Land and Water Resources Council

2001 Annual Report

to

Angus S. King, Jr.
Governor

and the
Joint Standing Committee on Natural Resources
of the
120th Maine Legislature
Second Regular Session

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EXECUTIVE SUMMARY

This section summarizes the policy issues that the Land and Water Resources Council ("council") addressed in 2001. For each issue, this summary provides the council's objective and the outcome.

I. Matters Assigned by the Legislature

A. Smart Growth

1. Study of farming, fishing, and forestry incentives

Objective: Oversight and approval of submission to the Legislature of report and recommendations evaluating incentives for keeping rural land in productive use for farming, fishing and forestry in accordance with P.L. 1999 c. 776, §17.

Outcome: The council submitted a *Report on the Use of Incentives to Keep Land in Productive Farming, Fishing, and Forestry Use* to members of the Committees on Agriculture, Conservation and Forestry, Taxation, Natural Resources, Marine Resources, Business and Economic Development, Inland Fisheries and Wildlife and Appropriations and Financial Affairs with an offer to provide a briefing if desired. No committee made such a request or took other action on the report.

2. Growth related capital investments

Objective: On-going implementation of the council's role under 38 M.R.S.A. §4349-A to consider certifications pursuant to 38 M.R.S.A. §4349-A, sub-§1 (C) (8) that extraordinary circumstances or the unique needs of an agency required state funds for the project outside one of the authorized investment areas.

Outcome: The council prepared and distributed guidance to assist state agencies in complying with this new law. The council considered no certifications under 38 M.R.S.A. §4349-A, sub-§1 (C) (8).

B. Watershed Protection Program

Objective: On-going oversight of comprehensive state watershed program pursuant to 5 M.R.S.A. §3331, sub-§7.

Outcome: The interagency Maine Watershed Management Council met quarterly and provided a forum for exchange of information among the agencies.

C. Lakes Heritage Trust Fund

Objective: Management of the Lakes Heritage Trust Fund established by 5 M.R.S.A. §3331, sub-§6.

Outcome: $20,000 from the General Fund (appropriated by P&S Laws 1999 c. 98, as one-time funds) were not committed as of June 30, 2001 and thus lapsed to the General Fund. The Fund had no further program activities in 2001.

D. Public Education Strategy for Drinking Water Protection

Objective: Oversight and approval of submission to the Legislature's Natural Resources Committee of a report on a public education strategy designed to reach those whose decisions may affect the protection of public water supplies as required by P.L. 1999 c. 761, §12.

Outcome: The council submitted a *Report on an Education Strategy for Public Water Supply Protection Aimed at Municipalities and the General Public* 120th Legislature's Natural Resources Committee in March 2001. The Committee has taken no action on the report's recommendations.

E. Nonpoint Source Pollution from Agricultural Sources

Objective: Review and approval for submission to the Legislature of a report prepared by DEP and DAFRR assessing farmers' progress in implementing best management practices ("BMPs") to reduce nonpoint source pollution and the efficacy of BMPs to reduce cropland erosion and control runoff of nutrients from farmland following its review by the council as required by PL 1997 c. 642, §10.

Outcome: DAFRR and DEP provided the report and recommendations to the Legislature's Agriculture, Conservation and Forestry Committee.

II. Matters Assigned by Executive Order

Council on Environmental Monitoring and Assessment ("CEMA")

Objective: Use of the Council on Environmental Monitoring and Assessment ("CEMA") as necessary as a forum to promote improved communication and coordination among agencies that collect environmental data.

Outcome: CEMA did not meet in 2001. The need for this group to meet in the future is under discussion, in light of existing coordination efforts spawned in part by prior CEMA efforts.

III. Interagency Coordination

A. Smart Growth Initiative

1. Smart Growth subcommittee

Objective: Establishment of an interagency Smart Growth Coordinating Committee, as a subcommittee of the council, to coordinate state policies, programs, and investments in support of the three year Competitive Advantage strategy, an element of the Governor's Smart Growth initiative, and issues regarding the State's Smart Growth Initiative generally.

Outcome: The subcommittee met nine times during 2001. The subcommittee's discussions focused on review and comment on revisions to several sections of the Planning and Land Use Regulation Act; development of guidance on the recently adopted changes in state growth related capital investment policies; management of consultant (Maine Development Foundation) hired to prepare a "Smart Growth report card"; and initiation of an inter-agency policy research and working group on Smart Growth and storm water including representatives from SPO, DEP, DOC, MDOT, EPA, the Cumberland County Soil and Water Conservation District, and the Cumberland County Emergency Management Agency. The subcommittee's work is on going.

2. Indicators of Smart Growth report

Objective: Development of a biennial "report card" on progress in achieving "smart growth" goals laid out in the State's Three-Year Smart Growth Action Plan.

Outcome: At its November 8, 2001 meeting, the council approved publication of the final report, titled *INDICATORS OF LIVABLE COMMUNITIES: A Report on Smart Growth and the Impact of Land Use Decision on Maine's Communities, Environment and Countryside,* for public comment. The Maine Development Foundation, hired to prepare the report, will assist with publication of the report in January 2002.

3. Beginning with Habitat: natural resources mapping initiative

Objective: Oversight of interagency effort to pilot a new, data rich approach to providing towns with natural resource information useful in open space planning.

Outcome: Project participants worked with an initial group of southern Maine towns to refine materials, maps, and technical aspects of the project. The working group is collating maps, supporting materials, and town-specific information into "Beginning with Habitat" binders, multiple copies of which will be provided to each town. The group expects to complete this phase of its work by January 2002

and is releasing these materials as a working draft as it continues to work on presentation and content related refinements.

B. Water Use Management Planning

1. Water Use Management Process ("WUMP")

Objective: In accordance with the State's Atlantic Salmon Conservation Plan for Seven Maine Rivers ("Atlantic salmon conservation plan"), oversight, review, and approval for consideration by the Atlantic Salmon Commission of the water use management plans for the three Downeast rivers that blueberry growers use as a source of water for irrigation.

Outcome: At its August 9, 2001 meeting, the council completed review of the Water Use Management Plan ("WUMP") report and its recommendations, titled *Downeast Salmon Rivers Water Use Management Plan: Pleasant and Narraguagus Rivers and Mopang Stream*, and recommended it for the Atlantic Salmon Commission's consideration and adoption as a part of the State's Atlantic salmon conservation plan. The WUMP is a product of an SPO-led stakeholder process initiated in 1998. The council subsequently established an implementation committee, whose work is underway, to oversee and coordinate actions of those with lead responsibility for carrying our tasks outlined in the report.

2. Sustainable Water Use Task Force

Objective: Oversight of this DEP-, DAFRR-led stakeholder effort initiated in 2000 to develop recommendations to establish sustainable water use policies for Maine's public water resources and to address underlying issues such as the standard(s) for determining how much water is adequate to ensure water quality and habitat protection and by whom, when, and how such standard(s) should be addressed through regulation or other resource management tools.

Outcome: The task force process is on going. The task force continues to make steady and significant progress toward consensus, building on the greatly improved level of communication and trust established over the past two years. The task force is striving to develop recommendations for consideration during the Second Regular Session of the 120th Legislature and expects to complete its discussions and report to the Council in early 2002.

