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**Land and Water Resources Council**  
**2002 Annual Report**

to

**Governor John Elias Baldacci**

and the

**Joint Standing Committee on Natural Resources**  
**of the**  
**121<sup>st</sup> Maine Legislature**  
**First Regular Session**

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## **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 2002. This report describes the council's activities in 2002 and notes activities that the council anticipates in 2003.

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 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 2002**

### **I. Matters Assigned by the Legislature**

#### **A. Invasive Species Management and Prevention**

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.” In addition to provisions regarding DIFW and DEP management actions, public education, and program funding, PL 2001 c. 434, Part B established the Interagency Task Force on Invasive Aquatic Plants and Nuisance Species (“Task Force”). The legislation required the Task Force 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 an action plan to protect Maine's inland waters from invasive aquatic plants and nuisance species. Under the legislation, the Task Force may also develop a comprehensive invasive aquatic plants and nuisance species management plan that meets the requirements of the federal Invasive Species Act. The Task Force chose to develop a state action plan that also meets the federal requirements. Such a plan makes Maine eligible for federal funding for invasive species prevention and control.

In November 2001, Governor King completed appointments to the task force, which is made up of representatives from five state agencies - the Departments of Environmental Protection (DEP), Inland Fisheries and Wildlife (DIFW), Human Services (DHS), Agriculture (DAFRR), and Conservation (DOC) - and twelve citizens from a variety of interest areas.

In 2002, the Task Force held four meetings. The focus of these meetings was development of the state action plan. These meetings were robust and productive. Thanks to a private foundation grant obtained by the Volunteer Lake Monitoring Program, consultant Holly Dominie was retained to research, draft the plan, and facilitate Task Force meetings. This series of meetings, coupled with Ms. Dominie's professional guidance, led to the group's development of a draft action plan in the summer of 2001. At its July 11, 2002 meeting, the council approved the draft plan for purposes of its presentation at several public meetings around the State to gather public comments on the draft.

In August 2002, the Task Force held public meetings in Presque Isle, Bangor, Augusta, and Naples. Attendance varied from 12 in Augusta to 27 in Naples. In addition to the public meetings, substantial public comment was also submitted to DEP in writing prior to the public comment deadline on August 31, 2002.

Following the series of public meetings, the Task Force reconvened in September to review its draft report in light of public comments and suggestions it received. In early October 2002, the Task Force approved its final draft "State of Maine Action Plan for Managing Aquatic Invasive Species" for presentation to and adoption by the council, in accordance with PL 2001 c. 434.

The Action Plan focuses on the following four key goals:

- Educate the public and people involved in business, trade, research and government so well about invasive aquatic species that they do not facilitate the introduction or spread of species through activities over which they have control;
- Prevent new introductions of invasive aquatic species into the State to the extent possible;
- Limit the spread of established populations to other waters of the State; and
- Reduce the harmful effects resulting from infestations of invasive aquatic species by managing those that cannot be eradicated.

The Plan notes that agencies' ability to achieve these goals may be hampered by limited staff and financial resources.

The Action Plan also articulates five major objectives that serve to organize the work needed to make progress toward these goals:

- Provide effective leadership, coordination, and program monitoring;
- Raise awareness and educate the public well;
- Strengthen programs to avoid introduction and transport;
- Be prepared to respond rapidly and control spreading, and
- Effectively inventory, research, and manage information.

The Plan details a number of strategies that are intended to provide a multi-faceted, public-private approach to prevention and management of aquatic invasive species issues. Strategies of

primary importance from state agencies perspective include: preventing spread of invasives through extensive education and outreach efforts; expanding the watercraft inspection program; establishing a rapid response program for both invasive plants and illegal fish introductions; working regionally to prevent invasive aquatic species from entering the state; establishing plant control protocols; and understanding the impacts of invasive species on Maine's commercial fisheries and marine ecology. The Task Force concluded that issues regarding the current Lake and River Protection sticker program as a funding vehicle be addressed during the program review scheduled for 2003.

At its October 10, 2002 meeting, the council reviewed and recommended that the Governor approve the plan for submission to the Federal Aquatic Nuisance Species Task Force as the State of Maine's invasive species management plan. Governor King approved the plan by letter dated October 22, 2002. On November 15, 2002, this federal task force approved Maine's plan as eligible for federal funding support. DEP is currently preparing the requisite proposal for federal funds. DEP anticipates that federal funding will be especially critical to address rapid response procedures for new plant infestations and illegal fish stocking.

