these are the only external circumstances or facts the
22 Department need consider. Its inquiry and analysis of Class B
23 standards stops here for the purpose of reclassification. It
24 may not stop there for the purposes of issuing an MPDS point
25 source discharge, but that permitting process is a separate

1 and distinctly different process than the reclassification
2 process that we're here to discuss today. It is not
3 reasonable therefore to layer hypothetical modeling as a
4 surrounding circumstance when actual data is available. This
5 is because the Department's hypothetical modeling is
6 inconsistent with the reality of actual facts and data. It
7 also leads to the absurd result of willfully ignoring actual
8 data and reality and relying on modeled result and that is
9 exactly the kind of inconsistency and absurd result the
10 Department itself professes it cannot do.

11 Similarly, the purpose of the Clean Water Act was to
12 prevent or eliminate water pollution, not to accommodate it by
13 preventing reclassification towards more protective standards
14 particularly when the basis is rare or exceptional occurrences
15 such as modeled or imagined maximum pollutant loading. And I
16 would point out and emphasize that with respect to Ed's
17 comments on that while we were invited to prevent modeling and
18 sampling under maximum discharge loads for point source
19 discharges that, number one, is unpractical because the data
20 shows that none of the waste -- MPDS waste dischargers on this
21 particular segment or upstream of the segment ever discharge
22 at fully discharged loads. So there is a -- there is a little
23 bit of a disconnect in terms of, well, what are we -- what are
24 we really looking for here. What's really realistic and
25 what's practical. I would also point out that -- that this

1 kind of flies in the face of the goal orientation of the Clean
2 Water Act, which is we're trying to get to the highest
3 classification. We're not trying to stay where we are because
4 we have another competing waste discharge into the river
5 that's governed by another permit program.

6 MR. DUCHESNE: Can I ask quickly if you have --

7 SCOTT SELLS: Yes.

8 MR. DUCHESNE: -- extensive further comments or are
9 you close wrapping up?

10 SCOTT SELLS: I'm close to wrapping up.

11 MR. DUCHESNE: Thank you so much.

12 SCOTT SELLS: So I would only by -- by wrapping up,
13 I would only point out that even if -- even the Class B
14 designated uses are met and they are undisputed, the
15 Department hasn't disputed the content or the quality of our
16 data. They have not disputed the designated uses for the
17 segment of the Androscoggin and that I have a fairly extensive
18 discussion regarding the existence of waste discharge permits
19 that -- and their effect on this particular requirement in
20 terms of upgrading to a Class B, but the bottom line is that
21 the river currently attains, as demonstrated by actual field
22 data, the higher bacteria and dissolved oxygen and aquatic
23 life standards as set forth in the Class B designation.

24 As noted by the Department, it has no reason to
25 question the data. It has even relied upon data supplied by

1 FOMB in prior classifications. There is no dispute as to
2 whether the designated uses of the segment of the river are
3 somehow inconsistent with Class B designated uses, therefore,
4 barring and showing that the data isn't valid, which has not
5 occurred, the Board must recommend that upgrading this section
6 of the lower Androscoggin to Class B under the plain language
7 of the law. There is no assertion that the Legislature
8 intended anything other than this result and it is confirmed
9 using the statutory analysis of the Department's own expert.
10 The Department's reliance on alternative factors here to avoid
11 reclassification is unsupported by the plain language of the
12 law and is accordingly arbitrary and capricious in our view.

13 We submit that the Board must recommend to the
14 Legislature that it reclassify the lower Androscoggin from
15 Class C to Class B. Thank you very much and I'd be pleased to
16 answer any questions from the Board.

17 MR. DUCHESNE: Mr. Sanford.

18 MR. SANFORD: I note that you're an attorney and
19 much of what you say seemed to be matters of law in addition
20 to matter of fact, but with regard to the matters of law, we
21 have a perfectly good AAG right here. I had one law course in
22 the previous century in graduate school, so I really am going
23 to on behalf of the Board, you know, look to our counsel to --
24 to help us sort through, parse what you're saying that's
25 matter of law so that we can sort out the matters of fact

1 aspect that where we feel more competent to decide. Thank
2 you.

3 SCOTT SELLS: Yeah, I would expect Mr. Dafoe, who is
4 I would say an excellent attorney, to advise you in a similar
5 way in terms of the statutory interpretation of the
6 obligations that the Board has in terms of reclassification in
7 this context.

8 MR. DUCHESNE: When we get to our deliberations
9 later, I won't be surprised if that comes up.

10 SCOTT SELLS: I apologize for being so long,
11 Presiding Officer, but --

12 MR. DUCHESNE: Well, let me ask you something about
13 once again the legal interpretation. It seems to me there is
14 a wrinkle that you should comment on and that is that we don't
15 have to interpret what the Legislature thinks because this
16 goes to the Legislature. Historically, this same argument has
17 come up regularly for at least the last couple of decades,
18 what we're legally obligated to do under the statute, et
19 cetera, and the Board -- the Department makes its
20 recommendations, the Board signs-off on it one way or the
21 other and then it goes to the Legislature which then has to
22 sign-off and they've never changed it either.

23 SCOTT SELLS: Right.

24 MR. DUCHESNE: So how do you handle that wrinkle?

25 SCOTT SELLS: Well, you know, I've looked at

1 other -- and you can even find language in 464 where they are
2 giving the Board, you know, discretion in terms of making
3 recommendations to the Legislature around certain issues.
4 This particular reclassification language in our view is
5 somewhat unique because it is so mandatory and it drives the
6 discussion of, well, what does -- what does actually meeting
7 the next highest class what does that really involve. And
8 that's kind of where the rubber hits the road because the
9 Department looks at, you know, sort of the totality of
10 circumstances for any particular case or any particular river
11 segment. It looks at, which we do not agree with, but certain
12 aspects of the NPDS discharge requirements to try and make a
13 determination of, well, okay, you know, is this meeting the
14 higher classification or -- or not. The problem is is you
15 don't have linkage in the language that directs the Board to
16 make a reclassification to the determination that the
17 Department must make in terms of, well, is it meeting Class B
18 or not. And that's what you -- that's where the tension in my
19 view lies because the minute you step into, you know, bringing
20 in, you know, a lot of external factors you're kind of
21 changing the calculus in terms of whether or not your
22 obligation as a Board to make a recommendation to the
23 Legislature is tripped. And that's, you know, I think the
24 solution from my perspective, and I may be speaking out of
25 turn here, would be to modify that language to give you a

1 little bit of wiggle room here because once -- once you've got
2 data that says, hey, it looks like it's meeting Class B
3 standards that moves you into that statutory place of, okay,
4 you know, we're in a space where we need to make a
5 recommendation here, how, you know, what are we going to do.
6 So I -- that's just my personal view and --

7 MR. DUCHESNE: That's fine. I'm just making an
8 observation the Legislature actually gets to demonstrate its
9 legislative avenues unlike many other things we rule on.

10 SCOTT SELLS: Absolutely. Absolutely. And I think
11 that was what the intent was, I -- I agree.

12 MR. DUCHESNE: Other questions? Thank you so much.

13 SCOTT SELLS: Thank you.

14 MR. DUCHESNE: We've been at this for over two hours
15 and as I age my bladder is not what it used to be, so I'm
16 going to recommend a five minute break, which will undoubtedly
17 stretch to ten.

