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Legislative Document

No. 1775

H.P. 1262

House of Representatives, May 23, 2019

An Act To Protect Sustenance Fishing

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script, reading "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Speaker GIDEON of Freeport. (GOVERNOR'S BILL)
Cosponsored by President JACKSON of Aroostook and
Representatives: COLLINGS of Portland, DUNPHY of Old Town, GRAMLICH of Old
Orchard Beach, NEWELL of the Passamaquoddy Tribe, TALBOT ROSS of Portland,
TUCKER of Brunswick, Senator: CARSON of Cumberland.

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

2 **Sec. 1. 38 MRSA §420, sub-§1-B, ¶A,** as enacted by PL 2001, c. 418, §3, is
3 amended to read:

4 A. The ambient criteria for mercury are as follows:

5 (1) Ambient water quality criteria for aquatic life:

6 (a) Freshwater acute: 1.7 micrograms per liter;

7 (b) Freshwater chronic: 0.91 micrograms per liter;

8 (c) Saltwater acute: 2.1 micrograms per liter; and

9 (d) Saltwater chronic: 1.1 micrograms per liter; and

10 (2) Fish tissue residue criterion for human health: 0.2 milligrams per kilogram
11 in the edible portion of fish for all waters, except for those water body segments
12 subject to a sustenance fishing designated use pursuant to article 4-A, which must
13 have a fish tissue residue criterion for human health of 0.03 milligrams per
14 kilogram in the edible portion of fish.

15 **Sec. 2. 38 MRSA §465-A, sub-§1, ¶C,** as amended by PL 2013, c. 193, §4, is
16 further amended to read:

17 C. There may be no new direct discharge of pollutants into Class GPA waters. ~~The~~
18 Notwithstanding paragraph D, section 466-A or any other provision of law to the
19 contrary, the following are exempt from this provision:

20 (1) Chemical discharges for the purpose of restoring water quality approved by
21 the department;

22 (2) Aquatic pesticide or chemical discharges approved by the department and
23 conducted by the department, the Department of Inland Fisheries and Wildlife or
24 an agent of either agency for the purpose of restoring biological communities
25 affected by an invasive species;

26 (3) Storm water discharges that are in compliance with state and local
27 requirements;

28 (4) Discharges of aquatic pesticides approved by the department for the control
29 of mosquito-borne diseases in the interest of public health and safety using
30 materials and methods that provide for protection of nontarget species. When the
31 department issues a license for the discharge of aquatic pesticides authorized
32 under this subparagraph, the department shall notify the municipality in which
33 the application is licensed to occur and post the notice on the department's
34 publicly accessible website; and

35 (5) Discharges of pesticides approved by the department that are:

36 (a) Unintended and an incidental result of the spraying of pesticides;

37 (b) Applied in compliance with federal labeling restrictions; and

1 (c) Applied in compliance with statute, Board of Pesticides Control rules and
2 best management practices.

3 Discharges into these waters licensed prior to January 1, 1986 are allowed to continue
4 only until practical alternatives exist. Materials may not be placed on or removed
5 from the shores or banks of a Class GPA water body in such a manner that materials
6 may fall or be washed into the water or that contaminated drainage may flow or leach
7 into those waters, except as permitted pursuant to section 480-C. A change of land
8 use in the watershed of a Class GPA water body may not, by itself or in combination
9 with other activities, cause water quality degradation that impairs the characteristics
10 and designated uses of downstream GPA waters or causes an increase in the trophic
11 state of those GPA waters.

12 **Sec. 3. 38 MRSA §465-A, sub-§1, ¶D** is enacted to read:

13 D. The following waters are subject to a sustenance fishing designated use pursuant
14 to section 466-A: Conroy Lake in Monticello; Grand Lake Matagamom in Trout
15 Brook Township and T.6 R.8 W.E.L.S.; Mattamiscontis Lake in T.3 R.9 N.W.P. and
16 T.2 R.9 N.W.P.; Grand Falls Flowage, Berry Brook Flowage, George Brook
17 Flowage, Huntley Brook Flowage, Lewey Lake, The Basin, The Narrows, Long Lake
18 and Big Lake, adjacent to Indian Township; and Sysladobsis Lake in T.5 N.D.

