



**MEETING MINUTES**  
**May 21, 2010**  
**DES Conference Rooms**  
**9:00 a.m. – 12:00 p.m.**

**Members present:**

Wendell Berry  
Bill Carpenter  
Jennifer Czysz  
Diane Hanley  
Jim Haney, Ph.D.  
Mark Hemmerlein  
Phil O'Brien, Ph.D., Chair  
Eric Orff  
Larry Sunderland, Vice Chair

**Representing:**

NH Business and Industry Assn  
Commissioner Rep. DRED  
Director Rep, Office of Energy & Planning  
NH Assn. of Conservation Commissions  
Scientific Community, UNH  
Commissioner Rep., DOT  
NH Lakes Association  
Fish & Game Commission  
Conservation Community

**Term:**

July 8, 2010  
Indefinite  
Indefinite  
August 22, 2010  
August 22, 2010  
Indefinite  
August 1, 2012  
August 22, 2010  
September 19, 2010

**Members not present:**

Mark Gallagher  
Fred Murphy  
Dennis Pavlicek  
Bo Quackenbos  
Ken P. Wilson  
Vacant  
Vacant  
Vacant

Commissioner Rep, DOS  
Planning Boards  
Municipal Officials  
NH Association of Realtors  
NH Marine Dealers Association  
Tourism Industry  
Commissioner, Dept. of Agr., Markets & Food  
Ex. Dir. Rep. F&G

Indefinite  
August 1, 2011  
August 1, 2011  
June 27, 2011  
August 22, 2011  
Expired  
Indefinite  
Indefinite

**Staff Present**

Jacquie Colburn  
Jenn Rowden  
Amy Smagula  
Paul Currier

Lakes Coordinator, Watershed Management Bureau (WMB)  
Watershed Planner, WMB  
Exotic Species Coordinator, WMB  
Administrator, WMB

**Guests:**

Richard "Dick" Smith  
Don Kent  
K. Allen Brooks  
Valerie Thayer

NH Bass Federation  
State Conservation Committee  
Attorney General's Office

**Opening**

Chairman O'Brien called the meeting to order at 9:08 a.m. Committee members and guests introduced themselves.

**Minutes**

- ***Larry Sunderland made a motion to accept the January 8, 2010 minutes as written, second by Bill Carpenter. Motion passed unanimously.***
- ***Bill Carpenter made a motion to accept the March 12, 2010 minutes as written, second by Eric Orff. Motion passed unanimously.***

**Status of Committee Membership**

Jacquie said that the NH Travel Council had submitted a letter to G&C requesting that Jim Morash be appointed to the LMAC as their representative. The State Conservation Commission has also submitted a letter to G&C requesting that Don Kent be appointed to the LMAC as their representative. Ken Wilson is recommending that the NH Marine Trades Association find a new representative because his schedule does not allow him to attend enough meetings. For the Fish and Game Department representative, Jacquie said that she has asked the

Commissioner to send a letter to Director Normandeau requesting a representative. Eric Orff said that he would also call Director Normandeau regarding the F&G department representative.

Jacque reminded Bud Berry, Diane Hanley and Jim Haney that their terms are set to expire this summer and asked them if they would like to be reappointed; they all concurred that they would.

### **Other Committee Business**

#### **Water Quality Standards Advisory Committee**

Jacque explained that she attended the recent Committee meeting on behalf of the LMAC. In addition to discussing the status of the administrative rules Env-WQ 1700, the surface water quality regulations; the draft policy for water level fluctuations; and numeric nutrient criteria for rivers; the Committee discussed how to proceed with HB 1305 and HB 1348. The committee decided to establish working groups to address four key areas, including: enforcement, anti-degradation, definition of wetlands and surface waters, and designated uses. Jacque said that she will be assisting the designated uses working group.

Jacque asked for an LMAC member to replace Bud Berry. Diane Hanley agreed to be the next LMAC representative to the Water Quality Standards Advisory Committee.

### **Key Discussion Issues**

#### 1) **Lake-Related Legislation** – Jacque Colburn

The LMAC reviewed and briefly discussed the status of the bills that it had been tracking during the 2010 Session. Jacque explained that since SB 441 regarding the Lakes Program had been amended by the House Resources, Recreation and Development Committee that it would have to go back to the Senate for concurrence. She added that while the bill was not heard by the Senate Finance committee, that it was heard by the House Finance Committee because of the reference included in the bill pertaining to the LMPP use of the Rivers Program fund for the acceptance and expenditure of funds. House Finance did not make any changes to SB 441.

#### 2) **Exotic Species Updates** – Amy Smagula

Amy is the Coordinator of the DES Exotic Species Program. She presented a very detailed overview of the issues related to exotic species management in the state but focused on research activities and control activities. Amy stated that variable milfoil is more of a problem in New Hampshire than in neighboring states, possibly because it favors our relatively more acidic waters. Low pH values may, however, provide some protection from zebra mussels, already found in Vermont and recently discovered in Massachusetts. Eurasian milfoil prefers waters with a higher pH.

Herbicides are so far the most common control method. Milfoil is most susceptible to a systemic herbicide like Triclopyr (slow-acting and expensive) and 2,4-D. Liquid formulations are tricky to use and not particularly effective. Granular 2,4-D applications are typically at 100 lbs. or 200 lbs./acre. There is no significant advantage of the heavier application rate. Different formulations are being tested this summer in Lake Winnepesaukee. Diquat is a contact herbicide and does not get at the stems and roots.

Biological controls were investigated in one of the earlier research projects. A nematode found in Lake Wentworth is similar to one used to control a rice plant parasite. However, it is not species specific to variable milfoil and more research is needed to find a similar but species specific variety.