18 (Break.)

19 MR. DUCHESNE: Ms. Fischer.

20 ANASTASIA FISCHER: That's me.

21 MR. DUCHESNE: Welcome.

22 ANASTASIA FISCHER: Hi, everyone.

23 MR. DUCHESNE: How have you liked it so far?

24 ANASTASIA FISCHER: Well, I -- I've been dipping
25 into my bag here trying to find food because I guess I didn't

1 eat enough breakfast this morning and I'm getting a little
2 dizzy, but. All right?

3 MR. DUCHESNE: Is the mic on? Good.

4 ANASTASIA FISCHER: There we go. I'm Anastasia
5 Fischer and I'm from Rockport and I am representing Eastern
6 Maine Conservation Initiative. I'm the board chair. I am not
7 either a scientist or a lawyer, so I want to make that clear.
8 I do want to say something quickly about the -- what EMCI has
9 been doing for over almost 30 years now specifically in this
10 particular area of the world that is under served in general
11 in terms of data, conservation, attention, money and
12 economically fragile. We, as I said, have been working 30
13 years to support different projects in this area. They could
14 be conservation, environmental research and also we support
15 historical preservation and legacy -- legacy information
16 preservation and that can go from the tribes to local
17 historical society, so we really try to support the existence
18 of the heritage of the region both environmentally and
19 historically socially.

20 We have inventory speaking to the Piping Plover
21 issue. I am not a bird watcher, but we do have inventories
22 for over the past 30 years of things such as birds in the
23 area, observational sightings. We have inventories of
24 seaweed. We have inventories of mosses and bryophytes. We
25 have inventories of rare plants and animals. We've done

1 wildflowers. We have a huge catalogue of inventory that we've
2 been maintaining for 30 years. So this is all to say that
3 we -- we have been deeply engaged in the region of Chandler
4 Bay for many, many years and have -- it's a personal situation
5 for us to look at the preservation of this and it would be
6 irresponsible for us not to be here presenting to you the
7 reasons that you should be seriously considering the
8 classification to SA.

9 And the thing that is -- there has been so -- I'm so
10 thankful to my predecessors actually, especially Attorney
11 Sells, because not being a -- a lawyer I -- I don't know how
12 law works that well, but I -- I do know that the DEP does
13 great work. I have worked with the DEP on other -- other
14 projects over time and I really, really respect the incredible
15 work that you guys are all doing and I -- I also feel like
16 we're all on the same team. This is -- we're trying to do the
17 same things -- all of us are trying to do the same things. We
18 care about Maine, we care about its future and we care about
19 the industries that are legacies, we care about preserving
20 what we've got and it is a crazy time all over the planet for
21 loss. We are seeing so much loss everywhere and I think that
22 brings the discussion of preservation to a whole new level.
23 We have a responsibility in the face of all of the loss that
24 we are experiencing on the ecological front and potentially
25 other fronts that can be related to that, for example, legacy

1 fishing industries. We have responsibility to preserve what
2 we can preserve now whether that's a legal responsibility, an
3 absolute statutory must requirement. I mean, I would love it
4 if that comes down to that if you guys end up seeing that
5 as -- but that is not what I am speaking to today and I am
6 speaking more from a philosophical perspective.

7 I do want to say that, you know, when you get my
8 letter it's going to reiterate everything. The DEP is in
9 agreement with us that the water quality of Chandler Bay meets
10 the standard. There have been three years of rigorous water
11 quality monitoring in that area that has met the standards and
12 that has been done with UMaine faculty, Damian Brady's team
13 specifically is the best -- one of the best in New England,
14 maybe the country for this work and it seems that the DEP does
15 agree with that.

16 The places where the DEP is in disagreement are
17 areas that I think are very, very interesting. I am going to
18 speak first to the one that is, well, a little bit less
19 problematic which is that there are, you know, the idea of
20 protected lands or it has to have a protected lands there and
21 this doesn't have any protected lands. Well, I do believe
22 that if you look at the classification states when we did a
23 mapping exercise it was done post -- this will be submitted in
24 our final materials, but it's not yet included, which shows
25 all of the conservation and protected land and we have almost

1 1,000 acres of protected lands around this bay that are
2 actually in active protective and conservation. I think that
3 they -- that kind of land should be absolutely included. It
4 shouldn't be just state and federal protected land, state
5 parks. There is also a state park just outside of Chandler
6 Bay that is a very, very fragile state park and it has great
7 importance as a natural estuary that, yes, it's maybe a tiny
8 space away from Chandler Bay, but it shouldn't be considered,
9 you know, it actually should be -- ecology is not borders, you
10 know, we're not different political systems is what I'm trying
11 to say.

12 So and then we have other extremely sensitive areas
13 and also the legacy fishing industry depends on these areas
14 and it depends on the fact that the coast is being preserved,
15 the land is being preserved. So we've got the quality of
16 data, we actually have under counted the number of preserved
17 and conserved lands that are actually on the books and then
18 let's get to the issues of the potential discharge
19 compromises.

20 Now, I have looked into -- as far as I can ascertain
21 about development, there are some development going on in
22 Washington County in the southern portion of Jonesport that is
23 very, very far away from Chandler Bay. It is a new
24 development area with 13 units, but it is absolutely south of
25 the bay by a considerable distance. It's very, very removed

1 from that, so I do not believe that that should be qualified
2 and I have not seen any other significant development pressure
3 going on there.

4 The second thing about this is is that the
5 agriculture was also mentioned. Well, agriculture has been
6 going on for years and the Chandler Bay is basically we've
7 been supporting projects to help revitalize the Atlantic
8 Salmon -- bring back Atlantic Salmon, which Chandler River has
9 supported. The agriculture runoff where -- if it was actively
10 impinging on the water quality it would have been -- it would
11 have shown a degradation to the water quality already. For
12 three years if it's not showing that degradation it's clearly
13 not degrading it. So I think that basic thing is the water
14 quality has been established and whether that's a must
15 reclassify it or not, I will leave you all to consider that.

16 So my last thing is -- gets to the specific
17 reference to the Kingfish permit. And I'm not going to
18 actually reference Kingfish or anything specific around that
19 except to say that this is fundamentally a philosophical
20 discussion about the future of life and I -- oh, gosh, sugar
21 finally.

22 MR. DUCHESNE: That puts the pressure on, doesn't
23 it?

24 ANASTASIA FISCHER: We -- just to get back to this
25 point about where we are in -- in helping maintain our

1 systems, our life giving systems on this planet. We have a
2 duty to preserve things at this point. If your approach -- if
3 the approach that we're taking is an approach that
4 automatically assumes compromise, we are setting up a
5 condition and that is the -- the Kingfish has not been built.
6 That is not contributing. Assuming that as a future state
7 it's basically -- it's basically committing a pristine area to
8 degradation. You are committing it by not taking action. And
9 this is -- I think it's a huge philosophical point. It's
10 really, really important. You cannot say this may happen in
11 the future so we will leave this open to -- to being
12 compromised.

13 And so this has been keeping me up all night for the
14 last three, you know, weeks, but I -- I -- this is the
15 fundamental point that I land on is that if you don't
16 reclassify it you're basically setting it up for degradation
17 and potentially destroying quite a bit of the legacy industry,
18 fishing industry that we have there that relies on the
19 ecological security of eel grass and all of the other natural
20 resources that are in the bay.