19 **Sec. 4. 38 MRSA §466, sub-§10-A** is enacted to read:

20 **10-A. Sustenance fishing designated use.** "Sustenance fishing designated use" is a
21 subcategory of the applicable fishing designated use that protects human consumption of
22 fish for nutritional and cultural purposes and applies only to those water body segments
23 that are identified in this article as subject to a sustenance fishing designated use.

24 **Sec. 5. 38 MRSA §466-A** is enacted to read:

25 **§466-A. Sustenance fishing designated use**

26 **1. Water quality criteria.** To protect the sustenance fishing designated use
27 designated under this article, the department shall calculate and establish water quality
28 criteria for human health using a fish consumption rate of 200 grams per day and a cancer
29 risk level of one in 1,000,000, except that the cancer risk level for inorganic arsenic is
30 governed by section 420, subsection 2, paragraph J.

31 **2. Criteria deemed protective.** For all purposes, the sustenance fishing designated
32 use established under this article is deemed protected through the water quality criteria
33 for human health calculated and established by the department for the water body
34 segments subject to a sustenance fishing designated use under this article.

35 **3. Limitation; construction.** Nothing in this section and nothing in the designation
36 in this article of a sustenance fishing designated use may be construed to:

37 A. Create any other right or protection, including a right to any particular quantity or
38 quality of fish;

39 B. Limit any right or protection otherwise existing in law; or

1 C. Alter or affect the regulation of mercury in discharges, which is governed
2 exclusively by section 413, subsection 11 and section 420, subsection 1-B.

3 **Sec. 6. 38 MRSA §467, sub-§7, ¶A**, as amended by PL 2003, c. 317, §12, is
4 further amended to read:

5 A. Penobscot River, main stem.

6 (1) From the confluence of the East Branch and the West Branch to the
7 confluence of the Mattawamkeag River, including all impoundments - Class C.
8 This segment is subject to a sustenance fishing designated use pursuant to section
9 466-A.

10 (2) From the confluence of the Mattawamkeag River to the confluence of
11 Cambolasse Stream - Class B. This segment is subject to a sustenance fishing
12 designated use pursuant to section 466-A.

13 (3) From the confluence of Cambolasse Stream to the West Enfield Dam - Class
14 B. This segment is subject to a sustenance fishing designated use pursuant to
15 section 466-A.

16 (5) From the West Enfield Dam, ~~including the Stillwater Branch~~, to the ~~Veazie~~
17 ~~Milford~~ Dam, including all impoundments, and the Stillwater Branch - Class B.
18 That portion of this segment upstream of the Milford Dam and upstream of the
19 Gilman Falls Dam at Route 43 is subject to a sustenance fishing designated use
20 pursuant to section 466-A.

21 (6) From the ~~Veazie~~ Milford Dam, but not including the ~~Veazie~~ Milford Dam, to
22 the Maine Central Railroad bridge in Bangor-Brewer - Class B. Further, the
23 Legislature finds that the free-flowing habitat of this river segment provides
24 irreplaceable social and economic benefits and that this use must be maintained.

25 (7) From the Maine Central Railroad bridge in Bangor to a line extended in an
26 east-west direction from a point 1.25 miles upstream of the confluence of Reeds
27 Brook in Hampden - Class B. Further, the Legislature finds that the free-flowing
28 habitat of this river segment provides irreplaceable social and economic benefits
29 and that this use must be maintained.

30 **Sec. 7. 38 MRSA §467, sub-§7, ¶B**, as repealed and replaced by PL 1989, c.
31 764, §7, is amended to read:

32 B. Penobscot River, East Branch Drainage.

33 (1) East Branch of the Penobscot River, main stem.

34 (a) Above its confluence with Grand Lake Mattagamon - Class A.

35 (b) From the dam at the outlet of Grand Lake Mattagamon to a point located
36 1,000 feet downstream from the dam - Class A. This segment is subject to a
37 sustenance fishing designated use pursuant to section 466-A.

