



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**Region 1**

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February 28, 2018

Michael Kuhns, Director  
Bureau of Water Quality  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333-0017

Re: Maine's 2016 Clean Water Act §303(d) List

Dear Mr. Kuhns:

Thank you for Maine Department of Environmental Protection's (ME DEP) submittal of the State's 2016 Clean Water Act (CWA) §303(d) list dated July 17, 2017, and received by EPA Region 1 electronically on July 18, 2017. We greatly appreciate the effort by your staff on the preparation and well documented submittal of the 2016 list.

In accordance with §303(d) of the CWA and 40 CFR §130.7, the U.S. Environmental Protection Agency (EPA) conducted a complete review of Maine's 2016 §303(d) list. Based on this review, EPA has determined that Maine's 2016 §303(d) list of water quality limited segments still requiring total maximum daily loads (TMDLs) meets the requirements of CWA §303(d) and EPA's implementing regulations, as described in the attached approval documentation. Therefore, EPA hereby approves ME DEP's decision to include the waters the State placed in Categories 5A, 5B, and 5D (collectively, the §303(d) list) of Maine's 2016 integrated list of surface waters, as well as ME DEP's decision to remove specific waters from the 2016 §303(d) list.

In February 2015, EPA approved sustenance fishing as a designated use for waters in Indian lands and for any waters outside of Indian lands subject to sustenance fishing rights under the Maine Implementing Act. In decisions issued in February, March, and June 2015, EPA disapproved certain WQS for waters in Maine, including, but not limited to, waters in Indian lands. On December 19, 2016, EPA promulgated WQS to address the disapprovals, and to address the Administrator's determination that Maine's human health criteria are not adequate to protect the designated use of sustenance fishing for certain waters (81 FR 92466). The federal WQS took effect on January 18, 2017.

In EPA's February 15, 2017 approval letter for the 2014 §303(d) list, EPA asked ME DEP to take into account in future §303(d) listing decisions the sustenance fishing designated use and the federal criteria, where applicable, when determining whether a water is impaired and should be listed in Category 5. The sustenance fishing use and federal criteria are also relevant to whether waters previously placed in Categories 4-A (TMDL approved) and 4-B (other controls in place

obviating the need for a TMDL) should remain in those categories or should be returned to Category 5. See 40 CFR 130.7(b)(1)(iii).

In the case of the 2016 list, EPA has examined these categories and determined that none of the listings for waters in Category 5 and Category 4-B are affected by the federal criteria. Two waters that are affected by the federal criteria for DO for Class A waters are included in Category 4-A. The segments are: Trout Brook in Alna and Choate Brook in Windsor. These two Class A waters and sixteen Class B waters (all listed for impairment of the aquatic life use due to non-attainment of DO criteria) were moved from Category 5 to Category 4-A because of the EPA approved Maine Statewide Total Maximum Daily Load (TMDL) for Nonpoint Source (NPS) Pollution (2016) (<http://www.maine.gov/dep/water/monitoring/tmdl/2016/statewide-nps-tmdl/final-maine-nps-tmdl.pdf>).

The federal DO criteria for Class A waters are the same as Maine's DO criteria for Class B waters, including the higher DO requirements that apply to spawning areas. Maine incorporated this higher DO requirement for Class B spawning waters into both the critical conditions and TMDL loading sections of the NPS TMDL. Because the TMDL applies to all included waters (Class A and B) in the same manner, EPA has concluded that it adequately addresses the higher seasonal DO requirements as promulgated by EPA for Class A waters. ME DEP confirmed EPA's analysis and conclusion by email dated January 31, 2018. Consequently, Maine correctly moved these waters from Category 5 to Category 4-A in the 2016 integrated list.

ME DEP's submittal also describes a priority-setting approach and identifies those waters for which TMDLs will be completed and submitted to EPA over time. The statutory and regulatory requirements, and EPA's review of ME DEP's compliance with each requirement, are described in detail in the enclosed approval document.

