



RIVERS MANAGEMENT ADVISORY COMMITTEE
NH Rivers Management and Protection Program

New Hampshire Department of Environmental Services
29 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
phone: 603-271-2959 fax: 603-271-7894

RMAC MEETING MINUTES
October 13, 2015
1:00 pm – 4:00 pm
NHDES Conference Rooms 110-111

Members Present

Ken Kimball, Chair
Michele L. Tremblay, Vice Chair
Mark Hemmerlein
Anne Krantz
Alan Larter
John Magee
Frederick McNeill
Roger Noonan
Jim Ryan
Larry Spencer
Ruth Ward
Donald Ware

Representing

Recreational Interests
Conservation Community
Commissioner, DOT
Historical & Archaeological Interests
Granite State Hydropower Assoc.
Executive Director, F&G
Municipal Government
Agricultural Community
NH Fish & Game Commission
NH Association of Conservation Comm.
Local River Management Advisory Comm.
Public Water Suppliers

Term

Dec. 28, 2017 V
Dec. 28, 2017 V
Indefinite NV
June 15, 2016 V
Jan. 5, 2018 V
Indefinite NV
Nov. 16, 2017 V
Mar. 22, 2015 V
Sept. 28, 2018 V
Oct. 12, 2016 V
Sept. 5, 2016 V
Sept. 28, 2016 V

Members Absent

Patrick Hummel
Gail McWilliam Jellie
Allan Palmer
Elizabeth Peck
Susan Slack

Commissioner, DRED
Comm., Dept. of Ag., Markets & Food
NH Business and Industry Association
Commissioner, DOS
Director, Office of Energy and Planning

Indefinite NV
Indefinite NV
Sept. 28, 2016 V
Indefinite NV
Indefinite NV

DES Staff Present

Ted Diers Watershed Bureau Administrator
Carolyn Guerdet DES Water Division
Tracie Sales Rivers and Lakes Programs

I. Introductions/Minutes/Committee Business

Chair Ken Kimball called the meeting to order at 1:05 PM with a quorum present.

1) Acceptance of August RMAC Meeting Minutes

- ***Vice Chair Michele L. Tremblay made a motion to accept the August 25, 2015 RMAC minutes, second by Larry Spencer. Motion passed unanimously.***

2) RMAC Membership Update

Vice Chair Tremblay shared a Thank You note from Kath Nelson, former RMAC member, to the RMAC and RMPP staff thanking all for the framed Rivers Program poster.

Tracie Sales noted that the membership renewals for both Jim Ryan and Fred McNeill were now complete. However, the Governor's Office had not yet received Roger Noonan's renewal paperwork.

3) Status of the Rivers Coordinator Position & RMPP with State Budget Approval

Ted Diers reported that now that we have a budget, the perspective for filling the Rivers Coordinator position is a little bit rosier. Under the continuing resolution, we would have still been in the hole \$10,000 as of January from Jacquie's retirement payout. With the new budget, however, we will only be in the hole \$3000. This means that we should be able to post the position in December, conduct interviews in January, and get someone on-board in February. The position will be posted internally to state employees first, before being posted to the public. Michele asked if an RMAC member would be on interview team, noting that she had been on the team the last time. Ted said that there would be an Advisory Committee representative.

Michele reminded the group that she and LMAC Chair David Packard had reviewed the combined job description for the Rivers and Lakes Programs Manager, and gave it more of a leadership tenor. Ted responded affirmatively to Ken's question that the part-time support position, Tracie's, would remain. John Magee asked if the position should be a higher Labor Grade due to the Master's degree requirement, but Ted replied that the grade was standard for the Env IV position. This position continues to oversee the Instream Flow Specialist, which is Federally funded.

II. RMPP Rules Updates

1) Proposed Changes to the RMPP Rules (Env-Wq 1800)

Tracie noted that the only changes since the last meeting were the addition of the terms "exemplary natural community" and "species of special concern" to the inventory to include in a nomination, along with definitions of these terms.