C. Coastal habitat restoration

Objective: Establishment of an ad hoc coastal habitat restoration team comprised of state agency representatives and staffed and facilitated by SPO, to begin

development of a coordinated state approach to coastal habitat restoration and to position the State to receive additional federal funds for coastal habitat restoration.

Outcome: This effort, funded in part by a grant from the Gulf of Maine Council ("GOMC") is on-going. The team anticipates that it will present a proposed coastal habitat restoration plan to the council by April 2002. The team is coordinating its work with that of the GOMC and envisions that the State's coastal habitat plan may be incorporated into the regional plan the GOMC is developing.

D. Coastal Dredging Policy

Objective: Oversight of MDOT-led stakeholder effort (development of a statewide Dredging Management Action Plan ("DMAP")) to refine state policy on coastal dredging and maintenance of harbors, channels, and waterway infrastructure throughout the State in an economically efficient and environmentally sound manner.

Outcome: This effort is on going. MDOT intends to present the DMAP task force's recommendations to the council in early 2002.

E. Invasive aquatic species

Objective: Review and endorsement of a DEP and DIFW report to the Legislature providing recommendations for action to address aquatic invasive species in accordance with P.L. 1999 c. 722, section 3.

Outcome: At January 11, 2001 meeting, the council endorsed establishment of an invasive aquatic species committee that, using budgeted resources and reporting to the council, would guide development of a state invasive species management plan, and identify and make recommendations regarding prioritization of agency actions to address the invasive species threats facing the State. The council endorsed other recommendations of the plan in concept only, because the recommendations required expenditures not in the Governor's proposed budget.

In June 2001, the Legislature enacted PL 2001 c. 434, which among other things provided $560,000 first year funding for an aquatic invasive species program and outlined several tasks for DEP and DIFW. PL 2001 c. 434, Part B establishes the Interagency Task Force on Invasive Aquatic Plants and Nuisance Species, which, among other duties, is required to make recommendations to the council on a comprehensive state plan for management of the invasive species problem that meets the requirements of the federal Invasive Species Act and thus makes the

State eligible for federal funding for invasive species management and control. In November 2001, Governor King completed appointments to the task force.

IV. Council Matters Anticipated in 2002

In addition to matters that may be assigned to the Council by the Legislature or Governor, the Council anticipates that it will address the following in 2002:

- Water use management policy
- Atlantic salmon restoration
- Smart growth and related land use and public investment issues
- Coastal dredging and dredged materials management policy
- Invasive species policy
- State dam removal policy

INTRODUCTION

The Land and Water Resources Council ("council") submits this annual report to the Governor and the Maine Legislature's Joint Standing Committee on Natural Resources in accordance with 5 M.R.S.A. §3331, sub-§4. The council addressed a number of challenging issues in 2001. This report describes the council's activities in 2001 and notes activities that the council anticipates in 2002.

In 1993, the Maine Legislature established the council to advise the Governor, the Legislature, and state agencies in the formulation of state policy regarding natural resources management to achieve state environmental, social, and economic objectives. The Legislature has conferred on the council, originally established by Executive Order, broad authority to consider natural resources issues of statewide significance and to counsel the Governor and Legislature on policy options for management and protection of natural resources. *See* 5 M.R.S.A. §3331, sub-§2. The council's agenda includes matters assigned to the council by the Legislature or the Governor, as well as projects initiated at the request of a state agency or by the council itself.

COUNCIL MATTERS IN 2001

I. Matters Assigned by the Legislature

A. Smart Growth

In its Second Regular Session, the 119th Maine Legislature enacted key parts of the Governor's Smart Growth initiative to address development sprawl and its consequences. The overarching purpose of the initiative involves identification, assessment, and understanding of development patterns in Maine, and encouragement of informed public and private actions to address and equitably distribute the costs of sprawl and its consequences. In 2001, the council completed its work on several elements of the initiative, and continued its oversight and coordination of development of state policy in this area. See also Section III, A, below.

1. Study of Farming, Fishing, and Forestry Incentives

P.L. 1999 c. 776, §17, a part of the omnibus Smart Growth package enacting recommendations of the Task Force on State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development, requires the council to prepare a report evaluating incentives for keeping rural land in productive use for farming, fishing and forestry. In accordance with a recommended work plan developed by the State Planning Office ("SPO"), the council assigned an interagency Rural Lands Working Group responsibility for developing a draft report for the council's review at its December 2000 meeting.

The Rural Lands Working Group was made up of State agency representatives from SPO, Department of Conservation ("DOC"), Department of Marine Resources ("DMR"), Department of Agriculture and Rural Resources ("DAFRR"), Department of Economic and Community Development ("DECD"), Maine Revenue Services, Department of Transportation ("MDOT"), and the Department of Environmental Protection ("DEP").

At the council's December 21, 2000 meeting, the working group presented a draft report that made a variety of recommendations for strengthening existing incentives and creating new incentives, including consideration of an increase in the real estate transfer tax as a primary source of ongoing funding to address those of its recommendations requiring additional State funds. The council expressed skepticism about increase in the real estate transfer tax as a funding source and requested the working group to consider alternative funding ideas and to present at its January 2001 meeting a revised, final draft of the report, due to the Legislative Committees on Natural Resources, Taxation and Agriculture, Conservation and Forestry on January 15, 2001.

At its January 11, 2001 meeting, the council reviewed the final *Report on the Use of Incentives to Keep Land in Productive Farming, Fishing, and Forestry Use,* [1] which makes the following recommendations to strengthen existing incentives and create new incentives :

Recommendations to strengthen existing incentives

- *Provide reimbursements for current use programs* to promote conservation of forestlands, farmlands, wildlife habitat and open space, which with the exception of the Tree Growth Program, do not provide a reimbursement to municipalities for property tax reductions;

- *Stabilize terms of current use programs*, particularly the Tree Growth Program, to discourage premature timber liquidation, and encourage increased participation;

- *Close the 40 acre subdivision loophole in the law administered by the Land Use Regulation Commission*, which allows 10 lots to be created every 5 years if these lots are 40 acres or more in size and located at least ¼ mile from a shoreland area in order to remove a disincentive for maintaining productive forest land;

- *Improve outreach for the Land for Maine's Future Program* by funding additional state positions or enhancing coordination with other agencies or volunteers;
- *Support refunding of the Small Harbor Improvement Program ("SHIP"),* a municipal matching grant program that has funded 40 projects totaling nearly $3 million in 1995 and 1998 to serve public infrastructure improvement needs along the Maine coast;

[1] http://www.state.me.us/spo/lwrc/pdf/Rural Land Incentives Report.pdf

- *Adjust the Forest Management Tax Credit*, which allows forest landowners a tax credit of up to $200 every 10 years to offset the cost of forest management plans, by recalculating the credit every 5-10 years based on inflation rates; and
- *Provide local communities with better information using a coordinated Geographical Information System ("GIS")* to improve the linkage of local comprehensive planning to regional and statewide farming, forestry, fishing and wildlife habitat objectives; and

