



MAINE
ASSOCIATION OF
WETLAND
SCIENTISTS

P.O. BOX 202
YARMOUTH, ME 04096

THE OBLIGATE

August 1993

The Newsletter of The Maine Association of Wetland Scientists

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PRESIDENT'S MESSAGE

Clean Water Act Reauthorization

Congress is at it again after a brief hiatus in last years election fun. The House's Water Resources Subcommittee and the Senate's Environment and Public Works Committee are busy conducting hearings and drafting legislation on all aspects of the CWA. On February 24th, Congressman Jimmy Hayes (D-LA) jumped into the swamp again by introducing H.R. 1330, the Comprehensive Wetlands Conservation and Management Act. As of April, the bill had 81 cosponsors. The bill is identical to the legislation previously introduced. Among other things, the bill proposes classifying wetlands, with the lowest class being unregulated, and would eliminate the roles of the EPA and USFWS in the permit process. Remember the hard work put in by an ad-hoc MAWS committee to scrutinize this bill two years ago?

Recent word from Washington is that Congress is considering handling wetland issues separately from the rest of the Clean Water Act. There is building sentiment that the CWA reauthorization shouldn't be held up any longer due to the debate. **Wende Rosier**

Certification Questionnaire

Tucked in this issue of *THE OBLIGATE* is a questionnaire addressing an issue that was fundamental to the formation of MAWS. *Should wetland scientists practicing in Maine be registered in some type of certification program, and what are their thoughts on the matter?* A variety of certification programs could be considered. As part of the newsletter, the questionnaire will be sent to those people currently on the MAWS mailing list. You're also encouraged to make copies of the questionnaire and circulate them to other professionals utilizing the services of wetland scientists, permit applicants, clients or other individuals who would provide useful input about this issue. Responses to the questionnaire are due by 11/1/93 and are to be used in determining how MAWS may proceed on this matter. A preliminary update on questionnaire results will be discussed at the next MAWS meeting on 12/1/93.

Hoffman Homes Inc. Case Settled

This court case, which has peaked the interest of wetland scientists and regulators over the past two years, has finally been settled. At issue was the EPA's interpretation regarding regulation of isolated wetlands. On July 19, 1993 the U.S. Court of Appeals for the Seventh Circuit ruled that EPA has properly interpreted the Clean Water Act in issuing regulations giving EPA jurisdiction over isolated, intrastate wetlands based on their effect on interstate commerce. The court further ruled that migratory birds area a valid connection between wetlands and interstate commerce and that the connection would be "potential rather than actual, minimal rather than substantial".

In the Hoffman Homes case, however, the Court ruled that EPA had failed to show any evidence to exert jurisdiction over the 0.8 acre wetland that was filled without a permit. EPA's files showed no evidence that the wetland provides habitat for migratory birds, so the court ruled that EPA improperly imposed a \$50,000 administrative penalty. Both sides claim victory in this one!

MAWS Directory Update

MAWS currently has a total of 116 members, 81 are active members and 35 are affiliate. Currently we have responses from only 67 members (a mere 57%) who wish to be in the Membership Directory which summarizes educational background, professional experience or disciplines and specialties of expertise. Contact Alan Burnell or any other member of the Executive Committee if you need the form to supply information for the directory. Data input for the MAWS Membership Directory will be finalized by the annual Meeting in February 1994 and will not be updated until the following year. If anyone wants to inquire about their present listings in the Draft of the Directory, call Alan Burnell at 583-2334. The Executive Committee also have copies of the Draft for review and comments.

MAWS NEWS BRIEF

August 1993

Thanks to John Lortie, Dave Rocque, Don Phillips, Dave Askew, and others for their input. Please forward material and suggestions to Hugh O. Durgin, P.O. Box 817, Blue Hill, Maine 04614 (374-5840).

WORTHWHILE MAILING LISTS

EPA *Watershed Events*, a bulletin on integrated Aquatic Ecosystem Protection. Office of Wetlands, Oceans and Watersheds, U.S. EPA (WH-556F), 401 M Street SW, Wash, D.C. 20460.