ME DEP also successfully completed a public participation process in 2017, during which the public was given the opportunity to review and comment on the State's proposed §303(d) list. As a result of this effort, ME DEP has considered public comments in the development of the final list. A summary of the public comments and ME DEP's response to comments were included in the final submittal, and EPA reviewed them in the evaluation of Maine's final §303(d) list.

My staff and I look forward to continued cooperation with ME DEP in implementing the requirements under §303(d) of the CWA. Please feel free to contact me or Ralph Abele at 617-918-1629 if you have any questions or comments on our review.

Sincerely,

/s/

Ken Moraff, Director  
Office of Ecosystem Protection

Enclosure

Cc (electronic):

Susanne Meidel, ME DEP

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## **EPA NEW ENGLAND'S REVIEW OF MAINE'S 2016 CWA §303(d) LIST**

### **I. INTRODUCTION**

EPA has conducted a complete review of Maine's 2016 Section §303(d) list and supporting documentation and information and, based on that review, EPA has determined that Maine's list of water quality limited segments (WQLSs) still requiring TMDLs meets the requirements of §303(d) of the Clean Water Act ("CWA" or "the Act") and EPA's implementing regulations. Therefore, by this order, EPA hereby approves Maine's 2016 §303(d) list, included as part of the State of Maine Department of Environmental Protection's *2016 Integrated Water Quality Monitoring and Assessment Report* (IR), dated July 17, 2017. The statutory and regulatory requirements, and EPA's review of Maine's compliance with each requirement, are described in detail below.

### **II. STATUTORY AND REGULATORY BACKGROUND**

#### **Identification of WQLSs for Inclusion on §303(d) List**

Section 303(d)(1) of the Act directs States to identify those waters within its jurisdiction for which effluent limitations required by §301(b)(1)(A) and (B) of the Act are not stringent enough to implement any applicable water quality standard, and to establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters. The §303(d) listing requirement applies to waters impaired by point and/or nonpoint sources, pursuant to EPA's long-standing interpretation of §303(d).

EPA regulations provide that States do not need to list waters where the following controls are adequate to implement applicable standards: (1) technology-based effluent limitations required by the Act, (2) more stringent effluent limitations required by State or local authority, and (3) other pollution control requirements required by State, local, or federal authority. See 40 CFR §130.7(b)(1).

#### **Consideration of Existing and Readily Available Water Quality-Related Data and Information**

In developing Section 303(d) lists, states are required to assemble and evaluate all existing and readily available water quality related data and information, including, at a minimum, consideration of existing and readily available data and information about the following categories of waters: (1) waters identified as partially meeting or not meeting designated uses, or as threatened, in the state's most recent Section 305(b) report; (2) waters for which dilution calculations or predictive modeling indicate nonattainment of applicable standards; (3) waters for which water quality problems have been reported by governmental agencies, members of the public, or academic institutions; and (4) waters identified as impaired or threatened in any Section 319 nonpoint assessment submitted to EPA. See 40 CFR §130.7(b)(5). In addition to these minimum categories, states are required to consider any other data and information that is

existing and readily available. EPA's 2006 Integrated Report Guidance describes categories of water quality related data and information that may be existing and readily available. See EPA's August 13, 2015 memorandum on Information Concerning 2016 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions which recommends that 2016 integrated water quality reports follow the Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act, issued July 29, 2005, as supplemented by the October 12, 2006 memorandum and attachments, the May 5, 2009 memorandum and attachments, the November 15, 2010 memorandum, the March 21, 2011 memorandum and attachments, and the September 3, 2013 memorandum and attachments. All guidance, memoranda, and attachments may be found at <https://www.epa.gov/tmdl/integrated-reporting-guidance>. While states are required to evaluate all existing and readily available water quality related data and information, states may decide to rely or not rely on particular data or information in determining whether to list particular waters.

In addition to requiring states to assemble and evaluate all existing and readily available water quality related data and information, EPA regulations at 40 CFR §130.7(b)(6) require states to include, as part of their submissions to EPA, documentation to support decisions to rely or not rely on particular data and information and decisions to list or not list waters. Such documentation needs to include, at a minimum, the following information: (1) a description of the methodology used to develop the list; (2) a description of the data and information used to identify waters; and (3) any other reasonable information requested by the Region.

