



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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May 25, 2022

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

Re: Maine's 2018/2020/2022 Clean Water Act §303(d) List

Dear Mr. Kavanah:

Thank you for Maine Department of Environmental Protection's (ME DEP) submittal of the state's 2018/2020/2022 Clean Water Act (CWA) §303(d) list received as part of the *2018/2020/2022 Integrated Water Quality Monitoring and Assessment Report* submitted to EPA New England on March 30, 2022. We greatly appreciate the effort by your staff on the preparation and well documented submittal of this combined multiyear 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 2018/2020/2022 §303(d) list. Based on this review, EPA has determined that Maine's 2018/2020/2022 §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 section 303(d) 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 early 2022, 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.

Finally, in reviewing the Integrated Report we noticed that all freshwaters in Maine are impaired for the general fishing designated use caused by atmospheric deposition of mercury. Although not explicitly stated in the Integrated Report, EPA acknowledges that the subset of waters where the sustenance fishing designated use applies are also impaired, as criteria to support this use requires higher consumption rates.

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 Jackie LeClair at 617-918-1549 if you have any questions or comments on our review.

Sincerely,

/s/

Ken Moraff, Director
Water Division

Enclosure

cc (electronic):

Susanne Meidel, ME DEP
Wendy Garland, ME DEP
Bonnie Blalock, EPA Region 1
Greg Dain, ORC, EPA Region 1
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Jackie LeClair, EPA Region 1
Tim Bridges, EPA Region 1

**EPA NEW ENGLAND’S REVIEW OF MAINE’S 2018/2020/2022
CWA §303(d) LIST**

I. INTRODUCTION

EPA has conducted a complete review of Maine's 2018/2020/2022 §303(d) list and supporting documentation and information. Based on this 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 2018/2020/2022 §303(d) list, included as part of the State of Maine Department of Environmental Protection’s *2018/2020/2022 Integrated Water Quality Monitoring and Assessment Report* (IR), dated March 30, 2022. 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 the §303(d) List

§303(d)(1) of the CWA 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 §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 §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 §319 nonpoint source 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. EPA's 2006 Integrated Report Guidance describes categories of water quality related data

and information that may be existing and readily available. All EPA integrated reporting guidance under CWA §303(d), 305(b) and 314 may be found at <https://www.epa.gov/tmdl/integrated-reporting-guidance-under-cwa-sections-303d-305b-and-314>. 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 EPA.

Priority Ranking

EPA regulations also codify and interpret the requirement in §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 §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 §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, 2015, 2017, and 2021 memoranda and attachments.

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

The Maine Department of Environmental Protection (ME DEP) submitted a final 2018/2020/2022 §303(d) list to EPA, along with responses to comments, dated March 30, 2022. Waters listed by Maine in Category 5 of the state's 2018/2020/2022 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. The water segments (referred to as assessment units by ME DEP) that 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. This 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 2018/2020/2022 IR and in the following pages of the IR appendices:

- Appendix II Rivers and Streams (pages 131-151),
- Appendix III Lakes (page 173),
- Appendix IV Wetlands (pages 189-190),
- Appendix V Estuarine and Marine waters (pages 230-233), and
- Appendix VI Coastal Designated Beaches (pages 234-238).

For purposes of evaluating Maine's §303(d) list, EPA also reviewed the following portions of Maine's 2018/2020/2022 IR:

- *Data Sources and Acknowledgements* (page 6-9, Chapter 1, IR),
- *Public Participation and Summary of Public Comments and Responses* (pages 14-24, Chapter 2, IR),
- *Assessment Methodology, Assessment Criteria, Data Interpretation* (pages 42-66 Chapter 4, IR),
- *Nutrients/Eutrophication Biological Indicators* (pages 102-103, Chapter 4, IR), and
- *Tidal Flow Alteration* (page 104, Chapter 4, IR).

