

## **Wetland Task Force Meeting Notes – January 31, 2002**

Meeting Attendees:

J. Reitsma, B. Wolfenden, F. Golet, H. Ellis, C. Horbert, D. Riding, E. Holland, M. Wencek, C. Murphy, S. Ely, C. Mason, S. Coffey, K. Beaver, A. Walsh, E. Marks, P. Holmes, R. Chateaufneuf, A. Good, and T. Getz

The Wetlands Task Force met on Thursday January 31, 2002 to discuss the DEM's progress in implementation of the recommendations of the Permit Streamlining Task Force. The Director started the meeting and welcomed all attendees and thanked them for their continued work on this project. He mentioned the purpose of the meeting was for DEM to provide a wetlands update and to provide the members an opportunity to evaluate the Wetlands 2001-Year End Report dated January 28, 2001, that includes an update of the recommendations made by the Task Force. This self-evaluation process is a good tool that should be used in other parts of DEM. In addition this report shows that DEM is being responsive to the recommendations of the Task Force.

### **1. Accomplishments to Date**

Russ Chateaufneuf gave a brief overview of the progress on regulatory issues.

#### **Regulation Development**

- Two wetland rule amendments were completed: the first amendment effective January 2001 established uniform appeal periods; the second amendment effective in September clarified DEM and Coastal Resources Management Council (CRMC) regulation of freshwater wetlands among other things. (Additional information can be found in the report in Table 3 – Proposed Revision #1).
- Along with the Phase 1 rules, the Memorandum of Agreement with the Coastal Management Resources Council was finalized. This agreement formalizes our respective permitting and enforcement responsibilities for freshwater wetlands.
- Phase 2 rules under development include a revised fee schedule and a reorganized rule structure. Cynthia Giles, using contractual assistance through NEIWPC, evaluated the Wetlands regulations and made recommendations to DEM for their reorganization. (Table 3 – Proposed Revision #2). Russ indicated that Ms. Giles is now working for the state of Massachusetts, but Mr. Rusty Russell, (formerly with the Conservation Law Foundation) an environmental attorney, is continuing her work.. He has developed a first draft reorganized rule and they are being reviewed. Internal review of this document will be completed by the end of February. When DEM finishes this review, DEM will distribute the draft to interested members of the Task Force to review these proposed changes. Ms. Giles also reviewed the Wetland Task Force Final Report, dated March 2001, and made additional recommendations concerning noncompliance, cumulative impact, and permit processing which are listed in Appendix B of the year-end report.
- DEM will convene a meeting of stakeholders in March/April to review these recommendations before DEM revises its workplan in June.

#### **Permit Streamlining**

- The Freshwater Wetlands permitting program is fully staffed. One of the major reasons for time delays in the review process is the time when a permit is in the queue waiting to be processed. DEM has reduced the backlog by 50 submissions and had reduced the review time for submissions. Appendix C of the year-end report provides additional details of this progress. In summary, by the end of 2001, approximately 40% of Preliminary Determinations were being processed within 30

days and more than 71% were being processed within 65 days. The average PD decision time for year 2001 was 77 days (versus 121 days in year 2000). This represents a 36% improvement.

- This year DEM is making a concerted effort to improve application quality by improved outreach. Additional assistance has been made available through NEIWPC through EPA funding. Improved application quality will reduce deficiencies and will expedite review by minimizing multiple reviews. The program has begun to reject applications that are seriously deficient. DEM conducted two wetlands training opportunities this year that were developed to help wetlands consultants and the municipal officials prepare better applications.

### **Non-regulatory Update**

Carol Murphy continued the presentation. She mentioned that DEM has implemented approximately 50% of the Task Force recommendations. She then updated the group on other wetland projects including the following:

- DEM prepared comments on 2001 wetland legislation, including the in lieu fee mitigation bill.
- DEM also prepared a white paper on aquatic weed permitting in response to questions from the legislature and application guidance is now being drafted for permitting these projects. A comment was made that controlling the water level of dams is another way people control weeds and DEM should evaluate this mechanism. The director agreed that this issue needs further discussion.
- Policy staff also researched dam projects and rule revisions are being drafted as part of Phase 2, to tailor application requirements in response to the Dam Safety Task Force.
- DEM staff worked on a Freshwater Wetland Restoration Planning project with URI. This project was funded by EPA, investigated freshwater restoration opportunities in the Woonasquatucket watershed. One hundred and forty six potential wetland restoration opportunities have been identified in the watershed and landowners have been contacted so URI can visit properties and confirm the restoration potential. Thirty-six potential restoration sites were identified and evaluated, including restoration cost estimates.
- DEM participated in a Vernal Pool Protection project with URI and EPA. URI developed a vernal pool web site viewable at <http://www.uri.edu/cels/nrs/paton/>. This website includes information on the characteristics of vernal pools, how to identify them, and indicator species.

In addition, Carol highlighted the following statistics in the report:

- DEM, through its land acquisition program, acquired 58 new properties totaling 3553 acres during 2000 and 2001. Approximately 35% of the land area is considered wetland.
- There was a slight decrease in the number of permits issued in the year 2000. Of the 274 insignificant alterations permits granted 53% were in the residential category.
- The net wetland loss that was permitted for 1999 and 2000 was 2.6 acres. (Loss means wetland filled or drained.)
- The majority of wetlands loss is not from permitted activity but from unauthorized wetlands alterations. Statistics from the Office of Compliance and Inspection indicated there was a total of 17.4 acres of unauthorized alteration of wetlands, rivers and streams, and 10.8 acres of unauthorized alteration of perimeter, riverbank, and floodplain. Because many of the alterations were unauthorized clearing, as opposed to loss due to fill or draining, it is possible that some of the wetlands will naturally be restored over time.

