

ZEBRA MUSSEL TASK FORCE (ZMTF)

Department of Agricultural Resources
101 University Drive, Amherst, MA 01002

Meeting #2 – December 22, 2009

MEETING SUMMARY

Members Present: Anne Carroll, Phil Griffiths (Chair), Lee Hauge, Jack Hickey, Mark Jester, Erik Kaplan, Joseph Larson, Jim McGrath, John Pajak, Dennis Regan, Jack Sheppard.

DCR/EEA Staff: Mark Tisa, Jonathan Yeo

Facilitators: Bill Logue, Loraine Della Porta, Kurt Dettman, MA Office of Dispute Resolution & Public Collaboration (MODR)

Observers Present: None

Welcome and Introductions:

ZMTF Chair Phil Griffiths welcomed the ZMTF and thanked them for their continued commitment to this process. The ZMTF members, MODR team, and DCR staff introduced themselves. The ZMTF welcomed new members, Jim McGrath from the City of Pittsfield and Dennis Regan from the Housatonic Valley Association. Phil Griffiths stated that he was pleased with the progress made to date and looked forward to the ZMTF “rolling up its sleeves” and getting into the details.

I. Follow Up On Actions From Meeting #1

Bill Logue advised that the ZMTF Ground Rules as adopted at ZMTF Meeting #1 have been circulated. Loraine Della Porta mentioned that the MODR facilitators had received comments from Lee Hauge concerning the draft summary of the group’s first meeting, including suggestions to (1) add a reference to the ZMTF science members assessing the drying times from the 100th meridian group; (2) reference the fact that the ZMTF recommendations need to be ready to implement in time for the 2010 boating season; (3) add a reference in the action items to circulating the BRPC comments on the Interim Action Plan. Jack Hickey also raised a concern that the draft meeting summary portrays draw downs in an overly negative light, especially considering that DCR’s 2005 Rapid Response Plan included draw downs as an option for dealing with ZM infestations. There were no other comments on the draft meeting summary. Bill Logue advised that the MODR team would take these comments into account in finalizing the meeting summary.

Members of the ZMTF discussed that the Natural Heritage and Endangered Species Program (Natural Heritage) had denied the proposed draw down for Laurel Lake until there were further studies on whether the draw down would negatively impact any protected species. LAPA suggested that a partial kill of zebra mussels in the drawdown area was a lot better than nothing. Anne Carroll noted that draw downs would not affect the deeper parts of Laurel Lake below the draw down level, and that remaining ZM colonies would rebound. She also noted that the Rapid Response Plan may have listed draw downs as an option, but the Plan did not state that it would eradicate ZMs. The ZMTF agreed that the two letters concerning the Laurel Lake draw down proposal be shared. Dennis Regan asked that the science members of the ZMTF talk about all options, including draw downs.

II. Legal/Regulatory Framework Issues

Kurt Dettman made a presentation on the legal framework of Massachusetts statutes and regulations as they pertain to potential options by the Commonwealth to control ZMs. Kurt noted the timely cooperation and assistance of DF&G General Counsel Richard Lehan and DCR General Counsel Gary Davis in compiling the summary. Kurt covered the following topics:

- The Commonwealth's history of protecting by statute the right of the **public's right to access to Great Ponds** for fishing, hunting and boating. Members of the ZMTF pointed out that there were at least two instances (in Town of Lee and at Wyman's Pond) that 10-citizen petitions had been filed to seek public access under the authority of MGL c. 91, s. 18A.
- The statutory authority of the Department of Fish and Game (DF&G) to establish rights of access either through the **Public Access Board (PAB)** process as to private land **or through the consent** of public owners as to public land. Per its statutory authority, DF&G has issued Public Access Facility Regulations (320 CMR 2.00) that the Office of Fishing and Boating Access (OFBA) administers to regulate the use of public access ramps. It was noted that the OFBA's regulatory jurisdiction does not extend to non-OFBA administered public access points. Jack Sheppard mentioned that since the 1980's DF&G has purchased approximately two PAB designated properties. Most of the approximately 270 public access sites are under Land Management Agreements with local public entities, under which DF&G designs/permits/builds facilities and the local public entity administers them under DF&G guidelines. Joe Larson noted that PAB-designated access was not needed as much today because public access had been addressed by other means.
- The statutory authority of the Department of Conservation and Recreation (DCR) to issue regulations governing lakes and ponds as part of an **Aquatic Invasive Nuisance Control Program**. DCR has not exercised this authority to date and even if it issued regulations, DCR does not have the statutory authority to provide in the regulations enforcement measures such as fines or penalties.
- The DCR has statutory authority to issue Orders and regulations **protecting scenic and recreational rivers and streams** of the Commonwealth, including fines and court enforcement. Dennis Regan asked whether the Housatonic and Hoosic Rivers had been designated as scenic and recreational rivers—MODR advised that it would find out and let the ZMTF know.
- DEP has advised that there do not appear to be any statutes with direct application to the ZM issues unless ZMTF recommendations touch upon Chapter 91 regulated structures in water bodies or include the application of chemicals or herbicides that are regulated by DEP. DEP has asked to review the recommendations at the appropriate time.