EPA reviewed and commented on Maine's public review draft 2018/2020/2022 §303(d) list, dated January 19, 2022. EPA also reviewed Maine's final 2018/2020/2022 §303(d) list, submitted March 30, 2022, which is included in Maine's final submittal of its 2018/2020/2022 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 2018/2020/2022 §303(d) list from January 19, 2022 until the close of business on February 21, 2022. On January 19, 2022, ME DEP posted Maine's draft list on ME DEP's website with a notice of public comment opportunity. During the week of January 17, 2022, ME DEP sent notice of the draft IR availability for comment via e-mail to approximately 1,250 subscribed interested parties, via three listservs with approximately 1,360 subscribers; and by publishing a legal notice in four daily and three weekly newspapers around the state. These newspapers included the Bangor Daily News, Kennebec Journal, Lewiston Sun Journal, and The Portland Press Herald (daily)

and the Star-Herald, Aroostook Republican and Houlton Pioneer Times (weekly) (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. There were 10 parties that submitted comments on the draft 2018/2020/2022 §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. Seven parties submitted comments on the issue of fish passage and dams in the state. Maine Forest Service, a volunteer from Maine Healthy Beaches, Bagaduce River Monitor, and the City of Portland also submitted comments on other issues.

Environmental/fish advocacy groups submitted comment letters regarding the placement within the Integrated Report of Maine waters with dams located on them. These groups included Bagaduce River Monitor, Friends of Casco Bay, Upstream, Atlantic Salmon Federation-Maine Council, Downeast Salmon Federation, Maine Rivers, and Trout Unlimited-Maine Council. These comments were requesting that waters be placed in Category 4C (impaired but not by a pollutant). As these are not comments regarding the impaired waters list, EPA simply notes that Maine has responded to the comments in its IR document.

Maine Forest Service requested that additional information be added to the text of the Integrated Report explaining their role in the state. ME DEP expanded the language in that section. As this is not a comment regarding the impaired waters list, EPA simply notes that Maine has responded to the comment in its IR document.

One commentator who is a volunteer with the Maine Healthy Beach Program expressed that the reasons for bacteria-related impairments should be detailed for newly listed WQLSs, Batson River–Goose Rocks Beach and Little River–Goose Rocks Beach. Both WQLSs are being added to Category 5B as impaired for bacteria. The commenter did not object to the listing of the WQLSs but expressed concern that the document did not contain more information for the public. ME DEP explained the data supporting its decision to list those waters, why certain information is beyond the scope of the Integrated Report, and added text acknowledging work done in the communities to improve water quality. ME DEP has adequately responded to the comment and provided additional information regarding the listing of these impaired waters.

Bagaduce River Monitor, in addition to its comment related to fish passage discussed above, also commented on how non-functioning septic systems are regulated in the state. ME DEP provided an explanation of the entities having appropriate authority. As this is not a comment regarding the impaired waters list, EPA simply notes that Maine has responded to the comment in its IR document.

The City of Portland submitted comments on the description of Capisic Brook Watershed Restoration Project in the Integrated Report. ME DEP clarified some text within the list of Category 4A waters and provided information in response to the comment. The state also offered to coordinate with the city on sampling. As this is not a comment regarding the impaired waters list, EPA simply notes that Maine has responded to the comment in its IR document.

EPA has reviewed all original public comments submitted and responses to those comments by ME

DEP and concludes that Maine responded adequately to all of those comments. The contents of the public comments did not result in any modifications to the final 2018/2020/2022 §303(d) list from the draft.

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

Over the past several reporting cycles, Maine DEP has fallen behind on timely submittals for the IR. In order to catch up, the state compiled a combined 2018/2020/2022 report. This §303(d) list is based upon water quality assessment results stored in EPA's Assessment and Total Maximum Daily Load Tracking and Implementation System (ATTAINS). Assessment results for the IR are based on data stored in Maine's Environmental and Geographic Analysis Database (EGAD) (see pages 217-218, 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, and volunteer watershed groups/conservation organizations (see Data Sources and Acknowledgements, pages 6-9, 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 2018/2020/2022 §303(d) list is part of Maine's 2018/2020/2022 *Integrated Water Quality Monitoring and Assessment Report* which includes the most recent §305(b) report. As ME DEP explains in its 2018/2020/2022 IR listing methodology, three criteria for listing waters in Category 5 (impaired waters for which a TMDL must be established) are as follows (page 45, Chapter 4 of the IR):

- 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 2018/2020/2022 §303(d) list, consistent with Maine's 2018/2020/2022 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 natural factors that may cause or contribute to the violation of criteria (38 MRSA §464(4)(C)” (see page 48, 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, Maine analyzed relevant data and information to support its 2018/2020/2022 listing decisions (page 42, IR). 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 during this listing cycle. For the 2018/2020/2022 report, water quality attainment decisions were primarily based on monitoring data collected in 2013 through 2020 for rivers/streams, 2015 through 2020 for wetlands, and 2015 through 2018 for lakes/ponds, although more recent data was consulted where appropriate. For estuarine/marine waters, assessments for all designated uses other than shellfish harvesting were based on data from 2013-2020, while shellfish harvesting designated use assessments were based on Maine Department of Marine Resources (DMR) classifications as of March 1, 2021. For coastal designated beaches, assessments were based on monitoring data collected during beach seasons 2016 through 2020.

