



130th MAINE LEGISLATURE

SECOND REGULAR SESSION-2022

Legislative Document

No. 1964

S.P. 690

In Senate, February 10, 2022

An Act To Update Certain Water Quality Standards and To Reclassify Certain Waters of the State

Reported by Senator BRENNER of Cumberland for the Joint Standing Committee on Environment and Natural Resources pursuant to Joint Rule 353.

Reference to the Committee on Environment and Natural Resources suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

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

2 **Sec. 1. 38 MRSA §361-A, sub-§1-L**, as enacted by PL 2017, c. 319, §1, is
3 repealed.

4 **Sec. 2. 38 MRSA §363-D**, as enacted by PL 1993, c. 579, §1, is amended to read:

5 **§363-D. Waiver or modification of protection and improvement laws**

6 The commissioner or the commissioner's designee may waive or modify any of the
7 provisions of this chapter if that waiver or modification promotes or assists any oil spill
8 response activity conducted in accordance with the national contingency plan, a federal
9 contingency plan, the state marine oil spill contingency plan, or as otherwise directed by
10 the federal on-scene coordinator, the commissioner or commissioner's designee. A waiver
11 issued by the commissioner under this section must be in writing.

12 This section does not apply to state or federal water quality standards applicable to any
13 waters of the State, including, but not limited to, designated uses, criteria to protect existing
14 and designated uses and antidegradation policies.

15 **Sec. 3. 38 MRSA §464, sub-§2, ¶C**, as enacted by PL 1985, c. 698, §15, is
16 amended to read:

17 C. ~~The Pursuant to subsection 3, paragraph B, the board may recommend changes in~~
18 classification it deems considers necessary to the Legislature.

19 **Sec. 4. 38 MRSA §464, sub-§2-A, ¶E**, as enacted by PL 1993, c. 344, §1, is
20 amended to read:

21 E. If the board adopts a proposal to enact a designated use under paragraph A,
22 subparagraph (1) or to remove a designated use or adopt a subcategory of a designated
23 use under paragraph A, subparagraph (2), it shall ~~forward that proposal~~ submit to the
24 joint standing committee of the Legislature having jurisdiction over environment and
25 natural resources matters at during the next regular session of the Legislature a report
26 that includes that recommendation and the joint standing committee may report out
27 legislation to implement that recommendation. The board may not ~~forward~~ propose
28 any other recommendation to the Legislature under this subsection. The Legislature
29 has sole authority to make changes in the designated uses of the waters of the State,
30 including the creation of a subcategory of a designated use.

31 **Sec. 5. 38 MRSA §464, sub-§3**, as amended by PL 2015, c. 124, §6, is further
32 amended to read:

33 **3. Reports to the Legislature.** ~~The department~~ commissioner or the board, as
34 applicable, shall periodically report to the Legislature as ~~governed by the following~~
35 provisions follows.

36 A. ~~The commissioner shall submit to~~ During the first regular session of each
37 Legislature, the commissioner shall submit to the joint standing committee of the
38 Legislature having jurisdiction over environment and natural resources matters a report
39 on the quality of the State's waters ~~which that~~ describes existing water quality,
40 identifies waters that are not attaining their classification and states what measures are
41 necessary for the attainment of the standards of their classification.

1 B. The board shall, from time to time, but at least once every 3 years, hold public
2 hearings for the purpose of reviewing the water quality classification system and
3 related standards and, as appropriate, recommending changes in the standards to the
4 Legislature. After conducting the review, the board shall submit to the joint standing
5 committee of the Legislature having jurisdiction over environment and natural
6 resources matters a report describing the board's findings and any recommendations
7 for changes to the water quality classification system and related standards and the joint
8 standing committee may report out legislation to implement those recommendations.

9 C. ~~The commissioner shall report to~~ During the first regular session of each
10 Legislature, ~~the commissioner shall submit to the joint standing committee of the~~
11 Legislature having jurisdiction over environment and natural resources matters a report
12 on the status of licensed discharges.