Based on the legal framework summary, members of ZMTF discussed the following issues:

- What are the applicable DEP statutes that may be implicated depending on some of the ZM issues such as treatment of the water and the decontamination process?
- What are the MEPA implications of the ZMTF recommendations? For example, how would draw downs that potentially affect protected species trigger Natural Heritage process and approval requirements?

- What is the application of Chapter 90B (statutes and regulations relating to the registration, control and enforcement as to power boats) to the ZM issues?
- Are there any other statutes dealing with Great Ponds that may apply to the ZM issues?
- Do any of the statutes pertaining to Department of Agricultural Resources apply to the ZM issues (it was noted that DAR regulates invasive plant species).
- Dennis Regan noted that there currently was no State authority to regulate river access sites.

The ZMTF discussed the pending bill (SB 2113) amending Chapter 90B. It was noted that this might provide a vehicle for implementation of the ZMTF recommendations, especially those that would grant State agencies the authority to issue regulations with enforcement mechanisms. This led to a discussion of what level of fines would be appropriate. John Pajak noted that enforcement would be more effective if law enforcement was given flexible, tiered options, such as warnings, citations, and graduated levels of fines and penalties depending on the gravity of the offence. The LAPA representatives advised that they had recommended fines up to \$5000, but agreed with graduated enforcement levels made sense. The ZMTF agreed that SB 2113 should be circulated to the ZMTF.

John Pajak advised that under Chapter 90B all registered vessels (currently, any power boat) were required to comply with Chapter 90B requirements and that the Director has the right to suspend registrations or render vessels inoperable for violations. Local police have Chapter 90B enforcement authority. Jim McGrath stated that from a municipal standpoint the clean boat certification was fine, but should be accompanied by fines and enforcement. He suggested that that local police be educated on their enforcement authority. John Pajak stated that that under MGL c. 21A local police have authority to issue citations and can be supplied with citation books. Jack Hickey noted the limited resources for enforcement, and raised the question whether auxiliary police could be used for enforcement—he observed that based on his experience, when the environmental police show up on a lake, certain activities (such as the use of personal water craft) cease. Anne Carroll agreed that the ZMTF needed to be conscious of funding resources.

In response a question, John Pajak stated that non powerboats such as canoes and kayaks could be addressed by Chapter 90B being amended to use the term “any vessel”, and including canoes and kayaks in the definition.

Some ZMTF members raised the issue of what lakes/ponds and rivers need to be addressed by any enforcement regime—high risk/medium risk lakes and ponds? Rivers, including the Housatonic and Hoosic watersheds?

III. Interim Action Plan Comments/Discussion

A. Aquatic Invasive Species Working Group

Anne Carroll circulated to the ZMTF a summary of the background and activities of the AIS Working Group. The AIS Working Group started in 2000, was composed of mostly State agency representatives, and was looking at a broad spectrum of aquatic invasive species. Anne Carroll noted that, in addition to LAPA West compendium of information, the AIS Working Group has access to other states' information through the national network of other regional AIS Working Groups. The AIS Working Group is waiting for the ZMTF's recommendations on ZM decontamination procedures. The AIS Working Group is scheduled to meet in

January 2010. Phil Griffiths noted that the AIS Working Group was looking at a broader set of issues than the ZMTF, but might provide an ongoing forum for implementation of ZMTF recommendations after the immediate actions needed for the upcoming boating season. Phil Griffiths advised that he wanted to focus on actions that are needed this spring, but was open to recommendations on further actions that could be taken in the future to implement the recommendations of the ZMTF.