21 Thank you all for your consideration. I really
22 appreciate it. I hope I didn't -- I know I'm not a lawyer or
23 a scientist here and I hope it doesn't -- it still seems
24 appropriate to speak.

25 MR. DUCHESNE: No problem from my point of view. I

1 love Chandler Bay, so. I look forward to questions from the
2 Board. Mrs. Vickery.

3 MS. VICKERY: Thank you. I was puzzled by in your
4 written comments, which we have a copy of here, the reference
5 in speaking about the permittee has -- has -- Kingfish has not
6 begun construction, made vested expenditures or discharged,
7 semicolon, the municipal permit expired August 14, 2024.
8 Municipal permit for what exactly?

9 ANASTASIA FISCHER: That was their -- their board
10 approved them having a permit there to do construction.

11 MS. VICKERY: To construct --

12 ANASTASIA FISCHER: Yeah.

13 MS. VICKERY: -- but that's not a discharge
14 permit.

15 ANASTASIA FISCHER: Well, the discharge is
16 controlled by the permitting process at the state, so that was
17 a -- that was a -- that's a whole different thing.

18 MS. VICKERY: But then your next bullet point says
19 should a discharge proposal be reintroduced. I'm a little
20 confused about what the --

21 ANASTASIA FISCHER: Well, again, so that -- that
22 is -- you know, okay, I probably should take that out of the
23 record per se, but, yes, that is always an ongoing question in
24 my mind and in the mind of our board is that this permit --
25 these waters -- the way that waters get classified if they're

1 not documented from what I understand is that everything gets
2 SB -- just across the board you get SB unless it's documented
3 that you're worse off, more compromised, or you're better and
4 the reason for that probably is resources, how many resources
5 do we have to manage these things. And I -- I think what is
6 interesting is that if this -- this permit would never have
7 been considered if the bay had actually been classified as SA
8 from the beginning, which clearly it has been SA probably
9 since the beginning of time. And the -- so this is my sort of
10 conflict is the bay should have been classified way long ago
11 add SA and there was due to probably lack of resources on the
12 part of the DEP and, you know, the way that the structure is
13 to automatically classifying it SB that has allowed it to
14 occur.

15 MS. VICKERY: I do have a different perspective, but
16 I'm not sure that that we need to discuss that now.

17 ANASTASIA FISCHER: Well, I'm interested.

18 MS. VICKERY: Well, it has to do with the fact that
19 I think that the state's responsibility is to be thinking
20 about classification that allows economic uses of coastal
21 waters. And so the difficulty, you know, presumably the
22 discharge permit would be such that, which of course this body
23 would be responsible for, that it would put limits on it so
24 that it would not destroy the local fisheries, that we hope,
25 and that it -- that there is a balancing act to be done and so

1 it's a question of choosing what are the places that are so
2 special we want to really make sure they're off limits.

3 ANASTASIA FISCHER: I -- I --

4 MS. VICKERY: So I've spent a lot of time around
5 Great Wass Island and those parts and so I know there are a
6 lot of very special waters Downeast. How to choose among
7 them, I don't know.

8 ANASTASIA FISCHER: I -- I respect that position a
9 lot. I mean, certainly I have always been between industry --
10 my entire career I've worked between industry and science and
11 not that much on any kind of advocacy position honestly. So
12 I -- I fully respect and especially for an area like Downeast
13 that has -- is very economically disadvantaged, however, the
14 one advantage they have is their fisheries and those people
15 are going to keep doing fisheries because that's what they
16 know, that's what their kids know. I mean, I know this
17 community deeply. I've seen them all grow up and they're
18 going to continue in that line. They're not going to retrain
19 to, you know, clean -- clean up -- clean a tank, you know,
20 that's not going to happen. So and the mission of our
21 organization is to help preserve that legacy that they have
22 there. So I -- I get your point and respect it.

23 MR. DUCHESNE: Any other questions from the Board?
24 There is the one observation, I suppose, that the Gulf of
25 Maine is warming fast and the history of what we've talked

1 about in the past over in Water Quality is mostly around
2 rivers and lakes. I don't remember a whole lot of discussion
3 over the ocean until recently. I think if you combined the
4 fact that we're taking a closer look at that and the
5 challenges of climate change and what it's going to do to
6 traditional fisheries like lobsters, that's all part of the
7 discussion, so I think the Board will probably take this quite
8 to heart and we'll deliberate and really take a close look and
9 just what I think will happen.

10 ANASTASIA FISCHER: Great. Thank you. You know,
11 prior to getting involved in this per se, I was running a
12 coastal water and weather site and it's a national site and
13 it -- it just has been a huge educational experience for me to
14 understand that our coastal and ocean waters just have never
15 gotten the attention that they deserve. It's always been
16 secondary and we are so far behind and it is really -- it's
17 a -- it's a tenuous time for that to happen and I appreciate
18 the Board really, really considering ocean waters going
19 forward. Thank you very much.

20 MR. DUCHESNE: Mr. Sylvester. Is that correct?

21 WILLIAM SYLVESTER: That's me.

22 MR. DUCHESNE: Have a seat.

23 WILLIAM SYLVESTER: Okay. I've been sworn in, I
24 think. Is this working? No? Turn it on?

25 MR. DUCHESNE: Turn it on, please.

1 WILLIAM SYLVESTER: Okay.

2 MR. DUCHESNE: There.

3 WILLIAM SYLVESTER: I'm Bill Sylvester. I live in
4 Auburn, Maine. I own 3,000 feet of riverfront on the
5 Androscoggin. I lived at Clayton Lake for 40 years. That's
6 between the Allagash and the St. John River. I own 2,000
7 acres up there and I own 300 or 400 down here. The St. John
8 River runs through there. I've been the committee chairman
9 and on the St. John River Advisory Committee for 40 years
10 about, maybe 50, so I -- I know a little bit about that stuff,
11 but, boy, the legal things and the -- the numbers are
12 overwhelming. I have got the Board -- the DEP letter here and
13 it says they mean to leave it alone. I say leave it alone.
14 It's up for review every three years and it seems like people
15 aren't remembering that this river has improved from me as a
16 kid in the early '60s. It -- it wasn't fit to be around and
17 now it -- you -- it's clear. I wouldn't drink it but neither
18 would I go up on the St. John River and drink some AA water in
19 August out of a warm puddle either. So there is a limit to
20 what we can afford. There is a limit to what DEP monitoring,
21 the whole -- and that's in here. That's -- they tried to
22 weave that in here, the cost of this. I think the cost of
23 saying this is a B may mean rewriting degradation and
24 discharge permits and don't spend our time on that. Let it
25 go. It's -- there is a new sewer tank being built in

1 Lewiston, the IP mill, evidently that wasn't a polluter
2 because it was built in '65 and that's when the river started
3 to improve I think somebody just said. So evidently it wasn't
4 IP in Livermore that polluted the river. They tried to clean
5 it up and now they're even talking about using the sediment
6 system up there for -- the sludge pools and what not for some
7 other project for a transfer station purification plant.