- ***Vice Chair Michele L. Tremblay made a motion to accept the wording in the rules for the terms "exemplary natural community" and "species of special concern" to be consistent with that used by the Natural Heritage Bureau, second by Jim Ryan. Motion passed unanimously.***

2) Next Steps for the RMPP Rules

Michele commented that the RMAC is ahead of schedule on the RMPP rules revision, as RMAC approval was due on December 1st, and reviewed the proposed schedule for the next steps. She thanked all of the RMAC members and RMPP staff who were involved with the rules revision effort.

Ken asked whether nominating committees submitting river nominations in June would follow the old rules or the new. Ted responded that they would follow the new rules as soon as the Fiscal Impact Statement for the draft rules is published by the Legislative Budget Assistant, which is scheduled for January 8, 2016. Michele clarified that nominating groups for the Warner and Androscoggin rivers would then use the new rules, and that Tracie would need to clarify with the groups that the nomination point system would no longer be used.

Ted recommended lining up an RMAC meeting with the Public Hearing for the rules update, possibly in early March. Michele will check the legislative calendar for crossover, with the goal of holding the RMAC meeting shortly prior.

Ted added a comment that the draft Env-Wq 1700 (Water Quality) rules are coming out in the next couple of months.

III. RSA 483 Statute Updates for 2016 Legislative Session

1) Additional Recommended Changes for RSA 483

Ken noted that Representative Spang had agreed to bring the changes to RSA 483 forward to the legislature. While the committee had approved some of the changes last year, they later voted to postpone bringing them to the legislature. Some additional changes have been proposed to those approved in November 2014. Rep. Spang has suggested some further edits,

and the general court may also make changes once this is presented to them. Michele noted that there is beginning to be some crossover between the Rivers Act and the Shoreland Act, and the committee should consider what belongs in each statute.

Ken brought up Rep. Spang's proposal to include a reference to RSA 483-B in RSA 483:2. No RMAC member proposed to add the reference, so RSA 483:2 remains as written.

Definitions:

Aquatic connectivity has been added as a topic for corridor management plans in RSA 483:10.

- ***Vice Chair Michele L. Tremblay moved to confirm the proposed definition of "Aquatic connectivity," second by Fred McNeill. Motion passed unanimously.***
- ***Larry Spencer moved to approve the proposed definition of "Fluvial geomorphology," second by Jim Ryan. Discussion ensued. Motion passed unanimously.***
Ted explained that this was a new topic added to the subjects that must be addressed in river corridor management plans, but the perception based on the prior wording was that DES would be required to do fluvial erosion hazard assessments that the Department did not have the resources to do, which had not been the intention.

Nominations:

- ***Vice Chair Michele L. Tremblay moved to relocate the word "publicly" to read "advertise publicly" in RSA 483:6 I, second by Fred McNeill. Motion passed unanimously.***
- ***Vice Chair Michele L. Tremblay moved to approve the updated and re-ordered list of resources to be considered in a nomination in RSA 483:6 IV, second by Anne Krantz. Motion passed unanimously.***

Gender neutral language:

- ***Vice Chair Michele L. Tremblay moved to approve the proposed gender neutral language in RSA 483:8 V, second by Larry Spencer. Motion passed unanimously.***

State comprehensive plan:

- ***Larry Spencer moved to approve the deletion of the previously approved new language regarding state comprehensive plans in RSA 483:8-a III(c) and instead add the words "river corridor" with respect to management plans in RSA 483:5, second by Don Ware. Motion passed unanimously.***

Corridor management plans:

Ted noted that items (j) and (k) did not look like the other items in this list, and most of this language about where to find the information should be in guidance, not in statute. Michele asked if this would be an opportunity for DES to ask for more funding. Ted thought not. Michele also asked if DES Senior Leadership would support these changes. Ted was unable to commit as Senior Leadership has not seen all of the proposed changes, or the fiscal note. Larry noted that DES should be able to provide these resources to at least a limited degree.

- ***Roger Noonan moved to approve the changes to the previously approved additions of state-owned lands and fluvial geomorphology for corridor management plans as RSA 483:10 II(j) and (k). Second by Don Ware. Motion passed with one opposed.***

Tracie asked if the RMAC should reconfirm with the Oyster River LAC their desire to have their Shoreland exemption for 1st – 3rd order streams removed. Michele felt that their 2014 letter of support for the removal of the exemption was sufficient.

