



# *The Obligate*

Maine Association of Wetland Scientists  
January 1998

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## **MAWS Fall Meeting Notes - October 16, 1998**

Meeting started at about 9:00 AM ... quick head count indicated about 30 people in attendance.

**Steve Pelletier** (President) called the meeting to order and gave an overview of the day's topics, including: (1) Federal and State Delineation Standards; (2) Al Frick's Tier I Exemption Abuse Letter; (3) Wetland Enhancement and Restoration Compensation forum; and (4) the Dyer Brook Restoration Site.

**Dale Brewer** (Treasurer) announced that MAWS has about \$3500 in the checking account. Two \$500 scholarships will be awarded this year. So far, we've received two responses. One \$500 scholarship will be awarded next year.

**Marcia Spencer-Famous** (Program Chair) requested ideas from the membership for potential workshop topics for next year.

**Jim Boyle** (Legislative Chair) said that all is quiet on the legislative front this year, at least on the State level. On the federal level, the Army Corps of Engineers will be replacing Nationwide Permit 26 in several states this year and with a Programmatic General Permit (PGP) but that we in the State of Maine and the rest of New England will not be affected since we've adopted the PGP in 1995. Bob Stratton of the DEP announced at this time that 55 maps are now available that show seabird nesting on islands. These maps are associated with new rules, which mirror the Wetland Protection Rules and include Significant Wildlife Protection. These maps are not available for public dispersal because they are on mylar. Users can get photocopies by going to any of the DEP offices in the State. Bob can answer additional questions by calling him at 287-6114. **Dave Ladd** also announced that permitting fees increased from \$35 to \$50.

Steve opened the meeting at about 9:30 AM for new business.

**Don Phillips** (President-Elect) reminded the membership that National Wetlands Month will be coming around and that we should be prepared this time. If anyone wanted to get involved, call him at 848-5714. Don also asked **Dave Rocque** (State Soil Scientist) to discuss the differences between Version 1 and Version 2 of the Field Indicators For Identifying Hydric Soils In New England. After a brief description, Dave handed out a 6-page document that compares the two versions to the membership.

**Liz Brown** announced that the State Planning Office is looking for ways to spend money on wetland issues, and requested ideas from the membership. Liz can be reached by calling 287-8935.

Steve began an open discussion at about 9:40 AM on Federal and State Standards regarding Wetland Delineation Standards. Issues include, but are not limited to, irregularities in wetland delineation from person to person caused by (among others) budgetary and

seasonal constraints; whether any standards exist in the first place; and what MAWS should do (if anything) to maintain a certain level of wetland delineation integrity. **Bob Stratton** of the DEP and **Rod Howe** of the Army Corps of Engineers were panelists.

Bob opened by saying that, based on the quality of Data Forms he has reviewed, the overall thoroughness of wetland investigations appears to have declined in recent years. Bob reminded the membership that Data Forms should be filled out at a "modified intermediate" level. An example of how Data Forms should be prepared was provided by the Corps in an August 1995, document entitled "Performance Standards And Supplemental Definitions For Use With The 1987 Corps Manual." Bob said that he continues to review Data Forms with sketchy information pertaining to vegetation and soils. In addition, he said that the requisite number of Data Forms appears to have also declined. Bob recommends that Data Forms: 1) should include plots large enough to sufficiently represent the vegetation (e.g., 30-foot radius for documenting the overstory); 2) should include a sufficient number of plots based on the kinds of vegetative communities and soil types at a given site; and 3) should preferably be located in the area within which the alteration will occur. Bob does not want to see soils documentation that goes only, for instance, "4-inches deep" to verify hydric or non-hydric conditions, nor does he want to see vegetation documentation that says, for instance, "sedges and rushes" to verify hydrophytic or non-hydrophytic conditions.

Rod stated that the Corps has mandated that Data Forms should be prepared in accordance to the 1995 document, but that delineators do not have to use the same format recommended by the Corps. However, any variations should include something similar and equivalent to the 1995 document, and that the Corps should be consulted beforehand if delineators use a different format. Rod also likes to see common terms paired with the genus and species, at least

for uncommon plants. Rod said that the Corps likes to see at least three Data Form plots per linear mile of wetland/upland boundary.