8 So anyway, I say don't -- don't bother to change it.
9 If something needs to be changed there has got to be teeth and
10 claws and nails and fangs in what you've got right now that
11 won't allow degradation. I don't think degradation is a
12 thing. I think PR-wise nobody is going to degrade a watershed
13 and the -- that's another story, but nobody is going to
14 degrade a watershed and live through business, but you've got
15 to have business to survive. Agriculture, that -- that
16 section of river has got massive agriculture on it and it
17 inundates -- a lot of that inundates and dust blows, it's
18 sand, it's leggy soil, don't -- don't hurt our farmers either.

19 Any questions?

20 MR. DUCHESNE: Questions from the Board? Seeing
21 none, thank you very much.

22 WILLIAM SYLVESTER: Well, thank you.

23 MR. DUCHESNE: Mr. Fisk.

24 ANDREW FISK: Good afternoon, Chairman Duchesne,
25 members of the Board. Thank you for being here today.

1 MR. DUCHESNE: You have two microphones on at the
2 moment. Do you --

3 ANDREW FISK: I'll shut off one.

4 MR. DUCHESNE: Thank you.

5 ANDREW FISK: My name is Andrew Fisk and I'm the
6 Northeast Regional Director for American Rivers. I live in
7 Holyoke, Massachusetts. I am here today to speak on behalf of
8 the Department's recommendations and also to speak on behalf
9 of one of those from my organization as well as the Friends of
10 the Presumpscot River, American Rivers, and the Northeast
11 River Northeast Regional Program.

12 American Rivers has not been present in Maine since
13 about the early 2000s. In 1999, we were an active member of
14 the Kennebec Coalition supporting the Edwards Dam removal. We
15 have been an active partner on the Penobscot River Restoration
16 Trust on whose board I currently sit and we are currently
17 working with other partner organizations throughout the State
18 of Maine on river restoration projects including dam removal,
19 hydro relicensing and the like. I am very excited to be back
20 in Maine working on behalf of the public's rivers.

21 What I would like to do first in endorsing the
22 Department's recommendations for standards and classifications
23 is just to restate that when I look around the region and the
24 country it is important to recognize that the Department, the
25 Board and the Legislature over time have built an incredibly

1 comprehensive, rigorously based set of standards and
2 classifications. They are very ambitious and they have done
3 the state incredible good service. I think it's important to
4 recognize that amongst the standards and classifications is
5 the DEP's biological definition of river and stream and
6 wetland health. That is a national model that demonstrates a
7 very, very comprehensive way along with the other chemical and
8 physical parameters for demonstrating how we make our rivers
9 healthy, clean, and full of life for everyone.

10 It's also important to note that, again, this is the
11 Department, the Board and the Legislature has brought forward
12 a framework of Clean Water Act protection that is nationally
13 significant and you have brought this from recall pre-1986
14 standards a Class D designation that had frankly horrific
15 standards and did not meet the Clean Water Act. So over time
16 not only have the rivers gotten clean, they have gotten clean
17 because of those three entities worked to create those strong
18 standards.

19 Again, I am here to testify in support of the
20 Department's recommendations. I am particularly supportive of
21 the dissolved oxygen changes, in particular the Class B
22 change. I think that is technically sound. It is feasible
23 and provides for clear decision-making. And I am also very
24 supportive of the classifications and I would like to take
25 note of the AA classification. As the Department noted, those

1 are what's called in the Clean Water Act outstanding natural
2 resource waters. And if you would bear with me for just a
3 moment, I want to put those 47 miles of AA classification,
4 those upgrades that are in the package in a national
5 framework. My organization has set out national and very,
6 very ambitious goals and among them is to ensure that a
7 million miles of the countries 4.4 million miles of river are
8 adequately protected. My organization has conducted the first
9 ever assessment of what are the 70 mechanisms that we define
10 equal river protection and that ranges from local ordinances
11 to state, federal, and national policy, types of land
12 ownership and Clean Water Act protections.

13 We see that million goal as within reach by 2030.
14 There are currently 850,000 miles of rivers that are protected
15 for an adequate level of protection based on these 70
16 mechanisms. This National Protected Rivers Assessment, or
17 NPRA, will soon be published in Nature Sustainability and
18 there is an active website if you Google National Protected
19 Rivers Assessment. At American Rivers you will see and
20 explore that demonstrates the data for the first time ever
21 collected nationally that compiles these into these different
22 levels of protection. Now, 47 miles towards a goal of getting
23 150,000 miles more by 2030 may not seem a lot, but I want you
24 to know that Maine's effort to regularly upgrade
25 classifications, including to AA, is nationally significant.

1 This does not happen at the same level of frequency and the
2 same ambitiousness around the country and so the work in Maine
3 we do waive a flag and say this is a very good example of how
4 we should be doing this work across the country in order to
5 meet that million mile goal.

6 My last comment is we are supportive of the
7 goal-based upgrade of the Presumpscot River from C to B. My
8 organization has been a long-time partner with Friends of the
9 Presumpscot River, a very, very active and a strong partner.
10 We recognize that this is a goal-based upgrade, but we would
11 ask you to consider it in support. If you do not find that
12 you can support it, we would ask you to consider putting this
13 forward to the Legislature with no recommendation, that it be
14 put forward for them to deliberate as you and the Legislature
15 have done for time how you address goal-based classifications.
16 Thank you very much for your time today.

17 MR. DUCHESNE: Questions from the Board? Mrs.
18 Vickery.

19 MS. VICKERY: Not a question, a comment. I so
20 appreciate you're coming here today to tell us that the state
21 and the DEP and the Legislature are doing a good job. It
22 really -- it -- it matters a lot to hear that Maine is leading
23 and is a model. And it -- I -- I for one feel as a Board
24 member it makes me sit up a little straighter and say, okay,
25 well, then we better uphold our standards, so thanks. It

1 really -- it makes a big difference to come to tell us that.
2 Thank you.

3 ANDREW FISK: It is true. I am appreciative of my
4 eight years with the Department and working with the
5 Legislature and the Board and the tremendous staff at DEP to
6 learn this. We're going to continue to have discussions and
7 fights and deliberations on it, but it's in a framework that
8 is always moving upward.

9 MR. DUCHESNE: Yeah, in both of our previous lives
10 we have discussions along these lines and one of the things
11 that always struck me is that we do have a model standard that
12 is more strict than most other states. Now that you're with
13 American Rivers you know what most other states are doing even
14 more clearly than ever I am presuming.

15 ANDREW FISK: I continue to have awareness both in
16 New England and around the country, yes.

17 MR. DUCHESNE: What always hit me when we have these
18 discussions is we have a very strict standard already. What
19 we're being asked to do sometime is even more strict and,
20 again, it's not entirely clear how we thread that needle
21 sometimes. I talked about earlier that close but no cigar.
22 It's always the same rivers we have these discussions over.
23 Certainly the approach you're suggesting is good as having a
24 goal-based and work hard to meet the goal would be one thing
25 worth the Board to consider.

1 ANDREW FISK: Correct. And what we are saying is to
2 make the Presumpscot from C to B so it can pose that upgrade
3 and what we recognize is based on the current operations of
4 the Sappi Mill, right, they are no longer pulping and their
5 license will be up for renewal in 2026 can accommodate a Class
6 B. The Class B at the Westbrook Treatment Plant, the fact
7 that there is infrastructure in the upper watershed that has
8 within connected into the sewer system as well as things like
9 the MS4 permit program demonstrates that it will be a goal
10 upgrade and you will be pushing those communities, but you
11 will be pushing them in a way that they are already moving and
12 it will not adversely affect one of the most significant
13 discharge licenses in that watershed, which is for Sappi,
14 right, so.