A copy of the Action Plan, which was previously sent pertinent legislative committees, is provided as Attachment 1. The Plan's summary, pp. i - iii, provides a useful overview of the various strategies that state agencies, in cooperation with public and private organizations and individuals, will use to meet these goals and objectives. A copy of the report is available on-line at : <http://www.state.me.us/dep/blwq/topic/invplan02.pdf>.

*Lead state agency contact: John McPhedran, DEP*

## **B. Assessment of the Effectiveness of the State's Coastal Management Program in Addressing Working Waterfront and Public Access Issues**

PL 2001 c. 595 directs the council to review the effectiveness of the State's federally approved coastal zone management program in meeting the State's statutory public access and working waterfront policy goals. In conducting this review the council is to (1) "explore state and local jurisdiction and authority"; (2) consider the "development of incentives for municipalities to improve coastal access"; (3) consider the "development of incentives for municipalities to conserve working waterfront lands for water dependent uses"; and (4) discuss the "development of performance indicators to allow for ongoing measurement of progress."

As lead agency on this effort, the State Planning Office (SPO) organized a study committee of interested parties to assist and guide its efforts to prepare the assessment. At the suggestion of the committee, SPO contracted with Coastal Enterprises, Inc., (CEI) to conduct a field survey of 25 coastal fishing communities that are representative of the array of commercial fishing ports and harbors found along the coast from Kittery to Eastport. The purposes of this study were to (1) document the status of working waterfronts and the present and future threats of change or loss; (2) to identify municipal responses and technical needs for dealing with problems; and (3) to make recommendations regarding monitoring the issues in the future. The study was conducted by interviewing knowledgeable

people in each community in order to better understand the status of their working waterfronts, and how municipalities are handling changes confronting them.

CEI's survey indicates that the threats to established commercial access facilities and sites are real, persistent, and pervasive and identified the following primary ways in which access is lost:

- Posting of access to privately-owned inter-tidal areas traditionally used by clam and worm diggers;
- Closing off or contesting ownership of established public access ways by new landowners;
- Loss of tenuous lease or use arrangements with other private pier and wharf owners;
- Conflict and competition for use of public facilities, especially those with limited parking and equipment storage space; and
- Conversion of working wharves to residential, recreational or other commercial use.

CEI also documented the following host of circumstances that exacerbate and stem from lost access:

- Intense real estate pressure to use waterfront for purposes other than commercial fishing or another water dependent use;
- Increased use pressures, as fishing families sell waterfront land;
- The need for many public wharves to balance and serve both commercial and recreational use;
- Limited parking areas, and increased competition for parking as tourism grows;
- Limited mooring opportunities, especially in some areas with heavy tourism;
- Increasing sizes of both commercial and recreational boats;
- Increased cost for coastal towns for legal challenges and acquisition of access;
- Higher property sales that trigger re-valuation, and in turn lead to higher taxes;
- Costly infrastructure and upkeep of both private and municipal wharfs and resulting challenges to keep them economically self-sustaining; and
- Inflated market prices for waterfront land that are unaffordable to traditional users.

Based on the results of CEI's survey, the committee's recommendations, and additional information regarding public recreational access and other issues, SPO developed a concept draft to ensure the council's approval of the nature and scope of the report. Following the council's review and discussion of the concept draft at its November 14, 2002 meeting, SPO developed a final report for the council's review and approval for submission to the Legislature. The final draft contains the following findings and recommendations:

- The problem of rising property taxes that force users off of the waterfront is the most critical issue that needs to be addressed by the Maine Legislature;
- The loss of access for commercial fisheries is a wide-spread and persistent problem, driven by broad economic and demographic influences that in turn result in rising property values and higher taxes;