New Incentives

- *Create a Farm Link Program* to match retiring Maine farmers who want to sell their farms with young farmers who want to buy them in order to help keeps farms in the hands of farmers;
- *Inventory rural resources and monitor effects of development using a coordinated GIS*;
- *Enact a Wildlife Habitat Tax Incentive*, with provision for reimbursement to municipalities that lose tax revenues, to provide a financial incentive for landowners to work with the Department of Inland Fisheries and Wildlife ("DIFW") to protect significant wildlife habitat areas, with the goal of preserving special habitats and large contiguous blocks of land adequate to provide habitat for the full range of Maine's wildlife species;
- *Support a current use program for commercial fishing property*;
- *Enact a Freedom to Fish law*, comparable to Maine's Right to Farm law to address use conflicts between fishing or aquaculture operations and other uses, and notify new or prospective landowners about existing commercial fishing operations in an area;
- *Address aquaculture application review issues to facilitate processing of applications in a timely manner*;
- *Adopt an overall policy statement and implementation strategy regarding the State's support for resource-based enterprises*, to serve as a framework to integrate strategies such as state purchasing policy, educational curricula, tax policy, value added research and development, Maine-made marketing promotion, work force training, health care and human service policy, business support, and technical assistance programs;
- *Enact a transferable state income tax credit for conservation to provide an additional incentive beyond the current federal income tax deduction available for charitable gifts of land or easements* to public agencies or qualified charitable organizations with the purpose of protecting prime coastal or agricultural lands, important forest areas, historic sites, critical open spaces, watersheds and wildlife habitats.

The council's final report also identifies several *promising ideas requiring further study,* including

- *Cooperative health care and retirement plans* to help those employed in natural resource based industries get affordable access to these critical benefits;

- *Sprawl offset or environmental impact fee or tax;*

- *State purchasing policies to support Maine made products*, particularly those related to fishing, farming and forestry;

- *Maine-oriented transfer of development rights model* to address the potential loss of land value that occurs when one area is zoned for no or limited development in order to preserve farmland or other rural values;

- *Incentives for use of agriculture-only zones* to protect active farms from new incompatible land uses;

- *Incentives for commercial fishing*, possible adapted from the existing incentives for farming and forestry; and

- *Research of incentives used in other places* to help Maine's policy makers identify and evaluate a full range of options.

Staff suggested combination of this report with that on promotion of natural resource based industries required under 1999 Resolve c. 99 (industry promotion report) in order to provide the Legislature a consolidated and consistent report on this topic.

The council approved coordination and submission of this report with the industry promotion report required by 1999 Resolves c. 99 and directed staff to coordinate with the appropriate legislative committees on presentation of the two reports. The council clarified that it endorsed creation of a wildlife tax incentive in concept only because, although consistent with the Governor's Smart Growth Action Plan, the Governor's budget proposal did not provide for such an incentive.

The council delivered to the Legislature's Committees on Agriculture, Conservation and Forestry, Taxation, Natural Resources, Marine Resources, Business and Economic Development, Inland Fisheries and Wildlife, and Appropriations and Financial Affairs with an offer to provide a briefing if desired. No committee made such a request or took other action on the report.

Lead State agency contact: Mary Ann Hayes, State Planning Office

2. Growth related capital investments

PL 1999 c. 776 (38 M.R.S.A. §4349-A) created a new role for the council regarding state growth-related capital investments and siting of state facilities. The law is intended to ensure siting of state facilities and offices in downtowns, growth areas and other locations consistent with the economic and land use policies underlying the Smart Growth strategy and thus limits the geographic areas where the State may make a "growth-related capital investment" or locate certain state facilities. With numerous exceptions, 30-A M.R.S.A. §4349-A, sub-§1 requires that state agencies make "growth related capital investments[2]" only in one of the following areas:

- a "growth area", locally designated in a comprehensive plan approved by SPO as consistent with state law; or
- in communities with no "growth area" designated in a comprehensive plan approved by SPO as consistent with state law, in: a) an area with adequate existing public sewer service; b) an area that the Census lists as a "census-designated place" ; or, c) a "compact area" as defined by 23 M.R.S.A. §754.

38 M.R.S.A. §4349-A, sub-§1 (C) (8) allows an agency to make a growth related capital investment outside an authorized investment area if it certifies to the council that there is "no feasible location" for the project within an authorized investment area and if the council finds by a majority vote of all members that "extraordinary circumstances or the unique needs of the agency" require state funds. 30-A M.R.S.A. §4349-A, sub-§2 in effect requires council authorization of Bureau of General Services ("BGS") state facilities lease or construction contract awards for projects that are not within a "service center", "downtown", "growth area", "compact area" or "census designated place" as those terms are used in PL 1999 c. 776. Among many other duties, BGS is the state agency that handles acquisition and leasing of office space for most state agencies.

At its November 9, 2000 meeting, the council adopted an administrative process to implement this new authority and agreed to develop guidance to assist agencies subject to the law. At its February 8, 2001 meeting, the council approved distribution of a letter providing guidance to state funding agencies subject to the new law's requirements.

SPO also worked with the BGS to assist BGS in designing administrative procedures consistent with the law's aims. On November 7, 2001, BGS submitted a report on its progress in implementing the law to the Legislature's Growth Management Study Group. In cooperation with SPO, BGS is working to identify municipal growth areas and downtowns.

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[2]30-A M.R.S.A. §4301, sub-§5-B, enacted by Section 7 of P.L. 1999 c. 776, defines "growth-related capital investment." The definition covers state expenditure of state, federal, or other public funds using the full range of state financial assistance tools for a limited range of projects, including specified public infrastructure investments, state office buildings, business or industrial parks, and multi-family rental housing.

During 2001, the council received one notice, from DEP, under 38 M.R.S.A. §4349-A, sub-§1 (C) (1), of an exemption for state funding of a project necessary to remedy a threat to public health or safety or to comply with environmental cleanup laws. The council considered no certifications pursuant to 38 M.R.S.A. §4349-A, sub-§1 (C) (8).

B. Watershed Protection Program

Recognizing the large number of state and federal agencies, as well as non-government organizations, that play a role in watershed management, as well as existing SPO and DEP coordination efforts, the Legislature provided specific authorization for the council to develop and oversee a comprehensive state watershed program. *See* 5 M.R.S.A. §3331, sub-§7. The Maine Watershed Management Program, managed by the Maine Watershed Management Committee ("MWMC") under the aegis of the council, focuses on improving and protecting water quality through activities to reduce or eliminate nonpoint source pollution.

Participating members of the MWMC include the DMR; DIFW; the Department of Human Services (Division of Health Engineering) ("DHS"), DOC, DAFRR, MDOT, and DEP. Participating federal agencies include the United States Environmental Protection Agency ("EPA"), the Natural Resources Conservation Service, and the United States Geological Survey. Also participating are the Maine Chamber of Commerce and Business Alliance, the Natural Resources Council of Maine, the Congress of Lake Associations, the Maine Association of Conservation Districts, and the Maine Water Utilities Association.

In 2001, the MWMC met quarterly and provided a forum for exchange of information among the agencies. A subgroup of the committee assisted DEP in evaluating applications for grants for watershed improvement projects. Funds for this grant program are provided under Section 319 of the federal Clean Water Act.

In 2002, MWMC will continue to focus on interagency coordination through information exchange, and through monitoring and feedback on agency progress in implementing Maine's upgraded Nonpoint Source Pollution Program. Committee members have expressed interest in keeping the primary focus of MWMC meetings on information exchange.