B. Interim Action Plan—Specific Issues

Bill Logue suggested that the ZMTF turn to a discussion of issues raised by the Interim Action Plan (IAP). He advised that in order to move the process along within the planned timeframe, the MODR facilitators would reflect back to the ZMTF a draft set of recommendations based on the discussions in general and the IAP.

Public Information, Education and Monitoring Forms. Lee Hauge advised that last spring (before the ZMs were discovered in Laurel Lake) LAPA worked with Tom Flannery on the ZM brochure, including recommended boat cleaning procedures. However, in Lee's opinion, DCR changed the brochure it issued, making the recommended procedures unclear and including some procedures that LAPA felt should be left out. He also felt that DCR changed the boat monitor form eliminating information that would have been useful. Anne Carroll stated that DCR did not intentionally leave out information and DCR welcomed comments updating the forms. Jack Hickey suggested State people meet with the ramp volunteers to get their input based on their experience. Joe Larson pointed out that the ZMTF needs to be clear on how information collected will be used--rigor and consistency on filling out and collecting forms will be necessary to draw reliable conclusions from the data. Lee Hauge noted, as to the dashboard self-certification form, there was no intent to collect them for data, and as to the boat monitor form, it was intended to record levels of activity (such as time of day) to identify high use periods for best use of monitors. Jack Hickey suggested that the ZMTF should use currently available information from existing forms to assist it in making decisions now. Phil Griffiths said that he would work with Anne Carroll to assign staff to help on the forms and address comments from stakeholders. It was noted that during the summer of 2009 the state monitors did not record the time a vessel was launched.

Mark Jester shared a sticker issued with fishing licenses in Arizona which describes decontamination procedures and is attached to the boat trailer. Phil Griffiths mentioned that this type of idea could be implemented when the state moves to on-line purchases of hunting and fishing licenses by January 2011. Recent articles were shared on ZM by Wayne McCallum Massachusetts Wildlife.

Decontamination Procedures. Bill Logue noted that the ZMTF had asked the science members to inform the ZMTF about what information was available on potential decontamination procedures. Mark Tisa advised that there were about a half dozen ways that will decontaminate vessels, but that the ZMTF will need to recommend the ones most appropriate for Massachusetts. He noted, for example, that longer drying times may not be as feasible given Massachusetts' shorter boating season. Joe Larson echoed Mark's comments, noting that drying times were directly affected by ambient environmental conditions that will vary by location and its weather before and after.

Anne Carroll noted that if "clean, drain and dry" approach is not realistic, there are other procedures such as using vinegar, chlorine and salt—but the multiplicity of options may be confusing. Dennis Regan also noted that users may select an approach based on the potential effect of the cleaning solution on boats and equipment (such as flotation devices and seals). Bill Logue suggested that this discussion raised the issue

of what criteria should be applied to make choices—these could include: is it understandable? is it easy to implement? are there no other adverse effects?

Lee Hauge raised a question of how the ZMTF should deal with currently contaminated lakes as they present different issues from uncontaminated water bodies. In response to a question, Joe Larson advised that once ZMs are established they cannot be eradicated—he noted that in Northern Virginia they did eradicate ZMs in a closed quarry by using potassium chloride, but that would not have practical application in Massachusetts water bodies. Mark Tisa noted that in Massachusetts with its small water bodies the unanswered question is the ultimate effect of ZM populations on the biology/ecology of small lakes and ponds. For example, the Housatonic River is marginal for ZMs and many lakes and ponds have mucky bottoms that are not favorable habitats for ZMs. As to Laurel Lake, Mark advised that we do not know at this point if there will be a dramatic impact from the presence of ZMs, but we do know that some methods to try to eradicate ZMs will kill other species. Lee Hauge noted that in some other places water is being chlorinated, and in others ZMs are being removed by divers. He asked if on Pontoosic Lake the hard areas where ZMs attach would be exposed by a draw down and of Laurel Brook could be chlorinated? Phil Griffiths observed that while he does not rule out looking at all potential options to deal with existing ZM colonies, the ZMTF should consider whether this is the body to do it—perhaps the ZMTF should concentrate on methods to prevent the spread of ZMs and managing access vs. eradication because at this point we can do more now about the spread of ZMs than we can about eradication.