- As coastal fishing communities are well aware, loss of commercial access is a worsening problem that takes several forms, varying from community to community, which are complex to track and address through public policy;
- Municipal ownership of existing facilities, support for businesses and facilities that serve the fishing industry are among the effective actions towns may take;
- The State’s Coastal Plan is implemented through a mixture of mandates, partnerships, and assistance programs that attempt to balance local “home rule” authority and the State’s policy goals and should be further refined and targeted to help municipalities address public access and working waterfront issues;
- Technical and financial assistance that help communities respond with locally appropriate solutions to access problems and needs are the best incentives to help advance state policy goals;
- Coastal communities, which face a variety of access-related issues, have come to depend on the State’s Small Harbor Improvement Program (SHIP) and other grant programs to help provide crucial financial support for local projects and are seeking knowledge about other tools and techniques to help maintain and enhance their working waterfronts.
- Better data on the coast-wide status and trends in commercial fishing access facilities and usage is desirable; and
- Policy makers should encourage formation of a stakeholder-based coastal access forum to work on effective public sector and private sector actions to maintain and promote needed access.

In addition, the report contains discussion of the above noted CEI survey and description of current Maine Coastal Program initiatives regarding the State’s public access and working waterfront policies.

At its December 12, 2002 meeting, the council approved submission of a finally edited and formatted version of the report to the Legislature in accordance with PL 2001 c. 595, following an opportunity for members not in attendance to review the report and confirm their concurrence in its submission. A copy of the final report as approved by the council is attached as Attachment 2.

*Lead state agency staff: Jim Connors, SPO*

**C. Water Use Management Policy**

See Section III, B (2), below.

**D. Smart Growth: 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. With numerous exceptions, 30-A M.R.S.A. §4349-A, sub-§1 requires that state agencies make "growth related capital investments"<sup>1</sup> 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.

During 2002, the council received no notices of exemption pursuant to 38 M.R.S.A. §4349-A, sub-§1 (C) (1) and considered no certifications pursuant to 38 M.R.S.A. §4349-A, sub-§1 ( C ) (8).

*Lead State agency contact: Liz Rettenmaier, State Planning Office*

## **E. 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.

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<sup>1</sup>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.

Participating members of the MWMC include the Department of Marine Resources (DMR), DIFW, DHS (Division of Health Engineering), DOC, DAFRR, Maine Department of Transportation (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 (USGS). 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 2002, the MWMC met quarterly and provided a forum for exchange of information among the agencies. Subgroups 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 2003, 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*

## **F. 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. The Fund had no program activities in 2002.

*Lead State agency: State Planning Office*

## **II. Matters Assigned by Executive Order**

### **Council on Environmental Monitoring and Assessment**

In 2002, Governor King's administration decided to terminate the Council on Environmental Monitoring and Assessment ("CEMA") as a forum for coordination of public and private environmental monitoring and assessment efforts, recognizing that this forum had served its purpose of fostering such coordination. Existing communication vehicles, including newsletters and conferences, seem to be effective in maintaining visibility for the State's volunteer monitoring programs. Volunteer monitoring networks for lakes, rivers and streams and estuaries continue to operate and improve their programs apart from the CEMA structure.

*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.

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 Governor King's Smart Growth initiative, and issues regarding the Smart Growth Initiative generally. In addition to representatives from the council's member agencies - SPO, MDOT, DEP, the Department of Economic and Community Development (DECD), DOC, DIFW, DAFRR, DMR, and DHS - representatives of the following agencies have been involved in the Smart Growth Initiative: Atlantic Salmon Commission (ASC), Maine State Housing Authority (MSHA), Maine Historical Preservation Commission (MHPC), Department of Education (DofEd), Department of Administrative and Financial Services, and Maine Public Utilities Commission.

The subcommittee met during early 2002 to finalize work on the the report titled, *Indicators of Livable Communities: A report on Smart Growth and the impact of land use decisions on Maine's communities, environment and countryside*. The report is available on-line at: <http://www.state.me.us/spo/lwrc/Indicators%20of%20Livable%20Communities.pdf>. The Smart Growth Coordinating Committee selected the twenty three indicators in the report as measures of "smart growth", and as tools to track and monitor the efficacy of "smart growth" efforts in Maine. Agencies participating in the subcommittee provided data. After the completion of the report, the full subcommittee did not meet, but sub-groups of members continued to meet to address policies, programs, and investments that cut across individual agency interests. Members of the subcommittee focused on the following initiatives and interagency efforts:

- SPO, MDOT, DECD, DMR, MSHA, MHPC, and DofEd are participating in the discussions of the Community Preservation Advisory Committee, which began meeting in October, 2002;
- SPO, MDOT, and DEP are working together with local and regional planners and environmental organizations in developing a model wetlands ordinance for municipalities interested in protecting high-value wetlands;
- DEP, SPO, DIFW, DMR, ASC, MDOT, and DHS are collaborating, together with representatives from the environmental, municipal, and development communities, in the revision of DEP's stormwater rules;
- SPO and DEP are working together to develop model ordinances for establishing local stormwater utilities to improve local water quality; and

- SPO and MDOT are meeting to incorporate MDOT interests into state reviews of comprehensive plans and ordinances, improve integration of transportation and land use planning locally and regionally, and alleviate confusion related to local authority over state projects.

The council anticipates that the group will continue to meet during 2003, with potential for more intensive and focused effort prior to legislative sessions. SPO provides lead staff support for this effort.

*Lead State agency contact: Liz Rettenmaier, State Planning Office*

## **B. Water Use Management Planning**

In 2002, the council continued its efforts on coordination, monitoring, and oversight of state water resources management policy initiatives:

- Oversight of actions to implement the Water Use Management Plan for Downeast Rivers (WUMP), led by SPO pursuant to the State's Atlantic Salmon Conservation Plan for Seven Maine Rivers (Atlantic salmon plan); and
- Completion of the work of 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 Downeast rivers 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 its August 9, 2001 meeting, the council unanimously reaffirmed its prior approval of the WUMP report's final recommendations and approved the report for the Atlantic Salmon Commission's consideration and adoption as a part of the 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 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.

Significant strides in implementing the were made in 2002. Cooperative efforts to carry out the Plan remain underway. The following listing indicates the status of action items scheduled for 2002 in the WUMP's implementation plan:

- maintenance of the USGS's stream flow gauge on the Narraguagus River: ongoing;
- long-term commitment to fund stream flow gauges on the Pleasant and Machias Rivers: multi-year funding secured;
- implementation of an effective flow monitoring strategy: preliminary proposal produced;
- continuation of support for the low flow study of eastern Maine rivers, due to the council in 2004: ongoing;
- provision of support for the ASC's Atlantic salmon habitat impact assessments: ongoing;
- integration of the water withdrawal hierarchy identified in the implementation plan into state policies: effort linked with broader water use management discussions;
- provision of technical assistance to farmers regarding water management: National Fish and Wildlife Foundation and state bond funds secured;
- amendment of state permitting programs to address inconsistencies in the approaches to water use management by DEP and the Land Use Regulation Commission (LURC): effort linked with broader water use management discussions;
- assessment of the effects of water withdrawals during high flows: ongoing
- development of models of smolt transport and discharge: ongoing
- development of models of upstream movement and discharge of adult Atlantic salmon: ongoing
- evaluation of the effects of water withdrawals at high flows: ongoing
- research on wild blueberry plant water requirements: in 2002 funding was secured and work continued, with the United States Department of Agriculture's Agricultural Research Service leading the research effort in 2002 in partnership with the University of Maine; and

- research on farm practices to further reduce water use: funding has been secured for development of management practices manuals for farmers, and full funding is being sought to provide educational programs to facilitate adoption of new practices by farmers using irrigation.

In 2002, the council focused much of its attention regarding the WUMP on the implementation plan's proposals regarding water monitoring and data, and the budget for monitoring needs identified by the plan. Through its discussions, the council identified the need for a coordinated, integrated approach to funding monitoring, research, and other actions called for by the WUMP. Work continues on development of this integrated funding proposal, with the expectation that such a proposal will be presented to the next administration for its consideration.

*Lead State agency contact: David Keeley, SPO*

## 2. Sustainable Water Use Policy Task Force

In 2000, DEP and DAFRR agreed to co-chair an interagency effort, guided by stakeholder input through a Sustainable Water Use Policy Task Force, to develop a prioritized set of recommendations to establish sustainable water use policies for Maine's public water resources. This effort stemmed from recognition by both DEP and LURC, the State's primary agencies responsible for water quality management, 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.

After presenting an interim report to the council on December 21, 2000, the task force formed four subcommittees focused on issues regarding aquatic ecosystems, water storage systems, water conservation, and research and monitoring. These subcommittees, made up of representatives of water users, environmental advocates, as well as state and federal agencies, held numerous meetings during 2001 and into early 2002.

