

MAINE STATE LEGISLATURE

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Land and Water Resources Council

*1997 Annual Report
to the Governor and the Maine Legislature*

January 1998

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Introduction

The Land and Water Resources Council submits this annual report to the Governor and the Maine Legislature pursuant to 5 MRSA § 3331. This report describes the activities of the Council in 1997. It includes the responsibilities that have been assigned by the Legislature or the Governor, as well as some projects that have been taken on by the Council at the request of state agencies.

The Council was originally created by Executive Order. In 1993, the Maine Legislature reestablished the Council by statute, and designated the following members:

- Commissioner of Agriculture, Food and Rural Resources
- Commissioner of Conservation
- Commissioner of Environmental Protection
- Commissioner of Human Services
- Commissioner of Inland Fisheries and Wildlife
- Commissioner of Marine Resources
- Commissioner of Transportation
- Commissioner of Economic and Community Development
- Director of the State Planning Office

Due to an expanded agenda, the Council now meets on a monthly basis. The Council is chaired by the Director of the State Planning Office. SPO provides some staff support for the Council, and other state agencies on the Council provide staff for specific tasks and projects.

The Council is authorized to advise the Governor, the Legislature and state agencies in the formulation of policies for management of the State's land and water resources to achieve state environmental, economic, and social goals. The statute provides broad authority to the Council to investigate natural resource issues of state significance and to recommend state policies to protect these resources (5 MRSA § 3331(2)). The Council agenda includes assignments from the Legislature and the Governor, as well as tasks that are undertaken by agreement of the Council members.

As the table of contents indicates, the Council has addressed a number of issues in 1997. Notably, this report contains two studies that were assigned to the Council by Legislative Resolve: a report to the Legislature on mercury contamination in Maine, required by Legislative Resolve, Ch. 41; and a review of the Natural Resources Protection Act Permit by Rule program, required by 1997 Legislative Resolve, Chapter 35.

1997 has been a year of reinvigoration of the Council. In the recent past, the Council was not very active in developing public policy for Maine, as this function occurred either within state agencies or in the Governor's Cabinet. The Council has now become better recognized as a forum for interagency discussions on state policy that leads to decisions that balance state

interests in environmental protection and economic development. It is also becoming a mechanism for managing state programs that involve multiple state agencies. Finally, the Council is a way to deliver a single state message to the federal government on federal policies that affect Maine's natural resources. Consequently, we expect the agenda of the Council to continue to expand in 1998, as the Legislature and state agencies increasingly recognize the value of this forum in making public policy decisions.

Atlantic Salmon Conservation Plan

The Atlantic Salmon Conservation Plan was developed by a Governor's Task Force to protect Atlantic salmon and its habitat and to restore viable, self-sustaining salmon runs to seven Maine rivers: the Sheepscot, Ducktrap, Narraguagus, Pleasant, Machias, East Machias, and Dennys rivers. The five year plan has been approved by the U.S. Fish and Wildlife Service as an alternative to federal listing of Atlantic Salmon as threatened species under the Endangered Species Act. The Plan includes a schedule of tasks for habitat protection, habitat enhancement, species protection, and fish management. Each task includes a measurable output within the five-year planning horizon. The plan will be implemented by the collective resources of state and federal governments, forestry, agriculture, and aquaculture industries, and local citizens. Additionally, conservationists will also seek and use private foundation funds for discrete tasks benefiting salmon habitat.

An Executive Order, signed by Governor King on December 15, 1997, An Order to Implement the Atlantic Salmon Conservation Plan, calls for all affected state agencies to fully implement the Conservation Plan. The Land & Water Resources Council is charged to supervise implementation of the Conservation Plan. As the State Planning Office is the chair of the Council, the Office is also the lead agency for implementing the Conservation Plan.

