Land and Water Resources Council

2007-2008 Biennial Report

to

Governor John Elias Baldacci

and the

Joint Standing Committee on Natural Resources
of the
One Hundred Twenty Fourth Maine Legislature,
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INTRODUCTION

The Land and Water Resources Council ("LWRC" or "Council") submits this biennial 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. This report describes the Council's activities in 2007 and 2008, and notes activities that the Council anticipates in 2009. PL 2007 c. 619 amended the LWRC's authorizing legislation to require submission of biennial as opposed to an annual report beginning in 2009.[1]

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 Council is established 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. 5 M.R.S.A. §3331, sub-§2. The Council's agenda includes matters assigned to it 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 2007-08

The Council's work in 2007-08 focused on oversight of implementation of outcomes of two inter-agency policy development studies undertaken in 2006. Both studies, one to explore innovative options for managing Maine's bays and the other to review and recommend improvements for management of groundwater resources, were undertaken at the Legislature's direction.

- **Bay Management**

Background:

PL 2003 c. 660, Part B (LD 1857) directed the Council to undertake a two-year study "to explore and document potential new and innovative concepts for the management of Maine's embayments" and to submit a final report by January 15, 2007 to the Legislature's Joint Standing Committee on Marine Resources. The main purposes of the study were to explore the concept of bay management as a tool for planning and management of uses of near shore embayments and the potential role of local government in such planning and management, and to recommend management options for consideration by the Legislature. The State Planning Office (SPO) and the Department of Marine Resources (DMR) led this study effort, which was supported by federal Coastal Zone Management Act funds, with advice from a project steering committee made up of eight public members with expertise in relevant fields. The initial aspects of the study centered principally on information gathering through both outreach and policy research;

[1] This law took effect after the LWRC's submission of its report for 2007, pertinent portions of which are addressed in this report.

the focus in 2006 was on assessment of that information and development of recommendations for improving management of uses and resources in Maine's nearshore environment. The Council submitted its final report to the Legislature's Marine Resources Committee in January 2007.

The recommendations in the Council's final report focused principally on means to ensure improved coordination among state agencies with missions involving management of nearshore resources, assistance to communities in undertaking local and regional nearshore management projects, and improvements in information resources (additional data and GIS capability) to inform such efforts. The Marine Resources Committee endorsed the report's recommendations, which did not call for changes in state law.

Governor Baldacci issued an executive order to ensure well-concerted agency action in moving forward on the study's recommendations, which included establishment of a Council subcommittee on coastal and marine policy charged with actively shepherding the implementation of the study's recommendations, establishing and tracking priorities for that work, and proposing a set of coastal management priorities (beyond bay management) on an annual basis.

Activities in 2007:

In 2007, SPO and DMR lead state agency efforts to establish and initiate the work of the coastal and marine subcommittee, which is made up of senior representatives of DMR, the Department of Environmental Protection (DEP) and SPO. This group held its initial, organizing meeting in November 2007. Other agencies are envisioned as participants on as needed basis.

Pursuant to its above noted charge, the subcommittee identified the following as priorities for its work:

- Launch the pilot interagency strategic planning process (described below);
- Issue an RFP and select one or more locations to pilot regional marine resource management; and
- Compete for grants and other sources of funds for projects cited in the bay management report.

The subcommittee also decided to focus the interagency strategic planning process (called for in the executive order) on interrelated issues regarding land use, water quality, shellfish resources, and swimming beaches, with the objective of better management of land use and water quality to protect key coastal uses such as shellfish harvesting and swimming. As an initial step, SPO produced an outline of the types of activities carried out by state agencies that affect shellfish and swimming resources. The departments of Transportation and Agriculture, Food and Rural Resources, which

administer programs related to nonpoint source pollution, were invited to participate in the process.

The group convened a staff level work group to further refine the planning process and scope with the objective of submitting a completed pilot strategic plan for the Council's consideration.

Activities in 2008:

Pilot Interagency Strategic Planning Initiative

Work in 2008 focused on reviewing background information and conducting a series of interviews with people working on water quality issues relevant to shellfish bed closures that will serve as the basis for the strategic plan. Staff first examined a selection of background materials and existing research in order to identify important issues, cross-agency land use and water quality programs that affect shellfish classifications, and previous agency efforts.