15 MR. DUCHESNE: Seeing no further questions, thank
16 you very much.

17 ANDREW FISK: Thank you very much.

18 MR. DUCHESNE: I'm going to need help with this next
19 name. It's Peter. I thought so.

20 PETER STUCKY: That rattling paper --

21 MR. DUCHESNE: Yeah.

22 PETER STUCKY: -- sounds loud to me, I don't know
23 about you.

24 Good morning. My name is Peter Stucky. I'm on the
25 board of the Friends of Presumpscot River. My wife Michelle

1 and I have lived on the Presumpscot just inside the Martin's
2 Point bridge on the Portland side for over 50 years.

3 In the 1970s the river was disgusting. It was
4 virtually dead. The clam flats were polluted, huge clumps of
5 sludge from the paper mill and untreated solid waste from
6 municipal and private and direct discharge routinely flowed
7 downstream and into Casco Bay sometimes getting stuck on the
8 mud to bake in the sun. Less visible but much more
9 odoriferous, you know what I mean, and dangerous were the
10 chemical pollutants in the water.

11 Today, thanks to the hard work of state and local
12 government, business leaders, environmental organizations, and
13 local citizens the river has made great strides. The clam
14 flats are still closed, but dam removals at Smelt Hill and
15 Saccarappa Falls have greatly improved the water quality in
16 the flow in the lower river.

17 In recent years, we've seen routinely right in our
18 back yard sturgeon and striper jumping, I saw one yesterday,
19 Egrets and Heron fishing, Bald Eagles and Ospreys soaring high
20 overhead then diving down to catch their lunch. We've seen
21 fisherman, dory rowers, canoers, kayakers and water skiers.
22 And this year we had a family of Night Heron nesting in a
23 tree -- in the trees in our yard. It's -- it's a dangerous
24 thing. They -- they are in the trees during the day and I'll
25 just leave it at that.

1 So I'm here today to -- to ask you to please protect
2 the raised floor. I -- I know there is some debate about
3 whether we're at B or just below. I like the word
4 inspirational and what I'm really concerned about is that
5 we've -- we don't want to backslide, so how do we best protect
6 the gains we've made. We're so close, so I'm here to just ask
7 you to please help us preserve those incredible changes we've
8 witnessed.

9 MR. DUCHESNE: Thank you. Questions from the Board?
10 Thank you very much.

11 PETER STUCKY: I wished I got a question. Thank
12 you.

13 MR. DUCHESNE: I considered making one up, but I
14 couldn't come up with anything good. Just so you know, we
15 have five people left to testify, so that's where we stand and
16 Ms. Noyes is next.

17 STEPHANIE NOYES: Hi. My name is Stephanie Noyes.
18 I am a resident of Falmouth just upriver from Peter and I'm
19 also a board member of the Friends of Presumpscot River. I
20 have lived on the river for the last 10 years and I have
21 watched a lot of the wildlife and the marine life come back to
22 the river. A couple other things besides what Peter has seen
23 is we've got seals that come up, which is actually super fun
24 to watch the pups learn to fish. And also besides the
25 ecosystem improving over the last 10 years that I've been

1 there is watching a lot of the people recreate. A lot of
2 swimmers and boaters and lots more people fishing.

3 In terms of the whole picture of this river and what
4 we're trying to do in the last 33 years of improving this
5 river from completely dead to what the Clean Waters Act says
6 is fishable and swimable is how it's kind of deteriorated in
7 the last -- in the 20th century and a lot of people, not just
8 the Friends of Presumpscot, but the state also had been
9 improving these water qualities over the last 33 years as I've
10 known it and progressively improving it and we are showing
11 that we're progressing this river to a healthier river and we
12 have demonstrated that we had plans to improve things.

13 Looking more at the bigger picture and, you know,
14 the topic of the economy has come up. If you look at the
15 industrial side of it for Sappi and their industrial
16 economical financial part of it versus the hospitality
17 industry and the tourism of bringing a lot more of the Maine
18 tourism economy to the state on the other rivers and the other
19 areas that have been brought up today so far but also the
20 Presumpscot River is just as beneficial. So when you are
21 looking at it as a state and, you know, you kind of question
22 about the licensure of discharging versus the quality of water
23 and then also just making that fishable and swimable is really
24 important and we should take every opportunity to improve the
25 water protection.

1 So I understand that we're not asking you guys to be
2 for it or oppose it but that it gets hopefully supported by
3 your Board and that it gets passed to the Legislature to make
4 the choice that the Presumpscot River, the lower half, should
5 be reclassified to a Class B. In my testimony I have a lot
6 more of the data we've shared previously. Yeah.

7 MR. DUCHESNE: Good. Questions from the Board?
8 Seeing none, thank you very much for coming. Mr. Frankel.

9 LUKE FRANKEL: Still morning. Good morning,
10 Presiding Officer Duchesne and members of the Board. My name
11 is Luke Frankel and I live in Portland and I am a Staff
12 Scientist with the Natural Resources Council of Maine or NRCM.
13 We would like to thank the Department for all of the work that
14 they've put into the current Triennial Review process. As
15 you've heard the process started last year. It's been a long
16 process.

17 I just want to echo what Andy Fisk mentioned before
18 that the Department really does -- and the Board and the
19 Legislature has really put forward a model that the rest of
20 the nation can look to and we have made significant progress
21 in the state. And if you want to see how a perfect example of
22 how hard the Department has worked in this effort it is in the
23 detailed response to comments document that was put forward as
24 part of this Triennial Review process.

25 And so we submitted detailed comments on the

1 Department's proposal earlier this year and so I would like
2 today just to highlight some key points from those comments
3 regarding the water quality classifications component and I'm
4 going to specifically talk about two water bodies that haven't
5 really been mentioned today I think at all.

6 So we support the Department's proposed upgrades
7 from A to AA for Abbott Brook and its tributary, Mount Blue
8 Stream and its tributaries and the middle branch of the
9 Pleasant River and its tributaries. These water bodies
10 provide excellent habitat for salmonids, including federally
11 endangered Atlantic Salmon the latter two and the Department's
12 available data supports the attainment of these water quality
13 criteria so the upgrades in these cases make sense.

14 So using the same logic, we also recommend that the
15 Board reconsider the Department's proposal for only partial
16 upgrades to the Sandy River and its tributaries between
17 Philips and Farmington and Temple Stream and its tributaries.
18 The Department initially recommended that these water bodies
19 be upgraded from B to A during the beginning of the Triennial
20 Review process, but changed course when they released their
21 proposal for public comments earlier this spring citing a lack
22 of data to support the upgrade. We pulled the data for these
23 water bodies from DEP's database and after presenting it
24 within our written comments the Department in the second
25 proposal is -- is recommending upgrading portions of these to

1 a sub-watershed that are predominantly forested. Although we
2 agree that data is quite limited in these sub-watersheds and
3 that more data is obviously always better, obviously Maine is
4 a big state there is it a lot of data to collect and we do
5 believe that there is sufficient data currently to support
6 upgrading the entirety of these segments and we'll just
7 provide some context and present some of that data now.