Overall changes to RSA 483 recommended by the RMAC:

- ***Vice Chair Michele L. Tremblay moved that this record, combined with the changes approved on November 18, 2014 and August 25, 2015, constitutes the changes that RMAC recommends moving forward as a bill in the legislature. Second by Larry Spencer. Motion passed unanimously.***

2) Proposed Changes to RSA 483-B Regarding 1st-3rd Order Streams

Ken noted that this proposal was made in response to the challenges incurred during the Ham Branch nomination. At the last meeting, the RMAC voted to make a recommendation to SAC regarding how 1st through 3rd order designated rivers are treated within the Shoreland Water Quality Protection Act (SWQPA), applying only those provisions of the SWQPA that apply within 50' of the water. This would weaken the protections on existing 1st-3rd order designated rivers, except on the Lamprey and Oyster rivers, unless a grandfathering clause was included. Speaking as a member of the Piscataquog River LAC, John Magee said that he would not like to see the full SWQPA protections removed from the 1st-3rd order portions of the Piscataquog. Ted added that stream order identification is relatively invisible to LACs and landowners, and is imperfect, being somewhat arbitrary when being determined. However, this addition would encourage future nominating committees to extend the designation to smaller order rivers.

Michele reminded the committee that it was likely that the RMAC would be jointly overseeing the SWQPA in the future, and that changing the basis on which streams are classified, such as using a method other than stream order, could be addressed later within that statute. Ted summarized that while Rep. Spang was reluctant to make changes in RSA 483-B, the RMAC feels the changes should be made there, not in RSA 483. RSA 483-B will be opened for fees during the 2016 legislative session. Relative to the Shoreland Advisory Committee (SAC), Michele said that while SAC voted to recommend different criteria for lakes, rivers and estuaries, they would not be determining what those criteria would be. She added that the RMAC should determine the rivers Shoreland criteria.

- ***Vice Chair Michele L. Tremblay moved that the RMAC recommend that for first, second and third order designated rivers, only the provisions of the SWQPA which describe the Waterfront Buffer standards, those within 50 feet of the reference line, be applied, that existing designated rivers be grandfathered from this new provision, and that this change be made in RSA 483-B. Second by Roger Noonan. Discussion ensued. Motion passed unanimously.***

Discussion ensued about grandfathering the existing 1st-3rd order designated rivers, with Roger noting there were challenges either way, grandfathering or not, and that grandfathering was cumbersome and challengeable. It could be an administrative hassle, but it Don felt that the hassle was manageable. Ken noted that not grandfathering could supersede past legislation.

Michele will speak with Rep. Spang about moving forward with the proposed changes to RSA 483 and RSA 483-B. In addition, the RMAC will send a letter to the Chair of SAC recommending the motion just approved on the 50 foot buffer as well as the previously approved motion that the RMAC is willing to take on joint oversight of SWQPA with the LMAC.

IV. River-related Legislation

1) 2015 CACR 2 Letter of Testimony

Ken reminded the committee that the RMAC had previously voted to support CACR 2, providing that dedicated funds be used solely for the purpose of the fund. The bill had originally been retained in committee, but the House Ways and Means committee will be voting on it on October 14th. Given that the bill text now includes a provision that a dedicated fund can be robbed if 2/3 of the General Court agrees, we have drafted a letter saying that the RMAC supports the intent of the bill, but not the portion that allows a fund to be used for alternate purposes. This change requires a vote.

- **Anne Krantz moved to approve the letter of testimony for 2015 CACR 2 as drafted, second by Don Ware. Discussion ensued, with a minor wording changed to the last paragraph proposed. Motion passed unanimously with the minor wording change.**

Michele will provide the new language for the final paragraph to Tracie.

2) 2016 LSRs Submitted by the House

Michele noted that the future RMPP bill is LSR 2492, and that John Mullen has submitted LSR 2491 to extend the Instream Flow advisory committee. Other LSRs of potential interest, which Michele finds through key word searches, are LSRs 2046 (conservation number plate funds), 2164 (stormwater or sewage penalties), 2418 (aquatic resources mitigation fund), 2658 (nitrogen and phosphorus in fertilizer), 2668 (shoreland permit fees), one on LCHIP funds and another to repeal LCHIP. Michele will poll the P&L subcommittee for a meeting time when bill text is available, probably mid-January.