Primary sources of information were:

- DMR's Shellfish Sanitation Program 2007 peer review study and recommendations;
- Resource agency strategic plans - relevant missions and agency strategies and potential areas of conflict; and
- SPO analysis of municipal strategies and implementation efforts related to shellfish, water quality, land use, and nonpoint source pollution contained in approved municipal comprehensive plans

Staff developed a list of primary resource people to interview about possible water quality improvement strategies, along with a set of interview questions. SPO has completed 75% of the planned interviews with twenty-seven staff members of state agencies, federal agencies, local and regional governments, and non-governmental organizations ("NGOs"). The interviews focused on identifying the barriers to opening shellfish beds, maintaining an “open” classification, and finding ways in which improved inter-agency cooperation might help to remove these barriers and improve nearshore water quality.

Interview topics included:

- Data and data management needs; data sharing and compatibility;
- Adequacy of existing regulations, standards, monitoring programs, management programs and remediation efforts;
- Coordination with municipalities, other agencies, and NGOs;
- Optimal roles for volunteers;
- Areas of concern, areas of potential improvement, and areas that are working well;

- Examples of other state programs and initiatives; and
- Maine regions in need of targeted assistance and areas suitable for a pilot project

These interviews yielded recommendations for improvements in a variety of areas, including contamination source identification, water quality monitoring, municipal land use and shellfish management programs, data development and access, agency coordination, and education/outreach, including principally:

- More focus on identifying and managing potential contamination sources;
- Improved sharing of data (including GIS layers) among agencies and with municipalities;
- Increased communication and coordination among agencies; and
- Increased educational efforts to assist municipalities with incorporating water quality and shellfish beds into the comprehensive planning and local land use management process.

Pilot Regional Marine Resource Management Projects

SPO continued to assist the Muscongus Bay pilot project by supporting the production of the GIS atlas for the Bay http://www.community-gis.org/projects/muscongus.html.

DMR and SPO continue to support the work of the Taunton Bay Advisory Group in its work on developing and implementing bay specific resource guidelines for participation in certain fisheries, harvesting limits, and reporting and monitoring on fishing activity. Due to the intensive staffing requirements for the Taunton Bay project, a solicitation for additional pilots was not offered in 2007 or 2008.

Funding for Bay Management Projects

SPO and DMR successfully competed in the NOAA Coastal Services Center fellowship program and were matched with Matt Nixon, a recent graduate of University of Rhode Island's master's degree program in marine policy. Matt began his two-year fellowship in September 2008 and is assigned to both agencies to further bay management efforts. To date he has launched a Coastal Atlas project to better integrate marine resource information, assisted the Taunton Bay resource management effort, and has provided staff support to the Ocean Energy Task Force.

Activities planned for 2009:

SPO plans to complete interviews in early 2009. In January and February, 2009, staff intends to develop draft recommendations and priorities for review and comment initially by interviewees and others identified in the interview process. Consultation with DMR's Shellfish Advisory Council is also planned. Later in the year, staff plans to develop a draft strategy for interagency planning and action for consideration by the

LWRC subcommittee and subsequently for consideration by the Council. In addition, the selected recommendations will be included in a March 2009 report to the Legislature's Joint Standing Committee on Marine Resources in accordance with the above-referenced executive order. The Council anticipates that when completed the interagency strategic plan will be used to guide staff work plans, applications for discretionary grant funding, pilot projects and other pertinent agency efforts regarding inter-related shellfish management and water quality issues.

- **Water Resources Planning Committee**

Background:

PL 2005 c. 452 directed the Council to study the State's laws and policies regarding management and utilization of ground water resources and to make recommendations for improvements to the Legislature's Natural Resources Committee. The Council provided its final report and recommendations, products of the stakeholder process led by the Maine Geological Survey ("MGS"), to the Legislature's Natural Resources Committee following its review and approval of the report produced by MGS in December 2006.

PL 2007 c. 399, the product of the Legislature's deliberations on the Council's recommendations, made a number of changes to state law aimed in part at creating consistency among the standards which state agencies apply in evaluating and regulating proposed groundwater withdrawals. The law called for establishment of a Water Resources Planning Committee (WRPC) under the purview of the Council to consider state water resources policy and develop guidance for municipalities and educational materials for the public. The WRPC is directed to report to the Council annually on its work beginning in August 2008. The law directs that the WRPC will conduct its work in several phases as described below.

The WRPC draws its membership from state agency groundwater professionals, water utilities, agricultural water users, the bottled water industry, other commercial water users, private well drillers, and a water advocacy organization.