Lead State agency contact: Don Witherill, Department of Environmental Protection

C. Lakes Heritage Fund

The 118th Maine Legislature created this fund and made the council responsible for its management. *See* 5 M.R.S.A. §3331, sub-§6. P&S Laws 1999 c. 98, enacted by the Second Regular Session of the Maine Legislature, appropriated $20,000 from the General Fund as one-time funds to the Fund. The funds were not committed as of June 30, 2001 and thus lapsed to the General Fund. The Fund had no program activities in 2001.

Lead State agency: State Planning Office

D. Public Education Strategy for Drinking Water Protection

P.L. 1999 c. 761, §12 provides that by March 5, 2001, the council must submit a report to the Legislature's Natural Resources Committee on a public education strategy designed to reach those whose decisions may affect the protection of public water supplies. The law stipulates that the strategy should be aimed at municipalities and the general public and address both the messages and tools for its implementation. As directed by the law, SPO hired temporary staff to develop the education strategy.

On October 12, 2000, SPO staff presented and the council approved a work plan for development of a strategy that covers issues concerning ground as well as surface water sources of drinking water. Under the plan, SPO serves as lead agency in consultation with DHS and DEP.

With the advice of an Education Strategy Advisory Committee ("advisory committee") and information gained from contacting pertinent public and private organizations, SPO developed a draft legislative report on the strategy for the council's review at its February 8, 2001 meeting and a final report for the council's approval at its March 8, 2001 meeting. The advisory committee was made up of representatives of the following state agencies and non-governmental entities: SPO, DEP, DIFW, DOC, DAFRR, DHS, EPA, Portland Water District, Maine Municipal Association, Maine Water Utilities Association, Department of Education, Office of the Public Advocate, Public Utilities Commission, Maine State Housing Authority, Maine Historic Preservation Commission, Department of Administrative and Financial Services, Atlantic Salmon Commission, and Maine Rural Water Association. As it developed information and ideas for the strategy, SPO staff consulted with various public and private organizations involved with public education on drinking water and related environmental issues.

In March 2001, the council submitted its *Report on an Education Strategy for Public Water Supply Protection Aimed at Muncipalities and the General Public*[3] to 120th Legislature's Natural Resources Committee. In the version of the study bill that became law, the $120,000 budget originally proposed for the study became $30,000. This change ruled out conduct of related market research and comprehensive development of necessary messages and tools requested by the 119th Legislature.

The report focuses on an overall strategy for public water supply protection including priority gaps and needs in program delivery to the general public, municipalities, and other audiences. The report identifies improvement of education efforts as the top priority. The report recommends that, as part of an outreach strategy aimed at a general audience, basic information on water resources and prevention of contamination, information on home heating oil and septic tank contamination, and targeted outreach to private sector businesses, such as gas stations, contractors, and growers, whose actions may affect water resources, should receive equal emphasis. The report identifies improved and clarified written materials, technical assistance,

[3] http://www.state.me.us/spo/lwrc/Smart Growth Coordinating Committee/publiceducation.htm

and improved communication and information sharing among pertinent local and regional units of governments and agenices as key components in a municipally-focused education strategy.

As directed by PL 1999 c. 761, §12, the council's report includes a recommendation regarding creation of a position within DEP to implement the proposed strategy. The council concluded that such a postion should be created in DHS's Drinking Water Program and that the duties of this position be closely coordinated with related efforts at SPO and DEP. For the sake of consistency with the Governor's proposed budget, the council proposed that the budget for implementation of the strategy be included in either the supplemental budget of the 120th Legislature or in the following biennium.

The Natural Resources Committee did not take any action on the report's recommended education strategy during the First Regular Session of the 120th Legislature.

Lead state agency contact: Judy Cooper East, State Planning Office

E. Nonpoint Source Pollution from Agricultural Sources

PL 1997 c. 642, §10 requires DAFRR, in cooperation with DEP, to develop a report on the effects of agriculture on nonpoint source pollution using the best available information and available funds. The law directed the agencies to submit the report assessing farmers' progress in implementing best management practices ("BMPs") to reduce nonpoint source pollution and the efficacy of BMPs to reduce cropland erosion and control runoff of nutrients from farmland following its review by the council.

At its January 11, 2001 meeting, the council reviewed the report, *The Impact of Agriculture on Nonpoint Source Pollution*[4], and authorized its submission to the Legislature's Agriculture, Conservation and Forestry and Natural Resources Committees. The report includes the following recommendations derived from review of the issues specified in the legislation:

- A survey, similar to one conducted by the University of Maine Cooperative Extension Service in 1996-97 but examining a wider segment of the agriculute industry, should be carried out to determine whether and to what extent the rate of adoption and use of BMPs by the agriculture community has changed and to serve as a baseline to gauge implementation of the State's Nutrient Management Act;

- Stream assessment should be undertaken in a variety of watersheds that support agriculture activities (not just potential problem areas) to assess ambient water quality in relation to the types of agriculture and related agricultural pollution control measures utilized in the watershed; and

[4] http://www.state.me.us/dep/blwq/report/repnpsag.pdf

- Federal funding for nonpoint source pollution issues should be used to support these assessments.

Lead state agency contacts: Bill Seekins, DAFRR and Don Witherill, DEP

II. Matters Assigned by Executive Order

A. Council on Environmental Monitoring and Assessment

The Council on Environmental Monitoring and Assessment ("CEMA") remained inactive during 2001. Volunteer monitoring networks for lakes, rivers and streams and estuaries opted to operate and improve their programs apart from the CEMA structure. Existing communication vehicles, including newsletters and conferences, seem to be effective in maintaining visibility for the State's volunteer monitoring programs. Highlights from these programs' activities in 2001 include:

- formation of a new coastal monitoring group in the Medomak River watershed (University of Maine Cooperative Extension ("UMCE"));
- continued growth in the volunteer marine phytoplankton monitoring program (DMR and UMCE);
- continued financial assistance to coastal monitoring groups through Shore Stewards grants to priority watershed groups (SPO);
- completion of Phase I of the coastal volunteer monitoring database (SPO, University of Maine Sea Grant Program, UMCE);
- continuation of DMR's successful volunteer water quality monitoring program (DMR);
- completion of a GIS layer of water quality monitoring sites along the coast (SPO with Southern ME Technical College);
- growth in the Maine Stream Team program (DEP);
- receipt of a grant from EPA to develop a coastal swimming beach monitoring program (SPO and DEP);
- completion of a successful second season of volunteer beach profiling including the second annual state of Maine's beaches conference (DOC/MGS and Sea Grant);
- initiation of a volunteer invasive "Plant Patroller" program, with over 250 volunteers trained in 2001;

- monitoring of boat traffic at launches for invasive plants involving over 80 volunteers on 50 lakes; and

- continued expansion (over 475 volunteers in 2001) of the lakes volunteer monitoring effort.

Lead State agency contacts: Kathleen Leyden, State Planning Office and Roy Bouchard, Department of Environmental Protection

III. Interagency Coordination

A. Smart Growth Initiative

In addition to the legislatively assigned duties discussed in Section I, above, the council continued to serve as a policy forum for development, discussion, and coordination of state agency actions pursuant to the Governor's Smart Growth Initiative and related policy initiatives.