EPA has reviewed Maine’s 2018/2020/2022 submission and has concluded that the state developed its list 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.

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 2018/2020/2022 §303(d) list. 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 45 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 (Chapter 4, page 46 of IR). There are no waters currently listed in Categories 5-B (rivers and streams impaired for bacteria only) and 5-C (waters impaired by atmospheric deposition of mercury) (page 151 of IR Appendix II). All freshwaters in Maine are listed for an impaired fish consumption use caused by atmospheric deposition of mercury. These waters were listed in Sub-Category 5-C in the 2006 Integrated Report and in the 2007 EPA approved a regional mercury TMDL, which allowed these waters to be moved to Category 4-A in the 2008 cycle (page 13 of IR).

Maine’s 2018/2020/2022 list priorities fall into the following time frames: H = high, M = medium, L = low (see Tables 8-14 through 8-18 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 within the next two years 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 Removed from Maine’s Section 303(d) List for the 2018/2020/2022 Reporting Period

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 2018/2020/2022 §303(d) list (Category 5), consistent with 40 CFR §130.7(b)(6)(iv). EPA approves Maine’s §303(d) list without these segments because the placement of these pollutants/assessment units in Categories 4-A, 4-B, and 2 is consistent with EPA’s regulations and EPA’s *Guidance for Assessment, Listing and Reporting Requirements*.

1. One river/stream assessment unit is being delisted from Category 5-A to Category 2.

Assessment Unit ID	Segment Name	Cause
ME0101000504_152R01_03	Meduxnekeag River	Periphyton (<i>Aufwuchs</i>) Indicator Bioassessments

The Meduxnekeag River (a 7.2 mile segment in Houlton and Littleton) was put in Category 5-A in 2014 due to aquatic life use impairment for algae. Periphyton indicator bioassessments in 2002, 2004 and 2011 at one of two biomonitoring locations indicated impairment prompting the listing. Assessment methods and the understanding of the response of algal communities to environmental factors have improved in recent years and Maine DEP’s biomonitoring program reanalyzed the historic data in light of this progress. Based upon reanalysis, this one monitoring location would have shown non-attainment only in 2002. Sampling in 2017 showed attainment as well. The second site has always shown attainment and did again in 2017. The data support delisting of this segment to Category 2 as it is attaining the aquatic life use.

2. One river/stream assessment unit is delisted from Category 5-A to Category 2 due to water quality standards attainment for aquatic life and also delisted to Category 4-B because another required control measure is expected to result in the attainment of an applicable water quality standard in a reasonable period of time.

Assessment Unit ID	Segment Name	Cause
ME0103000305_319R_02	Sandy River	Benthic Macroinvertebrates Bioassessments
ME0103000305_319R_02	Sandy River	Dissolved Oxygen

Sandy River in Farmington is a 3.24 mile segment below the Farmington wastewater treatment plant. The segment has been impaired for aquatic life use based on benthic macroinvertebrate bioassessments since 2004 and dissolved oxygen since 2012. Both impairments were listed in Category 5A. Maine DEP is delisting both pollutants during this listing cycle. The benthic macroinvertebrate community met criteria in 2007 and exceeded criteria in 2012 and 2017. The marked improvement in benthic macroinvertebrate bioassessment results support removing this pollutant cause from Category 5A and placing it in Category 2. The dissolved oxygen cause of aquatic life use impairment is proposed to be moved from Category 5A and placed in Category 4B. High levels of total phosphorus in wastewater treatment plant effluent was identified as the historic cause of large swings in dissolved oxygen concentration in this segment. Permit limits for total phosphorus went into effect on June 1, 2021. ME DEP anticipates that this segment will have sufficient data to document achievement of WQS in the coming year. ME DEP is placing the dissolved oxygen cause of aquatic life use impairment in Category 4-B during this listing cycle as the restoration approach continues using the MPDES permit and assessment data is evaluated.

