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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



GERALD D. REID
COMMISSIONER

TESTIMONY OF DON WITHERILL

BUREAU OF WATER QUALITY

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING IN SUPPORT OF L.D. 1743

**AN ACT TO RECLASSIFY
CERTAIN WATERS OF THE STATE**

SPONSORED BY REP. ZEIGLER

**BEFORE THE JOINT STANDING COMMITTEE
ON ENVIRONMENT AND NATURAL RESOURCES**

**DATE OF HEARING:
MAY 23, 2019**

Senator Carson, Representative Tucker, and members of the Committee, I am Don Witherill, Director of the Division of Environmental Assessment in the Bureau of Water Quality at the Department of Environmental Protection, speaking in support of L.D. 1743.

Included with my testimony is a large packet of information that has been submitted on behalf of the Board of Environmental Protection (BEP). I will make reference to some of this information to describe the some of the

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proposed reclassifications that have come from the Board. The Executive Analyst for the Board, Cynthia Bertocci, is here today and will also be able to serve as a resource during the work session on this bill if there are questions about the Board's deliberations.

The bill before you today is the result of two years of effort by Department staff. The Department obtained re-classification proposals through direct solicitation to various agencies and organizations during the summer and fall of 2017; a list of the types of organizations we contacted is included in your packet on page 2. During the fall and winter of 2017/18, Department staff reviewed all information submitted on the individual proposals in conjunction with information provided in water quality studies conducted in recent years, management activities such as the construction of wastewater treatment facilities, removal of former wastewater discharges, and the acquisition of lands for recreation and conservation purposes surrounding certain waters.

Based on this review, the Department developed a set of draft recommendations which were available to the public for comment in the spring of 2018. During this time, the Department also held two public meetings to receive input. The comment period and meetings were advertised via direct e-mails, the Department's e-mail subscription service and the Department's online meeting calendar. At the beginning of this public comment period, the Department also developed a dedicated web page which since its creation has been updated every time the process moved a step forward.

After consideration of comments, Department staff developed updated recommendations for the BEP, which conducted its own public comment period, including a public hearing in September of 2018. The comment period and meeting were advertised via legal notices in 5 newspapers and direct e-

mails, as well as the Department's and the Board's e-mail subscription services. Department staff also communicated directly with commenters to provide factual information regarding individual proposals and their likely effect on stakeholders.

After review of comments, Department staff developed an updated set of draft recommendations for consideration by the BEP at its November 1, 2018 meeting. Board members reviewed with Department staff the updated recommendations as well as the public testimony and comments received. The Board requested one further change to the recommendations. A final set of recommendations were approved by the Board at its December 6, 2018 meeting. Both the November and December meetings were advertised via direct e-mails and the Board's e-mail subscription services.

To ensure that stakeholders were aware of the bill before you today, and the hearing and work session dates, e-mail notifications were sent out last week.

I would like to describe for you the sections of the bill that were, to varying degrees, controversial, as well as one requested classification upgrade that we did not recommend be made, using material in the BEP packet you received. However, before doing that, I want to request a minor language change that we did not pick up on until after the proposed bill was submitted. Sec 3.A.(5) reads: (5) From the West Enfield Dam, including the Stillwater Branch, to the Veazie Milford Dam, including all impoundments – Class B. Because the Stillwater Branch is largely located below the Milford Dam, we would propose changing the language to read: (5) From the West Enfield Dam, ~~including the Stillwater Branch,~~ to the Veazie Milford Dam, including all impoundments, and the Stillwater Branch – Class B.

**Board of Environmental Protection
Recommendations to the Legislature for Changes in Water Quality Classification for Certain Maine Waters**

Table 1: List of Proposals Received

Proposals recommended for upgrade

LD 1743	Class Change	Waterbody	Town	Proposed by	Recommendation
Androscoggin River Basin					
Sec. 1	B to A Map #1	Tributaries to Webb Lake/Webb River	Weld, Township 6 North of Weld, Philips, Avon, Temple, Perkins TWP, Carthage, Roxbury	Maine DEP	DEP monitoring data for three tributaries indicate Class A aquatic life criteria are attained. Very good salmonid spawning, nursery, and adult habitat. Watershed is ~90% forested and a significant portion is protected as conservation land. Webb River below Webb Lake is Class A.
Kennebec River Basin					
Sec. 2	B to A Map #2	East Branch Wesserunsett Stream above the downstream Rt. 150 (Harmony Road) crossing, and all tributaries	Mayfield TWP, Brighton Plantation, Athens	Maine DEP	DEP monitoring data on the main stem East Branch Wesserunsett Stream indicate that Class A aquatic life criteria are attained. The watershed is ~86% forested. A licensed discharge exists in the lower watershed. MDEP has no water quality data for this segment and thus the lowest 2.7 miles of the main stem are excluded from the upgrade.
Penobscot River Basin					
Sec. 3	C to B Map #3	Penobscot River, confluence of East and West Branches to confluence with Mattawamkeag River	Medway, Molunkus TWP, Woodville, Mattawamkeag	Penobscot Nation and The Nature Conservancy	Water quality monitoring data show that Class B criteria are attained, including in the Mattaseunk impoundment. Closure of two upstream mills has significantly improved the water quality of this segment. Segment is critical for restoration of Atlantic salmon and other diadromous fish species. A Class B designation of this segment will ensure good quality habitat along the entire main stem of the river.

LD 1743	Class Change	Waterbody	Town	Proposed by	Recommendation
Sec. 5	C to B Map #4	West Branch Penobscot River, confluence with Millinocket Stream to confluence with East Branch Penobscot River	Millinocket, T3 Indian Purchase TWP, East Millinocket, TA R7 WELS, Medway	Penobscot Nation	Water quality monitoring shows that Class B criteria are attained in this segment, including in impoundments. Closure of mills on Millinocket Stream and the West Branch has significantly improved water quality in Millinocket Stream below Millinocket and in the West Branch below confluence with Millinocket Stream. Re-development efforts at former mill site on Millinocket Stream are continuing and may result in new discharges. MDEP modeling indicates that new discharges at actual 2005-2009 discharge levels at this site will not prevent attainment of Class B standards.
Sec. 5	C to B Map #5	Millinocket Stream, confluence of West Branch Canal to confluence with West Branch Penobscot River	Millinocket	Maine DEP	Closure of a pulp and paper mill has significantly improved water quality in this segment. Re-development efforts at former mill site are continuing and may result in new discharges. MDEP modeling indicates that new discharges at actual 2005-2009 discharge levels for this site will not prevent attainment of Class B standards.
Sec. 6	B to A Map #6	West Branch Mattawamkeag River, I-95 to confluence with Mattawamkeag Lake	Island Falls	Maine DEP	Data indicate attainment of Class A aquatic life criteria. Former discharge ended in 2009. Remainder of River and its tributaries (except for Fish Stream) are Class A; Fish Stream is also proposed for upgrade from Class B to Class A. River below Mattawamkeag Lake has salmon rearing habitat. Reasonably expected to attain Class A standards.
Sec. 6	B to A Map #7	Fish Stream	Mount Chase, Patten, Crystal, Island Falls	The Nature Conservancy	Fish Stream borders and drains the northern portion of TNC's Crystal Bog Preserve, a unique hydrologic feature in northern Maine. Previously existing wastewater discharge has been discontinued. MDEP monitoring data show that the stream attains Class A aquatic life criteria. Tributaries to Fish Stream are all Class A; West Branch Mattawamkeag River, which Fish Streams flows into, is also proposed for an upgrade from Class B to Class A. The watershed is largely forested.

LD 1743	Class Change	Waterbody	Town	Proposed by	Recommendation
Saco River Basin					
Sec. 7	B to A Map #8	Back Brook and tributaries	Limington	Maine DEP	Attains Class A aquatic life criteria. Supports a population of wild brook trout and is being stocked with Atlantic salmon. Watershed is ~90% forested and a significant portion is protected as conservation land. Valuable opportunity to increase Class A segments in the southern Maine region.
St. John River Basin					
Sec. 8	B to A Map #9	Salmon Brook and tributaries above Rt. 228 crossing on main stem in Perham, and West Branch Salmon Brook and tributaries above Washburn/Wade town line	Westmanland, T14 R5 WELS, Perham, Wade	The Nature Conservancy	Preserved land in upper Salmon Brook watershed. Very high quality wild trout stream. Reasonably expected to attain Class A standards.
Minor Drainages					
Sec. 9 to 11	B to A Map #10	Tunk Stream and tributaries, upstream of Route 1(Steuben)	T10 SD, Sullivan, T7 SD BPP, Cherryfield	Maine DEP	Very high quality water with potential for restoration of Atlantic salmon. Tunk Lake supports landlocked salmon. Significant portion of the watershed in Public Reserve Land; watershed is ~80% forested. Tunk Stream attains Class A aquatic life criteria, tributaries reasonably expected to attain Class A standards. Waters above Rt. 1 in Steuben were inadvertently omitted in 2003 upgrade of lower section of Tunk Stream and tributaries.