Implementation Stages/Steps. John Pajak suggested that the ZMTF should consider recommendations that can initially be considered guidelines and, once new legislation is passed, can be turned into regulations. Among other things, the recommendations will need to address standards, forms/certifications, and restrictions/requirements/ enforcement. Jack Sheppard noted that in the third paragraph of the second Emergency Management Measure that OFBA issued last July 23, 2009, municipalities were given the authority to prevent public ramp access if a boat had not been cleaned or decontaminated. The group agreed that municipalities be reminded of their enforcement powers before the upcoming season. John Hickey concurred with the suggestion that the ZMTF is not the venue for reviewing the “science” and urged that Chairman Griffiths convene a group to do this as soon as practicable.

Self-certification. There was a general consensus on the use of the self-certification approach because of its low cost, high impact, and effectiveness. ZMTF will consider how this approach can be used beyond the OFBA-controlled ramps.

John Pajak pointed out that the pending legislation (SB 2113) would give the Director the authority to issue regulations that could incorporate the self-certification requirement into all power boat registrations—this process could include the following stepped enforcement regime: requirement to certify that boat is clean; then a ticket for failure to do so; and then registration revocation for repeat violations. The currently pending legislation (SB 2113) would cover “vessels” as defined by Chapter 90B. Out of state residents must comply with Massachusetts boating laws. Certification at the time and place of launching would be simple and not too onerous process. Inclusion of canoes and kayaks in self-certification was generally discussed.

The ZMTF then considered various options on implementation of the self-certification approach including:

- Bi-annual general certification upon registration, combined with a separate certification at the ramp.

- Certification combined with annual Coast Guard safety inspections.
- Certification carried on board the boat vs. at the parked car.
- One sheet per boat and then list on it all launches over the course of the season.
- Using MGL c. 140, s. 194 (requiring a municipal-issued license for renting boats) to provide the basis for including self-certification as a condition of the license.
- With some people on a lake for the season owning several types of boats, a registration of all of the boats with a self-certification form that would cover the entire season (assuming that the boat stayed on the lake or pond the entire season).

Phil Griffiths wrapped up this phase of the discussion by noting that the ZMTF may have to recognize that there are different groups of lake/pond users with different circumstances and that each group may have to be addressed by a combination of actions. He also noted that there would need to be a legal working group to address any legal issues flowing from the ZMTF recommendations.

IV. Partnership Opportunities

Bill Logue asked what partnership opportunities exist for the ZMTF members and other stakeholders to work together on the ZM issues, including revenue opportunities. Phil Griffiths noted that success in implementation and for state funding requires a partnership among the State, lake and pond associations, sportsmen's/boating organizations, and municipalities.

Registration Fees and Surcharges. Jack Hickey stated that the Lake Associations could sell registration stickers. Mark Jester suggested designation of a portion of registration fees for a ZM control fund. (The two-year power boat registration fees range from approximately \$40 to \$60, depending on the size of the boat.) Phil Griffiths noted that in order to be effective, any surcharge money would need to support a specific program and asked whether municipalities could sell stickers for use of a pond, including canoes and kayaks, but to also consider whether there could be enforcement for such a program. Anne Carroll noted Maine implemented a plant-related sticker program with a dedicated fund. John Pajak noted that the OFBA can collect fees and can procure services, including environmental police and monitors. LAPA estimates that a \$5 surcharge on the bi-annual power boat registration would yield about \$360,000 per year to fund an AIS monitoring program. Joe Larson pointed out the legislature sometimes authorizes surcharges but then makes them subject to appropriation, resulting in collected but unspendable funds.

Phil Griffiths stated that for surcharges he would have to look at it from a statewide perspective—the agencies with authorization to spend the funds would have to prioritize based on need.

