



# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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**Legislative Document**

**No. 1775**

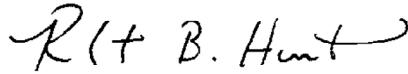
H.P. 1262

House of Representatives, May 23, 2019

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### **An Act To Protect Sustenance Fishing**

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

P. Perry.

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

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

H-1. Perry.

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

**Sec. 16. Rulemaking.** The Department of Environmental Protection shall adopt rules no later than March 1, 2020 that calculate and establish water quality criteria 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.