13 **Sec. 6. 38 MRSA §464, sub-§4, ¶A**, as amended by PL 2017, c. 319, §2, is further
14 amended by amending subparagraph (5) to read:

15 (5) Discharge of pollutants to any water of the State that violates sections 465,
16 465-A and 465-B, except as provided in section 451; causes the "pH" of fresh
17 waters to fall outside of the ~~6.0 to 8.5~~ 6.5 to 9.0 range; or causes the "pH" of
18 estuarine and marine waters to fall outside of the 7.0 to 8.5 range;

19 **Sec. 7. 38 MRSA §464, sub-§4, ¶F**, as amended by PL 1991, c. 66, Pt. B, §1, is
20 further amended by amending subparagraph (2) to read:

21 (2) Where high quality waters of the State constitute an outstanding national
22 resource, that water quality must be maintained and protected. For purposes of this
23 paragraph, the following waters are considered outstanding national resources:
24 those water bodies in national and state parks and wildlife refuges and in the
25 Katahdin Woods and Waters National Monument; those water bodies in public
26 reserved lands; and those water bodies classified as Class AA and SA waters
27 pursuant to section 465, subsection 1; section 465-B, subsection 1; and listed under
28 sections 467, 468 and 469.

29 **Sec. 8. 38 MRSA §464, sub-§4, ¶F**, as amended by PL 1991, c. 66, Pt. B, §1, is
30 further amended by amending subparagraph (4) to read:

31 (4) When the actual quality of any classified water exceeds the minimum standards
32 of the next highest classification, that higher water quality must be maintained and
33 protected. ~~The Pursuant to subsection 3, paragraph B, the board shall recommend~~
34 to the Legislature that that water be reclassified in the next higher classification.

35 **Sec. 9. 38 MRSA §465, sub-§1, ¶B**, as amended by PL 2017, c. 319, §4, is further
36 amended to read:

37 B. The aquatic life, dissolved oxygen and bacteria content of Class AA waters must
38 be as naturally occurs, except that the number of Escherichia coli bacteria in these
39 waters may not exceed a geometric mean of 64 CFU or MPN per 100 milliliters over a
40 90-day interval or 236 CFU or MPN per 100 milliliters in more than 10% of the
41 samples in any 90-day interval.

42 **Sec. 10. 38 MRSA §465, sub-§2, ¶B**, as amended by PL 2017, c. 319, §5, is further
43 amended to read:

1 B. The dissolved oxygen content of Class A waters may not be less than 7 parts per
2 million or 75% of saturation, whichever is higher, except that for the period from
3 October 1st to May 14th, in order to ensure spawning and egg incubation of indigenous
4 fish species, the 7-day mean dissolved oxygen concentration may not be less than 9.5
5 parts per million and the one-day minimum dissolved oxygen concentration may not
6 be less than 8.0 parts per million in identified fish spawning areas. The aquatic life and
7 bacteria content of Class A waters must be as naturally occurs, except that the numbers
8 of Escherichia coli bacteria in these waters may not exceed a geometric mean of 64
9 CFU or MPN per 100 milliliters over a 90-day interval or 236 CFU or MPN per 100
10 milliliters in more than 10% of the samples in any 90-day interval.

11 **Sec. 11. 38 MRSA §465, sub-§3, ¶B**, as amended by PL 2017, c. 319, §6, is further
12 amended to read:

13 B. Class B waters must be of sufficient quality to support all aquatic species indigenous
14 to those waters without detrimental changes in the resident biological community. The
15 dissolved oxygen content of Class B waters may not be less than 7 parts per million or
16 75% of saturation, whichever is higher, except that for the period from October 1st to
17 May 14th, in order to ensure spawning and egg incubation of indigenous fish species,
18 the 7-day mean dissolved oxygen concentration may not be less than 9.5 parts per
19 million and the one-day minimum dissolved oxygen concentration may not be less than
20 8.0 parts per million in identified fish spawning areas. Between April 15th and October
21 31st, the number of Escherichia coli bacteria in these waters may not exceed a
22 geometric mean of 64 CFU or MPN per 100 milliliters over a 90-day interval or 236
23 CFU or MPN per 100 milliliters in more than 10% of the samples in any 90-day
24 interval.