### **Priority Ranking**

EPA regulations also codify and interpret the requirement in Section 303(d)(1)(A) of the Act that states establish a priority ranking for listed waters. The regulations at 40 CFR §130.7(b)(4) require states to prioritize waters on their Section 303(d) lists for TMDL development, and also to identify those WQLSs targeted for TMDL development in the next two years. In prioritizing and targeting waters, states must, at a minimum, take into account the severity of the pollution and the uses to be made of such waters. See Section 303(d)(1)(A). As long as these factors are taken into account, the Act provides that states establish priorities. States may consider other factors relevant to prioritizing waters for TMDL development, including immediate programmatic needs, vulnerability of particular waters as aquatic habitats, recreational, economic, and aesthetic importance of particular waters, degree of public interest and support, and state or national policies and priorities. See 57 FR 33040, 33045 (July 24, 1992), and EPA's 2006 Integrated Report Guidance and the 2006, 2009, 2010, 2011, 2013 and 2015 memoranda and attachments.

### III. REVIEW OF MAINE'S §303(d) SUBMISSION

The Maine Department of Environmental Protection (ME DEP) submitted a final 2016 §303(d) list to EPA, along with responses to comments, dated July 17, 2017. Waters listed by Maine in Category 5 of the State's 2016 Integrated Report (IR, as defined below) represent the State's §303(d) list, which the State is required to submit to EPA for review and approval or disapproval. The water segments Maine placed into Categories 1 through 4 (as defined below) fulfill the requirements of §305(b) of the CWA and are not a part of Maine's §303(d) list. Such integrated listing format allows states to provide the status of all assessed waters in a single multi-part list. States may list each waterbody or segment thereof into one or more of the following five categories, as part of their IR:

- 1) All designated uses are supported; no use is threatened;
- 2) Available data and/or information indicate that some, but not all of the designated uses are supported (with the presumption that all uses are attained);
- 3) There are insufficient available data and/or information to make a use support determination;
- 4) Available data and/or information indicate that at least one designated use is not being supported or is threatened, but a TMDL is not needed;
  - 4a) A state-developed TMDL has been approved by EPA or a TMDL has been established by EPA for any segment-pollutant combination;
  - 4b) Other required control measures are expected to result in the attainment of an applicable water quality standard in a reasonable period of time;
  - 4c) The non-attainment of any applicable water quality standard for the segment is the result of pollution and is not caused by a pollutant; and
- 5) Available data and/or information indicate that at least one designated use is not being supported or is threatened by a pollutant(s), and a TMDL is needed.

The relevant §303(d) water segments (Listing Category 5) are identified in Maine's 2016 IR and the following pages of the IR appendices:

- Appendix II Rivers and Streams (pages 117-144);
- Appendix III Lakes (page 156);
- Appendix IV Wetlands (pages 168);
- Appendix V Estuarine and Marine waters (pages 176-199).

For purposes of evaluating Maine's §303(d) list, EPA also reviewed the following portions of Maine's 2016 IR relating to data sources and acknowledgements; listing methodology, assessment criteria, and data interpretation; Maine's process for solicitation of public comments; and Maine's responses to those comments:

- Maine's *Data Sources and Acknowledgements* (page 6, Chapter 1, IR);
- Maine's *Public Participation and Summary of Public Comments and Responses* (pages 14-17, Chapter 2, IR).

- Maine's *Assessment Methodology, Assessment Criteria, Data Interpretation* (pages 38-47 Chapter 4, IR), *Nutrients/Eutrophication Biological Indicators* (pages 79-81, Chapter 4, IR), and *Tidal Flow Alteration* (page 81) (Chapter 4, IR);

EPA reviewed and commented on Maine's public review draft 2016 §303(d) list, dated May 15, 2017. EPA also reviewed Maine's final 2016 §303(d) list, submitted July 17, 2017, which is included in Maine's final submittal of its 2016 Integrated Water Quality Monitoring and Assessment Report, or Integrated Report (IR) and its appendices.