1. Smart Growth subcommittee.

At its October 12, 2000 meeting the council established an interagency subcommittee, the Smart Growth Coordinating Committee, to coordinate state policies, programs and investments in support of the three year Competitive Advantage strategy, an element of the Governor's Smart Growth initiative, and issues regarding the Smart Growth Initiative generally. Participating agencies include SPO, MDOT, DEP, DECD, DOC, DIFW, DAFRR, DMR, ASC, Maine State Housing Authority, Maine Historical Preservation Commission, Department of Education, Maine Downtown Center, Department of Administrative and Financial Services, Maine Public Utilities Commission, and DHS.

The subcommittee met nine times during 2001. The subcommittee's discussions focused on the following initiatives and interagency efforts:

- Review and comment on revisions to several sections of the Planning and Land Use Regulation Act (Growth Management Act) that call on coordination among state agencies;

- Review, refinement, and assistance with distribution of a letter, flowchart, and table summarizing the effect of the recently adopted changes in state growth related capital investment policies on state grant programs (*see* discussion of growth related capital investments, Part I, A (2), above);

- Management of a consultant (Maine Development Foundation) hired to develop a report, titled *Livable Communities: A Report on Smart Growth and the Impact of Land Use*

Decision on Maine's Communities, Environment and Countryside, due for publication in January, 2002 (see Part III, A (2) below); and

- Initiation of an inter-agency policy research and working group on Smart Growth and storm water including representatives from SPO, DEP, DOC, MDOT, EPA, the Cumberland County Soil and Water Conservation District, and the Cumberland County Emergency Management Agency.

The council anticipates that the group will continue to meet during 2002, with potential for more intensive and focused effort prior to legislative sessions. SPO provides lead staff support for this effort.

Lead State agency contacts: Judy Cooper East, State Planning Office

2. Indicators of Smart Growth report

In the summer of 1999, Governor King formed a sub-cabinet working group to devise an action plan for economic growth and development that would ensure a strong rate of return on public investment, renewed commitment to environmental stewardship and increased efforts to strengthen and build the State's communities. The Governor suggested that the cabinet members review their agencies' policies, laws, regulations and operations, and investment decision making processes to identify those which may in effect undermine achievement of these smart growth objectives.

Cabinet members subsequently formed a working group which developed a Three-Year Smart Growth Action Plan.[5] The goal of the plan is to "...maintain Maine's competitive advantage as one of the most livable places in the United States -- a place of growing vital cities and towns, a productive countryside, and a revered natural environment".[6] The group established measurable objectives and provided recommendations for achieving these goals. One recommendation calls for development of a biennial "report card" on progress in achieving "smart growth" goal laid out in the plan.

In January 2001, the council established an inter-agency Smart Growth Coordinating Committee to coordinate implementation of the Smart Growth Action Plan. The committee, whose work continues, consists of representatives from over 15 state agencies. In a series of meetings held from March – November 2001, the committee prepared a draft report intended to focus state efforts to carry out a strategy to realize the State's smart growth objectives.

The report's main purposes are to identify actions needed to maintain and take advantage of the quality of life in Maine as a competitive advantage in attracting and retaining economic opportunities. The report, *INDICATORS OF LIVABLE COMMUNITIES: A Report on Smart Growth and the Impact of Land Use Decision on Maine's Communities, Environment and*

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[5] http://www.state.me.us/spo/lwrc/pdf/Smart Growth Action Plan.pdf
[6] Id., p. 2.

Countryside,[7] offers a definition of "smart growth" based on 23 indicators. These indicators are designed to measure the economic and social vitality of Maine's cities and towns by looking at issues such as outdoor recreational access, highway congestion, opportunties for residents to walk to shopping areas, cultural assets, and reliability of infrastructure.

The report's basic notion is that if each of these indicators were to meet or exceed a specified benchmark, "smart growth" would be occurring in Maine. The report also outlines a method, based on the indicators, to track and monitor progress toward smart growth. The committee contracted with the Maine Development Foundation to develop and publish the report card called for by working group's recommendations. A variety of state agencies provided information in support of this effort. The report also seeks to measure Maine's treasured natural environment by looking at air, water, and habitat quality issues. In addition, the report seeks to gauge the productivity of rural areas by evaluating the vitality of timber and farmlands and the availability of access to commercial fishing opportunities.

At its November 8, 2001 meeting, the council approved publication of the final report for public comment. The Maine Development Foundation will assist with publication of the report in January 2002.

Lead State agency contact: Judy Cooper East, State Planning Office

3. Beginning with Habitat: Natural resources mapping initiative

In 2000, based on the initial work of the statewide Resource Mapping Project led by DEP and feedback received from the council on that project, DEP and SPO collaborated to launch a new effort to provide towns in southern Maine with natural resource information useful in open space planning. The project, initially titled the Southern Maine Town Planning Initiative and now called "Beginning with Habitat", is an element of the State's Smart Growth Initiative. SPO is coordinating a working group made up of DIFW, DOC's Maine Natural Areas Program ("MNAP"), the United States Fish and Wildlife Service ("USFWS"), Maine Audubon Society ("MAS"), Wells National Estuarine Research Reserve ("Wells Reserve"), and the Southern Maine Regional Planning Council ("SMRPC"). The working group is collaborating on this pilot effort at a new and improved approach to local and regional open space planning. This effort marks a significant shift in the State's approach to wildlife conservation toward a proactive strategy of sharing information and technical expertise.

This project involves compilation of existing information sources to create an integrated, comprehensive information tool to help municipalities plan for conservation of wildlife and wildlife habitat. These information sources include the following: the results of the Wells Reserve's conservation lands database, USFWS's predictive modeling for high value habitat supporting federal trust species, DIFW's landscape planning model, SPO's wetlands

[7] http://www.state.me.us/spo/lwrc/homepage.htm

characterization, and the joint MAS, DIFW, MNAP and Maine Coast Heritage Trust land trust project, in combination with local knowledge that SMRPC offers.

The southern and coastal regions of Maine support the State's highest plant and animal diversity. This part of the State also faces significant threats to this diversity from habitat fragmentation and development. This pilot project involves work with the following towns: Alfred, Arundel, Biddeford, Buxton, Cape Elizabeth, Frye Island, Kennebunk, Kennebunkport, Kittery, North Berwick, Ogunquit, Scarborough, York, and Wells. For each of these coastal towns, the working group is developing a series of maps and supporting information that identifies: habitats of management concern as identified by DIFW, MNAP, and USFWS; riparian, wetland and open water areas which need to be conserved to maintain habitat connectivity and integrity in a developing landscape; and large undeveloped blocks of regional significance. The maps and related information will also indicate watershed boundaries, conservation lands, and existing land uses.

In 2001, project participants worked with the initial group of towns to refine materials, maps, and technical aspects of the project. The working group is collating maps, supporting materials, and town-specific information into "Beginning with Habitat" binders, multiple copies of which will be provided to each town. The group expects to complete this phase of its work by January 2002. The working group is releasing these materials as a working draft as it continues to work on presentation and content related refinements. DIFW, MAS, and SMRPC are also making a joint presentation to each participating town to introduce the information and its uses. DIFW is providing follow up and technical assistance to participating communities.