The Land & Water Resources Council has deliberated briefly on certain portions of the Conservation Plan and has designated an Atlantic salmon subcommittee to work on implementation. The subcommittee has begun to prepare operational plans for each one of the Conservation Plan's activities. Three local watershed councils have formed and have begun to meet to design work plans for the upcoming field season. Engineers have put together preliminary designs for weirs on the Pleasant, Machias, East Machias, and Dennys rivers. The Plan Coordinator has begun collecting information and contacting landowners to prepare permit applications for the weirs. The Atlantic salmon subcommittee will continue to review operational plans for the tasks and adjust the schedule and completion dates as necessary.

Lead state agency staff: Henry Nichols, State Planning Office

Council on Environmental Monitoring and Assessment

Governor King signed an Executive Order on April 22, 1997 that directed the Council to create the Council on Environmental Monitoring and Assessment (CEMA) to coordinate and develop volunteer environmental monitoring programs for the State. DEP and SPO share lead responsibility for the CEMA, along with two co-chairs. CEMA's membership appointed by the Land and Water Resources Council includes staff from state and federal agencies, universities, non profit organizations, a business representative and two citizen volunteer monitors.

CEMA was charged with nine tasks in the Executive Order, ranging from establishing a clearinghouse for information, improving technical support for citizen monitoring groups and serving as an advocate for volunteer monitoring. CEMA's mission statement is "building partnerships to better assess ME's environmental health". CEMA adopted two objectives: (1) to improve coordination and communication among environmental monitoring programs; and (2) to maximize the contribution of volunteer-generated data.

Two CEMA subcommittees are working on projects. The inventory subcommittee is creating a searchable database of environmental monitoring efforts in Maine, including public, private, research and volunteer efforts. The communications subcommittee has published articles in newsletters about CEMA and its mission. It is also planning a session for the 1998 Water Conference and is preparing a report about volunteer monitoring efforts in Maine.

In 1998, CEMA will develop a list of data gaps and recommendations for state policy to meet priority needs. Monitoring water quality at recreational swimming beaches and monitoring water quality of rivers and streams have been discussed to date. CEMA will submit a report to the Land and Water Resources Council in June, 1998, that includes these recommendations.

*Lead State agency staff: Kathleen Leyden, State Planning Office
Webster Pearsall, Department of Environmental Protection*

Watershed Protection Program

The 118th Maine Legislature passed An Act to Protect the States Lakes, Rivers, and Coastal Wetlands through a Comprehensive Watershed Protection (Public Law 1997, Chapter 519; 5 MRSA § 3331(7)). The law authorizes the Land and Water Resources Council to create, implement, and administer a comprehensive watershed protection program in order to ensure the development and implementation of locally supported watershed management plans. The law directs the Council to coordinate the activities of agencies involved in watershed management. One of the required activities of these agencies is to establish priorities for the purpose of directing resources to the management of water bodies based on the following factors:

- an assessment of their value;
- the degree of threat or impairment to water quality, and aquatic habitat due to nonpoint source pollution;
- the likelihood of meeting watershed management objectives; and
- the degree of public support in the watershed for watershed management.

The Council designated a Watershed Management Committee to advise the Council on priority watersheds and to ensure coordination of the watershed management activities by the participating agencies and organizations. Membership in the committee includes State and Federal agencies, as well as private organizations that have a statewide interest in watershed management.

During 1997, the committee developed a proposed list of priority water resources based on the criteria listed above. The Committee presented the preliminary list to the Council, and the Council authorized the list to be distributed for a thirty day public comment period. Final adoption of the priority watersheds by the Council will follow this comment period in 1998. It is important to note that the list of priority waters does not include all important water bodies in the State of Maine. The listed water bodies have significant value from a statewide perspective and have water quality that is either impaired or threatened by pollution from land use activities in the watershed.

Local groups that are developing or implementing watershed management plans in priority watersheds are likely to receive additional technical assistance from State and Federal agencies. The committee anticipates that each year several watersheds on the list will be targeted for watershed management actions by state agencies. For example, staff from the Maine Department of Environmental Protection will be available to assist local volunteers organize and carry out watershed surveys to determine the sources of water pollution in the watershed.