Amendment to statutory language (no change to classification)

LD 1743	Class Change	Waterbody	Town	Proposed by	Recommendation
Penobscot River Basin					
Sec. 3	N/A Map #11	Penobscot River, from Milford Dam to Veazie Dam – expand free-flowing language	Milford, Old Town, Bradley, Orono, Eddington and Veazie	Penobscot Nation and The Nature Conservancy	With the recent removal of the Great Works and Veazie Dams the upper boundary of the special 'free-flowing habitat' designation should be moved upstream to the Milford Dam. This amendment will not change the current Class B designation up and downstream of the Milford Dam, it only provides protection for the free-flowing nature of the segment below the dam. Recent fish returns following dam removals attest to the high value of this fish habitat and its restoration potential affecting several diadromous species.

Correction of classification error

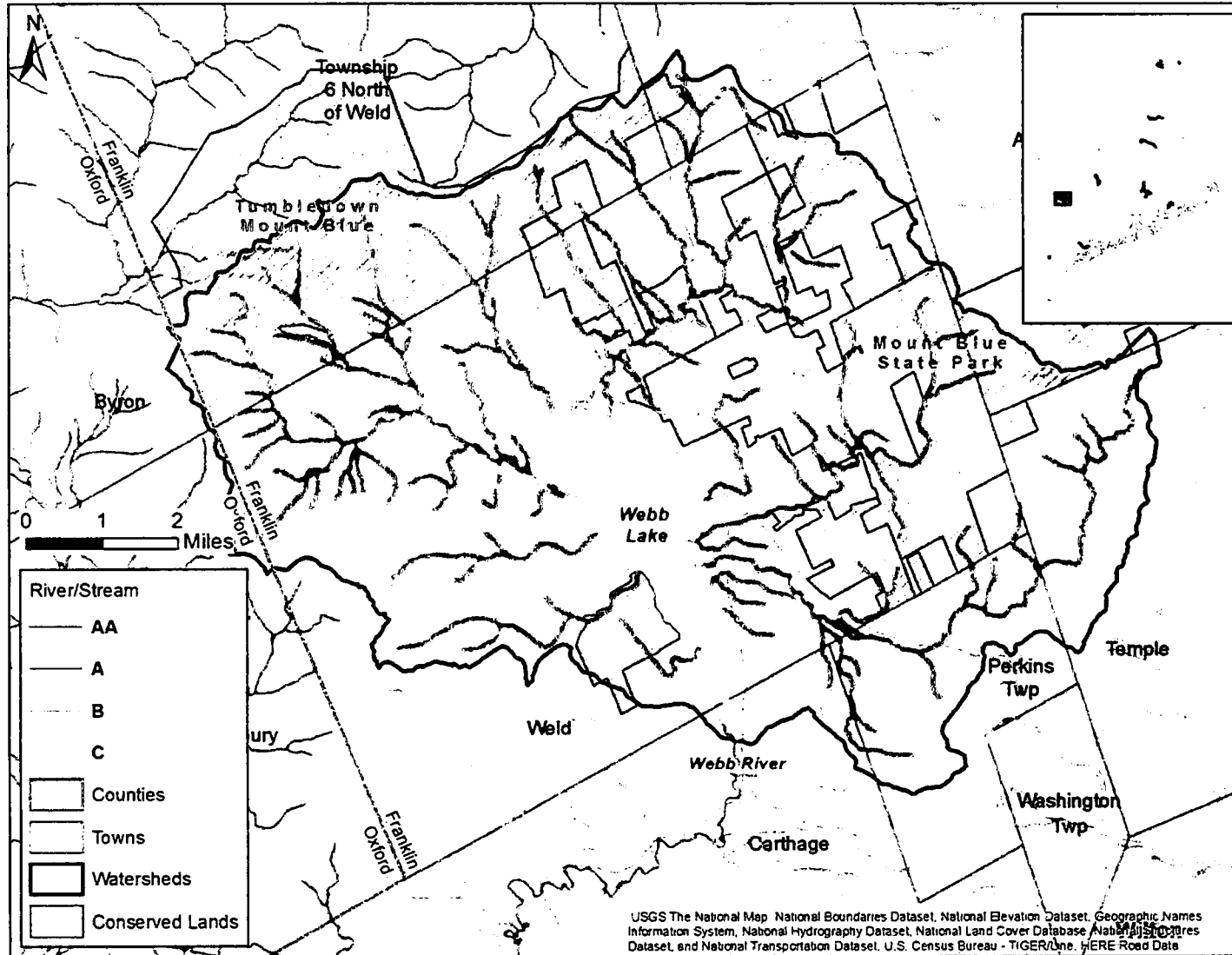
LD 1743	Class Change	Waterbody	Town	Proposed by	Recommendation
Penobscot River Basin					
Sec. 4	AA to B Map #12	East Branch Penobscot River, Mattaceunk impoundment	Medway	Maine DEP	This item corrects an error in the 1990 re-classification of this river segment from Class B to Class AA. At the time, the most downstream 1.6-mile segment of the river was already impounded by the Mattaceunk Dam on the upper main stem Penobscot River and so did not meet the Class AA criterion that the 'habitat must be characterized as free-flowing and natural'. This was an oversight by the Department and will be resolved by returning the segment in question to the original Class B designation. This correction is only intended to rectify the classification with respect to the habitat criterion; no new discharges or dams will be allowed.

Proposals not recommended for upgrade at this time (cross-reference to LD section not applicable)

Class Change	Waterbody	Towns	Proposed by	Recommendation
Androscoggin River Basin				
C to B Map # 13	Androscoggin River, Worumbo Dam in Lisbon Falls to Merrymeeting Bay (line between Pleasant Pt., Topsham and North Bath)	Lisbon, Durham, Topsham, Brunswick	Friends of Merrymeeting Bay	2010 MDEP monitoring data indicated that Class B standards were not always attained. Modeling results confirmed this finding during critical conditions, even when discharges were removed from model. Inputs from upstream tributaries and non-point source pollution, and effects of impoundments prevented attainment of standards. In the lowest section of river, inputs from Merrymeeting Bay and Sediment Oxygen Demand also contributed to non-attainment. MDEP is not aware of any changes in conditions.
Penobscot River Basin				
B to A Map #14	Blackman Stream and tributaries	Clifton, Dedham, Holden, Eddington, Bradley	The Nature Conservancy	Water quality appears to be affected by logging activities and some agricultural land use. Biological communities did not meet Class GPA aquatic life standards in Davis Pond in 2016. Ponds in the watershed show some indication of nutrient enrichment. In-stream monitoring data from Blackman Stream and some tributaries needed to determine likelihood of attainment of Class A standards.
St. John River Basin				
C to B Map #15	Limestone Stream, below Long Road Crossing	Limestone, Fort Fairfield	Citizen proposal	Water quality in this segment appears to be affected by agricultural land use, which is widespread upstream of and along the section of stream proposed for upgrade. MDEP monitoring data show that biological communities only meet Class C aquatic life criteria, and that nutrient concentrations in the stream are elevated. Given the intensive agricultural land use in the watershed, it is not expected that Limestone Stream below Long Road can attain Class B standards.

ANDROSCOGGIN RIVER BASIN

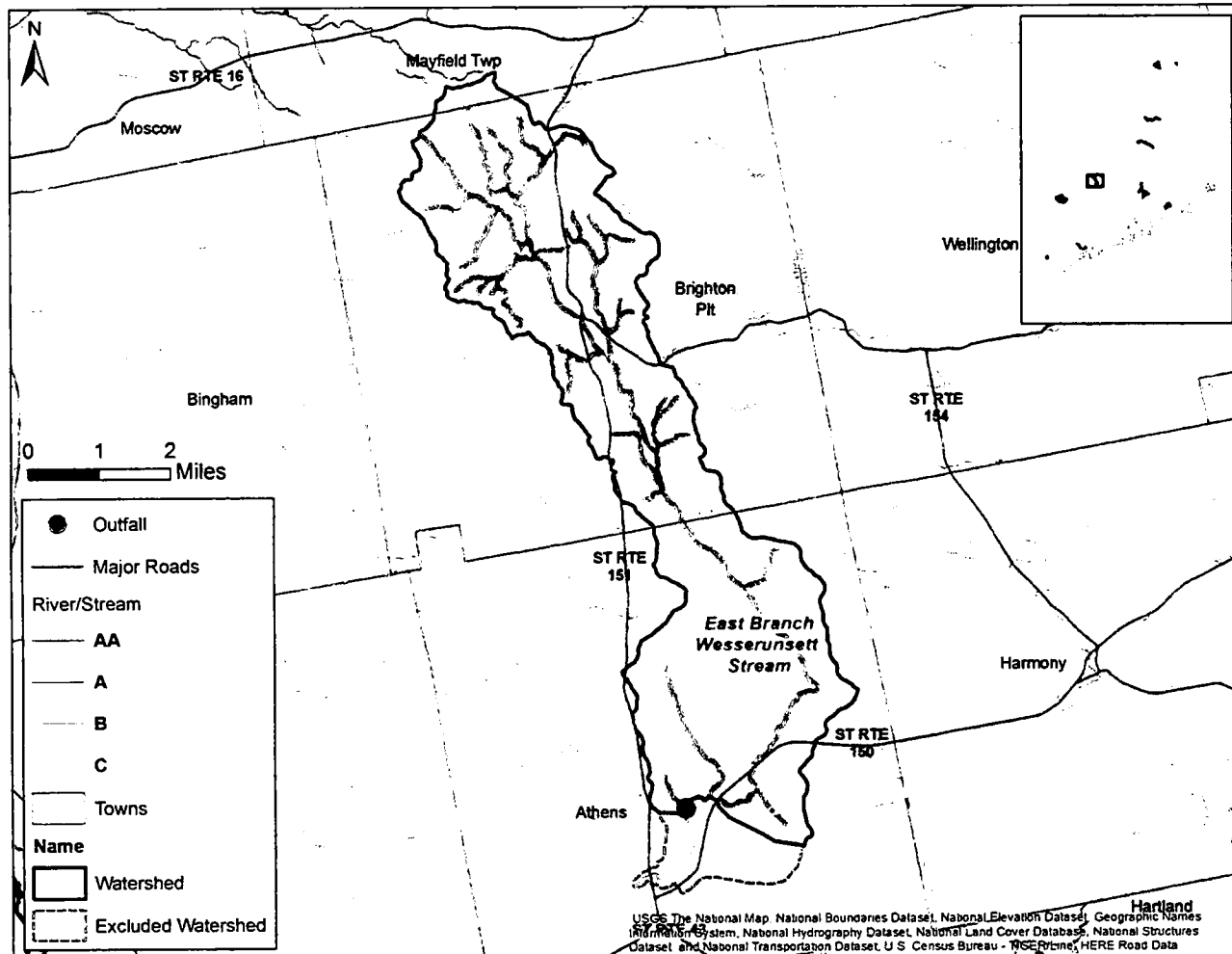
**Tributaries to Webb Lake/Webb River, Weld and surrounding towns.
Propose Class B to Class A (200 miles approx.).**