The Wetlands Research Program *Bulletin*, U.S. Army Engineer Waterways Experiment Station. This is an information exchange bulletin published quarterly. Contact Elke Briuer, CEWES-EP-D, US Army Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180-6199. Volume 2, Number 4, December 1992, and Volume 3, Number 1, March 1993, illustrate an interesting design sequence for wetland restoration/establishment. Volume 2 also has a list of current Wetland Research Program publications.

SELECTED BIBLIOGRAPHIES and PUBLICATIONS

Monitoring guidance for the National Estuary Program - This document provides guidance on how to design, implement, and evaluate a monitoring program. Contact Joe Hall (202) 260-9082.

Wetlands Mitigation Banking Concepts, Wetlands Mitigation Banking Demonstration Study, July 1992, IWR Report 92-WMB-1, Richard Reppert. Available from: U.S. ACOE, Water Resources Support center, Institute for Water Resources, Policy and Special Studies Division, Casey Building, 7701 Telegraph Road, Ft. Belvoir, Va 22060-5586.

Design of Stormwater Wetlands Systems: Guidelines for Creating Diverse and Effective Stormwater Wetlands in the Mid-Atlantic Region. Available from the Metropolitan Washington Council of Governments, 777 North Capitol Street NE, Suite 300, Washington, DC 2002-4201. Cost is \$25.

Wetland Planting Guide for the Northeastern United States, plants for wetland creation, restoration, and enhancement. Features planting guidelines for 150 species. Haven't seen it but looks like it has promise from the flyer. \$19.95 plus \$1 shipping from: Environmental Concern Inc., P.O. Box P, St. Michaels, MD 21663.

FEDERAL LEGISLATIVE ACTIVITY

On June 15, S.1114 was introduced to the Senate, a reauthorization of the Clean Water Act. As of that date, a CWA reauthorization bill had not been introduced to the House. Predictions are that it will be a year before congress debates reauthorization. Apparently agriculture will be singled out for special scrutiny.

S. 824 - Wetlands Simplification Act

Assigns the Soil Conservation Service sole responsibility for technical determinations, mitigation planning, and restoration with respect to wetlands or converted wetlands on agricultural lands.

H.R. 138 - Wetlands Delineation Fairness Act

Requires wetlands delineation criteria regarding wetland hydrology to apply uniformly to all areas including playa lakes, prairie potholes, vernal pools and pocosins. Defines "wetland hydrology" as the number of consecutive days that an area must be inundated or saturated with water.

REGULATORY CHANGES

The last newsletter mentioned the ACOE public notice dated February 15, 1993, regarding specific conditions attached to Nationwide Permits 18 and 26. Many of you made independent inquiries to the Augusta and Waltham offices of the Corps regarding this notice. The consensus is that nothing has changed and it is business as usual.

STATE LEGISLATIVE ACTIVITY

Below are brief summaries of some wetland related legislation enacted in Maine during last legislative session:

- H.P. 168 - L.D. 220: An Act to Amend Shoreland Zoning Law- Municipality may reduce shoreland zone around "freshwater wetlands" from 250 ft to 75 ft, provided wetland is not rated as medium or high value by IFW and 75 ft stream protection district is established along any outlet stream from the freshwater wetland.
- H.P. 144 - L.D.189: Act to Facilitate Municipal Road Construction- For culvert replacements, culvert size is now eliminated as one of the minimum guideline criteria in the municipality exemption from shoreland zoning permits.
- H.P. 936 - L.D. 1259: Act to Amend Natural Resources Protection Laws- "Significant wildlife habitat" now can occur in other protected Resource Areas (eg. deer wintering areas in freshwater wetlands). "Threatened, or endangered plant habitat" now mentioned in Standards of NRPA under §480-D(3). Both of proceeding effective 6/9/93. Effective 3/1/94- installation, removal or repair of subsurface wastewater disposal systems will not require NRPA permit provided compliance with DHS rules under Title 22, §42(3) .

The Legislature Resolved to direct DEP and State Planning Office to assess the feasibility of the State assuming permitting authority over federal wetlands located in Maine and to report on same to Legislature contingent on Planning Office receiving funding from federal grant.