Comments from the floor were plentiful. **Matt Schweisberg** suggested that if a delineator wonders if he/she has provided enough Data Forms on a given job site, then chances are good that not enough have been provided. **Peter Tischbein** asked the panelists if delineators should re-delineate wetlands that were originally investigated years ago? **Bob S.** replied that the site should at least be looked at quickly to verify wetland conditions, permitting standards and setback distances that may have changed over time. Don asked if written narratives should be included in support of wetland plans and Data Forms. Bob responded by saying a written report should be included if warranted - a large site usually warrants a written report while a small site may not. Jim asked if the DEP had numbers that supported Bob's opinion that the quality of wetland investigations was declining. Bob did not have any, but stated that it appeared to be a very gradual process. Steve asked if **Doug Burdick** (DEP, Augusta) or **Wende Mahaney** (U.S. Fish and Wildlife Service) noticed the same trend, and both replied in the negative. **Dave Cowan** asked about the quality of wetland boundaries between Data Forms, but Bob could not answer this due to the limited number of wetlands he is able to review in the field. **Colen Peters** suggested that MAWS establish a standardized reference area in order to test entry-level wetland delineators, upon which Dave made a motion to establish a committee to pursue remedies regarding this issue. Don seconded, and Steve recommended that MAWS should plan a workshop next summer that addresses fundamental wetland delineating skills. Dave volunteered to form a subcommittee and Bob, **Lauren Stockwell**, **Peter Tischbein**, **Gary Emond** and **Jay Beaudoin** volunteered to help him.

After a break, Steve introduced the next topic - Al Frick's letter suggesting that the 4,300-ft<sup>2</sup> wetland exemption is regularly abused.

**Don Witherill** (DEP, Augusta) discussed the background of how the exemption threshold developed. Lauren commented that at least part of the problem appeared to be those municipal Code Enforcement Officers who have a less than thorough grasp of what kinds of wetlands are exempted. Dave L. said that maybe MAWS should target that group for education. **David Moyses** said the problem was not confined to CEO's, but that the public at large does not know what a wetland looks like. David suggested that towns should routinely ask for professional assistance, and that the DEP should better enforce violations. Several people in attendance agreed that education was the key and that better enforcement would make a difference. However, a stepped up enforcement program would be unlikely, given the shortage of DEP staff. Bob S. said that DEP couldn't do anything if they don't ever hear about these problems, and suggested that consultants inform him of these problems. **Hugh Durgin** responded that we, as consultants, must remain neutral, else we'd never get jobs.

Steve then asked for a show of hands to see how many attendees thought a problem existed (upon which a little more than half of the 30 or so in attendance raised hands). He then asked how many do not know if a problem existed (whereupon most of the remaining attendees raised hands). Steve then asked the membership if a notification requirement would help, upon which just about everybody raised hands in agreement. Steve then called for volunteers to set up a committee dealing with this problem. Peter, Steve, and David Moyses volunteered to be on this committee. Wende suggested that, since the Corps PGP is due for renewal by the year 2000, then that year might serve as a target date to fix the language in the NRPA to resolve this issue. Colen then reminded the attendees that the Legislature may not be particularly receptive to adding more regulations, which brought forth a general round of agreement from participants.

At about 11:00 AM, Steve P. introduced the next agenda on the program, an update on the "New England Biological Wetland Assessment Work Group" by Matt Schweisberg of the EPA. Matt had several definitions of wetland enhancement that at one time or another enjoyed popularity with different federal agencies, and discussed the merits of each one. A paraphrased definition in favor these days is that wetland enhancement "increases the capacity of a wetland to perform functions and values at a level greater than the highest sustainable functional capacity at the expense of sustainability or with a reduction of functional capacity." At issue here is sustainability versus trade-offs. He also had several copies of the EPA publication entitled Wetland Bioassessment Fact Sheets to distribute to the audience.

After Matt's talk, Steve launched into the discussion "Wetlands Enhancement As A Form Of Wetland Compensation." After presentations by Matt Schweisberg, Doug Burdick, **Sylvia Michaud** (DOT), and Dave Cowan (Duke Engineering Services), the audience batted around the pros and cons of wetland enhancement versus wetland restoration. Striving to increase wetland benefits by increasing vegetative biodiversity were discussed until **Aram Calhoun** reminded everybody that increased species biodiversity is not always indicative of a healthy habitat, and she then offered sphagnum bogs as a good example. Wende (U.S. Fish and Wildlife Service) said that what she looks for when reviewing compensation plans is "What's the situation like now, what will the developer do to it, and what will it look like when the project is finished?" Doug said that a valid part of wetland compensation is reducing, minimizing, or eliminating invasive species.