Financial assistance for groups developing or implementing watershed management plans will be made available through a grant program that was also authorized by the watershed management law (38 MRSA § 2013). For the past several years, the DEP has awarded approximately \$500,000 from federal funds to local groups implementing projects to reduce nonpoint source pollution. In 1998, that amount will be supplemented by an additional \$500,000 if a bond issue

is approved by Maine voters in June. While these funds are not limited to just priority watershed projects, preference will generally be given to those projects, based on approval criteria set forth in the law.

*Lead State Agency Staff: Don Witherill, Department of Environmental Protection
Kathleen Leyden, State Planning Office*

Lakes Heritage Fund

The Lakes Heritage Fund was created by the Legislature in 1997 (5 MRSA § 3331 (6)). The purpose of the Fund is to protect, preserve and enhance the quality of lakes and great ponds in Maine. The Fund is authorized to receive funds from any private or public source, upon a majority vote of the Council. The Council is authorized to disburse the funds in a manner consistent with the purposes of the Fund. No funds have been deposited in this Fund, so no action has been taken by the Council.

Lead State Agency Staff: Mark DesMeules, State Planning Office

Patterns of Development

At the request of Governor King, the Council and member agencies were actively involved in 1997 with a number of studies and policy initiatives related to patterns of development, or sprawl. "The Costs of Sprawl" report released by the State Planning Office in 1997 outlines environmental, fiscal, and community character impacts of Maine's spreading out pattern of development. The report was a joint effort by Council member agencies, coordinated by the State Planning Office. In the fall of 1997, the ECO/ECO group sponsored a major conference in Bar Harbor on "The Paradox of Sprawl" that convened public and private participants in a two-day discussion of the issue. The conference was the outgrowth of the Maine Environmental Priorities Project's Patterns of Development Task Force led by the Dept. of Environmental Protection. The Maine Departments of Transportation, Inland Fisheries and Wildlife, Conservation and Economic and Community Development, as well as the Department of Education, are also involved in activities addressing this topic.

In 1998, the Council expects to continue to serve as a forum for state policy discussions on this issue. The State Planning Office is leading a task force on developing community service centers which will make recommendations to the Legislature that will be reviewed by the Council.

Lead State Agency Staff: John DelVecchio and Fran Rudoff, State Planning Office

Hazard Mitigation Plan

The Council endorsed the concept of establishing a standing committee on Natural Hazard Mitigation. The purpose of this committee would be to coordinate and lead natural hazards mitigation planning and policy efforts. The Council asked the Maine Emergency Management Agency and the State Planning Office to convene a meeting of interested state agencies and other appropriate entities and to report back to the Council with specific recommendations on Committee composition and responsibilities for the Council's final approval. The interagency planning meeting will take place in early 1998.

*Lead State Agency Staff: John DelVecchio, State Planning Office
Steve Burgess, MEMA*

Mercury in Maine

In response to the discovery of harmful levels of mercury in Maine's environment, and the presence of some significant mercury sources in Maine, the Maine Department of Environmental Protection requested the Maine Legislature to pass a resolve in 1997 to address this issue. The resolve directs the Land and Water Resources Council to develop a long range strategy to evaluate and reduce the levels of and sources of mercury contamination in Maine, and to report annually to the Legislature on its progress (a copy of Legislative Resolve Chapter 41 is included in the report in Appendix A). The strategy must contain at least the following items:

1. A description of the levels and locations of mercury contamination that are known or suspected to exist in Maine's environment.
2. A survey of sources and quantities of mercury discharged to or deposited into Maine's natural resources, including both instate and out-of-state sources.
3. Recommendations for further data acquisition, if necessary.
4. Recommendations for regulatory, legislative, pollution prevention or technical assistance actions to reduce mercury contamination.