By letter dated June 21, 2001, the Legislature's Natural Resources Committee requested the council to respond to LD 1488, a bill regarding water withdrawal reporting, which the Committee had voted to carry over. The Committee specifically asked the council to report on what information needs to be collected on water withdrawals in order to understand the overall volume of those withdrawals, the potential effects of those withdrawals on the State's water resources, and what steps need to be taken by state agencies to collect and manage that information on an on-going basis. The Committee made a substantially similar request for recommendations from DEP. In light of these requests and the on-going work on this issue initiated and led by DEP and DAFRR, the council decided to use the task force process as the means by which it would ensure development of policy recommendations for the

Legislature's consideration as requested. In addition to periodic reports to the council, the task force met twice with the Legislature's Natural Resources Committee to provide an update on its progress.

In February 2002, the Task Force presented consensus policy recommendations to the council. Those recommendations focused on a proposed interim program of water withdrawal reporting. Concerned that the Task Force's recommendations focused narrowly on the issue of water use reporting and agricultural issues, the council did not accept the Task Force's recommendations as presented but supplemented those recommendations to address water use management policy more broadly and suggested administrative and legislative actions to address the following issues:

- Data Gathering and Water Use Reporting
- Stakeholders and Task Force Involvement
- Instream Flow and Water Level Rules
- Permitting Process
- Water Conservation and Efficiency
- Storage Options, Alternative Sources and Technical Assistance
- Annual Report to the Legislature
- Regional Water Use Task Forces
- Water Rights and Impact on Users

By letter dated January 31, 2002, the council reported its recommendations to the Legislature's Natural Resources committee.

Following significant debate and discussion of issues presented by the council's recommendations and related matters, the Natural Resources Committee reported out an amended version of LD 1488, which was enacted became PL 2001 c. 619. The major provisions of this law include water withdrawal reporting, regional or local water use task forces, and rulemaking to establish water use standards.

In 2003, DEP, DAFRR and DOC's Maine Geological Survey (MGS) plan to continue work with other interested agencies to implement PL 2001 c. 619, and anticipate that the council will provide a forum for interagency discussions of any future recommendations to the Legislature resulting from experience with and assessment of the water withdrawal reporting program established by that law.

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

### **C. Coastal Dredging Policy**

In 2000, MDOT recommended and the council supported 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. During the 2000 legislative session, MDOT secured \$250,000 to support this process.

MDOT assembled a diverse group of stakeholders to serve as an oversight committee to the process and hired a consultant, Foster Wheeler Environmental Corporation (Foster Wheeler), to prepare a dredging management action plan intended to identify solutions to ensure that state harbors are dredged in a safe, economic, and environmentally sound manner.

The oversight committee held quarterly committee meetings in 2001, with a closing meeting in February of 2002. In addition, the committee held 3 public meetings during 2001, in Millbridge, Rockland, and Portland, to gather ideas from stakeholders. Based on public input and research and analysis done by Foster Wheeler, the committee discussed potential recommendations and policy initiatives. Based on the group's discussions and its own research and analysis, in March 2002, Foster Wheeler produced a final draft Dredging Management Action Plan (DMAP report) which discussed and made recommendations regarding the following major issues:

- potential changes in state and federal permitting processes to expedite regulatory decisions;
- options regarding selection and implementation of dredging windows (resource-based, seasonal restrictions on dredging operations);
- potential changes 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 on-going viability of existing or preferable, alternative open water ocean and upland disposal options;
- 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.

The oversight committee did not reach agreement on the findings or recommendations in the DMAP report, nor was there agreement on the report's findings or recommendations among participating agencies. Recognizing the desirability of continued work to refine state dredging policy, participating agencies (MDOT, DEP, DMR, SPO, MGS, and SPO), with staffing support and organizational leadership provided by MDOT, advised the council of their intent to continue discussions, using the DMAP report as an informational resource and soliciting the comments of oversight committee members on any policy recommendations resulting from these discussions.

