

## **MEETING SUMMARY**

### **Freshwater Wetland Restoration Strategy Topic Meeting 3**

October 1, 2010, 9:30 AM to 11:30 AM, RIDEM, Room 300

#### Project coordinators present:

Christine Caron, NEIWPCC

Carol Murphy, DEM Office of Water

Sue Kiernan, DEM Office of Water

#### Advisors present:

Scott Ruhren, Audubon Society of Rhode Island

Caitlin Chaffee, Coastal Resources Management Council

Peter Holmes, EPA Region 1

John Richard, Natural Resources Conservation Service

Rachel Calabro, Save the Bay

Wenley Ferguson, Save the Bay

John O'Brien, The Nature Conservancy

Chris Mason, University of Rhode Island Dept. of Natural Resources Science

Suzanne Paton, U.S. Fish and Wildlife Service

Chris Fox, Wood-Pawcatuck Watershed Association

#### Others present:

Russell Chateauneuf, DEM Office of Water, Chief of Groundwater and Wetlands Protection

Kelly Owens, DEM Office of Waste Management

Ron Gagnon, DEM Office of Customer and Technical Assistance

Lisa McGreavy, DEM Office of Water, Water Quality and Wetland Restoration Team

Martin Wencek, DEM Office of Water, Wetlands Permitting

#### Welcome

Christine Caron opened the meeting with a brief welcome and introduction.

#### Recap

Christine Caron provided a recap of the issues discussed at the last meeting on August 31<sup>st</sup>.

- ✓ Regarding goals: There was agreement for establishing statewide goals with restoration planning and goal setting also appropriate at a watershed level.
- ✓ Regarding site ID: There was discussion about the MA aerial photo time lapse method as a possible tool for statewide ID of restoration sites, but it was understood that the method may only ID gross areas of fill. However, the discussion led to the recommended updating of statewide wetland maps. At the watershed level, there was support for the idea of applying site ID in more focused areas within a watershed, such as around existing efforts and protected areas. It was also agreed that local knowledge and the knowledge of various DEM offices and experts could contribute ID sites.

- ✓ Regarding monitoring: It was noted that it is important to make sure the restored area functions as wetland and that the wetland should be assessed in relation to the project goals. It was suggested that DEM work to standardize monitoring protocol and provide technical assistance to local entities to implement. It was also noted that the monitoring results should be used to look back at what works and what doesn't work.

### **Permitting**

Russ Chateaufneuf led the permitting discussion. Russ began by noting that the DEM Wetland Task Force (2001) had recommended four phases of rule revisions. The program has completed three of the phases, but the fourth phase to help address permitting of wetland restoration projects has not been completed to date. The recommendation was to develop a streamlined process. Internally, the Water Quality and Wetland Restoration Team (WQ/WR Team) was formed to provide targeted preapplication assistance and coordination. The Team has been successful and has learned a lot about how to go about projects and it helped in the crafting of some regulatory rule changes.

Russ continued by outlining some of the issues that the Department has heard, experienced or has worked to address, which included:

- Many restoration applicants want to be treated differently than the average applicant because they are considered partners and feel they share the same goals as the Department. He explained that in the Wetlands Program, there can be divergent opinions over what to do to protect wetlands, which can be complicated. There is usually agreement, but when there are differences of opinion, they work to address them.
- The Department has already defined some restoration terms in rules and taken the action to reduce the fees for restoration projects. Years ago the fee was related to the amount of wetland disturbance (i.e. 1 acre wetland disturbance could cost over \$1000), now there are flat application fees for wildlife habitat projects or water quality improvement projects: \$100.00 for a Requests for Preliminary Determination application and \$300.00 for an Application to Alter a Freshwater Wetland.
- The costs to submit, prepare, and pay for necessary professional assistance is sometimes a burden to project proponents – people ask if there a there a way to reduce the amount of work needed. With limited project funds, sometimes there is barely enough for the construction phase of a project.
- A recurring issue is the conflict between multiple goals, even within the Department. For example, the TMDL program works with impaired water bodies, and often includes in the plans the building of stormwater BMPs in highly developed areas – they have to look at the available land to build them. The wetland rules indicate that wetlands are not to be used for water quality treatment.
- The Department is committed to complete another Rule revision to address restoration projects at some point; don't know when.

- Russ also highlighted some issues that were raised at the Restoration Strategy kick-off meeting on July 7, 2010 including 1) the need for a permit to restore to prior conditions (for example, dam removal projects propose to alter existing wetlands that were created by the dams prior to the Wetlands Act (1971) - the rules are not directive on this issue); and 2) other questions that arise are how to deal with sediment accumulation in wetlands that can destroy them overtime and with wetlands that are contaminated (scoop them out or allow for natural attenuation).