38 (c) From a point located 1,000 feet downstream from the dam at the outlet of
39 Grand Lake Mattagamon to its confluence with the West Branch - Class AA.

1 This segment is subject to a sustenance fishing designated use pursuant to
2 section 466-A.

3 (d) That portion of the East Branch in T.6 R.8 W.E.L.S. is subject to a
4 sustenance fishing designated use pursuant to section 466-A.

5 (2) East Branch of the Penobscot River, tributaries - Class A unless otherwise
6 specified.

7 (a) All tributaries, any portion of which is located within the boundaries of
8 Baxter State Park - Class AA.

9 (b) Sawtelle Brook, from a point located 1,000 feet downstream from the
10 dam at the outlet of Sawtelle Deadwater to its confluence with the Seboeis
11 River - Class AA.

12 (c) Seboeis River, from the outlet of Snowshoe Lake to its confluence with
13 the East Branch - Class AA.

14 (d) Wassataquoik Stream, from the boundary of Baxter State Park to its
15 confluence with the East Branch - Class AA.

16 (e) Webster Brook, from a point located 1,000 feet downstream from the
17 dam at the outlet of Telos Lake to its confluence with Webster Lake - Class
18 AA.

19 **Sec. 8. 38 MRSA §467, sub-§7, ¶D,** as amended by PL 1999, c. 277, §11, is
20 further amended to read:

21 D. Mattawamkeag River Drainage.

22 (1) Mattawamkeag River, main stem.

23 (a) From the confluence of the East Branch and the West Branch to the
24 Kingman-Mattawamkeag boundary - Class A.

25 (b) From the Kingman-Mattawamkeag boundary to its confluence with the
26 Penobscot River - Class AA.

27 (2) Mattawamkeag River, tributaries - Class A unless otherwise specified.

28 (a) East Branch Mattawamkeag River above Red Bridge - Class B.

29 (b) West Branch Mattawamkeag River from Interstate 95 to its confluence
30 with Mattawamkeag Lake - Class B. This segment is subject to a sustenance
31 fishing designated use pursuant to section 466-A.

32 (b-1) West Branch of the Mattawamkeag River from its source at
33 Rockabema Lake to Interstate 95 - Class A. This segment is subject to a
34 sustenance fishing designated use pursuant to section 466-A.

35 (c) Fish Stream - Class B.

36 **Sec. 9. 38 MRSA §467, sub-§13,** as amended by PL 2009, c. 163, §9, is further
37 amended to read:

38 **13. St. Croix River Basin.**

1 A. St. Croix River, main stem.

2 (1) Except as otherwise provided, from the outlet of Chiputneticook Lakes to its
3 confluence with the Woodland Lake impoundment, those waters lying within the
4 State - Class A. This segment is subject to a sustenance fishing designated use
5 pursuant to section 466-A.

6 (2) Those waters impounded in the Grand Falls Flowage including those waters
7 between Route 1 (Princeton and Indian Township) and Grand Falls Dam - Class
8 GPA. These waters are subject to a sustenance fishing designated use pursuant to
9 section 466-A.

10 (3) Woodland Lake impoundment - Class C.

11 (4) From the Woodland Dam to tidewater, those waters lying within the State,
12 including all impoundments - Class C.

13 B. St. Croix River, tributaries, those waters lying within the State - Class B unless
14 otherwise specified.

15 (1) All tributaries entering upstream from the dam at Calais, the drainage areas
16 of which are wholly within the State - Class A unless otherwise classified.

17 (2) Tomah Stream - Class AA. This stream is subject to a sustenance fishing
18 designated use pursuant to section 466-A.

19 (3) Monument Brook - Class A.

20 (4) Waters connecting the Chiputneticook Lakes, including The Thoroughfare,
21 Forest City Stream and Mud Lake Stream - Class A.

22 (5) Berry Brook, George Brook, Huntley Brook, Musquash Stream, Flipper
23 Creek, Patten Pond Stream and all segments of the West Branch of the St. Croix
24 River between the West Grand Lake Dam and Route 1 - Class A. These waters
25 are subject to a sustenance fishing designated use pursuant to section 466-A.