Jim McGrath advised that the Town of Pittsfield had applied for a grant for outreach in the Berkshires. Anne Carroll raised the question whether there were industry resources--especially hydropower plants--that would have an interest in stopping the spread of ZMs. Dennis Regan stated that HVA had applied to the GE/Housatonic River Natural Resources Trustees for funding and that if funds were granted the ZM issue would be within the general scope of the grant application. The ZMTF discussed how much other states were spending on the ZM issues.

Phil Griffiths advised the ZMTF about the financial realities of the Commonwealth—at this point the DCR budget was down about 30% in each of SFYs 2009 and 2010 and similar cuts are expected for SFY 2011. Anne Carroll pointed out that after July 1 there will be no DCR capital funds and that seasonal hires would

limited or none. In 2004 there were 4 to 6 state monitors statewide. In 2009 in the Berkshires DCR added two during the season and relied on volunteers. If the 8 high risk lakes identified in the Phase I Report were selected for monitoring, it would be an expansion beyond the 2009 seasonal staffing. DCR should have resources to train monitors, however the ZMTF should assess whether monitors could be expected to do enforcement. Rivers are difficult to monitor and control access. Some efficiencies are possible with boat ramp monitoring focused on high risk areas and implemented during high usage periods (for example, weekends). LAPA estimates this type of focused program would cost \$250,000 per year for paid monitors. Phil Griffiths asked Anne Carroll to develop cost scenarios based on tiers of lakes and level of monitoring.

Other suggestions for resources which could be brought to bear through collaboration of the stakeholders include:

- Local college programs (MCLA and BCC) as sources of volunteers. However volunteers must have the maturity and credibility to implement the program.
- Expand the DCR rangers' mission to include monitoring, but there it was noted that their resources were limited.
- LAPA plans, in conjunction with MCLA, to produce a ZM documentary with a Berkshire county focus for public access television and public service announcements on regular broadcast channels.
- The ZM control message could be incorporated into boating safety/training and education programs as part of the course curriculum and possibly hunter education programs.
- The Berkshire League of Sportsmen could get the ZM control message out through organized sportsmen's groups—it was noted that only one fishing organization is in the County League at this point.
- The Massachusetts Bass Federation could have monitors for fishing tournaments and support outreach through booths at sportsmen's shows.
- The ZMTF could explore whether ZM brochures could be put out at licensed bait shops.
- There was a sportsmen's show on the Berkshire local public access television and the ZM issue could be discussed on the show that would be broadcast to the Berkshire and Pioneer Valleys.
- The Acadia Shop and Berkshire Outfitters would probably be willing to help on outreach.

The facilitators will take these and suggestions from the prior meetings and incorporate them into a draft.

V. Working Group Discussions

At this point the ZMTF broke into two working groups, one to focus on decontamination procedures and the second to focus on the self-certification and monitor forms.

A. Decontamination Working Group (DWG) (Lee Hauge, Jack Hickey, Erik Kaplan, Dennis Regan with DCR staff support from Mark Tisa and Jonathan Yeo)

The DWG reached a general consensus that decontamination procedures should be kept as simple as possible since multiple options might cause confusion. Lee Hauge suggested that the DWG consider using the drying time of the 100th meridian group standard; bleach as a decontaminant; setting up washing facilities that could deliver 140° water at the hull; and providing training. Jonathan Yeo noted that the water in motors was not as big an issue, and that they were tagging (cleaned) boats now at the Quabbin

Reservoir. He noted that 140° water could cause damage to boat seals and also that boat cleaning facilities/car washes would need to be certified and might raise DEP related issues on the treatment of cleaning by-products. Dennis Regan pointed out that the DWG would also need to consider the effect of recommended decontamination procedures on the boats and equipment. Mark Tisa suggested that the DWG would need to consider practical options that the average person could do at home as that is where cleaning often occurs—these could include: chlorine; Lysol; and 104° at the nozzle power washing. Lee Hauge suggested that the DWG should consider: chlorine at higher concentrations; 140° at the hull washing; and vinegar. The DWG discussed possible criteria to be: Will it work/is it effective? Is it practical/feasible? Will it damage boats/equipment? Members of the DWG also raised issues about whether professional cleaning should be required or whether cleaning techniques should be available for at-home users.

The DWG agreed on the following: Mark Tisa and Jonathan Yeo will be in the lead on developing science-based options for the DWG's consideration; and that further communications will be via email among the DWG.