Russ then opened the discussion to the group and invited feedback and ideas. Comments noted include the following:

Regarding sediment issues and testing:

- By DEM: Contaminated sediments don't fall easily into the site remediation process (i.e. the issue comes up with fish ladder or dam removal projects). The Office of Technical and Customer Assistance is interested in developing policy on how to deal with this better. EPA has a contaminated sediment strategy that they are hoping to use.
- By Advisor: Agreed, that sediments in waterways/streams are problematic to deal with – DPWs want to remove road salt and sand that has washed in – is there a way to make this easier or to develop a policy on how to treat this?
- By DEM: The DEM Restoration team has worked on a number of fish ways and both DEM offices and partners have learned a lot about the permitting of fishways, including that there are sediment issues.
- By DEM: Dioxin is a tough issue to deal with because it so expensive to deal with it if you find it.
- By Advisor: Suggested that applicants/proponents could work with DEM before the permitting stage to develop a sediment sample plan in the assessment phase, that way less money would be spent on sampling at the permitting stage if some guidance were provided on what kind of sampling should be done.
- By Advisor: If DEM could come up with some standardized protocols or design treatments, it would save project proponents on the cost for professionals (a lot of money is spent on going to meetings to develop the protocols).
- By Advisor: The more guidance DEM can provide on what the outcome should be, the more beneficial and more cost effective for restoration proponents. However, there are some issues on how to best design guidance, for example, just setting benchmarks doesn't always fit the situation and it is sometimes difficult to write guidance that doesn't inhibit the process.
- By Advisor: The costs of lab results can be expensive, especially to send to certified labs (DOH). Colleges/university labs might be cheaper? By DEM: State law exists on lab certification if providing a public service; need QA/QC certified for certain parameters. By

Advisor: If a university is a partner, then maybe they could do samples at the assessment stage, then at the permitting stage, a certified lab could be used. BY DEM: The State has master price agreements for competitively priced labs; currently municipalities can use them also; maybe look into if partners could use these also (if cheaper). DEM has observed that lab costs have been decreasing because of better instrumentation.

- By Advisor: A lot of the cost of sampling is for the collectors; could save money if volunteers or a university could do collection.

Regarding process:

- By DEM: In 2001, there was the idea of expanding the exempt activities; with the 2007 rules, they were expanded to facilitate invasive plant control projects and planting projects. The problem with exempt activities is that then anyone can undertake the exempt activity, and DEM has to be careful that they are not authorizing activities that might result in damage to wetlands. Some conservation activities completed by DEM or US Fish and Wildlife on land owned by the State or federal government are exempt.
- By DEM: According to the 2007 rules, cutting and clearing of invasive plants can be authorized by the DEM WQ/WR Team. The Team sees these types of projects frequently in the summer. The Team has a standard list of questions that are asked, also requests photos and asks about monitoring. A Team authorization letter is issued to proceed with the project. The rule exemption presumes that if the Team is not comfortable with the project, they could direct the applicant to file a wetlands application, and the Team could then provide pre-application guidance to ensure a complete application is filed.
- By Advisor: If the project is IDed as restoration, maybe the process could become more streamlined. However, restoration projects might be too complicated to be considered exempt activities. By DEM: The benefit of the Team for preapplication assistance is the Team sees who is coming in, what experience they have (i.e. a teacher; the team could advise them how to get assistance) – the team is able to look at who, why, what land, what technical expertise they have.
- By Advisor: There are issues with the costs of sediment and in-stream management, once it is found not above toxic thresholds.
- By Advisor: Expect to continue to see dam removals for small dams; might be an opportunity to do these projects in more simplified, streamlined way (i.e. a separate permitting track for this type of projects; examples in NH and MA). May see some of the dams failing and projects to remove remnants. These projects restore the function/values of stream corridors; there are also culvert and river continuity projects.
  - MA – sediment standards work well; also aquatic life protocol; well laid out and easy to get started.
  - NH – has a dam removal restoration webpage and separate form to fill out.
- By Advisors: There is a difference in cost/complexity for a project involving a significant alteration versus an insignificant alteration. The “Formal” process is more burdensome,

and sometimes working right in the wetland is viewed as a negative. Advised that there are some legal issues to work on. Asked if it is possible to have a different set of criteria if restoration is a significant alteration?

- MA – wetland permitting is through local conservation commissions – can write a permit or not based on functions and values, might cause a change in wetland type (trade off) rather than the extent of wetland change, as long as there are not endangered species. MA has guidance on this (took a long time for MA to get to this). Sometimes the local conservation commissions have issues with the wetland change, but often the restored condition is better and longer lasting than the impoundment (because it fills with sediment).
  - Another Advisor: Making the significant impact call on ecosystem functions is tough. Where is the impact threshold, for example, with nitrogen fixation?
  - Another Advisor: DEM must also think of hazards from flooding when determining significance.
- By Advisor: There can be upstream and downstream impacts associated with a dam project – a question is how to get around this issue and the landowners with the Application to Alter.
    - A lot of the requirements in the Application to Alter application need to be completed when designing the project.
    - For dam removal projects, it is good to have public notice, but have to figure out how to make it not burdensome.
    - By DEM: The Wetland Rules have been changed to allow applicants to submit an application without requiring signatures of property owners whose wetlands may be altered as a result of the project. The Rule revision applies only to certain dam removals (where a flowing river, not an impoundment).
  - By Advisor: Suggested getting together with Ken Ayars (DEM Division of Agriculture) to try to ID restoration activities that should not be considered significant alterations; DEM could possibly ID types of projects under the agriculture exemption in which case restoration could be done through the Division of Agriculture. May not need a rule change if DEM can provide examples of insignificant restoration activities (guidance) so that the WQ/WR Team could get an idea that a project done in a certain manner would be an insignificant alteration.
    - Another advisor: The permitting process with Agriculture works well. They meet in the field to discuss projects.
    - DEM explained that for projects by a farmer, insignificant alterations to wetland are permitted by Agriculture and applicants for significant alterations are required to go through the “Formal” (Application to Alter) process through Wetlands.
  - By Advisor: Regarding invasive control in the coastal zone, an applicant has to go back to the Division of Agriculture for a yearly permit for herbicide control; if someone has a permit for 3 years of treatment from CRMC, could they also get a permit for 3 years of treatment from Agriculture?