- Thirteen river/stream assessment units with aquatic life use impairments are moved from Category 5-A to Category 4-A due to EPA approval of an addendum to the Maine Statewide Total Maximum Daily Load (TMDL) for Nonpoint Source Pollution in September 2021. Note that French Stream was listed for two causes of the impairment. Both were placed in Category 4A.

Assessment Unit ID	Segment Name	Cause
ME0101000412_140R05	Kennedy Brook (Presque Isle)	Periphyton (Aufwuchs) Indicator Bioassessments
ME0102000510_224R03	French Stream (Exeter)	Benthic Macroinvertebrates Bioassessments
ME0102000510_224R03	French Stream (Exeter)	Periphyton (Aufwuchs) Indicator Bioassessments
ME0103000309_326R02	Halfmoon Stream (Knox, Thorndike)	Periphyton (Aufwuchs) Indicator Bioassessments
ME0103000309_326R03	Halfmoon Stream (Thorndike, Unity)	Periphyton (Aufwuchs) Indicator Bioassessments
ME0104000208_413R03	Stetson Brook (Lewiston)	Dissolved Oxygen
ME0104000210_418R02	No Name Brook (Lewiston)	Dissolved Oxygen
ME0106000103_607R01	Black Brook (Windham)	Dissolved Oxygen

ME0106000103_607R03	Colley Wright Brook (Windham)	Dissolved Oxygen
ME0106000103_607R07	Inkhorn Brook (Westbrook)	Dissolved Oxygen
ME0106000103_607R08	Mosher Brook (Gorham)	Dissolved Oxygen
ME0106000103_607R09	Otter Brook (Windham)	Dissolved Oxygen
ME0106000103_607R12	Pleasant River (Windham)	Dissolved Oxygen
ME0106000304_625R01	Adams Brook (Berwick)	Benthic Macroinvertebrates Bioassessments

- ME DEP is delisting 122 estuarine and marine segments previously listed in Category 5-B-1 as impaired for shellfish harvest use and attributed to fecal coliform. In this listing cycle, these segment/impairments are being correctly placed in Category 3. This has been a large effort to adhere to EPA's listing guidance that advises waters closed to shellfish harvest based solely on administrative closures, lacking assessments and sufficient data, to be appropriately placed in Category 3. These delistings will correct this for past administrative closures that were incorrectly placed on the 303(d) list.

Waterbody Segments/Impairments Newly Listed on Maine's 2018/2020/2022 303(d) List (Category 5)

For the 2018/2020/2022 listing cycle, the following pollutant/assessment unit combinations were added to Category 5. These waters are impaired by pollutants and are a priority for TMDL development (see Tables 8-1 through 8-5, IR).

1. New River/Stream Listings in Category 5-A (Impaired by Pollutants Other Than Those Listed in Maine's subcategories 5-B Through 5-D)

Assessment Unit ID	Segment Name	Cause
ME0101000303_123R01	North Fork McLean Brook	Benthic Macroinvertebrates Bioassessments
ME0101000303_123R01	North Fork McLean Brook	Periphyton (Aufwuchs) Indicator Bioassessments
ME0101000412_140R05	Kennedy Brook (Presque Isle)	Dissolved Oxygen
ME0101000412_141R01	Birch Brook (Presque Isle)	Periphyton (Aufwuchs) Indicator Bioassessments
ME0101000412_143R04	Cowett Brook (Ft. Fairfield)	Benthic Macroinvertebrates Bioassessments
ME0101000412_143R04	Cowett Brook (Ft. Fairfield)	Periphyton (Aufwuchs) Indicator Bioassessments
ME0101000412_143R05	Unnamed Brook (Presque Isle)	Periphyton (Aufwuchs) Indicator Bioassessments
ME0101000413_144R01	Amsden Brook (Ft. Fairfield)	Dissolved Oxygen
ME0101000413_144R01	Amsden Brook (Ft. Fairfield)	Periphyton (Aufwuchs) Indicator Bioassessments