## **Public Review**

ME DEP conducted a public participation process, providing the public with an opportunity to review and comment on Maine's draft 2016 §303(d) list from May 15, 2017 to the close of business on June 14, 2017. On May 15, 2017, ME DEP posted Maine's draft list on ME DEP's website with a notice of public comment opportunity. During the week of May 15, 2017, ME DEP (1) sent a notice of the draft IR availability for comment via e-mail to approximately 180 subscribed "interested parties," and (2) published a legal notice in four daily newspapers around the state. Those newspapers (and approximate current weekday circulations) were: Bangor Daily News (33,700), Kennebec Journal (8,500), Lewiston Sun Journal (42,000), and The Portland Press Herald (39,200) (page 16, IR). Hard copies of the draft report were made available to the public upon request. EPA concludes that Maine's public participation process was consistent with its Continuing Planning Process (CPP), and that Maine provided sufficient public notice and opportunities for public involvement and response.

One party submitted comments to ME DEP on the draft 2016 §303(d) list during the public comment period. In preparing the final list, ME DEP prepared a summary of public comments received, and provided the State's responses. Two comments were received by Landis Hudson, Maine Rivers. Neither of the comments addressed §303(d) list issues and so will not be discussed in this approval memorandum. Both of the comments related to waters that the commenter asserted should be placed in Category 4-C (impaired but not by a pollutant). The contents of the letter did not result in any modifications to the final 2016 § 303(d) list from the draft.

EPA has reviewed ME DEP's responses to public comments and all original public comments submitted, and concludes that Maine responded adequately to all of those comments.

## **IV. IDENTIFICATION OF WATERS AND CONSIDERATION OF EXISTING AND READILY AVAILABLE WATER QUALITY-RELATED DATA AND INFORMATION**

For the 2016 report, water quality attainment decisions were primarily based on monitoring data collected in 2013 and 2014, although more recent data was consulted

where appropriate. Over the 2012 and 2014 reporting cycles, Maine DEP has fallen behind on timely submittals for the IR. In order to catch up, the Department compiled an abbreviated 2016 report, in which only assessments for lakes/ponds and wetlands were updated based on two years' worth of data; for rivers/streams and estuarine/marine waters, assessments were updated for only a few select waterbodies<sup>1</sup>, also based on 2013-14 data. Most of the remaining portions of the 2016 IR show the content of the 2014 report unaltered, with few exceptions (see page 5, Chapter I, IR). Maine has committed to preparing a complete report for the 2018 list cycle consistent with EPA's regulations.

EPA has reviewed Maine's submission. EPA recognizes that Maine has prepared an abbreviated report for the 2016 list cycle, and has concluded that the State developed the parts of its list that it did complete in compliance with §303(d) of the Act and 40 CFR §130.7. EPA's review is based on its analysis of whether the State reasonably considered existing and readily available water quality-related data and information and reasonably identified waters required to be listed.

Maine used the water quality assessment results stored in Maine's version of the EPA Assessment Database (ADB) to develop its 2016 §303(d) list. Assessment results for the IR are based on data stored in Maine's relational database (EGAD) (see pages 185-186, Chapter 9, IR). ME DEP has several departmental monitoring programs, and routinely works cooperatively with various professional and volunteer monitoring groups on projects yielding surface water quality data that are taken into consideration during the §303(d) list preparation. Sources of data include other state agencies and resources, federal and other government agencies, Tribes, volunteer watershed groups / conservation organizations that work with DEP staff and employ approved monitoring practices for a specific list of sources of assessment data for rivers and streams, lakes, wetlands, estuarine and marine resources (see Data Sources and Acknowledgements, pages 6-7, Chapter 1 of the IR).