25 **Sec. 12. 38 MRSA §465, sub-§4, ¶B**, as amended by PL 2017, c. 319, §8, is further
26 amended to read:

27 B. Class C waters must be of sufficient quality to support all species of fish indigenous
28 to those waters and to maintain the structure and function of the resident biological
29 community. The dissolved oxygen content of Class C water may not be less than 5
30 parts per million or 60% of saturation, whichever is higher, except that in identified
31 salmonid spawning areas where water quality is sufficient to ensure spawning, egg
32 incubation and survival of early life stages, that water quality sufficient for these
33 purposes must be maintained. In order to provide additional protection for the growth
34 of indigenous fish, the following standards apply.

35 (1) The 30-day average dissolved oxygen criterion of a Class C water is 6.5 parts
36 per million using a temperature of 22 degrees centigrade or the ambient
37 temperature of the water body, whichever is less, if:

38 (a) A license or water quality certificate other than a general permit was issued
39 prior to March 16, 2004 for the Class C water and was not based on a 6.5 parts
40 per million 30-day average dissolved oxygen criterion; or

41 (b) A discharge or a hydropower project was in existence on March 16, 2005
42 and required but did not have a license or water quality certificate other than a
43 general permit for the Class C water.

1 This criterion for the water body applies to licenses and water quality certificates
2 issued on or after March 16, 2004.

3 (2) In Class C waters not governed by subparagraph (1), dissolved oxygen may
4 not be less than 6.5 parts per million as a 30-day average based upon a temperature
5 of 24 degrees centigrade or the ambient temperature of the water body, whichever
6 is less. This criterion for the water body applies to licenses and water quality
7 certificates issued on or after March 16, 2004.

8 The department may negotiate and enter into agreements with licensees and water
9 quality certificate holders in order to provide further protection for the growth of
10 indigenous fish. Agreements entered into under this paragraph are enforceable as
11 department orders according to the provisions of sections 347-A to 349.

12 Between April 15th and October 31st, the number of Escherichia coli bacteria in Class
13 C waters may not exceed a geometric mean of 100 CFU or MPN per 100 milliliters
14 over a 90-day interval or 236 CFU or MPN per 100 milliliters in more than 10% of the
15 samples in any 90-day interval. The board shall adopt rules governing the procedure
16 for designation of spawning areas. Those rules must include provision for periodic
17 review of designated spawning areas and consultation with affected persons prior to
18 designation of a stretch of water as a spawning area.

19 **Sec. 13. 38 MRSA §465-A, sub-§1, ¶B**, as amended by PL 2017, c. 319, §10, is
20 further amended to read:

21 B. Class GPA waters must be described by their trophic state based on measures of
22 the chlorophyll "a" content, Secchi disk transparency, total phosphorus content and
23 other appropriate criteria. Class GPA waters must have a stable or decreasing trophic
24 state, subject only to natural fluctuations, and must be free of culturally induced algal
25 blooms that impair their use and enjoyment. The number of Escherichia coli bacteria
26 in these waters may not exceed a geometric mean of 29 CFU or MPN per 100 milliliters
27 over a 90-day interval or 194 CFU or MPN per 100 milliliters in more than 10% of the
28 samples in any 90-day interval. The aquatic life of Class GPA waters must be as
29 naturally occurs.

30 **Sec. 14. 38 MRSA §465-B, sub-§1, ¶B**, as amended by PL 2017, c. 319, §11, is
31 further amended to read:

32 B. The estuarine and marine life, dissolved oxygen and bacteria content of Class SA
33 waters must be as naturally occurs, except that the number of enterococcus bacteria in
34 these waters may not exceed a geometric mean of 8 CFU or MPN per 100 milliliters in
35 any 90-day interval or 54 CFU or MPN per 100 milliliters in more than 10% of the
36 samples in any 90-day interval. The number of total coliform bacteria or other
37 specified indicator organisms in samples representative of the waters in shellfish
38 harvesting areas may not exceed the criteria recommended under the National Shellfish
39 Sanitation Program, United States Food and Drug Administration as set forth in its
40 publication "Guide for the Control of Molluscan Shellfish" (2019 revision) or any
41 successor publication.