Plant replacement was tried in Lake Massasecum in Bradford after suction harvesting removed 87% of the variable milfoil and 42% of native species. Native plants from the south end of Massasecum were planted where the milfoil had been removed. This was mildly successful but the milfoil slowly returned. This method might be useful for a newly discovered small infestation of var. milfoil. Regarding hand pulling, unfortunately, divers can't keep up with milfoil growth. This technique is only used for very small infestations at an early stage. The combination of hand pulling and suction harvesting does work well for new infestations.

Amy state that DES covers up to 50% of the control costs, chemical or otherwise. There is no charge for DES dive time or benthic barriers. DES does not fund control of native plants. Physical removal of plants requires a DES Wetlands Bureau permit. DES has been hesitant about a policy statement on control methods for native species; it would prefer a guidance document and then case by case evaluations.

Following Amy's presentation, Dick Smith and one or two other members expressed concern about the availability of mail order chemicals and their use by individuals (without a permit) to eliminate plants in front of their properties.

### 3) **Character and Limitations of New Hampshire's Lakes** – Jim Haney

Jim gave a presentation focusing on two influential characteristics of our lakes – depth and phosphorus. Lake depth affects water quality and the lake's response to nutrient inputs. Most lakes in New Hampshire are less than 30 meters deep and that depth makes them more or less susceptible to chlorophyll-a. Chlorophyll is a measure of the algae abundance in the lake. Jim said that those lakes that have a mean depth of  $\leq 10$  m that they are more susceptible to eutrophication.

Regarding phosphorus Jim indicated that our lakes have a threshold of 10ppb, meaning once the phosphorus level in the lake exceeds 10 ppb the lake is much more susceptible to impairment and eutrophication increases at an accelerated rate. Once a lake reaches 10ppb of phosphorus the lake produces more chlorophyll a. Eutrophication occurs at an accelerated rate when the total phosphorus exceeds 10ppb. Jim said that the data indicate that twice as much phosphorus translates into twice as much microcystin; this is a linear relationship. Other important points that Jim made included that cyanotoxins increase at a faster rate when total phosphorus is greater than 9 ppb and the transfer of cyanotoxins through the food web is more efficient when total phosphorus exceeds 10 ppb.

Finally, Jim talked briefly about a document that was developed a few years ago by The Nature Conservancy (TNC) and titled "Classification and Condition Assessment for New Hampshire's Lakes". According to the TNC, the purpose of this effort was to develop a lake classification that could be comprehensively applied to all lakes in the state. Jim indicated that the data and information produced in the report is very useful and could be helpful for future work. He said that he and Jacquie should follow up with TNC to discuss the document in more detail and other potential applications of the GIS mapping and analysis that it includes.

### 4) **Public Trust in New Hampshire**- Allen Brooks

Jenn R. stated that as a follow-up to the March 12<sup>th</sup> LMAC meeting discussion on public trust, Allen Brooks from the AG's Office is joining us to discuss particular questions about public trust issues with the committee. To facilitate this discussion a draft discussion paper regarding the basics of public trust and lake management in NH was developed by Jenn and Jacquie. At the last meeting LMAC members expressed concern that the public, property owners, state agencies and the New Hampshire Legislature does not always have a clear understanding of the public trust. Exactly what the LMAC may be able to do to clarify the public's understanding of what the public trust is, may be limited.

The discussion revolved around the need to clarify what are shorefront property-owner's riparian rights, the actual jurisdictional boundaries of the state on great ponds (up to the natural high water mark), and how the state agencies are able to enforce regulations like the Comprehensive Shoreland Protection Act without it infringing on property owner's rights. The state is charged with managing waterbodies for the "greatest public benefit"; the issue is determining what the greatest benefit is and for who. Items related to this question discussed by Allen and the LMAC members are as follows:

- Enhancing public access and recreation on waterbodies by the building of boat ramps and leasing state-owned land, while also protecting water quality and shoreland areas. Sometimes the mandates for various state agencies/programs conflict with one another on these topics.
- Riparian land-owners have the right to "wharf out" (build a dock), access the water, etc. as long as they do not "unreasonable interfere" with the public's right to use the water. The LMAC asked what authority the state has to determine when a dock, etc. interferes. All docks require a wetlands permit and major projects must go before the Executive Council. Issues that are unclear regarding riparian land-owner rights versus the public's rights are the right to build a seawall to prevent erosion (maybe allowed) or the rights to put up swim lines (likely not allowed).
- Cases involving water withdrawals, particularly when the water will not be drawn past the natural high water mark, would likely not be determined under public trust doctrine, but by the state having proprietary ownership of the water.
- Additional questions regarding waterbodies traditional uses versus current uses in determining the greatest public benefit we also addressed.

Jenn and Jacquie will continue to work with Allen and the LMAC on the discussion paper. One next step that the LMAC may be able to take is to develop educational material to help clarify those rules and regulations that do exist regarding public trust issues.

**Update on the Sustainability Initiative** – Jenn Rowden

Due to time restrictions the update on the Sustainability Initiative Data Subcommittee will wait until a future meeting when they will have more to report back to the committee. They will be meeting on June 2<sup>nd</sup> at DES.

**Other Business:**

Future agenda items: None were suggested

Lake visit suggestions: Cobbetts Pond in Windham, Canobie Lake in Windham and Salem, and maybe Arlington Mill Pond in Salem.

➤ ***The meeting concluded at noon.***

**Next meeting Friday, July 23, 2010; Meeting and lake visit.**