8 So starting with the Sandy River between Philips and
9 Farmington there are three DEP biomonitoring stations in that
10 stretch that have been sampled in 2022. The macroinvertebrate
11 data from all of three of those stations attained Class A
12 criteria. None of those stations were sampled for algae, for
13 dissolved oxygen. There are only six measurements, but all of
14 them attained Class A criteria of 7 milligrams per liter and
15 75 percent saturation. And then for a total phosphorous,
16 which is another important metric in the recently passed fresh
17 water nutrient criteria. Two of the stations on the tributary
18 entrance on the Sandy did exceed the Class A criteria of 18
19 micrograms per liter but the one station -- the main stem of
20 the Sandy met the criteria and it's -- again, it's the -- the
21 biomonitor -- the response indicator variables like the
22 macroinvertebrates is really what drives attainment in the
23 nutrient criteria law.

24 And then shifting over to Temple Stream and this is,
25 again, this is a tributary to the Sandy River a little further

1 downstream. There are three biomonitoring stations that were
2 sampled from 2017 to 2023, one for macroinvertebrates, one for
3 algae, and then one for both. Macroinvertebrates both at --
4 at both stations attained Class A criteria. For algae one
5 station attained Class A, one attained Class C. Additionally,
6 there are also three water quality stations that are separate
7 from the biomonitor stations sampled from 2021 to 2023 and
8 kind of sampled in conjunction with the Walton's Mill Dam
9 removal on that river in 2022, which now allows fish passage
10 upstream in the watershed. So looking at the dissolved oxygen
11 from those three water quality stations there are sondes that
12 were deployed, so there were over 100,000 individual
13 measurements, 88 percent attained the Class A criteria of 7
14 milligrams per liter and 90 percent attained the 75 percent
15 saturation. And then for total phosphorous there were 31
16 measurements and 90 percent met the Class A criteria of 18
17 micrograms per liter.

18 And so as others have said earlier, Maine's
19 classification system is goal-oriented and we believe that
20 this data is sufficient to support the upgrades from B to A in
21 this particular case. And protecting water quality in these
22 water bodies even though they're -- they're small compared to
23 some of the others on the table today it's critical because
24 they are high quality habitat for endangered Atlantic Salmon
25 and it's especially important in light of ongoing efforts to

1 improve fish passage in the Sandy River as well as the
2 prospect of additional river restoration downstream in the
3 coming years.

4 And so to round out our comments just to touch on
5 some of the water bodies discussed earlier, we also recommend
6 that the Board reconsider the Department's position on the
7 proposed upgrade of the Androscoggin River from Gulf Island
8 Pond to the Worumbo Dam from Class C to Class B for all of the
9 reasons mentioned earlier. There has been dramatic
10 improvements in that river as well and the water quality data
11 shows that the Class B standards are met in the vast majority
12 of cases. And so with that, I'll gladly take any questions
13 you have.

14 MR. DUCHESNE: Questions from the Board? Seeing
15 none, thank you very much.

16 LUKE FRANKEL: Thank you.

17 MR. DUCHESNE: Ms., I think, Plenderleith. You can
18 correct my pronunciation right away.

19 KIJANA PLENDERLEITH: Classic story for me.

20 MR. DUCHESNE: People struggle with Duchesne.

21 KIJANA PLENDERLEITH: So good morning, Chair,
22 members of the Board, my name is Kijana Plenderleith. I am an
23 attorney at Preti Flaherty here testifying on behalf of Maine
24 Forest Products Council. We represent Maine's forest products
25 community, including pulp and paper manufacturers along the

1 Androscoggin, Kennebec, Penobscot, Presumpscot and St. Croix
2 Rivers. We will be submitting detailed written testimony that
3 elaborates on the six points I will be making here today.

4 Our members are deeply committed to protecting
5 Maine's water quality while ensuring that the regulatory
6 framework remains balanced, science-based and practical for
7 the communities and industries that depend on it.

8 First, MFPC supports DEP's recommendation to adopt a
9 daily average dissolved oxygen criteria level for Class B and
10 C waters. This approach recognizes natural diurnal
11 fluctuations in oxygen levels and provides a more realistic
12 way to assess water quality. It also would help to prevent
13 unnecessary -- unnecessary impairment listings that could
14 trigger costly studies and permit changes with little
15 environmental benefit. However, we caution against using this
16 new standard to prematurely reclassify waters upward without
17 long-term data proving consistent attainment of applicable
18 water quality criterion across all flow regimes, as doing so
19 could create unattainable requirements and unnecessary
20 economic burdens.

21 Second, we support DEP's decision not to advance
22 certain proposals that would have added regulatory complexity
23 without proven benefits such as banning discharge that
24 cause -- discharges that cause odor, creating a new Class B
25 subclass, changing bacteria standards or setting numeric

1 turbidity limits. These measures could have imposed major
2 costs and uncertainty on facilities that are already operating
3 responsibly and sustainably.

4 Third, MFPC supports DEP's decision to defer
5 rulemaking on toxic pollutant criteria for aluminum, copper
6 and polonium. Maine industries have invested heavily in
7 site-specific scientific studies that yield more accurate
8 protective data than generic national models. Abandoning
9 those studies in favor of one-size fits all models would
10 undermine science and unrealistic permit limits.

11 Fourth, we commend DEP for choosing not to revise
12 the mixing zone policy. The current case-by-case approach
13 works well and avoids unnecessary regulatory burdens on the
14 few facilities that operate under mixing zones.

15 Fifth, MFPC agrees with DEP's decision not to
16 upgrade water classifications on the Androscoggin and
17 Presumpscot Rivers. The available data do not show that
18 consistent attainment of higher standards and upgrades could
19 trigger unrealistic permit limits and economic harm without
20 environmental gains, particularly in areas like Gulf Island
21 Pond where mechanical oxygenation is needed to meet current
22 standards.

23 Finally, we oppose DEP's proposal to adopt a new
24 numeric pH criterion of 6.5 to 9.0 for fresh water. This
25 narrower range conflicts with the federal EPA standards of 5.0

1 to 9.0 contained in affluent limitation guidelines under 40
2 CFR Section 430.22. It has not been shown to be technically
3 necessary to protect Maine's waters. More study is needed to
4 assess whether the proposed criterion is even needed, whether
5 it is achievable under actual operating conditions in Maine
6 and what impacts it might have on regulated entities moving
7 forward.

8 In summary, MFPC supports DEP's balanced
9 science-based approach, particularly the daily DO standards.
10 The rejection of unnecessary rule changes and the deferral of
11 overly broad pollutant criteria. At the same time, however,
12 MFPC disagrees with DEP's recommendation to adopt a numeric
13 fresh water pH criterion, as such a standard appears
14 consistent with existing federal affluent limitation
15 guidelines. We urge the Board to adopt the Department's
16 recommendations consistent with these comments, in turn it
17 means water quality standards remains protected, practical,
18 and sustainable for both the environment and Maine's
19 forest-based communities. Thank you for your time and
20 consideration.

21 MR. DUCHESNE: Questions from the Board? Just real
22 quick, I think this is the first concern I've heard about the
23 pH standard. For the Maine Forest Products Council, what is
24 the threat exactly for changing that standard?

25 KIJANA PLENDERLEITH: In submitting the more

1 detailed comments I'd love to address that there.