42 **Sec. 15. 38 MRSA §465-B, sub-§2, ¶B**, as amended by PL 2017, c. 319, §12, is
43 further amended to read:

1 B. Class SB waters must be of sufficient quality to support all estuarine and marine
2 species indigenous to those waters without detrimental changes in the resident
3 biological community. The dissolved oxygen content of Class SB waters may not be
4 less than 85% of saturation. Between April 15th and October 31st, the number of
5 enterococcus bacteria in these waters may not exceed a geometric mean of 8 CFU or
6 MPN per 100 milliliters in any 90-day interval or 54 CFU or MPN per 100 milliliters
7 in more than 10% of the samples in any 90-day interval. The number of total coliform
8 bacteria or other specified indicator organisms in samples representative of the waters
9 in shellfish harvesting areas may not exceed the criteria recommended under the
10 National Shellfish Sanitation Program, United States Food and Drug Administration as
11 set forth in its publication "Guide for the Control of Molluscan Shellfish" (2019
12 revision) or any successor publication.

13 **Sec. 16. 38 MRSA §465-B, sub-§3, ¶B**, as amended by PL 2017, c. 319, §13, is
14 further amended to read:

15 B. Class SC waters must be of sufficient quality to support all species of fish
16 indigenous to those waters and to maintain the structure and function of the resident
17 biological community. The dissolved oxygen content of Class SC waters may not be
18 less than 70% of saturation. Between April 15th and October 31st, the number of
19 enterococcus bacteria in these waters may not exceed a geometric mean of 14 CFU or
20 MPN per 100 milliliters in any 90-day interval or 94 CFU or MPN per 100 milliliters
21 in more than 10% of the samples in any 90-day interval. The number of total coliform
22 bacteria or other specified indicator organisms in samples representative of the waters
23 in restricted shellfish harvesting areas may not exceed the criteria recommended under
24 the National Shellfish Sanitation Program, United States Food and Drug
25 Administration as set forth in its publication "Guide for the Control of Molluscan
26 Shellfish" (2019 revision) or any successor publication.

27 **Sec. 17. 38 MRSA §466, sub-§2-C** is enacted to read:

28 **2-C. CFU.** "CFU" means colony-forming units.

29 **Sec. 18. 38 MRSA §466, sub-§8-B** is enacted to read:

30 **8-B. MPN.** "MPN" means most probable number.

31 **Sec. 19. 38 MRSA §467, sub-§1, ¶A**, as affected by PL 1989, c. 890, Pt. A, §40
32 and amended by Pt. B, §68, is further amended to read:

33 A. Androscoggin River, main stem, including all impoundments.

34 (1) From the Maine-New Hampshire boundary to its confluence with the Ellis
35 River - Class B.

36 (2) From its confluence with the Ellis River to ~~a line formed by the extension of~~
37 ~~the Bath-Brunswick boundary across Merrymeeting Bay in a northwesterly~~
38 ~~direction~~ Worumbo Dam in Lisbon Falls - Class C.

39 (3) From Worumbo Dam in Lisbon Falls to a line formed by the extension of the
40 Bath-Brunswick boundary across Merrymeeting Bay in a northwesterly direction
41 - Class B.

1 **Sec. 20. 38 MRSA §467, sub-§1, ¶B**, as amended by PL 2003, c. 317, §1, is further
2 amended by amending subparagraph (2) to read:

3 (2) Little Androscoggin River, tributaries - Class B unless otherwise specified.

4 (a) Outlet of Thompson Lake in Oxford - Class C.

5 (b) Andrews Brook in Woodstock - Class A.

6 ~~(c) Black Brook in Woodstock - Class A.~~

7 ~~(d) Cushman Stream in Woodstock - Class A.~~

8 ~~(e) Meadow Brook in Woodstock - Class A.~~

9 (f) Bog Brook and tributaries in Minot, Oxford and Hebron - Class A.

10 (g) Twitchell Brook and its tributaries in Greenwood and Albany Township -
11 Class A.

12 (h) Tributaries upstream of the confluence with Twitchell Brook in
13 Greenwood - Class A.