The indoors portion of the workshop ended at about 1:30 PM, at which time Dave Cowan handed out directions to the Dyer River Restoration Site in Newcastle, Maine. According to Dave, this restoration site is part of an enforcement action associated with wetland impacts at Sears Island in recent years. This action consisted

of purchasing, then stabilizing, the land area around two unnamed tributaries to the Dyer River. These streams and adjacent wetlands were impacted over time by the historic use of grazing cows. This land-use practice resulted in compaction of the soil, which resulted in extensive erosion of both tidal and non-tidal reaches in a flashy, 125-acre watershed. Compensation included purchasing the area around the streams; fencing the cows away from the streams; reconstructing the streambanks; and a planting regime.

Meeting adjourned at about 4:00 PM.  
Minutes respectfully submitted by Don Phillips.

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## Legislative and Regulatory

### Wetlands Legislative Update

Jim Boyle

#### *Conservation and Reinvestment Act/Reinvestment and Environmental Restoration Act (CARA/RERA)*

Legislation was reintroduced in the Senate on January 19, 1999 containing major funding for state wildlife conservation, recreation and education. The Conservation and Reinvestment Act of 1999 (S. 25) dedicates a percentage of federal offshore oil and gas revenues to states for wildlife programs under its Title III section. The House version is expected to be reintroduced shortly. Both bills were first introduced in October 1998.

The House and Senate bills (CARA and RERA respectively) would dedicate 50% or more of annual revenues from offshore gas and oil leases - projected at \$4.59 billion in the year 2000 - into three separate funds. The distribution is stipulated in three "titles" in these bills.

Title I -- Outer Continental Shelf Impact Assistance -- This section would dedicate 27 percent (or approximately \$1.24 billion based on FY 2000 estimates) of annual offshore oil and gas revenue to coastal states and local communities for impact assistance including

environmental remediation or infrastructure needs associated with outer continental shelf activity off their coasts. Impact assistance funds could be used for projects like air and water quality improvements, coastal zone management, beach replenishment and conservation of fish, wildlife and wetlands as well as for onshore infrastructure and public service requirements. Title I is available to 30 "coastal" states including Great Lakes states. Title I revenue projections for Maine are estimated to be in the neighborhood of \$12.6 million.

Title II -- State, Local and Urban Conservation and Recreation -- This section would dedicate 23 percent in CARA (or \$1.06 billion based on FY 2000 estimates) or 16 percent in RERA (or \$734 million based on FY 2000 estimates) of offshore oil and gas revenue for funding the Land and Water Conservation Fund and the Urban Park and Recreation Recovery Programs. These funds would be used for state, federal and local recreation and conservation projects. Title II revenue projections for Maine are estimated to be in the neighborhood of \$4.3 million.

Title III -- Wildlife Conservation and Restoration -- This section would dedicate 10 percent in CARA (or \$459 million based on FY 2000 estimates) or 7 percent in RERA (or \$321 million based on FY 2000 estimates) of offshore oil and gas revenue to fund state-level wildlife conservation, wildlife education, and wildlife-associated recreation projects. Title III revenue projections for Maine are estimated to be in the neighborhood of \$2.2 million.

Senate co-sponsors include Frank Murkowski (R-AK), Mary Landrieu (D-LA), Trent Lott (R-MS), John Breaux (D-LA), Thad Cochran (R-MS), Tim Johnson (D-SD), Barbara Mikulski (D-MD), Jeff Sessions (R-AL), Max Cleland (D-GA) and Judd Gregg (R-NH).

House co-sponsors in 1998 included: Congressmen Don Young ® - Alaska), John Dingell (D-MI), Billy Tauzin (R-LA), Chris John



(D-LA), Richard Baker (R-LA), Bob Schaeffer (R-CO), Nicholas Lampson (D-TX), Saxby Chambliss (R-GA), James Barcia (D-MI), Tim Roemer (D-IN), William Jefferson (D-LA), Karen McCarthy (D-MO), James Gibbons (R-NV), Robert Aderholt (R-AL), George Radanovich (R-CA), Charles Norwood (R-GA), Michael Castle (R-DE), Pete Sessions (R-TX), Jay Dickey (R-AR), Roy Blunt (R-MO) and Wayne Gilchrest (R-MD).

### *Lands Legacy Initiative*

On January 11th, President Clinton and VP Gore unveiled a \$1 billion dollar initiative that is similar in some ways to CARA/RERA. The White House proposal is called the Lands Legacy Initiative and will be part of the President's FY 2000 budget proposal. The initiative contains many of the provisions from the Dept. of Interior's PAR (Partnership for America's Resources) proposal that was presented to the White House for consideration last month. In particular, the Lands Legacy Initiative proposes to use OCS revenue to fund LWCF, wilderness protection, local open space planning, coastal protection, endangered species habitat acquisition and urban parks.