B. Forms Working Group (FWG) (Anne Carroll, Mark Jester, Joe Larson, Jim McGrath, John Pajak, Jack Sheppard,

The FWG discussed and agreed to the need to have forms that were easily accessible, uniform and easy for users to understand and complete. Anne Carroll suggested that forms could be available online for people to download as needed. The question was raised by John Pajak as to whether the requirement to certify a vessel would apply state-wide or just to the areas identified "at risk" for ZMs. Discussion followed as to whether timing was right for a state-wide approach or whether it should be "phased-in" over time. John raised the point that it might be easier to go state-wide and make regulations uniform across the board. Anne responded that it might be difficult to get that done in a short period of time given limited resources and might cause confusion. FWG agreed that only those water bodies currently identified as at "high-risk" for ZMs would require self-certification. Anne agreed to take the lead at re-designing current forms to include feedback received thus far from LAPA and others and asked that any other feedback/suggestions be forwarded to her as soon as possible.

Jack Sheppard showed current signage being used at boat ramps. FWG agreed that signage needs to be uniform and easy to read. It was suggested that the same color be used uniformly at all locations. Jim McGrath suggested that any outreach materials used (signage, forms, educational brochures, etc.) also needed to be "catchy" so that people would remember it. The group discussed what was being done in other states with ZMs, for example, "Don't move a mussel" campaign currently in California and other states. FWG agreed to review outreach/educational materials in other states and to make recommendations as to which are most effective to the ZMTF for consideration.

C. Additional Discussion

The MODR Facilitators reported back to the ZMTF the initial discussions of the two working groups. Bill Logue noted that the working groups would report back to the ZMTF and that the ZMTF should get to a consensus on the recommendations that it could. However, if someone disagreed with a recommendation he/she should propose a problem solving suggestion on what could be done to address the disagreement based on that person or group's underlying interests/needs.

The ZMTF discussed whether there should be an added step for contaminated lakes, such as a mandatory cleaning when leaving the lake and any decisions at Laurel Lake will establish a precedent for other lakes. If cleaning is required to leave the lake it might impact lake usage. The issue of whether there would be a protocol for temporary closure if a new infestation is discovered. On this point, Joe Larson suggested that there should be a clear directive from the EEA Secretary's Office on what should happen if ZMs are discovered in other lakes. Phil Griffiths noted that EEA will coordinate agency communications on the ZM issues.

Phil Griffiths informed the ZMTF that some fishing tournament permits for the upcoming boating season had recently been issued, but that they would be reviewed in the context of the IAP. Jack Sheppard noted that the conditions of the permits could be revised and that they would have to have proper forms filled out. Erik Kaplan noted that because individuals belong to different organizations, it was easier to implement this at the organization level than at the individual level.

Lee Hauge suggested that the ZMTF should consider the LAPA Action Plan, including the option of draw downs. Jack Hickey also suggested that the LAPA proposals be considered, including who has the authority to do what where so that they can get control of the issue quickly.

IV. Action Items

The ZMTF confirmed the following meeting dates:

- January 20, 2010 (Meeting #3)
- January 26, 2010 (snow date for January 20)

The ZMTF agreed on the following interim dates:

- January 12, 2010—Working Group recommendations and any other comments on IAP or Laurel Lake actions to MODR facilitators
- January 15, 2010 (target date)—MODR facilitators overall draft recommendations (including incorporation of Working Group recommendations) to ZMTF to review prior to January 20 meeting.

Other Action Items:

- Circulate to the ZMTF the two letters dealing with the proposed draw down of Laurel Lake (Mark Jester/MODR Team).
- Circulate to the ZMTF for comment draft meeting summary on Meeting # 2 (MODR Team)
- Confirm location for next ZMTF meeting (MODR Team)
- Circulate copy of SB 2113 (MODR Team)
- Post information circulated to ZMTF to date on DCR Lakes and Ponds web site (Griffiths with staff support)
- Update Legal Matrix and brief SMTF at next meeting (Dettman)
- Identify what rivers have been designated scenic and recreational (Dettman)
- E-mail feedback/suggestions on forms to Anne prior to 1/10/10