

upper confidence level on a single mean point estimate of a BAF, if a single BAF is appropriate for the state, or 2) the 95<sup>th</sup> percentile of BAFs to protect 95% of the waters, if BAFs vary with waters,” with the section regarding site-specific BAFs providing for a higher BAF if appropriate to protect specific waters (May 21, 2004 response from DEP to EPA questions seeking clarification). EPA believes this approach is consistent with established methodologies used to develop criteria, and allows Maine to be appropriately protective of all of its waters.

Subsection(1-B)(E) directs DEP to establish statewide ambient water quality criteria for mercury to protect wildlife, which EPA supports consistent with the goals of the CWA.

Section 1 of Chapter 418 (which enacts 38 MRSA § 413, sub-§11) relates to NPDES permitting and is not considered to be a water quality standard subject to EPA review and action under § 303(c) of the CWA. DEP, in its May 21, 2004 response to EPA’s questions seeking clarification of Chapter 418, clarified that references to antidegradation requirements highlight important antidegradation considerations and do not override or conflict with the antidegradation provisions at 38 MRSA § 464(4)(F).

**2. Chapter 574. An Act to Amend Water Quality Laws to Aid in Wild Salmon Restoration.**

Chapter 574 revises Maine’s Class AA and Class A provisions to allow discharges intended to assist in the restoration of endangered Atlantic Salmon. Waters classified as AA in Maine are considered outstanding national resources, and water quality is to be maintained and protected [38 MRSA § 464(4)(F)(2)]. We interpret “maintained and protected” to mean no new or increased discharges to Outstanding National Resource Waters (ONRWs) and their tributaries that would lower water quality, with some exception for limited activities that result in temporary and short-term changes in water quality (Water Quality Standards Handbook: Second Edition, EPA-823-B-94-005a, August 1994). However, the discharges that could be authorized by DEP based on Chapter 574 must be for the express purpose of assisting in the restoration of endangered Atlantic salmon by restoring water quality that has been degraded by anthropogenic activity. The Chapter 574 discharge provision is not an authorization to lower water quality in ONRWs. Further, EPA believes that the intent to restore natural ambient water chemistry to aid in the restoration of endangered salmon is consistent with the overall objective of the CWA at 101(a). Therefore, EPA is approving this limited discharge provision.