2 MR. DUCHESNE: Okay. Thank you. Seeing no other
3 questions. Mr. Heinz.

4 STEPHEN HEINZ: Morning, Chairman Duchesne and
5 members of the Board. I'm Stephen Heinz and I live in
6 Cumberland Foreside and I represent Trout Unlimited and I'll
7 be talking about the Androscoggin upgrade this morning.

8 I coordinate FERC-related action for the Maine
9 Council at Trout Unlimited. Maine TU is a non-government
10 organization whose stated mission is to conserve, protect, and
11 restore Maine's cold water fisheries and their watersheds.
12 Maine TU encompasses six chapters with over 1,700 members.
13 Maine TU members use the Androscoggin River for recreation and
14 aesthetic purposes. Its members fish, boat, and otherwise
15 enjoy the watershed. Maine TU has been heavily involved with
16 efforts to restore stream connectivity and improve water
17 quality within the Androscoggin River watershed since early in
18 2019 when it became involved with the Lower Barkers Mill
19 project. It is currently involved with ongoing FERC
20 hydroelectric relicensing throughout the greater watershed
21 from the Aziscohos project at the headwaters to the Worumbo
22 project on the lower river. Further, Maine TU members have
23 broad and deep organizational interest in Maine's statutory
24 provisions that protect Maine's water quality. Maine TU and
25 its members have a direct, substantial interest in the outcome

1 of the reclassification of the waters under consideration.

2 Additionally, I have standing as an individual. As
3 a citizen -- I am a citizen, domiciliary, voter, and property
4 owner of the State of Maine and since 2005 in addition to my
5 TU duties, I have personally fished, hiked, recreated, and
6 enjoyed the scenic benefits from multiple visits to the public
7 lands and waters of the Androscoggin watershed from near its
8 headwaters in the Rangeley area to the tidewater in Brunswick.
9 My most frequent activities have been to fly fish for
10 smallmouth bass in the reach above Worumbo Dam in Lisbon,
11 which do I multiple times a year as well as the upper part of
12 the reach above Gulf Island Pond and the section where the
13 Wild River joins the Androscoggin at Gilead. Additionally, I
14 participated as a volunteer in stream -- in a stream clean up
15 and habitat surveys within the watershed.

16 I have always been amazed that so much of the river
17 even in the souther part of the state looks like it is a
18 wilderness because of the lack of development. This is a
19 result of its former conditions before the passage of the
20 Clean Water Act when its primary use was as an industrial
21 sewer. I witnessed personally when I lived in Topsham in the
22 early 1970's there were obnoxious odors and pink foam below
23 the Brunswick Dam and this was the worst during the late
24 summer low flow conditions. The change since then has been
25 miraculous. And I have seen Bald Eagles in Lisbon every year

1 since I started fishing there as well as numerous other water
2 fowl. Usually -- initially there was a slight paper mill
3 smell in the air when the wind was from the north, but since
4 the explosion shut down the Androscoggin Mill in Jay in 2030,
5 I'm sorry, in 2020, the air has been the same clean air for
6 which Maine is ranked first in the nation. Reclassification
7 will ensure that the water condition will not be allowed to
8 degrade in coming years.

9 The waters below Lewiston Falls are classified as
10 critical habitat for endangered Atlantic Salmon. As a TU
11 member, I want to see the species restored and
12 reclassification will protect the waters in the critical
13 habitat. This is especially important now as relicensing for
14 the three hydro projects, Worumbo, Pejepsot, and Brunswick,
15 below Lewiston are underway or complete with improved fish
16 passage measures that promise to put Atlantic Salmon below
17 Lewiston Falls every year. Other relicensings in the Little
18 Androscoggin watershed promised to give Atlantic Salmon access
19 to their historic spawning habitat sometime in the 2030s.

20 It has been well established through years of study
21 and sampling by the Friends of Merrymeeting Bay on the lower
22 Androscoggin and most recently of the waters under
23 consideration in the upgrade proposal by Grow L+A that the
24 river meets Class B standards every year at nearly all times
25 of the year as well as these standards are met anywhere. The

1 only possible reason I could imagine for denying an upgrade is
2 some vague, unfounded cargo cult notion that keeping the
3 classification as Maine's lowest would encourage industrial
4 development. This would be at the expense of what has been
5 achieved and contrary to the Clean Water Act that Maine's own
6 Edmund Muskie was responsible for passing. That the former
7 site of the Androscoggin Mill is being redeveloped shows that
8 those fears are unfounded. As the Board previously found fit
9 to upgrade the lower section of the river between Worumbo Dam
10 and Merrymeeting Bay, so too the section for Worumbo to Gulf
11 Island Pond deserves to have its existing water quality locked
12 in and codified by classification.

13 Please approve the reclassification from Class C to
14 Class B to protect and enhance the fisheries restoration plans
15 for the greater watershed and prevent future harm to the
16 fishing that I so enjoy in the watershed.

17 Thank you very much. I'm happy to answer questions
18 about my testimony.

19 MR. DUCHESNE: Questions from the Board? Seeing
20 none, thank you very much. Mr. Kendall, I believe you're
21 last.

22 ADRIAN KENDALL: Good afternoon. Adrian Kendall of
23 Norman, Hanson and DeTroy. I'm here on behalf of my client
24 Kingfish Maine, which I've represented since 2019 when the
25 project first -- first started.

1 Kingfish Maine is the owner of property located in
2 Jonesport, 92 acres that is on Chandler Bay directly across
3 from Roque Island. We are fully permitted. There was some
4 discussion and noted in the part of the record that one of our
5 permits might have expired. That's not correct. We are fully
6 permitted. All permits are valid. That includes an array of
7 permits from the state -- I mean, DEP and other submerged land
8 leases, U.S. Army Corps of Engineers as well as permits issued
9 by the town of Jonesport under their shoreland zoning and land
10 use development ordinance.

11 I wrote down that I'm here neither for nor against
12 because I'm -- I'm here for the recommendation of DEP staff
13 and we do oppose the proposed reclassification of Chandler Bay
14 from SB to SA. We are in full agreement with staff with
15 respect to the legal standard not having been met under the --
16 under the statute that this is not -- as beautiful as it is
17 and as great as the water quality is, this is not an
18 outstanding national resource and we share the concerns voiced
19 by at least one of the Board members with respect to the land
20 in the area and also by staff, of course, that the upland is
21 not subject to adequate conservation. And in addition to our
22 discharge permit, which its correct it's not active at this
23 point, but there is another discharge permit further up, I
24 think it was Beaver Brook was the mention of the -- of the
25 watershed that affects and drains into Chandler Bay as well.

1 With respect to -- so that's simply pointed there is
2 clearly a connection between the land use and water quality
3 contrary to what might have been suggested by Dr. Krumholz.
4 We're quite familiar with Dr. Krumholz and the Eastern Maine
5 Conservation Initiative. We've been through years of
6 permitting and his -- his testimony featured before the town
7 planning board on a variety of issues. There is -- you'll
8 forgive me if I note an irony that during that entire process
9 the claim was that the water quality was not adequate to
10 support the limited capacity of the nitrogen due to a
11 potential claimed eel grass issue and which -- and they were
12 trying to discredit our data that showed the high quality of
13 the water. We're here because of the high quality of the
14 water naturally and to threaten that would be entirely
15 contrary to our own interests, but so this philosophical
16 discussion, you'll forgive me if I don't quite buy into that.
17 The -- the -- the notion that now it's so high it's deserving
18 of SA classification is a remarkable pivot, but it's not
19 supported by the standards that are -- that are applicable and
20 as staff -- as staff has duly noted.