14 **Sec. 21. 38 MRSA §467, sub-§1, ¶D**, as amended by PL 2019, c. 333, §1, is further
15 amended by amending subparagraph (6) to read:

16 (6) Nezinscot River, east and west branches above their confluence in Buckfield
17 and their tributaries - Class A.

18 **Sec. 22. 38 MRSA §467, sub-§1, ¶D**, as amended by PL 2019, c. 333, §1, is
19 further amended by enacting a new subparagraph (10) to read:

20 (10) Cushman Stream in Woodstock, an unnamed tributary to Meadow Brook at
21 Cushman Hill Road - Class A.

22 **Sec. 23. 38 MRSA §467, sub-§1, ¶D**, as amended by PL 2019, c. 333, §1, is
23 further amended by enacting a new subparagraph (11) to read:

24 (11) Meadow Brook in Woodstock - Class A.

25 **Sec. 24. 38 MRSA §467, sub-§4, ¶G**, as repealed and replaced by PL 1989, c. 228,
26 §2, is amended by amending subparagraph (2) to read:

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

28 (a) All tributaries entering above the Route 142 bridge in Phillips - Class A
29 unless otherwise specified.

30 (a-1) South Branch Sandy River and its tributaries - Class AA.

31 (a-2) Cottle Brook and its tributaries - Class AA.

32 (b) Wilson Stream, main stem, below the outlet of Wilson Pond - Class C.

33 (c) Mount Blue Stream and its tributaries - Class A.

34 (d) Orbeton Stream above Toothaker Pond Road and its tributaries - Class AA.

35 **Sec. 25. 38 MRSA §467, sub-§5, ¶B**, as amended by PL 2017, c. 137, Pt. B, §4,
36 is further amended by amending subparagraph (7) to read:

37 (7) Fletcher Brook ~~in Township 36 Middle Division~~ and its tributaries - Class AA.

1 **Sec. 26. 38 MRSA §467, sub-§5, ¶B**, as amended by PL 2017, c. 137, Pt. B, §4,
2 is further amended by amending subparagraph (8) to read:

3 (8) Magazine Brook ~~in Township 43 Middle Division~~ - Class AA.

4 **Sec. 27. 38 MRSA §467, sub-§5, ¶B**, as amended by PL 2017, c. 137, Pt. B, §4,
5 is further amended by amending subparagraph (10) to read:

6 (10) Chain Lakes Stream ~~in Day Block Township~~, also known as Chain Lake
7 Stream - Class AA.

8 **Sec. 28. 38 MRSA §467, sub-§6-A, ¶B**, as amended by PL 2017, c. 137, Pt. B,
9 §6, is further amended by amending subparagraph (12) to read:

10 (12) Little Narraguagus River in Township 22 Middle Division and Township 28
11 Middle Division - Class AA.

12 **Sec. 29. 38 MRSA §467, sub-§7, ¶B**, as amended by PL 2019, c. 333, §4 and c.
13 463, §7, is further amended by enacting a new subparagraph (2), division (f) to read:

14 (f) All tributaries entering the East Branch Penobscot River from the west, any
15 portion of which is located within the boundaries of the Katahdin Woods and
16 Waters National Monument - Class AA.

17 **Sec. 30. 38 MRSA §467, sub-§7, ¶B**, as amended by PL 2019, c. 333, §4 and c.
18 463, §7, is further amended by enacting a new subparagraph (2), division (g) to read:

19 (g) Those segments of any tributary of the Sebois River that are located within
20 the boundaries of the Katahdin Woods and Waters National Monument - Class
21 AA.

22 **Sec. 31. 38 MRSA §467, sub-§7, ¶B**, as amended by PL 2019, c. 333, §4 and c.
23 463, §7, is further amended by enacting a new subparagraph (2), division (h) to read:

24 (h) Dry Brook, East Branch and West Branch Mud Brook and other tributaries
25 located in T.3, R.7, W.E.L.S. that enter the East Branch Penobscot River from
26 the east, any portion of which is located within the boundaries of the Katahdin
27 Woods and Waters National Monument - Class AA.