Contact your Members of Congress, your Governor and the White House. Now is the time to raise awareness and brief your members of Congress.

### **National Regulatory News**

The following is a brief update on several regulatory developments from the *National Wetlands Coalition*.

*NWP 26 Replacement Permits*---The Corps is circulating within the Administration another draft of the nationwide permits proposed to replace NWP 26. The Corps hopes to release the replacement permits in final form on March 6th. The Corps Districts are then to incorporate regional conditions into the replacement NWPs. On July 15th, the Corps is to release the entire final package, including the

regional conditions. A 45 day comment period will then be opened. The Corps intends for the replacement permits to be in effect when NWP 26 expires in September 15, 1999.

*Rule on Wilson Decision*---The Corps and Administration are currently discussing and sharing drafts on rule language that will address the Wilson decision by the U.S. Court of Appeals for the 4th Circuit. In that case, the court declared invalid the Corps' rule that asserts jurisdiction over isolated wetlands and waters whose disturbance "could" affect interstate commerce. The court held that a connection with interstate commerce must actually exist before jurisdiction can be obtained. The effect of the court's ruling was to diminish the extent of the Corps' jurisdiction in the five states comprising the 4th Circuit: Maryland, Virginia, West Virginia, North Carolina and South Carolina. While the Corps has stated that no decisions have been made yet on any rule proposal, recent trade press reports cited an internal EPA memo discussing the agency's efforts to "expand" the jurisdiction of the 404 program through such a rule.

*Tulloch Rule*---The Corps is also discussing what to do about the Tulloch rule, which was struck down by the U.S. District Court for the District of Columbia. The rule asserted jurisdiction over excavation activities on the basis that incidental fallback into waters of the U.S. of material being excavated and removed from waters was a "discharged of dredged material" under Section 404. The district court's decision was upheld by the U.S. Court of Appeals for the District of Columbia Circuit, and the government decided at the end of last year not to appeal that decision to the Supreme Court. The Corps recognizes that it must do something on the regulation, which is now invalid. Options range from issuing a new rule to issuing guidance. According to the Corps, it may take some action in February.

**Army Corps Manual On-Line - With Updates:**

If you haven't already discovered it, you ought to check out the

on-line version of the 1987 Army Corps manual. It has been updated to incorporate a number of national-level guidance issues by adding boxes of "User Notes" throughout the text. In addition, text that has been rendered obsolete has been stricken. Very enlightening. Find it at <http://www.wes.army.mil/el/wetlands/pdfs/wlman87.pdf>.

### Partnership for Habitat Restoration

Lois Winter

The National Fish and Wildlife Foundation recently announced a new \$100,000 challenge grant, administered by the U.S. Fish and Wildlife Service's Gulf of Maine Program, and established to promote habitat restoration efforts in Maine. Designed to promote voluntary partnerships between federal and state agencies, local conservation groups and landowners, the grant will help restore Maine's salt marshes and coastal freshwater marshes and re-establish fish passage on coastal rivers and streams. In the end, migratory birds that depend on wetlands, and migratory fish such as alewives, herring, smelt, and salmon that depend on free-flowing rivers will all benefit.

The grant can fund a wide variety of restoration projects, such as:

- installing culverts to restore tidal flow to salt marshes;
- plugging drainage ditches;
- removing invasive non-native plants;
- maintaining existing fishways that have fallen into disrepair;
- constructing new fishways; and
- removing unneeded dams.

To ensure grassroots support and to stretch limited federal dollars further, the National Fish and Wildlife Foundation grant requires 2:1 matching non-federal funds (at least 1:1 in cash and up to 1:1 in-kind). "We look forward to coordinating with a wide variety of partners, including the Natural Resources Conservation Service, which also

provides federal matching funds for habitat restoration. Because habitat restoration projects demand the interests and abilities of a broad coalition of partners, participation of many is key to our success," explained Lois Winter, a biologist and outreach specialist at the United States Fish and Wildlife Service's Gulf of Maine Program. For more information, contact Winter at 207-781-8364.

### **Field Indicators Representative Sought**

Dave Rocque is looking for a MAWS representative to participate on an Oversight Committee regarding field indicators for identifying hydric soils in New England. This group will be larger than the Technical Committee, and involve stakeholders including regulators and wetland scientists. The Oversight Committee will meet once a year to be given a technical update on the indicators and to give their perspective on how well the indicators are working for them. Dave considers our participation to be important. We will be voting on a representative at the annual meeting so that we may respond to this request in a timely manner.