In order to focus discussion on key issues, MDOT organized several subgroups to look at six broad topics:



- dredge work windows (lead staff: Alan Stearns, MDOT).
- dredge disposal options (lead staff: Christine Olson, MDOT)
- federal navigation projects prioritization (lead staff: Brian Nutter, MDOT)
- streamlining and technical assistance (lead staff: Jeff Madore, MDEP)
- beneficial reuse (lead staff: Paula Clark, MDEP)
- leadership and policy (lead staff: Rob Elder, MDOT)

The dates for release, discussion, and finalization of these reports have slipped from those initially intended. Current plans are to hold a meeting of interested parties in January 2003, following release of the subgroups' reports, and to present a report to council in February or March 2003, with a final report to the Legislature in February or March 2003.

*Lead state agency contacts* : Brian Nutter, Department of Transportation; Alan Stearns, Department of Transportation

#### **D. Dam Removal Policy**

Responding to both legislative and public interest in dam removal issues during 2001-02, on May 9, 2002, the council requested SPO to convene an advisory group comprised of legislators and stakeholders to analyze and evaluate the need for a dam removal policy in Maine. Concurrently, at the request of the council, SPO initiated and coordinated an effort among representatives of all state agencies whose mandates involve dam issues to update the State's hydropower policies and to generate a written compendium of state law and agency policies pertinent to dam removal. In early November 2002, SPO published an initial, partial draft compendium.

The Maine Dam Removal Policy Advisory Group met three times during the fall of 2002 and initiated a collaborative dialogue aimed at identifying the primary issues facing the State in its consideration of a dam removal policy. In order to provide Maine-specific information on the dam removal issue, SPO conducted a survey of dam owners to find out the number and nature of dam removal proposals expected in the near future. The response rate of the survey from owners of non-hydropower dams was robust and indicated that only 1% of dam owners intend to remove their dam, 0% intend to abandon their dam, and 26% anticipate a need major repair in the next decade. For the most part, the owners of hydropower dams did not respond to the survey.

Although it did not complete work on this issue, the group agreed that any state dam removal policy should address both hydropower and non-hydropower dams and generated for the council's consideration a set of ten considerations for dam removal proceedings, along with two preliminary recommendations for on-going work on development of a state dam removal policy. The group recommended that SPO complete the above noted compendium, as an aid to the Legislature, the next administration, and interested parties, and that the council recommend to the next administration's Land and Water Resources Council that it reconvene or re-form the group and request that it continue its work to determine whether Maine's current laws and state agency policies regarding dam removal address the full range of important issues. Under the group's recommendation, the reconvened or re-

formed Dam Removal Policy Advisory Group would then work to provide comprehensive recommendations to the new council. The work of the advisory group is available on-line at: <http://www.maine.gov/spo/energy/damremoval/damremoval.htm>

At its December 12, 2002 meeting, council members reviewed and unanimously accepted the group's report and recommendations. In addition, the council agreed to forward the attached report and recommendations to the Legislature's Natural Resources, Marine Resources, and Inland Fisheries and Wildlife Committees for their information, having given council members not in attendance an opportunity to review the attached report and recommendations and affirm their agreement in acceptance and transmittal of the report as described above. The group's report, previously sent to legislative committees, is attached as Attachment 3.

## **COUNCIL MATTERS ANTICIPATED IN 2003**

In 2003, the council will be comprised of new members, following confirmation of new state agency commissioners. The following list of issues indicates matters, in addition to those that may be assigned to it by the Legislature or Governor, that the new council may wish to consider in 2003:

- **Water use management policy:** monitoring and data collection; reconciliation of DEP and LURC approaches to regulation of water withdrawal; coordination of efforts to secure funding for management initiatives identified in the State's Water Use Management Plan, focused on the Downeast rivers; and related issues.
- **Atlantic salmon conservation:** Harmonization of the goals and objectives of the State's Atlantic Salmon Conservation Plan for Seven Maine Rivers and the federal Atlantic salmon habitat management plan; and related issues.
- **Smart growth and related land use and public investment issues**
- **State dam removal policy**
- **Local regulation of state development actions pursuant to the Growth Management Act**
- **Coastal dredging policy**

## **CONCLUSION**

During 2002 the council continued to fulfill and further develop its role as a forum for interagency discussion on state policy for appropriately balancing environmental protection, conservation, and economic development objectives. The council has proven an effective mechanism 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 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 2003 as the Legislature, Governor, and state agencies make use of this forum to develop and refine the State's natural resources policy.