Recommendation: Tributaries to Webb Lake/Webb River (shown in green within black watershed line): Class B to Class A.

KENNEBEC RIVER BASIN

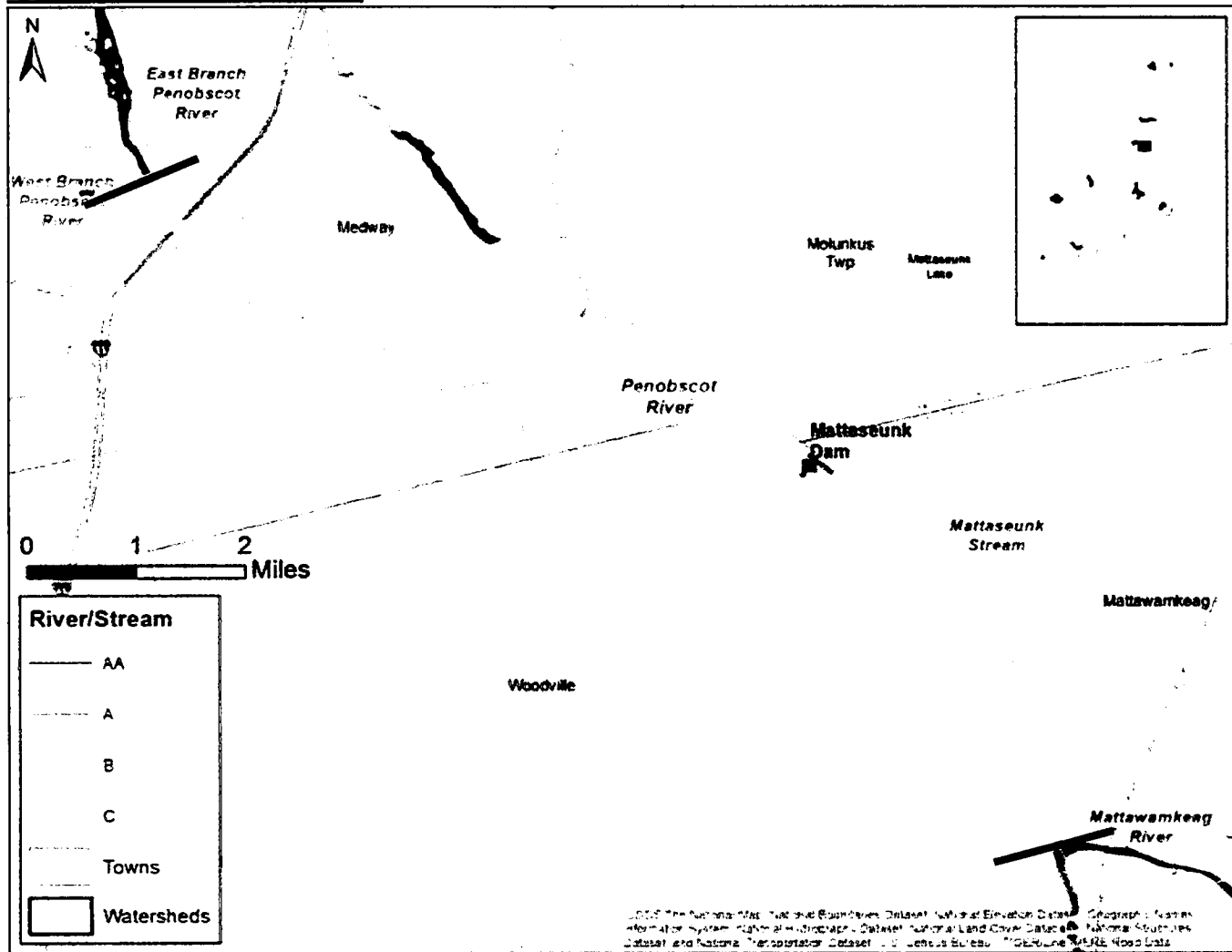
East Branch Wesserunsett Stream above the downstream Rt. 150 (Harmony Road) crossing, and all tributaries, Mayfield TWP, Brighton Plantation and Athens. Propose Class B to Class A (44 miles approx.).



Recommendation: East Branch Wesserunsett Stream and tributaries (shown in green within black watershed line):
Class B to Class A.

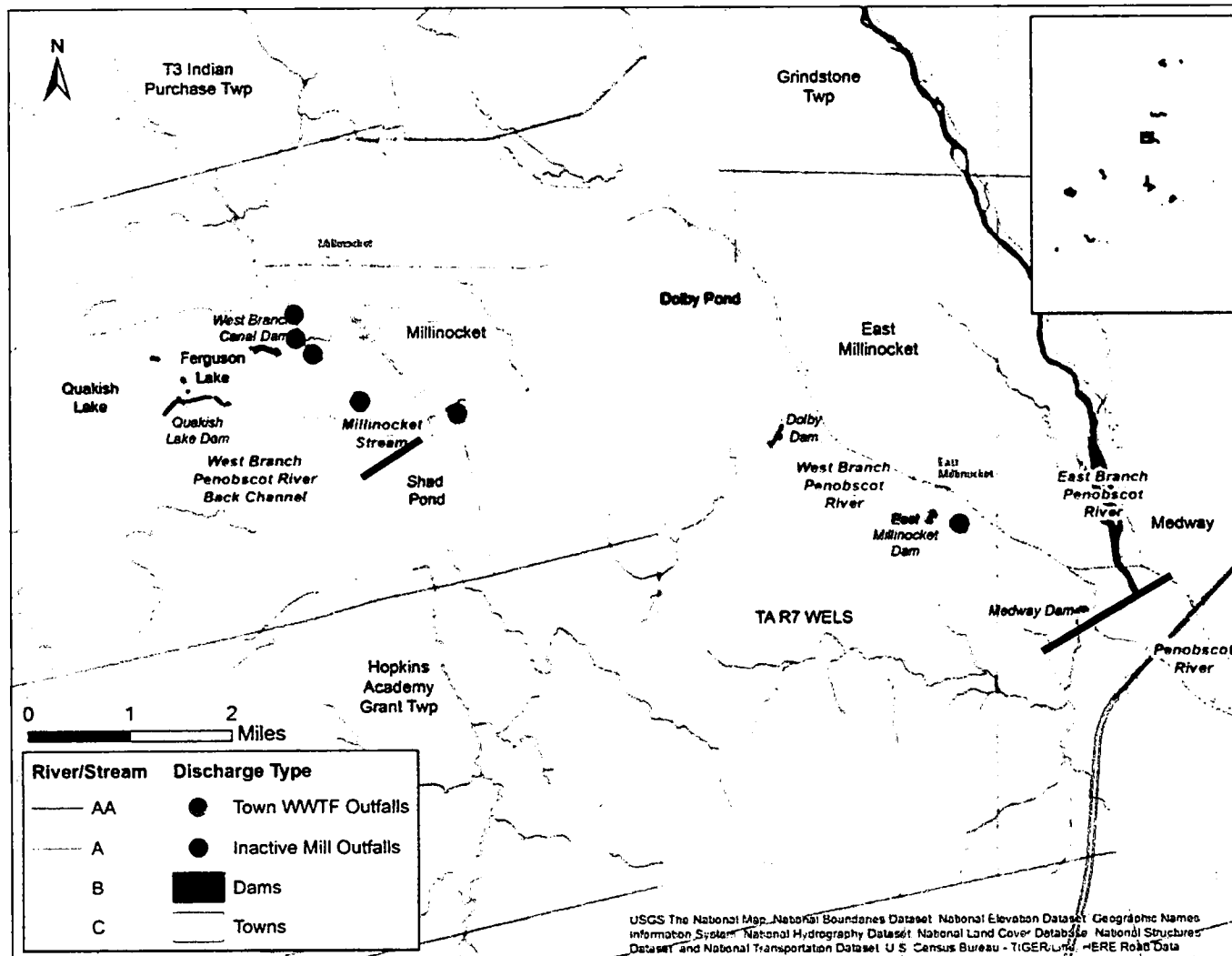
PENOBSCOT RIVER BASIN

Penobscot River, from the confluence of the East and West Branches to the confluence with the Mattawamkeag River, including all impoundments; Medway, Molunkus TWP, Woodville, and Mattawamkeag. Propose Class C to Class B (13 miles approx.).