CHANGES AT DEP

For those of your preparing NRPA Permit applications, as of 1 July 1993 there is a new and improved application packet in a striking fluorescent green cover (Munsell 5G7/?).

As of 1 August 1993- NRPA Permit-by-Rule Application fees increased from \$25 to \$35.

OTHER LEGISLATIVE ACTIVITY

Wetlands and Watershed Management Act Proposed by Association of State Wetlands Managers to revise the Clean Water Act. Promotes federal, local, and state partnership to evaluate, plan, regulate, manage, restore, and protect wetlands. May provide greater certainty, predictability, fairness, and flexibility for private landowners. Contact ASWM, (518) 872-1804.

EDUCATIONAL

The Volunteer Monitor serves as a networking tool and information source for volunteer environmental monitoring groups nationwide. Subscription is free. Write to: Eleanor Ely, editor, 1318 Masonic Avenue, San Francisco, Ca 94117, Telephone (415)255-8049. This is a nifty publication for high school science teachers.

FREE OR INEXPENSIVE

Natural Wetlands and Urban Stormwater: Potential Impacts and Management. Summarizes some of the literature. Call EPA Wetland Hotline 1-800-832-7828. Also ask for a copy of the EPA Wetlands Protection Hotline Publications List when you call.

Free computer-aided instructional program with windows driven text and illustrations about wetland functions, values and policy. Need VGA. Send two 3.5" DD-HD diskettes to: EPA Headquarters, Wetlands Division, Mail Code A-104 F, 401 M Street SW, Wash, D.C., 20460. I haven't received my copy yet so can't report on the utility of the program.

Birds of Acadia National Park. A nicely done pamphlet style checklist that includes abundance, when present, and habitat. Available from National Park Service.

Private Landowner's Wetland Assistance Guide, a 38 page pamphlet written for landowners who wish to protect and conserve their wetlands while meeting their economic needs. Information on technical assistance, financial assistance, management plans, decision tree for evaluating options and other tools. Call Wetlands Protection Hotline (800) 832-7828.

More names and addresses: **Coast Links, a Resource Guide to Maine's Coastal Organizations,** Spring 1990, published by the Maine Coastal Program. **Gulf Links, A Resource Guide to Coastal Organizations in the Gulf of Maine Region,** published by the Gulf of Maine Council on the Marine Environment, 1991. Both available from the State Planning Office, State House Station 38, Augusta, Maine 04333-0038.

OTHER ITEMS OF INTEREST

A reminder in Bangor Hydro's summer issue of *Environmental Currents* on reuse and disposal of treated wood utility poles, "The Maine Department of Environmental Protection also prohibits the use of pentachlorophenol-treated or creosote-treated wood from being used in any waterbodies or wetlands".

MAWS 1993 Calendar of Upcoming Events

Next Mtg- 9/15/93 Field Review of Wetland Mitigation Sites- 9:30-4:00

- 9:30 Meet at Normandeau (846-3598) Parking Lot, Route 88, Lower Falls Landing, Yarmouth (East side I-95 Bridge over Royal River- Exits 16 or 17) and depart by van to look at 2 sites in morning.
- Noonish Picnic lunch at Scarborough Marsh Nature Center, Route 9 (Pine Point Road), Scarborough. BYO Brown Bag or Catered at \$5.00/person. Place order for lunch with registration by 9/8/93.
- 1:00 Review 2 other mitigation sites.
- 4:00 Return to Normandeau.

Sites are located in Yarmouth, greater Portland area and Biddeford. Discussions at sites lead by individuals intimately familiar with projects and will cover: regulatory requirements, project design, intent of mitigation (replacement, enhancement, creation, etc.) wetland functions and/or evaluation of mitigation success. Vans provided by MAWS to prevent parking difficulties.

Register by Wednesday September 8th with:

Marcia Famous (255-8934), Box 102 HCR 70, Machias, ME 04654.

FUTURE MEETINGS and TENTATIVE AGENDAS

12/1/93 Symposium on Wetland Natural History

2/16/94 Annual Meeting/ Election of Officers



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