26 **Sec. 10. 38 MRSA §467, sub-§15, ¶A,** as repealed and replaced by PL 1989, c.
27 764, §16, is amended to read:

28 A. St. John River, main stem.

29 (1) From the confluence of the Northwest Branch and the Southwest Branch to a
30 point located one mile above the foot of Big Rapids in Allagash - Class AA. This
31 segment is subject to a sustenance fishing designated use pursuant to section
32 466-A.

33 (2) From a point located one mile above the foot of Big Rapids in Allagash to
34 the international bridge in Fort Kent, those waters lying within the State,
35 including all impoundments - Class A.

36 (3) From the international bridge in Fort Kent to the international bridge in
37 Madawaska, those waters lying within the State, including all impoundments -
38 Class B.

(4) From the international bridge in Madawaska to where the international boundary leaves the river in Hamlin, those waters lying within the State, including all impoundments - Class C.

Sec. 11. 38 MRSA §467, sub-§15, ¶C, as amended by PL 2017, c. 137, Pt. B, §9, is further amended to read:

C. Aroostook River Drainage.

(1) Aroostook River, main stem.

(a) From the confluence of Millinocket Stream and Munsungan Stream to the Route 11 bridge - Class AA. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(b) From the Route 11 bridge to the Sheridan Dam - Class B. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(c) From the Sheridan Dam to its confluence with Presque Isle Stream, including all impoundments - Class B. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(d) From its confluence with Presque Isle Stream to a point located 3.0 miles upstream of the intake of the Caribou water supply, including all impoundments - Class C. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(e) From a point located 3.0 miles upstream of the intake of the Caribou water supply to a point located 100 yards downstream of the intake of the Caribou water supply, including all impoundments - Class B. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(f) From a point located 100 yards downstream of the intake of the Caribou water supply to the international boundary, including all impoundments - Class C. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(2) Aroostook River, tributaries, those waters lying within the State - Class A unless otherwise specified.

(a) All tributaries of the Aroostook River entering below the confluence of the Machias River that are not otherwise classified - Class B.

(b) Little Machias River and its tributaries - Class A.

(c) Little Madawaska River and its tributaries, including Madawaska Lake tributaries above the Caribou-Connor Township line - Class A.

(d) Machias River, from the outlet of Big Machias Lake to the Aroostook River - Class AA. This segment is subject to a sustenance fishing designated use pursuant to section 466-A.

(e) Millinocket Stream, from the outlet of Millinocket Lake to its confluence with Munsungan Stream - Class AA.

- 1 (f) Munsungan Stream, from the outlet of Little Munsungan Lake to its
2 confluence with Millinocket Stream - Class AA.
- 3 (g) Presque Isle Stream and its tributaries above the Mapleton-Presque Isle
4 town line - Class A.
- 5 (h) St. Croix Stream from its confluence with Hall Brook in T.9, R.5,
6 W.E.L.S. to its confluence with the Aroostook River - Class AA.
- 7 (j) Scopan Stream from the outlet of Scopan Lake to its confluence with the
8 Aroostook River - Class C.
- 9 (k) Limestone Stream from the Long Road bridge to the Canadian border -
10 Class C.
- 11 (l) Beaver Brook and its tributaries (T.14 R.6 W.E.L.S., T.14 R.5 W.E.L.S.,
12 T.13 R.5 W.E.L.S., Portage Lake, Ashland, Castle Hill) - Class A.
- 13 (m) Gardner Brook and its tributaries (T.14 R.5 W.E.L.S., T.13 R.5
14 W.E.L.S., Wade) - Class A.

15 **Sec. 12. 38 MRSA §467, sub-§15, ¶E**, as amended by PL 2015, c. 12, §1, is
16 further amended to read:

17 E. Meduxnekeag River Drainage.

18 (1) Meduxnekeag River, main stem.

19 (a) From the outlet of Meduxnekeag Lake to the international boundary -
20 Class B. This segment is subject to a sustenance fishing designated use
21 pursuant to section 466-A.

22 (2) Meduxnekeag River, tributaries - Class B unless otherwise specified.