ME DEP identified the pollutants (when known) causing or expected to cause exceedances of the applicable water quality standards, including those pollutants for which there were no corresponding numeric criteria in the State's standards (e.g., nutrients). In the cases where the identity of the pollutant was unknown, ME DEP identified the listing cause as the water quality standards impairment (e.g., dissolved oxygen, benthic macroinvertebrate assessment, habitat assessment, fish consumption).

Maine's 2016 §303(d) list is part of Maine's *2016 Integrated Water Quality Monitoring and Assessment Report* which includes the most recent §305(b) report. As ME DEP explains in its 2016 IR listing methodology, three criteria for listing waters in Category 5 (impaired waters for which a TMDL must be established) are as follows (page 41, Chapter 4 of the IR):

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<sup>1</sup>Waters for which DEP received new outside data and those for which the 2014 IR indicated that an update would be provided in the 2016 cycle.



- 1. Current data (collected within five years) for a standard indicates either impaired use, or a trend toward expected impairment within the listing period [threatened], and quantitative or qualitative data/information from professional sources indicates that the cause of impaired use is from a pollutant(s),*
- 2. Water quality models predict impaired use under current loading for a standard, and where quantitative or qualitative data/information from professional sources indicates that the cause of impaired use is from a pollutant(s), or,*
- 3. Those waters that were previously listed on the State's 303(d) list of impaired waters, based on current or old data that indicated the involvement of a pollutant(s), and where there has been no change in management or conditions that would indicate attainment of use.*

ME DEP appropriately considered all existing and readily available information in the development of the 2016 §303(d) list, consistent with Maine's 2016 listing methodology, for the parts of Maine's list which were updated this list cycle. The IR explains that "A determination of nonattainment is only made when there is documented, quality assured, evidence (e.g. monitoring data) indicating that one or more criteria are not attained. Such data are also weighed against evidence that there are plausible human-caused factors that may contribute to the violation of criteria (38 MRSA Section 464(4)(C)." (see page 43, Chapter 4, IR) (Note that a special case is made for wetland assessments with respect to documented evidence of impairment, depending on the location of a wetland with respect to a related river/stream, or lake/pond).

In its listing methodology, the State provided a rationale for not relying on particular readily available water quality-related data and information as a basis for listing waters. Beginning with the 1998 list and continuing through the 2016 listing process (page 40, IR), Maine chose not to list waters where the only information regarding water quality was unsubstantiated anecdotal information. Maine analyzed relevant data and information to support its listing decisions. The State's use of this listing methodology is reasonable and consistent with EPA's regulations. The regulations require states to "assemble and evaluate" all relevant water quality related data and information, and Maine did so for each of its waterbodies it analyzed this listing cycle. The regulations permit states to decide not to use any particular data and information as a basis for listing, provided they have a reasonable rationale in doing so. Maine's decision not to use unsubstantiated anecdotal information is reasonable in light of the uncertainty about the reliability of such information. Moreover, it is reasonable for Maine to decide to focus its listing and TMDL development resources on waters where water quality impairments are well-documented, rather than on waters with only unreliable water quality information. As additional waters are assessed, EPA expects Maine would add waters to its list where such assessments show water quality standards are not being met.

In accordance with its listing methodology, Maine may, in certain cases, include waters on the 2016 §303(d) list based solely on evaluative information, i.e.,

information the evaluation of which requires the use of judgment, in contrast to information consisting of straightforward numerical sampling results. Maine based a listing decision on evaluative information when the State had confidence that an impairment existed. For example, Maine's use of evaluative information includes waters based on data older than 5 years of age (i.e., "evaluated" waters under EPA's §305(b) guidance) where such data showed exceedances of one or more criteria of Maine water quality standards. Although data older than 5 years is considered "evaluative" information under EPA's §305(b) guidance, Maine chose to use such data as a basis for listing. The State concluded that the use of such data is reasonable because, without specific information to the contrary, there is no reason to believe that data older than 5 years are no longer representative of the water quality of the waterbody in question. EPA believes this conclusion is reasonable, and it is consistent with EPA regulations for states to decide to list waters based on data older than 5 years. The regulations require states to consider all available data and to use it unless the state provides a reasonable rationale for not doing so.