The Department of Environmental Protection has led the effort to compile information on the levels and sources of mercury contamination in Maine, and has directed a policy dialogue among the Land and Water Resources Council, the Maine Environmental Priorities Council, Legislators, the U.S. Environmental Protection Agency and other interested parties. Based on this work, the Land and Water Resources Council submits its report to the Legislature: Initial Evaluation and Recommendations on Mercury in Maine (attached as Appendix A).

Lead State Agency Staff: Erika Morgan, Department of Environmental Protection

NRPA permit by rule program

The Legislature directed the Land and Water Resources Council to evaluate the Permit by Rule program under the Natural Resources Protection Act (1997 Resolves, Chapter 41). The Resolve requires the Council to investigate the following issues:

1. Whether all of the activities that have been designated eligible for permit by rule are appropriate for the permit-by-rule process in light of the requirement to protect the natural resources in, on or adjacent to which the activities are located;
2. Whether there are adequate checks to ensure compliance with the permit standards.
3. Whether permit by rule provides the Department of Environmental Protection with sufficient information to evaluate projects.
4. Whether there is a satisfactory process for appeal when a permit by rule is approved.
5. Whether the standards are adequate to ensure no significant impact upon the environment when projects are in compliance with the standards.

The Council directed SPO to coordinate a review committee which made findings and recommendations to the Council based on an opinion survey and field inspections of permits issued in 1996. Based on the advise of the Committee, the Council is submitting its report to the Legislature which is attached as Appendix B.

Lead State Agency Staff: Bill Ferdinand, State Planning Office

Uniform Registration System for Hazardous Materials

As part of the reform of the Site law in 1995, the Legislature directed the Council to form a committee consisting of representatives of the Department of Environmental Protection, the Office of the State Fire Marshal, the Board of Pesticides Control, the Maine Emergency Management Agency, affected industries and municipal and other public interests to discuss and study the requirements of a uniform system for the registration, storage and handling of petroleum products, hazardous materials and other substances with the potential to contaminate groundwater (Public Laws 1995, c. 704, s. A-25, eff. July 1, 1997).

The committee is directed to submit recommendations regarding legislative or regulatory action to the Land and Water Resources Council no later than January 10, 1998, and the Council may submit legislation based on these recommendations to the First Regular Session of the 118th Legislature no later than January 20, 1998.

The Department of Environmental Protection conducted some initial investigation into creating a uniform registration systems for these materials, but has found that this issue to be quite complex and possibly unworkable. The Council has therefore not formed a committee to address this issue. The DEP will make recommendations to the Council on how to proceed with this project in 1998.

Lead State Agency Staff: Jeff Madore, Department of Environmental Protection

Groundwater Use Policy

As part of the reform of the Site law in 1995, the Legislature directed the Department of Environmental Protection to develop, in concert with the Department of Conservation, the Department of Human Services and other affected state agencies, water utilities, water bottlers and other interested parties, a program to minimize the potential for unreasonable adverse impact on the availability of groundwater to support existing uses (Public Laws 1995, c. 704, s A-25, eff. July 1, 1997). This program may have both regulatory and non regulatory components and must assess the availability of groundwater in different regions of this State to support future development without unreasonable adverse impacts on existing uses or the natural environment.

The DEP convened a work group to study the requirements of a program to minimize the potential adverse impacts of groundwater extraction on the availability of groundwater to support existing uses, such as water supplies and base flow to streams. The work group finds that there is credible evidence demonstrating that groundwater overdraft has resulted in significant impacts on the environment and on public health and safety in other states, and that there are states in which overdraft has impacted surface water bodies and the availability of groundwater for existing wells. Largely anecdotal evidence indicates that local effects of overdraft have impacted some areas in Maine, and that some aquifers may be unable to support current or reasonably anticipated future demands. However, the present state of knowledge regarding the magnitude and occurrence of groundwater overdraft in Maine is so limited that the work group could not determine whether or not a new regulatory program was justified at this time.