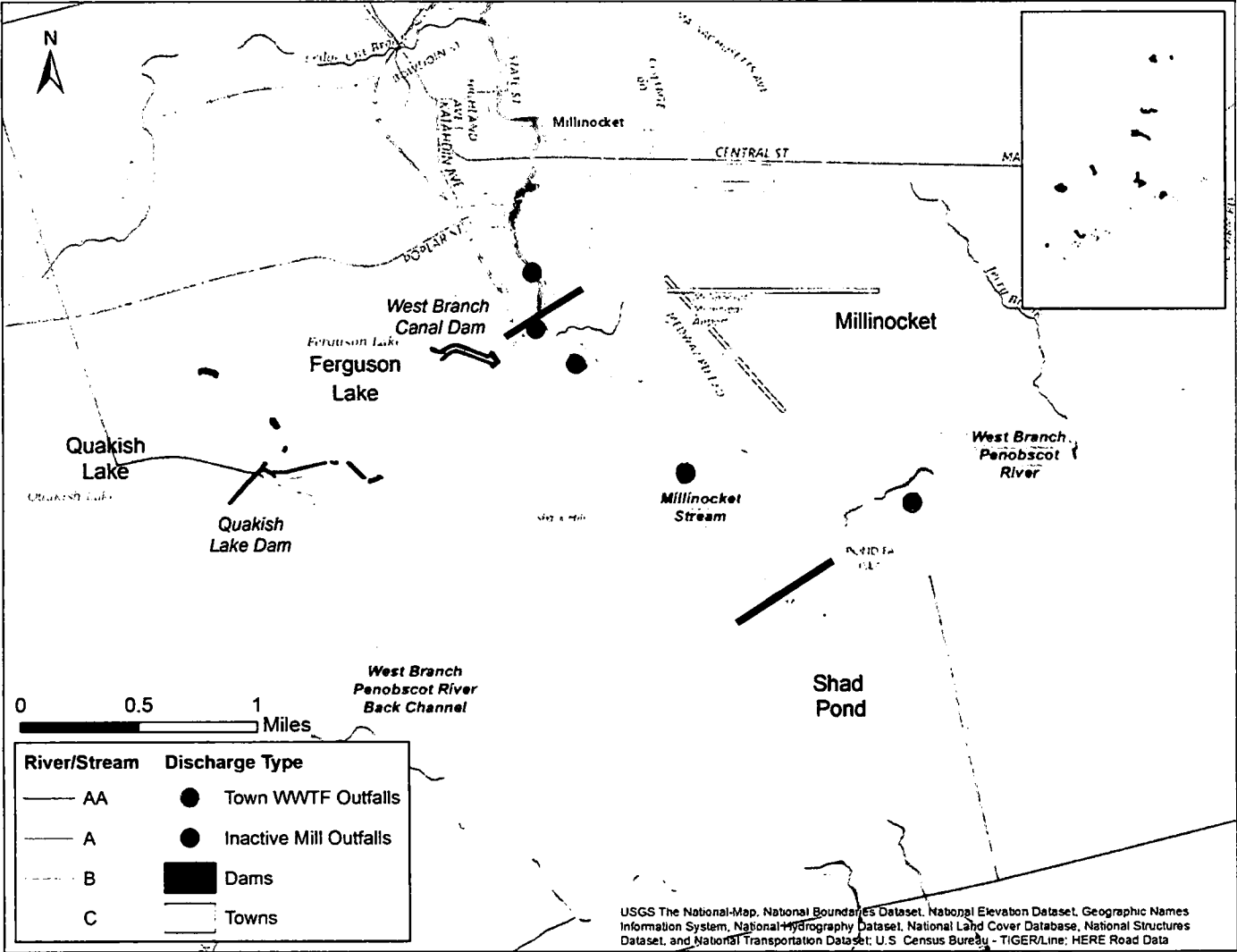
Recommendation: Segment of Penobscot River (shown in yellow) from confluence of East and West Branches to confluence with Mattawamkeag River: Class C to Class B.

West Branch Penobscot River from the confluence with Millinocket Stream to its confluence with the East Branch Penobscot River, Millinocket, T3 Indian Purchase TWP, Medway. Propose Class C to Class B (9.3 miles approx.).



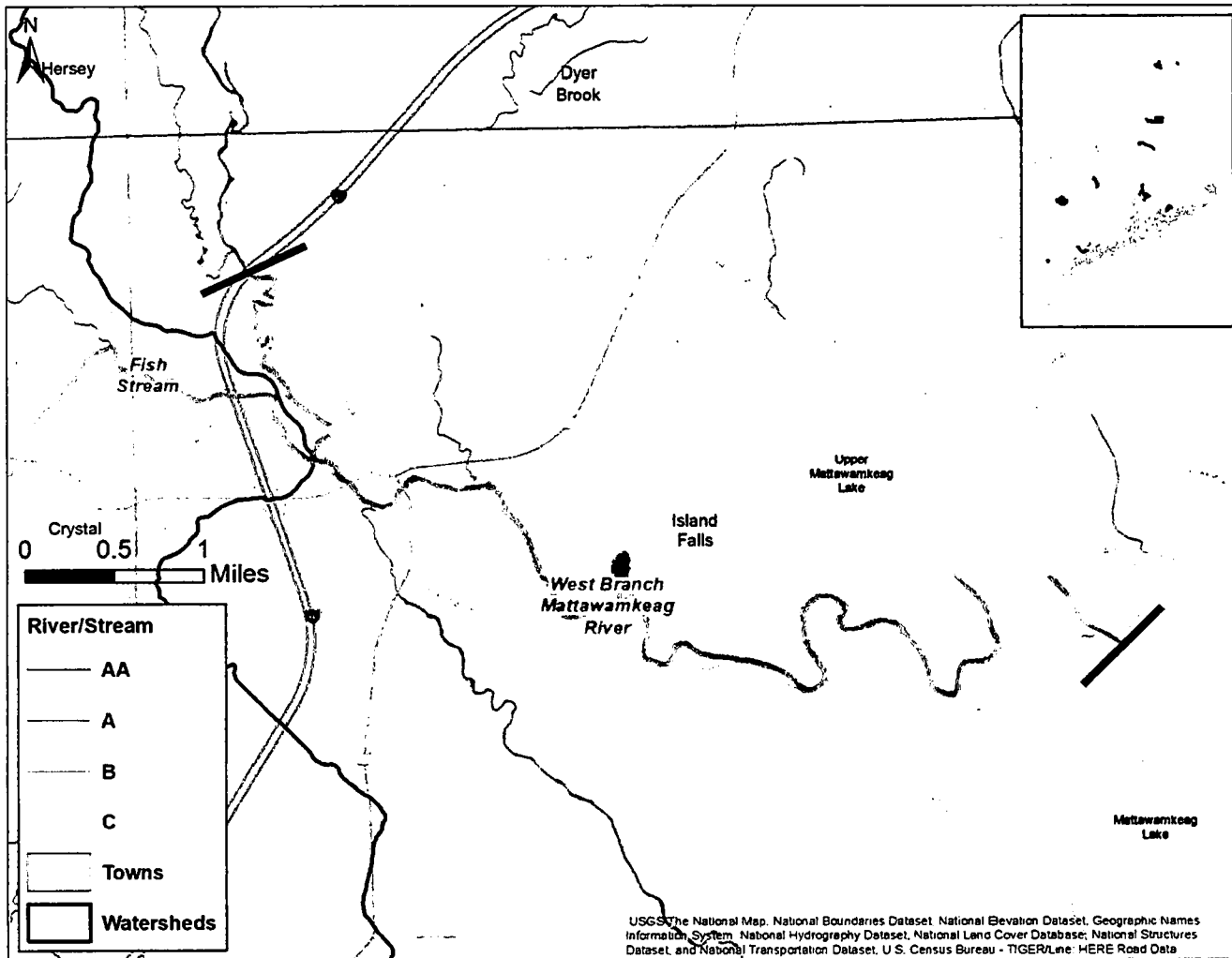
Recommendation: West Branch Penobscot River from Millinocket Stream to East Branch Penobscot River (shown in yellow): Class C to Class B (does not include Shad Pond).

Millinocket Stream from its confluence with the West Branch Canal to its confluence with the West Branch of the Penobscot River, Millinocket.
Propose Class C to Class B (2.4 miles).