In summary, for the portion of the §303(d) list that ME DEP addressed this listing cycle, ME DEP considered the most recent §305(b) assessments, as required by EPA's regulations, and evaluated all existing and readily available water quality-related data and information, obtained primarily through monitoring, as the basis for adding water quality impairments to the 2016 §303(d) list. The State added a total of three new impaired waterbody segments to the 2016 §303(d) list (Category 5), each of which are river and stream segments. No new impairments were listed for lakes/ponds, wetlands, or for estuarine/marine waters. (see summary in Chapter 8, pp. 132-135 IR). EPA concludes that the State properly assembled and evaluated all existing and readily available data and information for the portion of the list that ME DEP addressed this listing cycle, including data and information relating to the categories of waters specified in 40 CFR §130.7(b)(5).

### **Priority Ranking**

As described in its listing methodology, Maine established a priority ranking of TMDL development for listed waters by considering: 1) the value of a particular water (a water's size, public use, proximity to population centers, level of public interest for water quality improvement), 2) the nature of the impairment and the source(s) of the problem, 3) available information to complete the TMDL, and 4) availability of staff and contractual resources to acquire information and complete the TMDL study (Chapter 4, page 41 of the IR). Additionally, Maine has considered the merits of addressing, on a regional or statewide basis, waters with similar problems (e.g., impaired waters related to bacteria alone, or to excessive stormwater). Category 5-A waters are assigned a projected scheduled date and priority level of high, medium, or low for TMDL development; Category 5-D waters (legacy pollutants, and coastal waters that have a consumption advisory for the tomalley of lobsters due to the presence of persistent bioaccumulating toxins found in that organ) are assigned a low priority for TMDL development. There are no waters currently listed in Categories 5-B (impairment is caused solely by bacteria contamination. A TMDL is required) and

5-C (impairment caused by atmospheric deposition of mercury. A regional TMDL is required) for freshwaters (p. 137 IR List). Maine’s 2016 list priorities fall into the following time frames: H = high, 1-2 years; M = medium, 3-6 years; L = low, 6+ years (see Tables 8-13 through 8-16 in Chapter 8 of the IR for a list of projected TMDL schedules).

EPA reviewed Maine’s priority ranking of listed waters for TMDL development and finds that the waterbody prioritization and targeting method used by Maine is reasonable and sufficient for purposes of §303(d). Maine properly took into account the severity of pollution and the uses to be made of listed waters, as well as other relevant factors described above. EPA acknowledges that the schedule of TMDL completion establishes a meaningful priority ranking system.

**Waterbody Segment Impairments Not Listed on Maine’s 2014 §303(d) List, But Which Were Listed on Maine’s 2012 §303(d) List.**

EPA asked the State to provide a rationale for its decision to “delist” these previously listed waters. The State has demonstrated, to EPA’s satisfaction, good cause for not listing these waters on its 2014 §303(d) list, consistent with 40 CFR §130.7(b)(6)(iv). EPA approves Maine’s §303(d) list without these segments because the placement of these impairments in Category 4-A is consistent with EPA’s regulations and EPA’s *Guidance for Assessment, Listing and Reporting Requirements*.

Category 5 in 2014, delisted to Category 4-A in 2016:

In August 2016, The USEPA approved the Maine Statewide Total Maximum Daily Load (TMDL) for Nonpoint Source Pollution and consequently, the following 21 river and stream assessment units (AUs) with aquatic life use impairments are moved from Category 5-A to Category 4-A<sup>2</sup>. (see Table 8-5, pp. 138-140 ME 2016 IR):