The work group finds that there is a need to determine the magnitude and extent of existing or potential problems with groundwater overdraft. This finding is based on the evidence of adverse impact due to groundwater overdraft in this state; the likelihood of increased usage of groundwater in developing areas of the state; and the significant public and private investment represented by water supply systems and the residential and commercial facilities dependent on those supplies. The Department of Environmental Protection therefore intends to present the recommendations of the work group to the Council in 1998.

Lead State Agency Staff: John Hopeck, Department of Environmental Protection

Great Ponds Management Plan

The 117th Legislature reestablished the Great Pond Task Force to study public policy issues facing Maine's Great Ponds and to prepare a Great Ponds Management Strategy (38 MRSA § 1841 et seq.). The Task Force met from December 1995 to January 1997, and developed thirty five recommendations on public policy relating to water craft, water quality and funding mechanisms. The preliminary recommendations were presented to Maine citizens at eight public meetings (Rangeley, Belgrade Lakes, Greenville, Windham, Portland, Orono, Presque Isle and Machias) in August and September 1996. During this public comment period, 175 people presented oral testimony and 367 letters were received. In addition, 446 questionnaires were completed and returned to the State Planning Office.

Senator Sharon Treat introduced the legislative recommendations in LD 1730. The Natural Resources Committee held a public hearing on LD 1730 during the First Session of the 118th Legislature, but voted to carry over bill to the Second Regular Session. The major components of L.D. 1730 are as follows:

- Create the Lakes Heritage Trust Fund in the Executive Department for the purpose of protecting, preserving and enhancing the quality and value of the State's lakes and great ponds (Section 3). *Note: this provision was adopted during the first session of the 118th Legislature as an amendment to LD 1217.*
- Amend the definition of personal water craft to: 14 ft. or less in hull length; primary source of propulsion an inboard motor powering a jet pump; and capable of carrying one or more persons sitting, standing or kneeling (Section 4). *Note: this provision was adopted by the legislature during the first session of the 118th Legislature as an amendment to LD 416.*
- Expand the criteria used by the Commissioner of Inland Fisheries and Wildlife in establishing surface-use rules to include water craft type, wildlife, environmental values, noise, and traditional use (Section 5).
- Increase the registration fee for motorized water craft \$15 for the first water craft, and \$4 for each additional water craft (Section 6). *Note: this provision was adopted by the legislature during the first session of the 118th Legislature.*
- Create a new one-time \$10 registration fee for motorless water craft (canoe, kayak, sailboard, sailboat, or rowboat) to support lake water quality, enforcement and education efforts (Section 7).
- Create a new recreational motorboat rental and leasing license requirement (Section 8).
- Prohibit the use of internal combustion engines on seven small ponds wholly within Acadia National Park (Section 11).
- Require an educational safety sticker on personal water craft (Section 12).
- Prohibit "wake jumping" by personal water craft (Section 12).
- Establish sound standards for motorized water craft (Section 12).
- Prohibit tampering with muffler systems on water craft (Section 12).

- Prohibit personal water craft on Great Ponds wholly within the unorganized territories (Section 13).
- Prohibit personal water craft on Great Ponds less than 200 acres after June 1, 1999 unless a specific rule is adopted allowing such use (Section 13).
- Require motor boat safety education for persons 12 to 16 years of age (Section 13).
- Establish a non-suspendable fine for certain water craft safety law violations (Section 14).
- Limit the liability of lake associations placing navigational aid markers (Section 15).
- Increase from 200 to 1,000 feet the allowable radius of the protected zone around intakes of public drinking water supplies (Section 16).
- Increase the real estate transfer tax \$.22 per \$500 of value for properties located within the watershed of a Great Pond to support the Lakes Program at DEP, enforcement and education efforts (Section 17).
- Assess an annual \$10 water quality impact fee on each residential dwelling unit located wholly or partially within the shoreland zone to support the Lakes Program at DEP, enforcement and education efforts (Section 18).