The overarching charge to the WRPC is to plan for sustainable use of water resources, through three phases of work. The first phase of this effort is to gather and otherwise improve water resource data and to use these data in an analysis of "watersheds at-risk." Prior to establishment of the WRPC, MGS conducted a preliminary analysis of "watersheds at-risk" using available data as part of a comprehensive review of groundwater withdrawal regulations and produced a map that identifies a number of watersheds in which cumulative withdrawals in combination with in-stream flow requirements might be a large percentage of available water resources. As noted below, improving water information in a select few of these watersheds was the focus of WRPC work during 2008.

The second phase of work for the WRPC will be to convene planning groups in watersheds where additional data gathering and analysis indicate that cumulative water use, including demands for in-stream flow, approach unsustainable conditions.

The WRPC hopes that the third phase of work will not be necessary. This phase would involve a return to the Legislature with recommendations to address over-subscribed watersheds where the planning efforts of the second phase have failed.

The Legislature provided no additional resources for this new work. The Maine Geological Survey (MGS) has redirected 1½ hydrogeologists to this effort. Adequate funding has been secured from the Drinking Water Program in cooperation with the water utilities, the Maine Department of Environmental Protection, and from Poland Spring for the field investigations necessary to characterize groundwater in select watersheds. Funding is currently secured for two years only.

Activities in 2007:

MGS is the lead agency for the WRPC. State Geologist Dr. Robert Marvinney (MGS) spearheaded efforts to establish and organize the Committee. MGS solicited and secured participants on the Committee, and planned and organized its initial meeting, which was held in early 2008.

MGS refined its "watersheds-at-risk" analysis, in part by identifying areas for field investigation in the summer of 2008. This analysis provides a factual, scientific foundation for directing and focusing state efforts to address groundwater policy issues. The Drinking Water Program at the Maine Center for Disease Control, DEP, and the Poland Spring bottling company provided funding to MGS for the Committee's work.

Activities in 2008:

WRPC meetings:

The WRPC met on four occasions – January 15, March 26, July 22, and November 14, 2008. Brief summaries of each meeting are provided here.

January 15, 2008: This inaugural meeting focused on reviewing the legislative process that resulted in establishment of the WRPC, committee membership, charge to the committee and current funding status. The group briefly reviewed the watersheds at-risk analysis and some changes to it that ultimately had minimal impact on its conclusions. MGS staff discussed potential climate-change impacts to the analysis and activities MGS might undertake in select watersheds to better understand water resources in each.

March 26, 2008: Dr. Marvinney noted that budgetary forecasts required cuts in all agencies, and the MGS was forced to place one-half hydrogeologist on the funding for the WRPC activities provided by other agencies. MGS staff presented detailed maps of several candidate watersheds for additional investigations, including the Greater Portland area, Lake Auburn, Freeport, Friendship, Floods Pond, and Prestile Stream. After discussion, the WRPC decided to focus efforts in 2008 in the Freeport watersheds. The

group further discussed the hiring of interns to assist with investigations, and preliminary thoughts on improving discharge measurements.

July 22, 2008: This meeting focused on the potential agreement between the Kennebunk-Kennebunkport-Wells Water District (KKWWD) and Poland Spring for water withdrawal in the Branch Brook watershed. Staff from KKWWD presented an overview of the issue and its current position to table further consideration of an agreement indefinitely. KKWWD will first pursue the certification required under the state's in-stream flow rules (Chapter 587). Staff from Poland Spring presented an overview of its interests in the area, and the recent hydrogeologic studies it had conducted. The WRPC further discussed the regulatory process that would be triggered by potential water withdrawals by Poland Spring, noting that the company would need a permit under the Natural Resources Protection Act for this activity. MGS staff updated the WRPC on current activities. The group briefly discussed the need for better water resource information in eastern Maine and for improved educational efforts. The WRPC sent the KKWWD a letter endorsing its decision to pursue its certification under the Chapter 587 flow rules before considering any agreements for water withdrawal. The WRPC further offered to work collaboratively with KKWWD to improve water information in their watershed.

November 14, 2008: This meeting focused on water information needs for the Kennebunk-Kennebunkport-Wells Water District. Staff from KKWWD outlined the Water District's needs for additional stream flow information in order to assist with its compliance with the Chapter 587 in-stream flow rules. KKWWD requires a permanent stream gauge on Branch Brook to get direct measurement of flows. Funds are available to accomplish the installation through the Maine Drinking Water Program. The Water District would pay the annual maintenance for the gauge.