### **Version 2 Woes? You Are Not Alone...**

Several of our members have reported delays and/or unresponsiveness in their efforts to obtain their own copies of Version 2: *Field Indicators for Identifying Hydric Soils in New England* from the *New England Interstate Water Pollution Control Commission* (NEIWPCC). If you had received a copy of Version 1 prior to August, 1998, then you should have received a notification to request the new version free of charge. If you have not yet received Version 2, you can call NEIWPCC at 978-323-7029 and talk to Karen Koscielecki, or e-mail her at [kkoscielecki@neiwpc.org](mailto:kkoscielecki@neiwpc.org). Those who were not holders of Version 1 can expect to pay \$5.00 for the new version.

## Salt Marsh Restoration Added to Programmatic Permits

Concord, Mass., Feb. 10 /PRNewswire/ -- Salt marsh restoration activities in Maine, New Hampshire, Massachusetts and Rhode Island may now be eligible for regulatory consideration under Programmatic General Permits recently modified by the U.S. Army Corps of Engineers.

The Corps of Engineers regulates all work in waters and wetlands under a variety of statutes, including Section 10 of the Rivers and Harbors act of 1899 which provides for federal regulation of all work in, under or over navigable waters of the United States and Section 404 of the Clean Water Act which regulates the discharge of dredged or fill material in United States waters, including wetlands.

"Programmatic General Permits (PGPs) for the four states have been revised to allow review of salt marsh restoration activities of any size, so long as these projects are designed to restore or enhance the natural functions and values of the wetland and is determined by the Corps of Engineers with input from the federal resource agencies not to have more than minimal adverse impact on the aquatic environment," said Christine A. Godfrey, of the Army Engineers regional headquarters in Concord, Mass.

The salt marsh amendments to the PGPs for each of the four states went into effect on January 29, 1999. Because the original PGPs were issued on different dates, they expire as listed below:

- Maine September 29, 2000
- New Hampshire June 2, 2002
- Massachusetts March 1, 2000
- Rhode Island February 11, 2002

Further information about the Programmatic General Permit program in general or the new salt marsh restoration amendment may be obtained by contacting Christine Godfrey at the New England District, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751.

SOURCE: U.S. Army Corps of Engineers

## MAWS 1999 Annual Meeting

Wednesday, February 24, 1999

Maine State Grange

146 State Street

Augusta

### **Meeting Agenda:**

8:00-8:45 Minutes of the fall meeting

Committee Reports

**Elections** 8:45-10:00 Ad-hoc Committee Reports:

Wetland Delineation Standards - Dave Cowan, Chair

4,300 square foot exemption - Pete Tischbein, Chair

MAWS Web Page - Karen Bolstridge, Chair

**Coffee Break** 10:00-10:45

10:45-11:30 Corps mitigation guidance, Gail Klingerman (Corps)

MDOT update, Sylvia Michaud (MDOT)

11:30-12:00 Use of GPS for Wetlands Mapping - Brad Beeler, Maine

Technical Source

12:00-1:00 Lunch (catered)\*

1:00-2:30 Federal and State agency updates

DEP Mike Mullen?

LURC Marcia Spencer-Famous

Corps Jay Clement

Vernal Pools Mark McCollough

Natural Areas Program, Program

Developments Molly Docherty

SPO, Casco Bay Watershed Project Liz Brown

2:30-4:00 Panel Discussion on Preservation

Doug Thompson (EPA) (tentative)

Chris Godfrey (Corps)

Don Witherill/Mike Mullen (DEP)

\* The day's events and refreshments are free of charge, but please confirm your attendance by notifying Marcia Spencer-Famous at LURC (287-4933 or marcia.m.spencer-famous@state.me.us). Please let Marcia know by Friday 2/19 if you will be having lunch.

### **1999 Executive Committee Nominations**

The offices of President-Elect, Secretary, Program Chair, and Legislative Chair are up for election in 1999. An election will be held at the Wednesday, February 24, 1999 meeting in Augusta (see above agenda). The slate of candidates for 1999 is given below. As always, nominations will be accepted from the floor.

President-Elect Peter Tischbein (Timson & Associates)  
Secretary No Nominee  
Program Chair Colen Peters (DE&S)  
Legislative Chair Gary Emond (E-Pro)