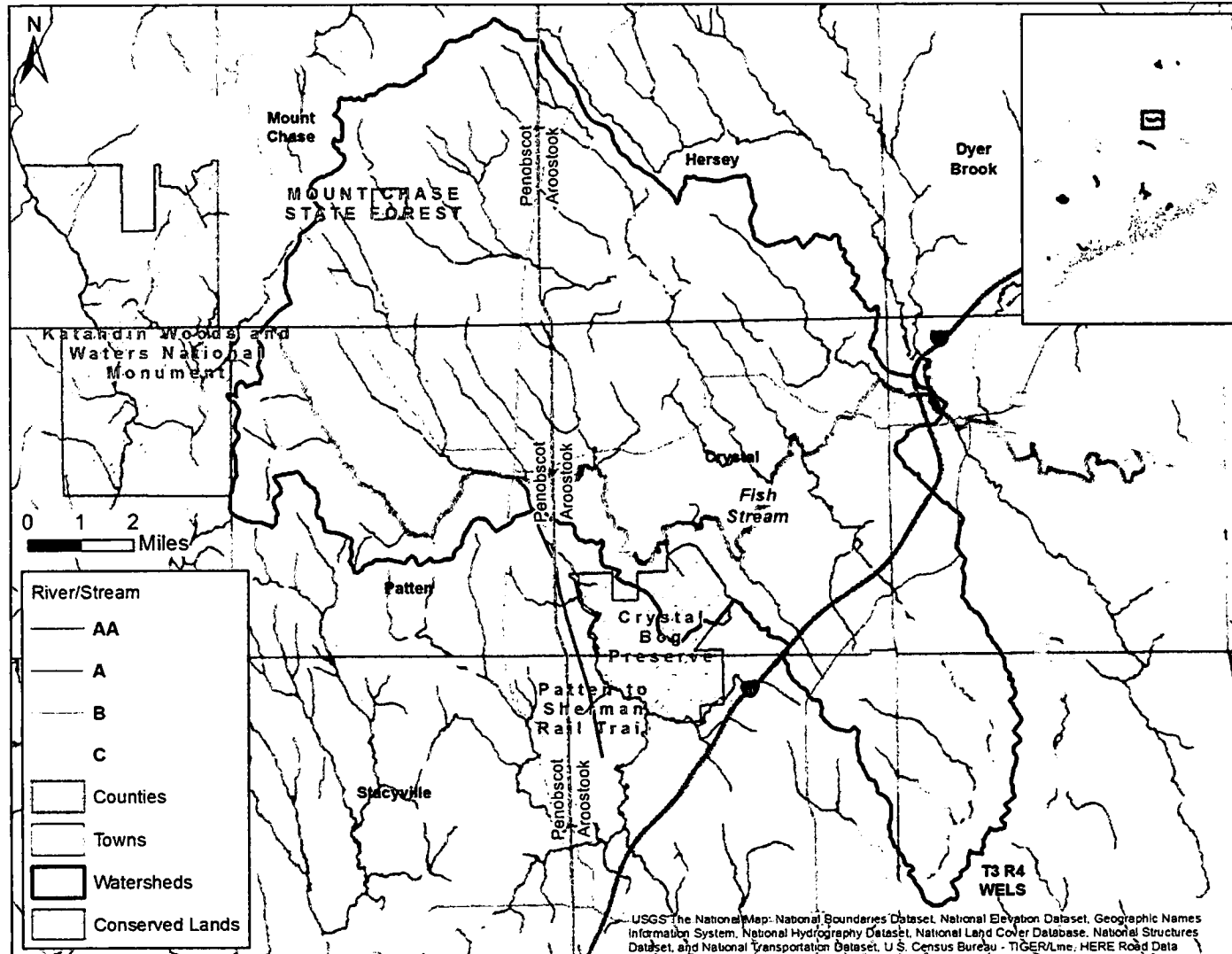
Recommendation: Segment of Millinocket Stream from West Branch Canal to West Branch Penobscot River: Class C to Class B.

West Branch Mattawamkeag River from Interstate 95 to its confluence with Mattawamkeag Lake, Island Falls.
Propose Class B to Class A (9.2 miles).



Recommendation: W Branch Mattawamkeag River (shown in green) from Interstate 95 to Mattawamkeag Lake:
 Class B to Class A.

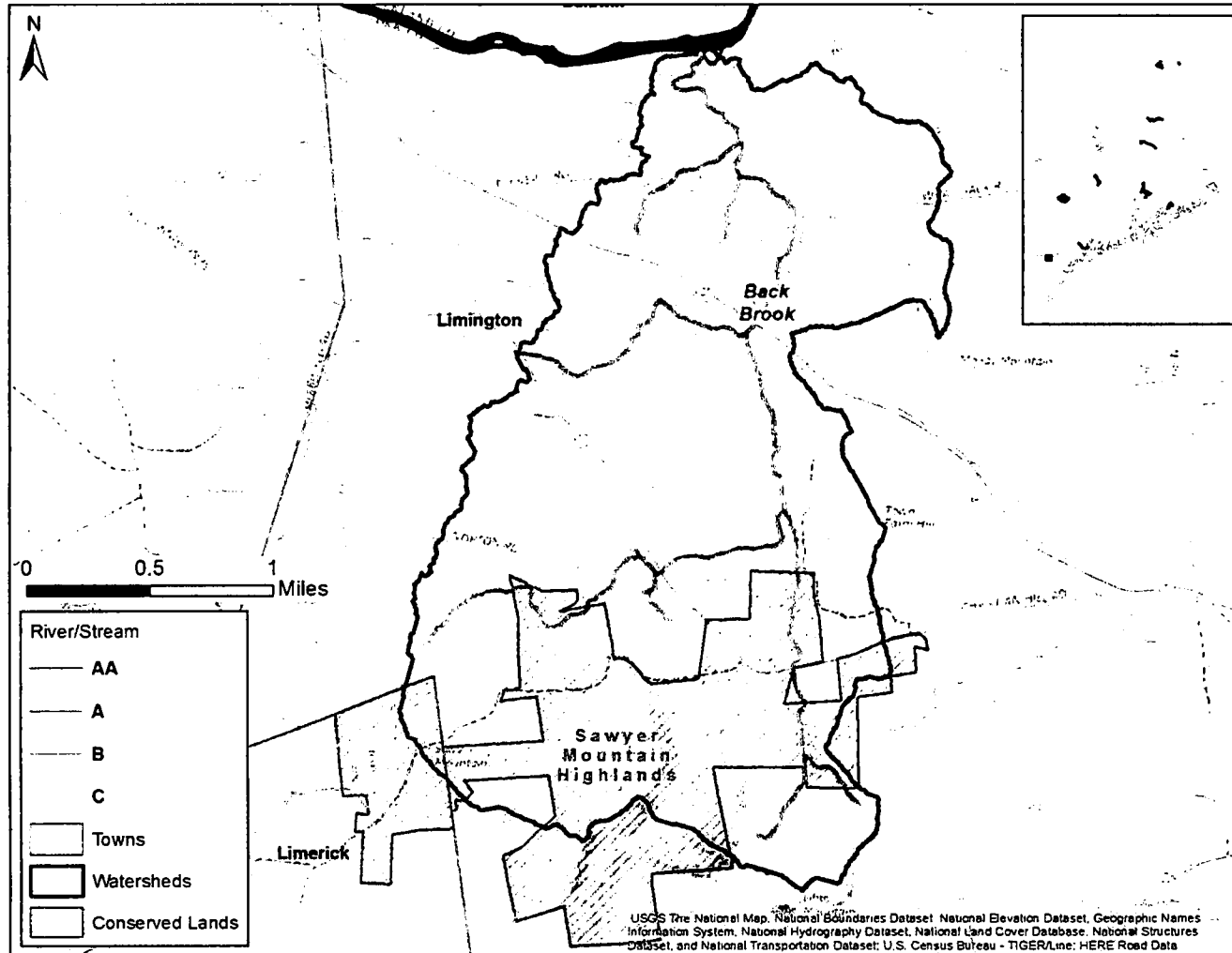
Fish Stream, Mount Chase, Patten, Crystal and Island Falls.
Propose Class B to Class A (25 miles approx.).



Recommendation: Fish Stream (shown in green within black watershed line): Class B to Class A.