Investigations

MGS began water resource investigations in the Freeport watersheds that host the water supply wells for the Freeport Division of Aqua Maine (FDAM). Aqua Maine, Inc., a subsidiary of Aqua America, Inc., is a public utility that owns or manages 15 water systems in Maine. FDAM's primary source wells are in a large sand and gravel aquifer, first mapped by MGS in the 1980s. Daniel Locke, an MGS hydrogeologist, is conducting and managing the data collection efforts. Mr. Locke and two summer interns have been working on the tasks regarding data collection from available sources; aquifer investigations; and discharge measurements.

The WRPC submitted its annual report for the LWRC's consideration at its September 2008 meeting. A copy of the report is available on SPO's website.

<u>Activities planned for 2009</u>:

In 2009, MGS intends to continue water resources investigations in the above-noted Freeport watersheds. MGS is engaging with the U.S. Geological Survey to collaborate on this effort. In addition, MGS intends to work with the WRPC to prioritize

options for 2010 field investigations of other watersheds identified as potentially at risk in the 2006 study discussed above.

- **Lakes Heritage Trust Fund**

5 MRSA §3331, sub-§6 authorizes the Council to manage the Lakes Heritage Trust Fund and requires the Council to include in its annual report "an accounting of all donations to and expenditures from" the Fund. In 2007-8, the Fund received no donated or other funds and the Council made no expenditures from the Fund.

- **Interagency coordination**

In 2003, the Council adjusted its meeting schedule (moving from monthly to quarterly meetings) and approach to agenda setting in an effort to clarify and coordinate its role in relation to the Energy Resources Council and other forums for discussion among the State's natural resources agency commissioners. In particular, the Council resolved to use the commissioners' cabinet-level discussions to identify issues that are ripe for consideration by the Council and to help guide Council actions on matters assigned to the Council by the Legislature or Governor, as well as other matters which may benefit from inter-agency coordination but may not require the active involvement of the Council.

This approach has proven an efficient and effective means for ensuring timely communication among agency decision makers and resulting action on natural resources policy issues. The approach allows opportunity for discussions among state natural resources agencies of issues that involve multiple state agencies with potentially conflicting missions or mandates, including those of interest to stakeholders outside of state government that may necessitate and benefit from further commissioner-level consideration via the Council. SPO staff, in cooperation with other natural resources agency staff, provided professional assistance on a variety of matters to help support inter-agency policy initiatives, including the Governor's Task Force on Wind Power Development, the Ocean Energy Task Force, coordination of state dredging policy team, coordination of state participation in the Federal Energy Regulatory Commission's review of LNG projects, and state comments on the Minerals Management Service's EIS and proposed rules regarding development of a program for leasing Outer Continental Shelf areas for renewable energy development.

The Council itself met three times 2007 and once in 2008. The agenda and timing of these meetings were gauged to work on the two initiatives, discussed above, assigned to the Council to oversee.

- **Upcoming Issues in 2009**

Topics which the Council anticipates it will address in the coming year include the following:

- Continued oversight of implementation of bay management study recommendations

The Council's subcommittee on coastal and marine policy will continue work outlined above in accordance with the executive order stemming from the bay management study.

- Oversight of Water Resources Planning Committee

The Council will oversee and report to the Legislature on the committee's work.

- Coastal dredging; dredged materials management

The Council will continue to oversee an interagency-stakeholder coastal dredging work group. Meeting periodically, the work group provides a forum for identification and discussion of coastal dredging issues with the objective of facilitating coordination of state agency activities as appropriate.

- Interagency coordination

The Council intends to continue to coordinate its role and activities in relation to the Energy Resources Council and other forums for discussion among the State's natural resources agency commissioners. To that end, the Council intends to continue to meet on a quarterly basis in 2009 to facilitate oversight of those matters assigned to it and others as deemed appropriate.

CONCLUSION

The Council continues to provide a decision maker level forum for development and communication of consistent state positions on issues and policies that have statewide natural resources implications and that require coordination among multiple agencies.

As in past years, the Council's work was enabled, benefited from, and continued to promote close collaboration among state natural resources agencies. The Council thanks members of the public and state government personnel for their hard work and participation in its meetings, and the stakeholder meetings, study commissions, Council subcommittees, and other public policy development initiatives whose recommendations often inform and enlighten the Council's discussions and decisions.