During 2002, the working group intends to work with an additional 20-30 towns. Criteria for the choice of the new towns include location and proximity to towns initially studied and the status of local comprehensive planning (or open space planning) efforts. In addition, the group will produce the "Beginning with Habitat" materials in a stand-alone format as a reference for towns not selected as part of this next phase. The group also intends to study methods for data production and distribution in order to identify the most efficient way to disseminate project information. Due to limited funding for this project, technical assistance from the group may not be available for this next group of 20-30 towns.

The response to this project from the natural resource community, the planning community, towns, land trusts, and others continues to be overwhelmingly supportive. The demand for these materials continues to grow as towns become aware of this project. The group has decided to provide this suite of information to towns that are involved in open space planning, comprehensive plan development or updating as requests for natural information are made.

In 2000, EPA provided $103,000 in federal funds and the Maine Outdoor Heritage Fund has provided $38,000 to support this effort. The working group needs additional financial and personnel resources to support efforts now lead by DIFW and MNAP to provide technical follow-up to analyze the data and develop strategies to conserve land in the developing

landscape. The working group is investigating funding options to support this project and provide this data and the necessary technical support to a larger number of towns across the state.

Lead State agency contact: Elizabeth Hertz, State Planning Office

B. Water Use Management Planning

In 2001, the council continued to focus much of its efforts on coordination, monitoring, and oversight of state water resources management policy initiatives:

- the water use management planning ("WUMP") process, led by SPO pursuant to the State's Atlantic Salmon Conservation Plan for Seven Maine Rivers ("Atlantic salmon plan"); and

- the Sustainable Water Use Task Force ("task force"), jointly led by DEP and DAFRR under the aegis of the council.

At its July 2000 meeting, the council agreed that close coordination of these efforts was necessary to ensure efficient development of informed and consistent state policy in this area.

1. Water Use Management Process ("WUMP")

The State's Atlantic salmon plan calls for the development of water use management plans for the three rivers Downeast that blueberry growers use as a source of water for irrigation. In 1998, the council initiated a stakeholder process, the WUMP, to produce river-specific hydrology reports to enhance understanding of flow conditions and flow-related salmon biology issues and to develop a single, integrated report offering river specific and crosscutting policy recommendations, to be used in part to aid the task force in developing a statewide policy framework.

At the council's December 21, 2000 meeting, representatives of the WUMP process presented the final report of the WUMP process, the Downeast Water Use Management Plan ("Plan" or "report"). The following are the Plan's main recommendations with the Plan's assessment of the relative importance of each indicated:

- maintain the States Geological Survey's ("USGS") stream gauge on the Narraguagus River (essential);

- make a long term commitment for funding stream gauges on the Pleasant and Machias Rivers (essential);

- implement an effective flow monitoring strategy (essential);

- continue funding support for the five year USGS low flow study on eastern Maine rivers now underway (essential);

- support periodic assessments by the Atlantic Salmon Commission of Atlantic salmon habitat impacts as irrigation strategies evolve (important);

- integrate the hierarchy of water withdrawal options developed by through the WUMP into state permitting, funding, educational, and technical assistance programs. This hierarchy ranks water withdrawal options, including development of storage ponds, in order of preference in terms of their potential for adverse environmental effects (essential);

- provide technical assistance to farmers regarding water conservation and best management practices (essential);

- amend state permitting programs to ensure that LURC and DEP apply consistent, internal processes for permitting and commenting on irrigation proposals (essential);

- assess habitat impacts of water withdrawals during high flow periods (important);

- research the water requirements of low bush blueberry plants (important); and

- research farm practices to further reduce water use for agriculture (very important).

The Plan also provides for the following major next steps:

- adoption of the Plan as part of the Atlantic salmon plan;

- consideration of the Plan in development of an Atlantic salmon recovery plan under the federal Endangered Species Act; and

- development of a strategy for implementation of the Plan.

Following discussion, the council tabled final decision on whether to recommend to the Atlantic Salmon Commission that the Plan be adopted as part of the State's Atlantic salmon plan for purposes of further discussion.

At its January, February, March, and April 2001 meetings, the council considered additional information and presentations on the Plan's above noted recommendation to integrate a hierarchy of water withdrawal options developed by through the WUMP into state programs, the Plan's proposal regarding long-term monitoring of flow conditions, and related issues. At its April 12, 2001 meeting, the council unanimously agreed to endorse the above noted recommendations in the WUMP report and tabled the matter of approval of the full report to allow additional time for editorial changes. At its August 9, 2001 meeting, the council unanimously reaffirmed its approval of the WUMP report's final recommendations and approved the report[8] for the Atlantic Salmon Commission's consideration and adoption as a part of the

[8] http://www.state.me.us/asa/7-25fina.pdf

Atlantic salmon plan. In addition, the council recommended creation of an implementation committee to oversee and coordinate actions of those with lead responsibility for carrying out tasks outlined in the report.

At its November 8, 2001 meeting, the council unanimously agreed to establish and oversee an interagency committee, chaired by SPO and made up of one representative of each of the entities with lead responsibility for one or more designated tasks in the WUMP, to coordinate implementation of the WUMP. The council requested a follow up report to clarify further the committee's role and responsibilities, including the manner in which the technical flow team established during the WUMP process will interact with the committee. The implementation committee, made up of representatives from the University of Maine, DAFRR, DOC, USGS, ASC, DEP, and the Maine Wild Blueberry Commission, held its first meeting on December 11, 2001.

Cooperative efforts to carry out the Plan are underway. The Plan calls for the following implementation steps to be initiated during 2002:

- maintenance of the USGS's stream flow gauge on the Narraguagus River;
- long-term commitment to fund stream flow gauges on the Pleasant and Machias Rivers;
- implementation of an effective flow monitoring strategy;
- continuation of support for the low flow study of eastern Maine rivers, due to the council in 2004;
- provision of support for the ASC's Atlantic salmon habitat impact assessments;
- integration of the above described water withdrawal hierarchy into state policies;
- provision of technical assistance to farmers regarding water management;
- amendment of state permitting programs to address inconsistencies in the approaches to water use management by DEP and LURC;
- assessment of the effects of water withdrawals during high flows;
- development of models of smolt transport and discharge;
- development of models of upstream movement and discharge of adult Atlantic salmon;
- evaluation of the effects of water withdrawals at high discharges;
- research on wild blueberry plant water requirements; and

- research on farm practices to further reduce water use.

Lead State agency contact: David Keeley, SPO

2. Sustainable Water Use Policy Task Force

In its second year, this interagency effort continued to work with stakeholders to develop sustainable water use policies for Maine. DEP and LURC, the State's primary agencies responsible for water quality management, have both recognized that maintenance and enhancement of water quality necessarily involves and is dependent upon the availability of an adequate quantity of surface water. These agencies also recognized the lack of and need for consistent state policy on a host of related key questions, such as the standard(s) for determining how much water is adequate to ensure water quality and habitat protection and by whom, when, and how such standard(s) should be addressed through regulation or other resource management tools. To this end, DEP and DAFRR agreed to co-chair an interagency effort, guided by stakeholder input, to develop a prioritized set of recommendations to establish sustainable water use policies for Maine's public water resources.