V. RMAC Comments on the Draft Instream Flow Pilot Program Report

Ken prepared a draft comment letter on the *Draft ISF Pilot Program Report* for the RMAC's consideration, which he reviewed along with some project background. He felt that the RMAC is obligated to respond and provide comments given that the RMAC has spent decades working on this program. Comments are due October 25th. Given the amount of time and funding that the Pilot Program required, Ken thought that completing all of the designate rivers could take a very long time. Therefore, he suggests adding an interim standard setting approach to protect instream flow until the river-specific protected flows and management plans can be developed.

Larry asked that tools mentioned in the report be referenced there. In response to a question from Fred about a financial section, Tracie responded that the report includes an estimate of how much it will cost to complete ISF on each river and the additional required staff, but that no detailed budget request has been developed. Larry added that dam retrofits are likely to be costly for some rivers, and Fred suggested identifying financial resources early to complete the required work.

- **Vice Chair Michele L. Tremblay made a motion that the RMAC approve the draft letter commenting on the Draft Instream Flow Pilot Program Report, second by Larry Spencer. Discussion ensued. Motion passed unanimously with spelling corrections.**

VI. Member Comments, Updates and Other Related Groups

1) Sub-committee Reports:

- a. WQSAC – Ted covered this topic during the discussion on the RMPP rules.
- b. SAC – Michele reminded the group that SAC sunsets at the end of the year, and there seems to be no intention by the committee to extend it. SAC has spent more of its time focused on the rules, rather than on bigger changes in the statute such as addressing tidal rivers. She also noted that SAC has not incorporated the RMAC/LMAC/SAC subcommittee recommendations as part of their report, but that she will continue to push to see that they are. SAC does not want to have RSA 483-B opened, so Michele recommends that the RMAC move forward itself with any changes it feels should happen. SAC also did not feel that it should formally recommend that the RMAC and LMAC take on oversight of the Shoreland Program.

2) Other Member Updates

Larry reported that the work done by volunteers and volunteer organizations at Livermore Falls has really paid off. The area saw a lot of use, and volunteers were often on hand to greet visitors. There is still some alcohol consumed inappropriately there, but it is now mostly families. The volunteers will continue their efforts at this new state park.

3) RMPP Updates

- Sludge Rules – Mike Rainey is still working on edits in response to comments, he will submit the final draft to JLCAR this month. Many RMPP recommendations included.
- The new interactive map of designated river corridors is receiving positive feedback from LACs and LRMP staff. It has been added to LRMP permit applications, and will be added to others.
- RSA 483:5 – Coordination with Federal Statutes
River Corridor Management Plans have been updated with FERC as of October 12, 2015. As a result, FERC must "... consider the extent to which a project is consistent with Federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project."

Michele asked Tracie to forward her email of September 29th to the LACs to RMAC members. Michele also said she would like to ensure that the LAC Workshops continue, though there will not be one this fall.

VII. Other Business and Action Item Review1) Action Item Review

- a. The joint RMAC/LMAC subcommittee on the hybrid approach will meet in early January.
- b. The Policy & Legislation subcommittee will meet in early to mid-January.
- c. Tracie will forward the letter of testimony on CACR 2.
- d. Tracie will forward the comment letter on the *Draft Instream Flow Pilot Program Report* to Wayne.
- e. Tracie will draft a letter from the RMAC to SAC regarding the 50' concept for 1st-3rd order designated rivers and RMAC/LMAC oversight of the Shoreland Program.

2) Next Meeting

The next meeting will tentatively be January 28, 2016 in the afternoon, with meeting topics including 2016 legislation and moving forward with the rivers and lakes hybrid approach. With LMAC concurrence, the day will include a mid-day joint RMAC/LMAC meeting as well as a morning LMAC meeting.

➤ **Anne Krantz made a motion to adjourn, second by Fred McNeill. All agreed.**

Meeting adjourned at 3:00 PM