- By DEM: Need to find out whether they have the flexibility to do that under the pesticide statute; if it was able to change, would probably still want/need to certify that they are no new wells, the applicator is the same, etc. Things can change over a 3 year period and the concern is for people's health.
- By DEM: Also note that there may be future requirements by the RIPDES program in terms of permitting herbicide usage in waters in response to a court order to EPA due to health concerns
- By Advisor: It was suggested that DEM and CRMC join efforts on the invasive management training to include freshwater wetlands.
  - By DEM and CRMC: DEM wetlands has been invited, but has not participated as a trainer to date. CRMC has requirements for certified "Invasive Managers" – not sure how DEM would fit it into the training as the agencies invasive control authorization processes are different. CRMC will not necessarily adopt the same wetland rule exemption for invasive control projects that DEM has.
  - The CRMC program is geared toward upland coastal buffers – started because it was not permitted before – targeting individual property owners for small scale projects (not "wetland restoration", i.e. not treatment of *Phragmites* at this program). The program outreaches to landscape professionals, related to the coastal buffer regulations.
  - CRMC maintains a list of people who are certified and it might be good for the DEM WQ/WR Team to refer project proponents to the list.
  - A lot of jurisdictional wetlands have the same invasive species that are talked about at the training.

### **Coordination**

Carol Murphy led the discussion on coordination. Carol noted that coordination is an important issue to address, and that it is currently happening under grant programs, the habitat restoration trust fund, NRCS technical teams, and around projects with multiple partners. DEM also coordinates with its Restoration team and the OCTA office for questions and answers. The topic for discussion is whether there is enough coordination. In the past there was the RI Habitat Restoration Team that was formed about 10 years ago and was working with different resource types (eelgrass, etc.). The team was lead well by multiple agencies, but has not met in the last couple years. Is there a need for any more overarching coordination or team?

Comments arising from the discussion included:

- There is a plan to resurrect the RI Habitat Restoration Team and there is a plan for a meeting on November 9<sup>th</sup>. The structure will be similar to report out to others, but would also like to create some subgroups (i.e. for shellfish, eelgrass, fish passage, etc.). The larger team would likely meet 2 or more times a year and then the groups could have issues they are dealing with and hear about what is going on.
  - There were some subgroups before related to a habitat restoration strategy.
  - There would probably be a lot of cross over between wetlands and fish passage; also river connectivity and fish passage – could join or have coordination between groups.

- Suggestion to take anadromous fish out of the description and just call it habitat connectivity and passage because it is beneficial for all groups.
- There are also wetlands adjacent to watercourses that may be restoration opportunities.

Question by an Advisor regarding how early the PGP group gets involved with projects and continuing discussion about the PGP. Advisors responded:

- It is always valuable to get involved earlier, which a lot of times the group does. Someone involved has to know the threshold is met, and the group is normally invited to pre-application meetings.
- Might want to look further at the flow process for different projects that meet PGP or Individual Permit.
- Would be ideal to get a general permit category at federal level for these projects or individual permit with a general permit to cover a number of activities in the state.
- There are thresholds for RI PGP, if a project might exceed the PGP, then need an individual permit, it handles all sorts of activities/projects.
- Would be good to expedite federal review.
- In MA – they added culvert standards to the Mass PGP.

By DEM: Getting the RI team reactivated in a step in the right direction, but there is not a single person obligated to pay attention to restoration on a statewide basis. Would be good to have a larger picture coordinator; benefit to have a holistic approach (i.e. how much restoration has been done this year?). To help facilitate on a statewide basis, it would probably need to be someone's responsibility. Responses included:

- There is tracking on trust fund projects, but there is so much occurring in upland, fish and wildlife, forestry. This has always been a limitation, would be great to have a holistic approach.
- There were projects listed on the Habitat restoration portal, but it is outdated. It will be taken down and will work to update the database of projects (they have all up to 2004 and all the trust fund projects).
- The RI Restoration list serve is a good tool, and it is important that it be maintained.

### **Conclusion**

Christine Caron concluded the meeting and informed the group that the next meeting would be scheduled for the first week of November.