After presenting an interim report to the council on December 21, 2000, the task force formed four subcommittees to work on different aspects of the problem. These subcommittees, made up of representatives of water users, as well as state and federal agencies, have held numerous meetings over the past year and have made substantial progress. The subcommittees are:

- *Aquatic ecosystems subcommittee*: This subcommittee is responsible for providing information on aquatic resources that are dependent on specific flow conditions for their maintenance. The subcommittee has organized this information in the form of matrices, one for each water classification protective of the standards assigned to the class. The subcommittee also organized a conference this past summer to raise the level of understanding of in-stream flow issues. The "Instream Flow Issues Conference" was held August 30 at the Augusta Civic Center and attracted approximately 100 people. Speakers from around New England and beyond gave presentations on the current state of the science of instream-flow, and on recent policy developments in other New England states.

- *Storage issues subcommittee*: Water storage can play an important role in resolving water use conflicts. Especially in the agricultural sector, the ability to capture water when it is relatively abundant, as in the spring, and use it when it is relatively scarce and therefore most needed, as in July and August, can be very valuable. Unfortunately, often the most logical place to build a storage pond happens to already be a wetland. This subcommittee has been studying the state and federal irrigation storage pond permitting processes and trying to identify ways to improve the process while continuing to protect wetlands. In November

2001, in Presque Isle, this subcommittee held a workshop on storage pond permitting. State and federal regulators joined with representatives of the agricultural interests to discuss the current permitting process and some of the basic concepts of pond design.

- *Water conservation subcommittee*: Water conservation can be another important way to address water use conflicts. Reducing water use through conservation measures can also save costs for the user while leaving more water for the needs of aquatic ecosystems. This subcommittee has explored the availability of information on water conservation and how it might be incorporated into sustainable water use policies.

- *Research and monitoring subcommittee*: With the leadership of the Maine Geological Survey and USGS , this subcommittee has discussed research and data needs to support sustainable water use policies.

- *Consumptive use subcommittee*: As the task force's steering committee began to grapple with what a sustainable water use policy might look like, it formed this subcommittee to tackle some fundamental questions concerning who should be included under any program to track or regulate water withdrawals.

Building on the greatly improved level of communication and trust established over the past two years, the task force continues to make steady and significant progress toward consensus. In addition to periodic reports to the council, the task force has met twice with the Legislature's Natural Resources Committee to provide an update on its progress. The task force expects to wrap up its discussions and report to the council in early 2002.

Lead State agency contacts: David VanWiè, DEP and Peter Mosher, DAFRR

C. Coastal Habitat Restoration

Awareness of the need for and public interest and involvement in efforts to restore coastal habitats continues to grow. In a number of policy forums in recent years, the State has developed recommendations that call for increasing the pace and scale of coastal habitat restoration. Examples include the Wetland Conservation Plan, the Maine Coastal Program Enhancement Strategy, the Atlantic Salmon Conservation Plan for Seven Maine Rivers, the Casco Bay National Estuary Program Plan, individual anadromous fish restoration plans, and the Gulf of Maine Council's Action Plan.

In the last several years, federal and state agencies, conservation organizations and landowners have worked together to implement a variety restoration projects. The majority of the public funds for implementing these projects came from the National Fish and Wildlife Foundation's Maine Habitat Restoration Partnership and the Atlantic Salmon Collaborative (both administered by the USFWS's Gulf of Maine Program Office), and the Natural Resources Conservation Service (Wetland Reserve Program and Wildlife Habitat Incentives

Program). In addition, other efforts, such as the Corporate Wetlands Restoration Program, the Estuary Restoration Act of 2000, and Coastal America, are positioned to fund coastal restoration efforts in Maine. American Rivers, Trout Unlimited, and Ducks Unlimited, among other conservation organizations, have contributed financial as well as other resources to these efforts. SPO has been working with other agencies and organizations within and outside of state government to develop, coordinate, and integrate related efforts.

In fall 2001, the the National Oceanic and Atmospheric Administration ("NOAA") awarded the Gulf of Maine Council ("GOMC") a three-year grant to undertake riverine and coastal habitat restoration in Maine, New Hampshire, and Massachusetts. In the first year of the grant (2002), the GOMC will receive $430,000. The lion's share of this funding is dedicated to actual restoration work in the three states. The first year award also includes $40,000 as seed funding for a position to coordinate restoration efforts in Maine. At its November 19, 2001 meeting, the Maine Outdoor Heritage Fund Board awarded funding to support this restoration coordinator for purposes of bringing focus and support to statewide restoration efforts and other elements of the SPO-sponsored *Restoring Coastal and Riverine Habitats* proposal. This project will develop a more complete baseline of coastal wetland locations, their extent, and condition; identify habitat restoration opportunities; and will prioritize implementation efforts.

The United States Army Corps of Engineers and MDOT have recently signed a memorandum of agreement to inventory the State's coast for tidal restrictions due to transportation related construction. This is a multiyear project designed to produce a list of coastal restoration sites. Starting in 2002, SPO's Maine Coastal Program will initiate a more expansive inventory of coastal restoration options and will inventory the location and condition of coastal marshes in Southern Maine. SPO will be coordinating with MDOT to ensure that these efforts are complimentary and not duplicative.

In August 2001, the GOMC convened a habitat committee to begin work on a regional restoration plan. This broad look at restoration needs and priorities throughout the Gulf of Maine is necessary for the State to have access to additional federal funds available through the federal Habitat Estuary Restoration Act. This regional plan will also be helpful in identifying partners for both restoration projects and funds. The committee's work is underway.

Recognizing the need for interagency coordination and the potential, through effective coordination, to secure addition federal funds for coastal habitat restoration, the council has established an ad hoc coastal habitat restoration team comprised of state agency representatives and staffed and facilitated by SPO, to begin development of a coordinated state approach to coastal habitat restoration. The team's goals are to -

- identify the State's coastal habitat restoration priorities;
- assemble an initial list of priority restoration coastal and riverine sites;

- identify options to clarify state coastal habitat restoration policies;
- assess the capacity of the state to conduct coastal habitat restoration;
- propose mechanisms to improve state agency coordination;
- identify partnering mechanisms with nonprofits and federal agencies to accelerate the pace of coastal habitat restoration; and
- identify implementation time frames and strategies including identifying state funding requirements.

SPO is leading and coordinating this effort. Agencies represented on the council are providing staff assistance to the ad-hoc team. The Wells Estuarine Research Reserve, a quasi-state agency, and the USFWS's Gulf of Maine Program are additional cooperators. The team will hold its first meeting in January 2002. The team intends to consult with and solicit advice from nonprofit conservation organizations, academia, and federal agencies.

The team's primary tasks are to:

- assess information gathered on existing state agency policy and recommendations regarding coastal and riverine restoration priorities, and identify areas where recommendations may be in conflict;
- prepare a report summarizing this assessment and including recommendations on a consistent state policy and priorities regarding coastal and riverine habitat restoration for the council's review and approval.

This consistent state policy will guide state agency actions regarding coastal and riverine habitat restoration, as well as the State's efforts as a GOMC member to develop a regional coastal habitat restoration plan. The team anticipates that it will present its report by April 2002.

Lead state agency contact: Elizabeth Hertz, SPO

D. Coastal Dredging Policy

At the council's December 1999, meeting, MDOT reported on the status of efforts to refine state policy on coastal dredging. MDOT recommended development of a statewide Dredging Management Action Plan ("DMAP") that would look at the key issues relating to maintenance of harbors, channels, and waterway infrastructure throughout the State. The council voted to support that recommendation. During the 2000 legislative session, MDOT secured $250,000 to support this process.