In addition to legislative recommendations, the task force is making recommendations for other actions by state government and private nonprofit groups. All these recommendations are being compiled into the Great Ponds Strategic Management Plan, 1998-2002 which will be presented to the Council, Governor and the Legislature in February, 1998. The plan provides background on great ponds in Maine and describes the current policy issues that are addressed. The plan then sets goals and objectives, as well as actions that should be taken in the next five years. The plan recommends that the Land and Water Resources Council oversee implementation of these actions.

Lead State Agency Staff: Mark DesMeules and Hank Tyler, State Planning Office

Wetlands Conservation

In 1994, the SPO created a Wetlands Conservation Task Force to prepare a Wetlands Conservation Plan for Maine. Staff for this task force are funded by a grant from the U.S. Environmental Protection Agency. The task force is comprised of representatives from a range of development and conservation interests, as well as the relevant state and federal agencies. The State Planning Office has requested the Land and Water Resources Council to review and approve the plan in 1998:

The initial work of the task force focused on drafting legislation in response to a Legislative Resolve that called for amendments to state law that would streamline the state and federal processes for permitting activities that impact freshwater wetlands. The task force recommended legislation that was passed by the 117th Legislature (1995 Public Laws, Ch. 575). The task force also assisted DEP in developing the regulations to implement these changes.

The task force also developed recommendations for achieving more meaningful compensation of unavoidable wetland losses. As a result, the 118th Legislature enacted an amendment to state law to authorize the DEP, in consultation with SPO, to establish a wetlands compensation fee program (1997 Public Laws, Ch. 101). SPO and DEP are now working with a subcommittee of the task force on a pilot project to develop this program. The results of this project are due in 1999.

In 1997, the task force requested the Land and Water Resources Council to address two policy issues concerning cultivation of cranberries in or near wetlands. These issues arose when the Department of Agriculture was preparing the State Cranberry 2002 plan. The Council reached consensus on state policy to encourage upland cultivation of cranberries, to avoid impacts on wetlands. The Council also reached consensus on state policy to persuade the Army Corps of Engineers to renew a general permit for cranberry cultivation in wetlands. In this way, the Council sought to promote a valuable emerging industry for Maine while ensuring that our wetland resources are protected.

The Wetlands Conservation Plan is now nearing completion and it will be presented to the Land & Water Resource Council and the Legislature in 1998.

*Lead State agency staff: Jackie Sartoris, State Planning Office
Elizabeth Brown, State Planning Office*

Southern Maine Beach Management

The Department of Environmental Protection, the Department of Conservation and the State Planning Office convened a group of stakeholders to discuss current beach management issues that are concerning the citizens of Maine. The stakeholder group is comprised of property owners, business interests, environmental interests, municipal officials and Maine State agencies. The Council agreed to receive the report of this stakeholder group which is expected in February, 1998. The issues addressed by the stakeholder group are:

- accelerated beach erosion, caused by a variety of factors including human activities in beach systems, with a special focus on beaches in Wells and Saco.
- Reducing the risk of storm damage and flooding of structures built on or near the sand dune system.
- Protecting wildlife habitat of two federally listed endangered bird species -- piping plovers and least terns -- that nest in the coastal beach dune system during the spring and summer.
- Resolving disputes over public ownership and use of beaches to support regional economies.
- Improving administration of state laws that regulate activities on or near beach systems.

Future Agenda of the Council

As explained above, most of the issues and programs described above will require further attention by the Council in 1998. State agencies have also proposed that the Council address the following additional issues in 1998:

- ◆ State policy on controlling Greenhouse Gases
Lead Agency: State Planning Office

- ◆ Coastal access for commercial fishing
Lead Agency: Dept. of Marine Resources and Dept. of Conservation