Assessment Unit ID	Segment Name	Cause
ME0101000413_144R02	Hacker Brook (Ft. Fairfield)	Periphyton (Aufwuchs) Indicator Bioassessments
ME0101000413_144R03	Gray Brook (Ft. Fairfield)	Periphyton (Aufwuchs) Indicator Bioassessments
ME0101000501_150R02	Rocky Brook	Periphyton (Aufwuchs) Indicator Bioassessments
ME0101000504_152R02	Craig Brook	Periphyton (Aufwuchs) Indicator Bioassessments
ME0101000504_152R03	Oliver Brook	Periphyton (Aufwuchs) Indicator Bioassessments
ME0101000504_152R04	Smith Brook and tributaries (Houlton)	Periphyton (Aufwuchs) Indicator Bioassessments
ME0102000510_224R05	Capehart (Pushaw) Brook (Bangor)	Benthic Macroinvertebrates Bioassessments
ME0104000208_413R07	Gully Brook (Auburn)	Benthic Macroinvertebrates Bioassessments
ME0104000208_413R07	Gully Brook (Auburn)	Periphyton (Aufwuchs) Indicator Bioassessments
ME0104000210_419R03	Unnamed Stream (Lewiston Municipal Landfill)	Periphyton (Aufwuchs) Indicator Bioassessments
ME0105000305_528R05	Meadow Brook (China)	Escherichia coli
ME0105000305_528R07	Choate Brook (Windsor)	Escherichia coli
ME0105000305_528R08_01	Chamberlain Bk (Whitefield)	Escherichia coli
ME0106000105_610R07	Red Brook (Scarborough, South Portland)	Benthic Macroinvertebrates Bioassessments
ME0106000106_616R04	Bear Brook	Benthic Macroinvertebrates Bioassessments
ME0106000106_616R04	Bear Brook	Habitat Assessment

2. New Lake/Pond Listing in Category 5-A (Impaired by Pollutants Other Than Those Listed in Maine's subcategories 5-B Through 5-D)

HUC		Lake Name	Lake ID	Cause
ME	0102000513	Alamoosook Lake	4336	Declining trophic trend

3. New Wetlands Listings in Category 5

Assessment Unit ID	Segment Name	Location	Cause
<i>ME0101000501_150 R01_W198</i>	<i>Robinson Dam Pond wetlands</i>	<i>Blaine, Wetland station W-198</i>	<i>Benthic Macroinvertebrates Bioassessments</i>
<i>ME0104000210_418 R02_W101</i>	<i>No Name Brook (Lewiston) wetland</i>	<i>Wetlands along No Name Brook in Lewiston, includes biomonitoring station W-101 and W-102</i>	<i>Benthic Macroinvertebrates Bioassessments</i>

4. New Estuarine/Marine Water Listings in Category 5

No new listings in this combined listing cycle.

5. New Coastal Designated Beach Listings in Category 5-B (bacteria impairment)

Assessment Unit ID	Segment Name	Cause
<i>ME010600030303_SB_345424B</i>	<i>Goose Rocks - Batson River (Kennebunkport)</i>	<i>Enterococci</i>
<i>ME010600030303_SB_793244B</i>	<i>Goose Rocks - Little River (Kennebunkport)</i>	<i>Enterococci</i>
<i>ME010600031102_SB_794778B</i>	<i>Riverside (Ogunquit)</i>	<i>Enterococci</i>

Waterbody Segment/Impairments moving within Category 5 on Maine's 2018/2020/2022 303(d) List

One lake that is impaired for its aquatic life use is being moved from Category 5-A into the newly created Category 5-Alternative due to EPA R1's acceptance of ME DEP's *Great Pond Watershed-Based Management Plan* (dated March 2021). The plan is an Alternative Restoration Plan consistent with EPA's §303(d) program Vision. This assessment unit remains in Category 5 while the Alternative Restoration Plan is implemented (<https://www.epa.gov/system/files/documents/2021-09/great-pond-arp-tmdl-report.pdf>). The Great Pond alternative action plan focuses on keeping untreated runoff from getting into the watershed, and therefore reduces the phosphorus load to Great Pond. The action plan consists of pollutant reduction targets, responsible parties, potential funding sources, approximate costs, and an implementation schedule for each task.

Assessment Unit ID	Segment Name	Cause
<i>ME 0103000310</i>	<i>Great Pond</i>	<i>trophic trend, low DO, Gloeotrichia blooms</i>

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. §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. Waters identified by the state as impaired or threatened by nonpoint sources of pollution (NPS) were appropriately considered for inclusion on Maine's 2018/2020/2022 §303(d) list. Maine properly listed waters with nonpoint sources causing or expected to cause impairment, consistent with §303(d) regulations and EPA guidance.