<b>ADB Assessment Unit ID</b>	<b>Segment Name</b>	<b>2014</b>	<b>2016</b>
ME0101000412_143 R01	Everett Brook (Ft. Fairfield)	5-A	4-A
ME0101000412_143 R02	Merritt Brook	5-A	4-A
ME0101000412_143 R02	Merritt Brook	5-A	4-A
ME0101000413_146 R02	Coloney Brook	5-A	4-A
ME0101000413_146 R02	Coloney Brook	5-A	4-A
ME0102000510_224 R01	Burnham Brook (Garland)	5-A	4-A
ME0102000510_224 R07	Crooked Brook, Corinth	5-A	4-A
ME0103000308_325 R02	Brackett Brook (Palmyra)	5-A	4-A
ME0103000308_325 R03	Mulligan Stream (St. Albans)	5-A	4-A
ME0103000309_327 R01	Mill Stream (Albion)	5-A	4-A
ME0103000311_334 R03	Jock Stream (Wales)	5-A	4-A

<sup>2</sup>Segments may appear multiple times if multiple causes have been delisted.

ME0103000311_334 R03	Jock Stream (Wales)	5-A	4-A
ME0104000210_413 R02	Penley Brook (Auburn)	5-A	4-A
ME0105000218_521 R01	Warren Brook (Belfast)	5-A	4-A
ME0105000305_528 R03	Dyer River below Rt 215	5-A	4-A
ME0105000305_528 R04	Trout Brook (Alna)	5-A	4-A
ME0105000305_528 R05	Meadow Bk (China)	5-A	4-A
ME0105000305_528 R06	Carlton Bk (Whitefield)	5-A	4-A
ME0105000305_528 R07	Choate Bk (Windsor)	5-A	4-A
ME0105000305_528 08_01	Chamberlain Bk (Whitefield)	5-A	4-A
ME0106000102_603 R02	Chandler River Including East Branch	5-A	4-A
ME0106000103_607 R06	Hobbs Brook (Cumberland)	5-A	4-A
ME0106000103_607 R10	Thayer Brook	5-A	4-A
ME0106000304_625 R03	West Brook (N. Berwick)	5-A	4-A

**Waterbody Segments/Impairments Newly Listed on Maine's 2016 303(d) List (Category 5)**

For the 2016 listing cycle, the following three river and stream segments were added to category 5-A (waters impaired by pollutants; a priority for TMDL development (see Table 8-1, pages 132-133, 2016 IR)):

<b>ADB Assessment Unit ID</b>	<b>Segment Name</b>	<b>2014</b>	<b>2016</b>	<b>Comments</b>
ME0103000305_322R01	Perkins Stream (Waterville)	3	5-A	New listing for Aquatic Life Use impairment based on 2014 biological monitoring data
ME0103000305_322R01	Perkins Stream (Waterville)	3	5-A	
ME0103000308_331R01	Martin Stream (Dixmont)	4-B	5-A	New listing for Aquatic Life Use impairment based on 2014 biological monitoring data - Permit expired moved from Category 4-A to 5-A
ME0103000308_331R01	Martin Stream (Dixmont)	4-B	5-A	
ME0103000308_331R01	Martin Stream (Dixmont)	4-B	5-A	
ME0103000308_331R02	Martin Stream (Dixmont)	0	5-A	New listing for Aquatic Life Use based on 2004-2016 biological monitoring data
ME0103000308_331R02	Martin Stream (Dixmont)	0	5-A	

## **Waters impaired by nonpoint sources of pollution**

The State properly listed waters with nonpoint sources causing or expected to cause impairment, consistent with §303(d) and EPA guidance. Section 303(d) lists are to include all WQLSs still needing TMDLs, regardless of whether the source of the impairment is a point and/or a nonpoint source. EPA's long-standing interpretation is that §303(d) applies to waters impacted by point and/or nonpoint sources. In 'Pronsolino v. Marcus,' the District Court for the Northern District of California held that §303(d) of the Clean Water Act authorizes EPA to identify and establish total maximum daily loads for waters impaired by nonpoint sources. Pronsolino v. Marcus, 91 F. Supp. 2d 1337, 1347 (N.D.Ca. 2000). This decision was affirmed by the 9th Circuit court of appeals in Pronsolino v. Natri, 291 F.3d 1123 (9th Cir. 2002). See also EPA's *Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Section 303(d), 305(b), and 314 of the Clean Water Act* – EPA Office of Water, July 29, 2005.