23 (a) North Branch of the Meduxnekeag River and its tributaries above the
24 Monticello - T.C, R.2, W.E.L.S. boundary - Class A.

25 (a-1) The North Branch of the Meduxnekeag River and its tributaries,
26 including Dead Stream, from the source in T.8 R.3 W.E.L.S. to the
27 international boundary are subject to a sustenance fishing designated use
28 pursuant to 466-A.

29 (b) Moose Brook and its tributaries, upstream of the Ludlow Road in
30 Ludlow - Class A.

31 (c) South Branch of the Meduxnekeag River and its tributaries, upstream of
32 the Oliver Road in Cary - Class A.

33 (d) Captain Ambrose Bear Stream and tributaries upstream of the Burnt
34 Brow Bridge in Hammond - Class A.

35 (e) All tributaries from the outlet of Meduxnekeag Lake to the international
36 boundary are subject to a sustenance fishing designated use pursuant to
37 466-A.

1 **Sec. 13. 38 MRSA §467, sub-§15, ¶F**, as amended by PL 2017, c. 137, Pt. B,
2 §10, is further amended to read:

3 F. St. John River, minor tributaries, those waters lying within the State - Class A
4 unless otherwise specified.

5 (1) Except as otherwise classified, all minor tributaries of the St. John River
6 entering below the international bridge in Fort Kent, those waters lying within the
7 State - Class B.

8 (2) Baker Stream and Baker Branch of the St. John River, from the headwaters at
9 the Upper First St. John Pond to their confluence with the Southwest Branch -
10 Class AA.

11 (3) Big Black River, from the international boundary to its confluence with the
12 St. John River - Class AA.

13 (4) Northwest Branch, from the outlet of Beaver Pond in T.12, R.17, W.E.L.S. to
14 its confluence with the St. John River - Class AA.

15 (5) Prestile Stream from its source to Route 1A in Mars Hill - Class A. This
16 segment is subject to a sustenance fishing designated use pursuant to section
17 466-A.

18 (a) Prestile Stream from Route 1A in Mars Hill to the international boundary
19 - Class B. This segment is subject to a sustenance fishing designated use
20 pursuant to section 466-A.

21 (6) Southwest Branch, from a point located 5 miles downstream of the
22 international boundary to its confluence with the Baker Branch - Class AA.

23 (7) Violette Stream and its tributaries, from its source to the confluence with
24 Caniba Brook - Class A.

25 **Sec. 14. 38 MRSA §468, sub-§8, ¶P** is enacted to read:

26 P. Perry.

27 (1) Boyden Stream - Class B. This segment is subject to a sustenance fishing
28 designated use pursuant to section 466-A.

29 **Sec. 15. 38 MRSA §469, sub-§7, ¶H-1** is enacted to read:

30 H-1. Perry.

31 (1) Tidal waters south of a line running from Gleason Point easterly to the
32 international boundary, thence southerly to the town line with Quoddy, thence
33 westerly to the Old Eastport Road, including Boyden Stream and the Little River
34 - Class SB. These waters are subject to a sustenance fishing designated use
35 pursuant to section 466-A.

36 **Sec. 16. Rulemaking.** The Department of Environmental Protection shall adopt
37 rules no later than March 1, 2020 that calculate and establish water quality criteria
38 protective of human health for toxic pollutants and the sustenance fishing designated use

1 as established pursuant to this Act. Rules adopted under this section are routine technical
2 rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

3 **SUMMARY**

4 This bill creates a sustenance fishing designated use as a subcategory of the
5 applicable fishing designated use for certain specified water body segments within
6 Maine's water classification program where there is or may be sustenance fishing or
7 increased fish consumption by members of the Indian tribes in Maine or other Maine
8 citizens. This bill also requires that the Department of Environmental Protection adopt
9 routine technical rules no later than March 1, 2020 that calculate and establish water
10 quality criteria protective of human health for toxic pollutants and the sustenance fishing
11 designated use as established by this bill. This bill limits the scope of the sustenance
12 fishing designated use created by this bill by providing that, for all purposes, the
13 sustenance fishing designated use created by this bill is deemed protected through water
14 quality criteria for human health calculated and established for the identified water body
15 segments.