21 I would also just note that implicit there seems to
22 be the -- in the position seem to be that SB somehow offers no
23 protection and that, of course, is not the case. We've worked
24 very closely with Commissioner Loyzim's staff and they've put
25 us through a very rigorous honest process of analysis of

1 holding us to the very high standards that are applicable to
2 SB, not just in terms of the monitoring that's occurring now,
3 which by the way Kingfish is entirely funding and momentarily
4 added two additional testing points at the request of the
5 municipality because of concerns from -- from the community
6 and they -- this is -- it's always interesting where local
7 lore and scientific knowledge mix and so the lobstermen said,
8 hey, you know, we'd like a couple of extra ones, would you put
9 in some in these locations and they actually sat there in the
10 planning board hearing, I had Navionics on my phone and
11 they -- they spotted and we got the lat and longs and we put
12 them in and we agreed to those. We would have happily added
13 more had they been requested, but they -- but they were not.

14 But so what -- so what we have here though is
15 there -- is there is a regime in place for protection for
16 maintaining the very high quality standard of water. It is --
17 right now it's monitoring without discharges by us. As it
18 goes forward there will be continued monitoring and continued
19 review of the standards to which we're being held on a variety
20 of reams -- reams of pages of standards for various -- for
21 various effluent standards and reporting and action and so on.
22 So this notion that -- that the suggestion that this -- that
23 life is at stake is -- is not -- it's just not true and is
24 hyperbole to serve a purpose that we would suggest is -- is
25 not actually limited to protecting the bay, but is directed

1 specifically at trying to further the interests to stop this
2 project moving forward.

3 I also want to address this notion that somehow
4 because we haven't been able to -- we're not operational yet,
5 we're not discharging and that renders our -- our position and
6 our interests after these many years of working very hard with
7 the community, which by the way overwhelmingly supports the
8 project, that it's somehow invalid when, in fact, the entire
9 strategy has been to oppose and now delay the project. We
10 cannot responsibly go forward and start digging while any
11 aspect of it is in question. We can't -- it just simply is
12 not -- not plausible for a project of this -- of this size,
13 dimension, and importance to place that type of investment at
14 risk until this is fully and finally resolved and that means
15 addressed by the Legislature as was outlined at the -- at the
16 outset by the Commissioner.

17 So that's -- that's where we sit. We do think
18 that -- we do -- we do value the bay, we do value the quality
19 of it. This notion that it should have been classified long
20 ago though, again, we're here because of Kingfish. There is a
21 reason why it was -- there was mention of Fisherman's Bay,
22 similar characteristics, quality, they're not here to protect
23 that. Machias Bay, same thing. This is -- this is all about
24 Kingfish and stopping this particular project. But
25 unfortunately, and I think this was perhaps touched on by

1 Mr. Duchesne and others, that that would come at a much larger
2 cost and that is impeding economic opportunity within
3 Washington County within the area of Jonesport, Jonesboro and
4 other areas because there was also discussion of a buffer
5 zone. If you establish this then there are also buffer zones
6 around it, so it's larger than simply the area of the water
7 body that we're talking about and that -- that's simply not
8 fair.

9 This notion -- I also need to make one additional
10 point where it said that -- that where Miss Fischer stated
11 that the -- this is about a heritage -- that she's here to
12 protect a heritage industry and that fishermen and their
13 families, they don't want to come clean tanks and that's
14 clearly a reference to Kingfish. We -- as a land-based
15 aquaculture culture facility, we grow fish in tanks on land
16 and then filter, treat the water as it comes in and as it's
17 discharged. I can tell you at every meeting that we had at
18 the town of Jonesport we've been approached and asked when are
19 we taking applications. Where -- this is about economic
20 opportunity that isn't susceptible to the climate change
21 issues that have already been touched on that we all face and
22 are very dire that offer benefits and -- and predictable wages
23 and -- and other -- and then a ripple effect within the
24 community and help preserve and create opportunities so that
25 families can stay in this area.

1 And I should mention I am on the Board of the MRDA,
2 Maine Rural Development Authority, and economic development is
3 a passion of mine not because I'm pro business but because of
4 the opportunities that we so critically need in rural parts of
5 this state to preserve that way of life. You can't -- you
6 can't do it on -- on, you know, if you're -- if you're just
7 turning down beds on Airbnbs, you know, that's not -- that's
8 not sustainable. We need -- we need real jobs and we need
9 sustainability opportunity.

10 Retaining the SB classification strikes that
11 reasonable balance between responsible opportunity and
12 responsible use of a pristine and wonderful natural resource.
13 And I'm happy to take any questions.

14 MR. DUCHESNE: Questions from the Board? Just a
15 quick one.

16 ADRIAN KENDALL: Sure.

17 MR. DUCHESNE: It's currently SB. Does Kingfish
18 have any data to indicate that when it's operational it would
19 compromise the ability to attain SA in the future? Because I
20 don't know what the discharge limits are and stuff like that,
21 I just don't know.

22 ADRIAN KENDALL: I have to admit, I am not aware of
23 that.

24 MR. DUCHESNE: Yeah. Okay.

25 ADRIAN KENDALL: The DEP and Commissioner Loyzim and

1 her staff certainly have all of the data that's projected --

2 MR. DUCHESNE: Yup.

3 ADRIAN KENDALL: -- and would probably be your -- I
4 am an advocate obviously and --

5 MR. DUCHESNE: Oh, sure.

6 ADRIAN KENDALL: -- and they're a trusted
7 resource.

8 MR. DUCHESNE: Yeah, I just don't know the answer,
9 so --

10 ADRIAN KENDALL: We can find out.

11 MR. DUCHESNE: -- I'm sure we'll dig into it later
12 on.

13 ADRIAN KENDALL: Yup.

14 MR. DUCHESNE: Thank you. Any other questions?
15 Seeing none, thank you.

16 ADRIAN KENDALL: Thank you four your time.

17 MR. DUCHESNE: Is there anyone else who wishes to
18 testify that didn't? Thank you for not.

19 Again, written comments on the proposed Triennial
20 Review of Maine's Water Quality Standards may be submitted
21 until October 22, 2025. And if there are no other questions
22 or comments from the Board we'll close the hearing. Thank
23 you.

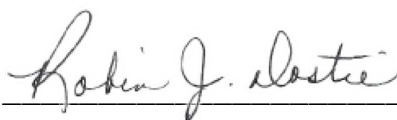
24 (Hearing concluded at 12:26 p.m.)

25

C E R T I F I C A T E

I, Robin J. Dostie, a Court Reporter and Notary Public within and for the State of Maine, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken by me by means of stenograph,

and I have signed:



Court Reporter/Notary Public

My Commission Expires: February 6, 2026.

DATED: November 3, 2025

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COMMENTS NEITHER FOR NOR AGAINST:

TRIENNIAL REVIEW OF MAINE'S WATER QUALITY STANDARDS

THURSDAY, OCTOBER 16, 2025, AUGUSTA CIVIC CENTER, 76 COMMUNITY DRIVE, AUGUSTA

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