SACO RIVER BASIN

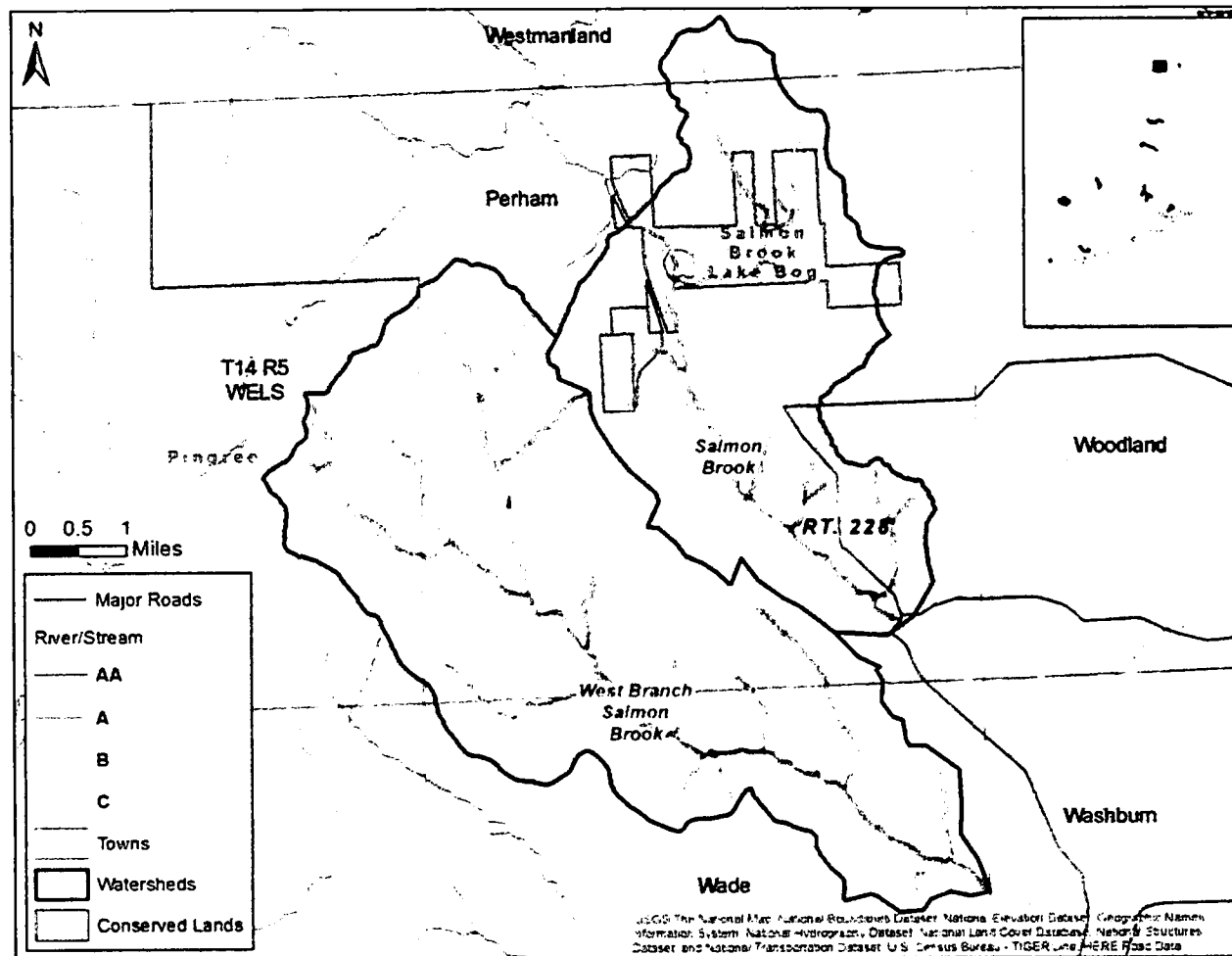
Back Brook and tributaries, Limington.
Propose Class B to Class A (13 miles approx.).



Recommendation: Back Brook and tributaries (shown in green within black watershed line): Class B to Class A.

ST. JOHN RIVER BASIN

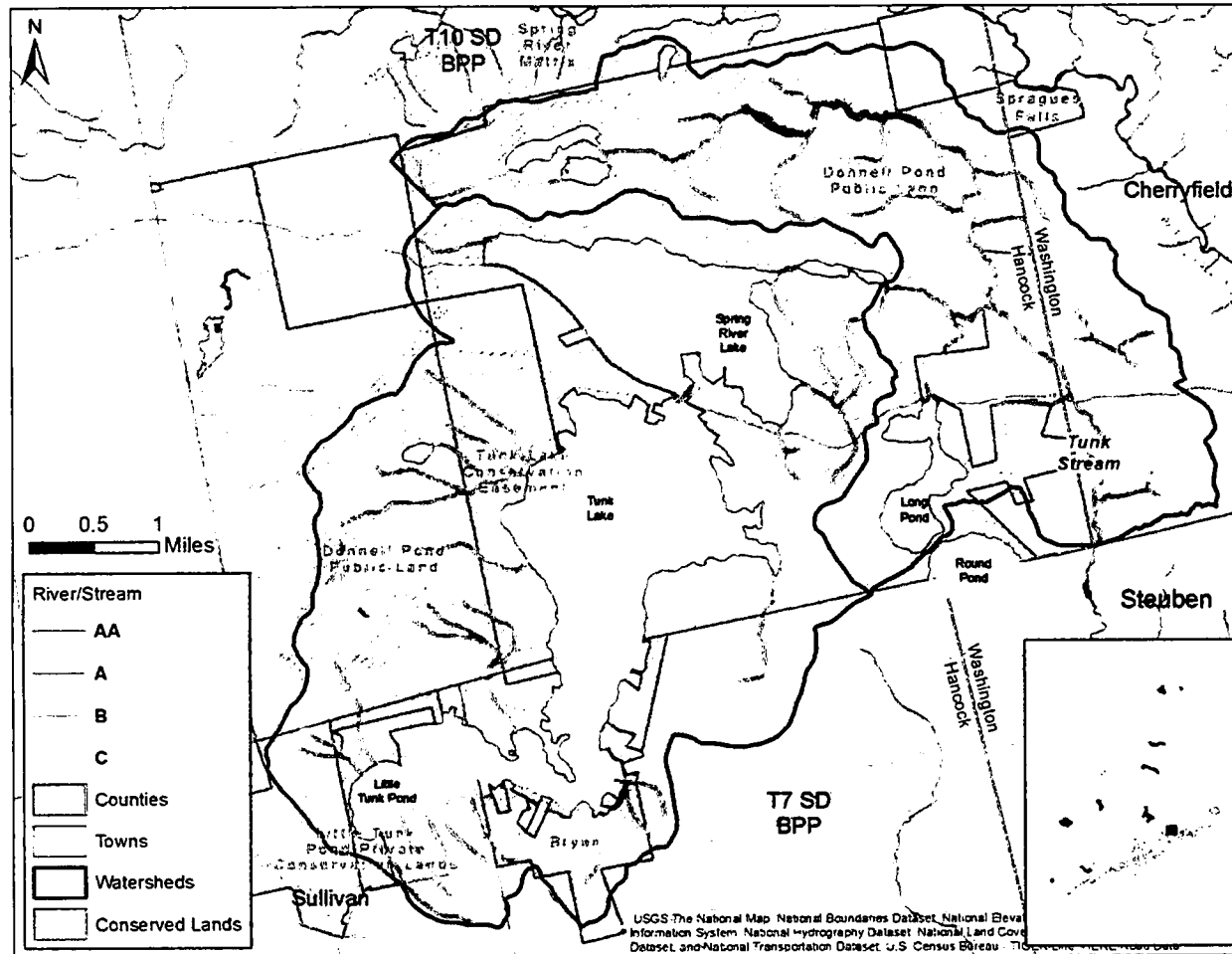
**Salmon Brook and tributaries above Rt. 228 crossing on main stem in Perham (Perham and Westmanland), and West Branch Salmon Brook and tributaries above the Washburn/Wade town line (T14 R5 WELS, Perham, Wade).
Propose Class B to Class A (48 miles approx.).**



Recommendation: Salmon Brook and its tributaries and West Branch Salmon Brook and its tributaries (shown in green within black watershed lines): Class B to Class A.

EASTERN COASTAL BASIN

Tunk Stream and tributaries (T7 SD, Sullivan, T10 SD, Cherryfield) upstream of Route 1, Steuben.
Propose Class B to Class A (68 miles approx.).