MDOT has assembled a diverse group of stakeholders to serve as an oversight committee to the process. This group had its inaugural meeting on July 31, 2000 and established the following as its mission statement:

> "Identify solutions to insure that Maine's coastal waterways are dredged in a safe, economic, and environmentally sound manner."

With MDOT's leadership, the group outlined the goals of the process. Key goals included identifying options for disposal of dredged material, analysis of the permitting process, effective assessment of the environmental effects of dredging, and public education on the importance of dredging to the economy and environmental effects. MDOT contratced with Foster Wheeler Environmental Corporation as a consultant to assist the committee in development of the DMAP.

During the past year, the committee, with its consultant's assistance, has evaluated, analyzed, and discussed the following major issues:

- *potential changes in state and federal permitting processes* to expedite review and environmentally and economically sound decisions on large and small dredging and dredged material disposal projects;

- *options for improving selection and implementation of dredging windows* (resource-based, seasonal restrictions on dredging operations);

- *potential improvements in current federal and state program requirements and procedures regarding testing of sediments* for contamination and suitability for ocean disposal;

- *potential institutional changes to create an on-going capacity to plan for and coordinate efforts to address Maine's coastal dredging needs*, based on evaluation of successful programs in other states;

- *potential recommendations for ensuring the ongoing viability of existing or preferrable, alternative open water ocean and upland disposal options*, including recommendations regarding classification of dredged materials a "special waste" under Maine law;

- *options for funding the non-federal component of federal projects as well as funding options for private sector projects*; and

- *identification of tools to increase public understanding of dredging related issues*, such as creation of a non-technical guide to dredging in Maine.

The committee conducted quarterly committee meetings in 2001, and held 3 public meetings, in Millbridge, Rockland, and Portland, to gather ideas from stakeholders. The committee is working on recommendations and initiatives to support or implement its findings. By February

2002, MDOT anticipates that the committee will have completed its work and made policy recommendations to the council.

Lead state agency contact: Brian Nutter, Department of Transportation

E. Invasive Aquatic Species.

At its December 8, 2000 meeting, the council reviewed a summary of the draft DEP and DIFW report to the Legislature providing recommendations for action to address aquatic invasive species in accordance with P.L. 1999 c. 722, section 3. DEP and DIFW requested the council's endorsement of the plan, which envisioned actions by and coordination among multiple state agencies. The draft report focused on freshwater issues, and immediate action needs including investments needed to leverage potentially available federal funds to help address the problem. Draft recommendations included the following:

- establishment of an invasive species work group overseen by the council;
- development of a comprehensive, statewide invasive species plan, a prerequisite to eligibility for available federal funds;
- a targeted public education effort;
- prioritization of areas on which to focus prevention and remediation efforts;
- development of a rapid response capability;
- management of access to waters with identified aquatic invasive plant species, e.g., through control of state launching facilities;
- enhanced penalties for violation of laws prohibiting transport of intrastate transport of aquatic invasive plant species;
- continued interagency cooperation; and
- appropriation of $185,000, first year cost, to initiate an ongoing state program effort.

Having previously tabled the matter for further discussion, at its January 11, 2001 meeting the council acknowledged the ecological and economic significance of the threats posed by invasive species and agreed to:

- endorse establishment of an invasive aquatic species committee that, using budgeted resources and reporting to the council, would guide development of a state invasive species management plan, and identify and make recommendations regarding prioritization of agency actions to address the invasive species threats facing the State; and

- endorse other elements of the plan[9] and its above noted recommendations in concept only, in light of the fact that the Governor's proposed budget did not provide funding needed to carry out the plan's recommendations.

In June 2001, the Legislature enacted PL 2001 c. 434, "An Act to Prevent Infestation of Invasive Aquatic Plants and to Control Other Invasive Species." Among other things, this law provided $560,000 first year funding for an aquatic invasive species program and outlines several tasks for DEP and DIFW. The law provides for on-going funding for this program through a sticker program: the operator of any powered watercraft, registered in Maine or elsewhere, on inland waters of Maine must purchase and display a lake and river protection sticker.

In accordance with new law, DEP and DIFW initiated an aggressive education campaign in 2001. Survey results indicate that over 65% of the public is now well aware of the invasive aquatic species problem. Volunteers and paid staff of non-governmental organizations, under agreements with the State, made a significant contribution to public education and boat inspection efforts. Other elements of the campaign, such as establishment of a rapid response capability for new invasions, have yet to be implemented.

DEP also established a citizen volunteer monitoring network with over 250 members. DEP has begun more detailed monitoring of lakes with known infestations of aquatic invasive plants. Several local communities, with state agency staff advising, also initiated projects for milfoil control. DEP and DIFW cooperated on a program of boat inspections at launching sites and along selected roadways as a pilot program. DEP has drafted a comprehensive report on the program's efforts to date for submission to Legislature by January 15, 2002.

PL 2001 c. 434, Part B establishes the Interagency Task Force on Invasive Aquatic Plants and Nuisance Species, which, among other duties, is required to make recommendations to the council on a wide array of matters related to prevention and control of aquatic and other invasive species. One of the task force's primary missions is to develop a comprehensive state plan for management of the invasive species problem that meets the requirements of the federal Invasive Species Act. The State needs to have such a plan to be eligible for federal funding for invasive species management and control.

In November 2001, Governor King completed appointments to the task force, which by statute is made up of representatives from five state agencies (DEP, DIFW, DHS, DAFRR, and DOC) and twelve citizens from a variety of interest areas, with an advisory group of representatives of federal agencies, including USFWS, EPA, and USDA. DEP anticipates that the task force's initial meeting will be held in early 2002. DEP, which staffs the task force, envisions that task force will review work plans and reports produced by the Invasive Species Program and in this way help guide and advise programmatic decisions and implementation actions. On the interagency issues identified in the law that require development or clarification

[9] http://www.state.me.us/dep/blwq/report/repaquatic.pdf (final report to Legislature)

of state policy, the task force will forward its recommendations to the council for its review and endorsement.

COUNCIL MATTERS ANTICIPATED IN 2002

In addition to matters that may be assigned to the council by the Legislature or Governor, the council anticipates that it will address the following in 2002:

- Water use management policy
- Atlantic salmon restoration
- Smart growth and related land use and public investment issues
- Coastal dredging and dredged materials management policy
- Invasive species policy
- State dam removal policy

CONCLUSION

During 2001 the council continued to fulfill and further develop its role as a recognized and increasingly sought after forum for interagency discussion on state policy for appropriately balancing environmental protection, conservation, and economic development objectives. The council has increasingly become a mechanism for managing state programs that require coordination among multiple agencies. The council has also proven an effective mechanism for development and communication of consistent state positions to the federal government regarding federal policies or proposed actions with statewide natural resources implications.

As in past years, the council's work was enabled, benefited from, and continued to promote close collaboration among the State's natural resources agencies. The council thanks members of the public and federal, state, and local government personnel for their hard work and participation in council meetings, and the stakeholder meetings, study commissions, and other public policy development initiatives whose recommendations often inform and enlighten the council's discussions and decisions. The council looks forward to a challenging agenda in 2002 as the Legislature, Governor, and state agencies make use of this forum to develop and refine the State's natural resources policy.