28 **Sec. 32. 38 MRSA §467, sub-§7, ¶C**, as amended by PL 2019, c. 333, §5, is further
29 amended by amending subparagraph (1), division (d) to read:

30 (d) From the McKay powerhouse to ~~its confluence with Ambajejus Lake~~ a
31 point located 1,000 feet downstream - Class A.

32 **Sec. 33. 38 MRSA §467, sub-§7, ¶C**, as amended by PL 2019, c. 333, §5, is further
33 amended by enacting a new subparagraph (1), division (d-1) to read:

34 (d-1) From a point located 1,000 feet downstream of the McKay powerhouse
35 to its confluence with Ambajejus Lake - Class AA.

36 **Sec. 34. 38 MRSA §467, sub-§7, ¶C**, as amended by PL 2019, c. 333, §5, is further
37 amended by amending subparagraph (2), division (a) to read:

38 (a) Those segments of any tributary that are located within the boundaries of
39 Baxter State Park or the Katahdin Woods and Waters National Monument -
40 Class AA.

1 **Sec. 35. 38 MRSA §467, sub-§7, ¶C**, as amended by PL 2019, c. 333, §5, is further
2 amended by amending subparagraph (2), division (b) to read:

3 (b) Those tributaries ~~above~~ entering between Ripogenus Dam and the
4 confluence with the Debsconeag Deadwater, any portion of which is located
5 within the boundaries of Baxter State Park Ambajejus Lake - Class AA.

6 **Sec. 36. 38 MRSA §467, sub-§7, ¶C**, as amended by PL 2019, c. 333, §5, is further
7 amended by enacting a new subparagraph (2), division (e) to read:

8 (e) Nahmakanta Stream and its tributaries including tributaries to Nahmakanta
9 Lake and upstream lakes - Class AA.

10 **Sec. 37. 38 MRSA §467, sub-§7, ¶E**, as amended by PL 2009, c. 163, §5, is further
11 amended by amending subparagraph (2), division (e) to read:

12 (e) Pleasant River, West Branch tributaries - Class A unless otherwise
13 specified.

14 **Sec. 38. 38 MRSA §467, sub-§7, ¶E**, as amended by PL 2019, c. 333, §5, is further
15 amended by enacting a new subparagraph (2), division (e-1) to read:

16 (e-1) Houston Brook and its tributaries - Class AA.

17 **Sec. 39. 38 MRSA §467, sub-§7, ¶E**, as amended by PL 2009, c. 163, §5, is further
18 amended by amending subparagraph (2), division (k) to read:

19 (k) Schoodic Stream and its tributaries - Class A.

20 **Sec. 40. 38 MRSA §467, sub-§7, ¶E**, as amended by PL 2009, c. 163, §5, is further
21 amended by amending subparagraph (2), division (l) to read:

22 (l) Scutaze Stream and its tributaries - Class A.

23 **Sec. 41. 38 MRSA §467, sub-§7, ¶F**, as amended by PL 2017, c. 137, Pt. B, §7, is
24 further amended by repealing subparagraph (1).

25 **Sec. 42. 38 MRSA §467, sub-§7, ¶F**, as amended by PL 2017, c. 137, Pt. B, §7, is
26 further amended by amending subparagraph (12) to read:

27 (12) Medunkeunk Stream and its tributaries - Class A.

28 **Sec. 43. 38 MRSA §467, sub-§9, ¶A**, as amended by PL 1999, c. 277, §12, is
29 further amended by amending subparagraph (3) to read:

30 (3) From U.S. Route 202 to Saccarappa Falls, also known as Sacarappa Falls -
31 Class B.

32 **Sec. 44. 38 MRSA §467, sub-§9, ¶A**, as amended by PL 1999, c. 277, §12, is
33 further amended by amending subparagraph (4) to read:

34 (4) From Saccarappa Falls, also known as Sacarappa Falls, to tidewater - Class C.

35 **Sec. 45. 38 MRSA §467, sub-§15, ¶F**, as amended by PL 2019, c. 463, §13, is
36 further amended by amending subparagraph (6) to read:

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