- Wetlands permitting staff stepped up compliance inspections in 2001 conducting 156 such inspections and found that there was field compliance with 83% of the permits. Staff worked with the permittees to fix problems noted in the field.
- Carol explained that URI, at DEM request, and with EPA support, completed a survey of wetland map users. The results indicated that a wide range of professionals utilize wetlands map data regularly and users prefer up-to-date, large-scale maps, with a high degree of positional accuracy. The majority of users think that improved maps are needed, while understanding that even the best map will not replace field information. In a report to DEM, the project principals recommend that the State undertake a project to improve wetland maps and that 1:12,000 scale, color-infrared photography be used as the source imagery (Miller, Golet, and August, 2001). The next step is for DEM to circulate the report to the wetland and map experts to confirm the recommendations and cost estimates. The Director suggested that the Farm Bill may include funding opportunities for wetland mapping and that NRCS should be included in any discussions on mapping.

## 2. Group Discussion

### A. Wetlands Loss

The report does not account for all the losses of wetlands in the state. There is no data concerning loss of other wetlands. DEM noted that CRMC does provide DEM with available freshwater statistics for the EPA required Status and Trends report. In addition DEM does not collect information concerning permitted loss of perimeter, riverbank or floodplain wetlands. It was suggested that applicants should be required to submit this information to DEM for tracking

One problem discussed is maintenance of conditions that were in the original permit. Permittees are required to record their permits in the land evidence records, but they often do not. More follow-up with permittees regarding recording permits is needed. When a property changes hands the new owner is not always aware of wetland permit conditions and may conduct activities that are in noncompliance with the permit and result in alteration of wetland. In addition, permits may be issued that contain conditions that are not carried out when the work is being performed.

DEM has a backlog of wetlands complaints that needs to be addressed. In addition it was suggested that DEM should develop ways to conduct surveillance to determine the amount of wetlands altered without a permit. The statistics show that there is only a relatively small amount of permitted wetlands loss. The majority of the loss is from activities that are not permitted. The loss from activities that are unreported to DEM is unknown, but should be addressed. The director mentioned that the program is short two FTE's and in this climate it is not feasible that the number of complaint investigations will increase. However he indicated that DEM is reviewing its permitting and enforcement personnel to determine if other approaches can be taken to prevent the decrease of enforcement actions from taking place.

Environmental surveillance could be a solution to preventing wetlands alteration and loss due to activity not permitted or determining if permit conditions are being met during the construction process. The group discussed ways to involve municipalities or their Conservation Commissions to be the "eyes and ears" of DEM in their areas.

## **B. Wetland Mapping Issues**

Improved wetlands mapping was identified as an important need if the state is to be efficient in protecting wetlands. The cost of developing new maps is expensive and DEM needs to look for alternative sources of funding to cover the cost.

Frank Golet explained that satellite data should not be used for improved wetland mapping because it is very difficult to differentiate between upland and wetland forest. Stereo pairs are essential for wetland identification and delineation. New technology includes a Digital Transfer Scope to speed the process and reduce error. It was suggested that municipalities could be contacted to determine their mapping needs and to see if they are able to defray some of the expense of developing new wetland maps.

## **C. Appendix B Recommendations**

DEM will review the other recommendations identified in Appendix B relative to the workplan revisions that will be completed in June. Members would like to participate in discussions about the recommendations.

## **D. Regulation Development Issues**

DEM is in the next phase of regulation development. Interested members of the Wetlands Task Force will be sent a draft reorganized wetland rule for review and are invited to work with DEM on regulation development. Internal review will take about a month. DEM could send the draft rule, which are predominantly structural changes as early as the end of February. We could use this group to identify issues in the regulatory review process that should be included in the 2003-2004 workplan.

### **3. Follow up actions**

- DEM will convene a meeting of stakeholders in March or April regarding the recommendations and reorganized rules.
- The use of manipulating water levels in dams to effectuate weed control should be evaluated.
- DEM should incorporate freshwater and coastal wetland loss data collected by CRMC into a report. There should be a process for CRMC to make this information available to DEM on a regular basis. (Per prior agreement, CRMC does make permitted freshwater loss data available to DEM for the EPA Status and Trends report.)
- DEM should collect information concerning loss of perimeter, riverbank or floodplain wetlands. The regulations should be revised to require applicants to submit this information to DEM.
- DEM could revise the regulations to require the applicants / application preparer, certify that all permit conditions were met at the end of the project.
- Require the applicant to record the permit on land evidence records prior to the permit becoming valid. (DEM would have to determine if it has the statutory authority to do this.)
- Work on outreach with the communities to increase their capacity to help in the enforcement of permit conditions. DEM staff indicated that they send copies of wetlands permits to the local building officials and where appropriate to the planning officials.
- DEM should investigate using Conservation Commissions to monitor compliance with the conditions of wetlands permits although their authority to visit properties is uncertain. DEM would need to train local officials in the requirements of the regulation in order for this to be effective. Another method suggested is to work with Conservation Commissions to conduct field surveillance activities using digital cameras that have GPS capabilities.

- DEM should investigate using aerial surveillance to find and document wetlands alterations. One member mentioned that the new digital technology would allow the computation of wetland loss by comparing map data collected in different years.
- Work with Frank Golet and Peter August to prepare grants using technology to do surveillance of wetlands alterations. Require another set of plans to be submitted with an application. The other set could be sent to the municipality along with the permit letter to follow-up on permit conditions.
- Contact municipalities and determine their mapping needs and see if they are able to defray some of the expense of developing wetlands mapping system.
- There is a funding available for homeland security. Determine if there are any needs for mapping and then determine if this could be a potential funding source for wetland mapping.
- Contact the federal agencies that regulate coastal issues or NOAA and determine if there are any financial resources for wetlands mapping.