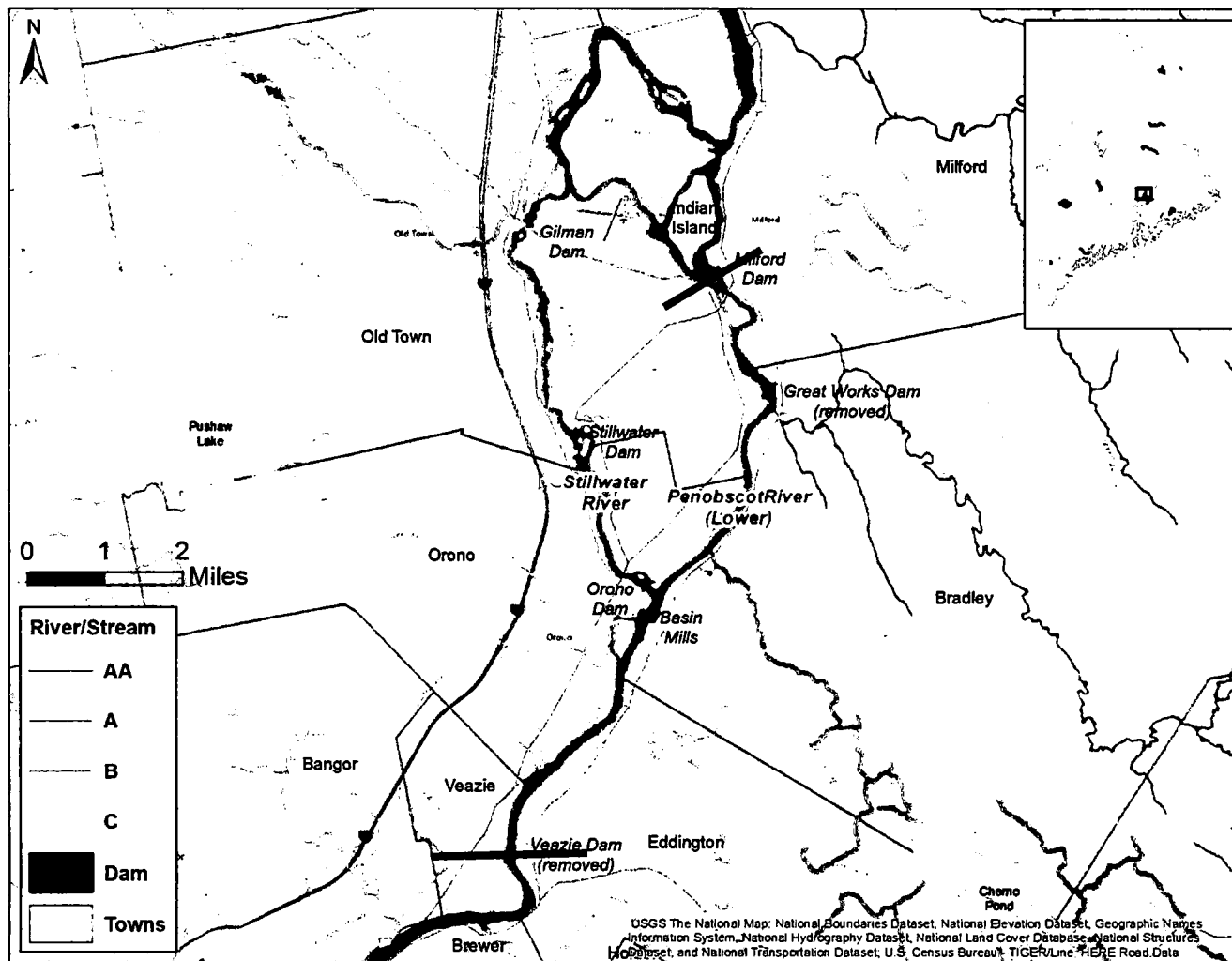


Recommendation: Tunk Stream and tributaries (shown in green within black watershed lines):
Class B to Class A.

AMENDMENT TO STATUTORY LANGUAGE

PENOBSCOT RIVER BASIN

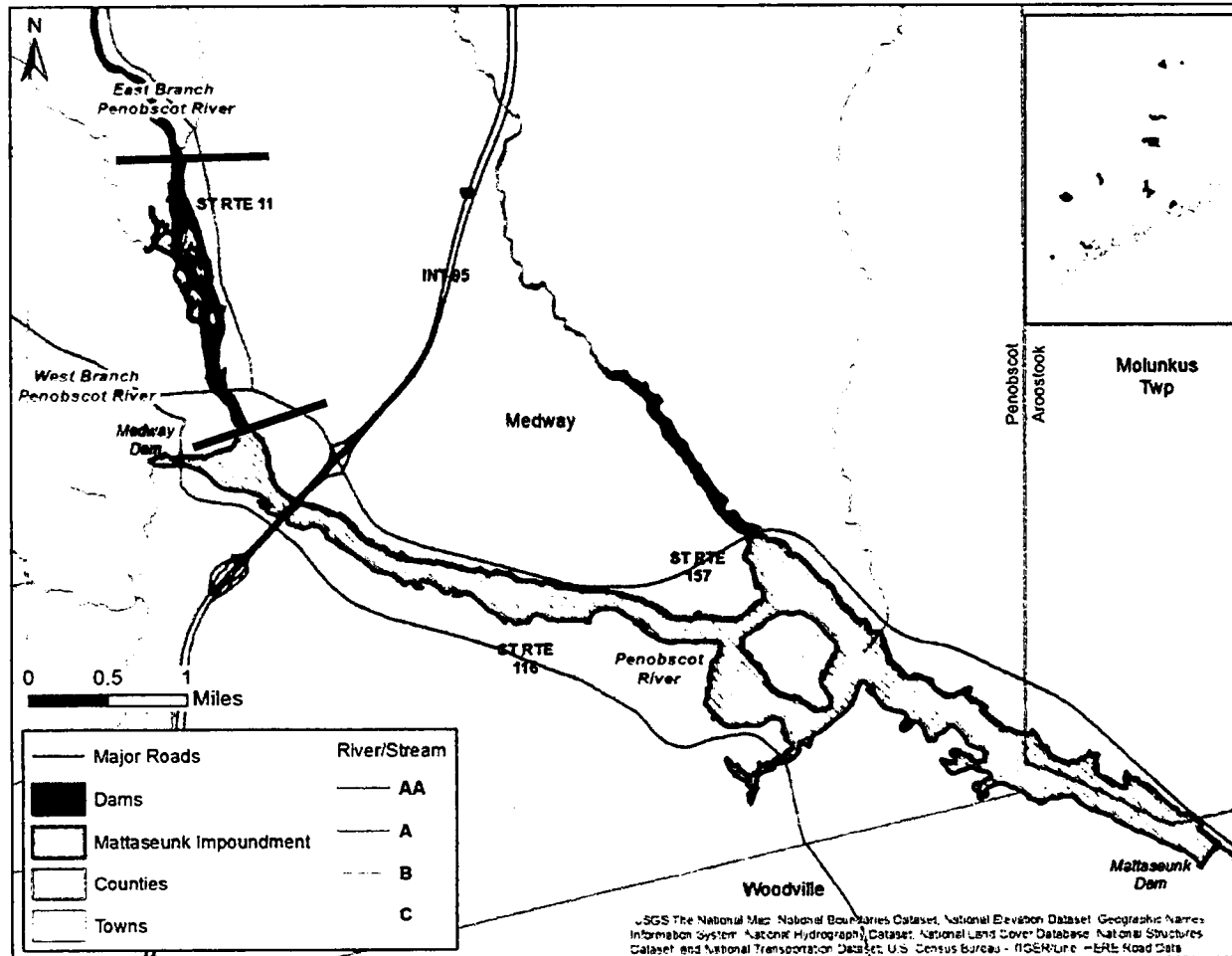
Penobscot River in Milford, Old Town, Bradley, Orono, Eddington and Veazie.
Propose amendment to language (9.4 miles approx.).



Recommendation: With the removal of the Veazie and Great Works Dams, extend the free-flowing designation of the Penobscot River upstream from Veazie to the Milford Dam.

CORRECTION OF CLASSIFICATION ERROR PENOBSCOT RIVER BASIN

East Branch Penobscot River from its confluence with the Mattaceunk impoundment to its confluence with the West Branch Penobscot River, Medway.
Correction of classification error (1.6 miles approx.).

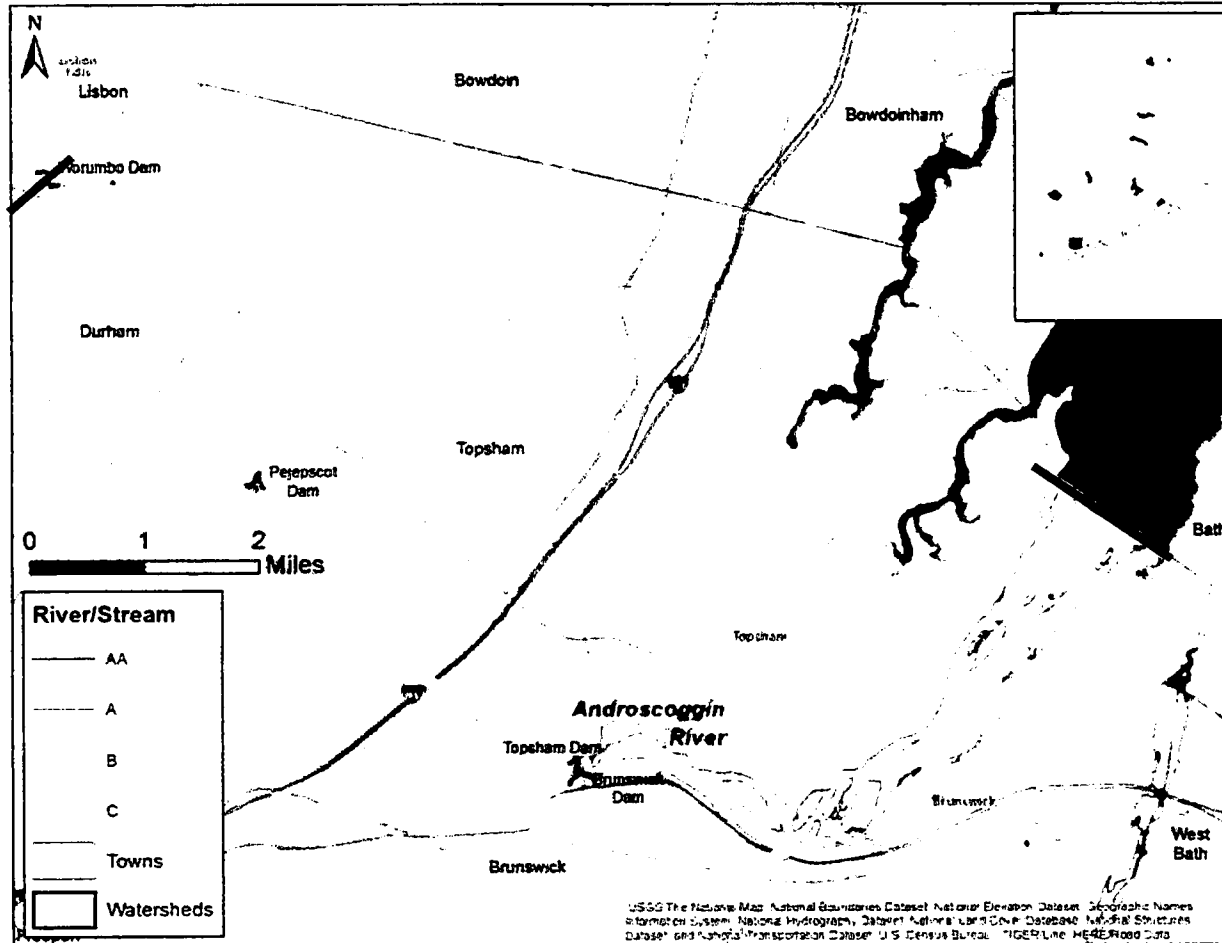


Recommendation: The segment of the East Branch Penobscot River shown in purple is impounded by Mattaceunk Dam and was incorrectly classified Class AA; return to Class B.

PROPOSALS NOT BEING RECOMMENDED AT THIS TIME

ANDROSCOGGIN RIVER BASIN

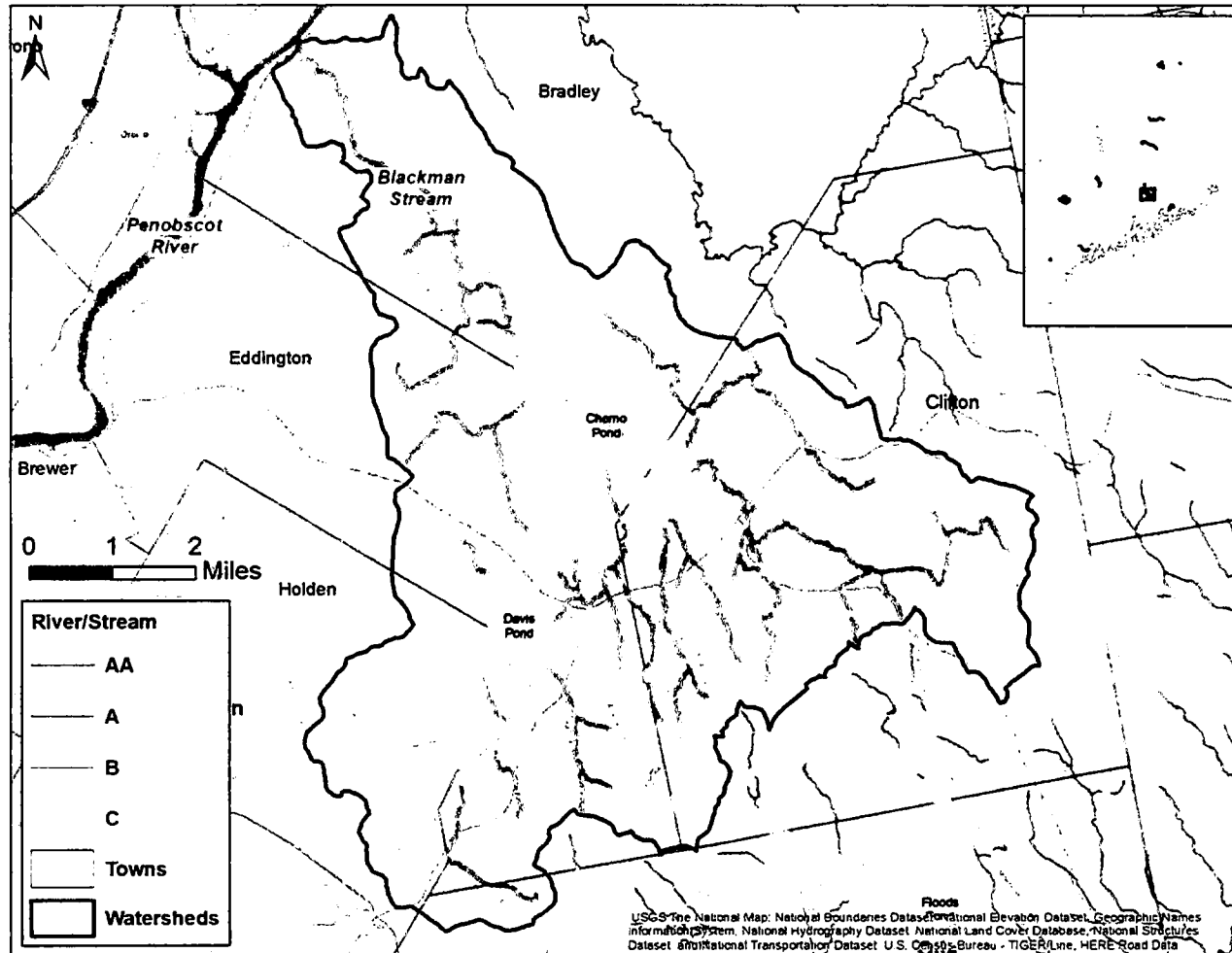
Androscoggin River main stem, Lisbon Falls, from Durham Boat Launch or Worumbo Dam, to mouth of the Androscoggin in Merrymeeting Bay (line between Pleasant Pt., Topsham and North Bath) Propose Class C to Class B (14 miles approx.).



Not Recommended: The segment of the Androscoggin River from Worumbo Dam to Merrymeeting Bay (shown in yellow) was proposed by Friends of Merrymeeting Bay for upgrade from Class C to Class B.

PENOBSCOT RIVER BASIN

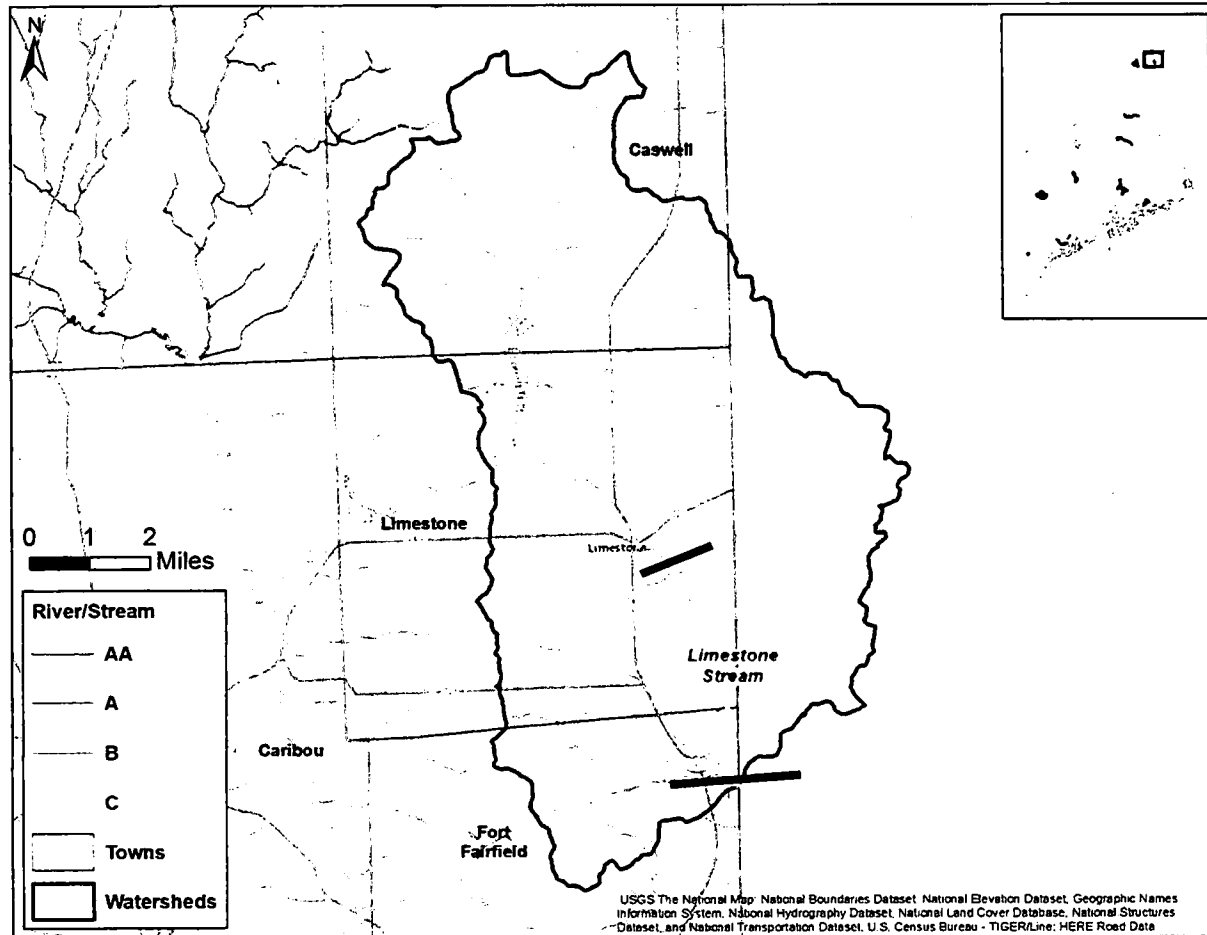
**Blackman Stream and tributaries, Bradley and surrounding towns.
Propose Class B to Class A (66 miles approx.).**



Not Recommended: Blackman Stream and tributaries (shown in green within black watershed line) was proposed by The Nature Conservancy for upgrade from Class B to Class A.

ST. JOHN RIVER BASIN

Limestone Stream, below Long Road, Limestone.
Propose Class C to Class B (4.5 miles).



Not Recommended: Segment of Limestone Stream shown in yellow within the black watershed line: citizen proposal for upgrade from Class C to Class B.