

ZEBRA MUSSEL TASK FORCE (ZMTF)
Department of Environmental Protection Western Region Office
436 Dwight St., Springfield, MA 01003

Meeting #3 – January 20, 2010

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. Bill Logue suggested that the ZMTF proceed with the agenda circulated before the meeting.

Note: Because many of the issues discussed at ZMTF Meeting #3 will be incorporated into the ZMTF Final Recommendations, this meeting summary will recount only the main topics discussed at the meeting.

Notations concerning Summary #2. The following amendments and corrections were requested, either at the meeting or subsequently via email, to the summary for the second meeting:

- Questions concerning: How will access to Laurel Lake be handled during the coming boating season? How many boat cleaning stations will there be? Who will supervise? How will they be funded? How many ramp monitors will be hired? For what period? How many hours per day?
- Under section I. 'Follow Up...' Last sentence in second paragraph, should read: "Dennis Regan asked that the ZMTF examine all possible actions including draw down and herbicide to kill the zebra mussels (and unfortunately everything else) and to electrify the outflow (which is a possibility). The group felt there was not sufficient time to investigate and implement these options for this boating season."
- Under II. 'Legal/Regulatory...' the section 'Based on the legal framework summary....' the last bullet, refers to "municipal boat ramps", of which there will be 5 new municipal boat ramps next year. These should be included in any management plan for the Housatonic River.

I. Follow Up On Legal Matrix From Meeting #2

Kurt Dettman made a presentation on the ZMTF's additional issues regarding the legal framework of Massachusetts statutes and regulations as they pertain to potential options of the Commonwealth to regulate the ZM issues. (The Matrix as updated after the meeting is attached) Kurt noted the timely

cooperation and assistance of EEA legal counsel and others in compiling the additional information. Kurt covered the following topics:

- MGL c. 91 prohibits the raising or lowering of water levels in a Great Pond without a DEP license. For already issued DEP c. 91 licenses and future licenses, DEP could ask licensees to voluntarily agree to post ZM signage on the licensed structures.
- MGL c. 30, ss. 61 to 62H and 301 CMR 11.00 et seq. establish thresholds that may trigger MEPA requirements depending on the ZMTF Recommendations (potentially, these thresholds could include rare species; wetlands and waterways; Areas of Critical Concern). DCR representatives noted that DCR had already done an EIS on invasive species that that might address some of the MEPA issues. The two main issues that raise MEPA review implications are: drawdowns and decontamination facilities. Kurt also noted that the Department of Agricultural Resources had advised that there may be DAR implications if the ZMTF Recommendations affect agricultural property. Kurt also noted that there may be DEP implications if the ZMTF Recommendations affect water bodies that serve as drinking water sources or that affect groundwater resources.
- MGL c. 90B as it currently exists has regulations that apply to registration of motor boats but not to all vessels (except for personal flotation device inspections).
- As to the other issues raised at the last ZMTF meeting, Kurt reported that there is some statutory and case law authority for municipalities to adopt by-laws to address ZM issues. The ZMTF discussed that it was better to establish a comprehensive, uniform approach to address the ZM issues.
- Kurt reported that the Hoosic and Housatonic Rivers have not been designated as scenic and recreational rivers under the authority of MGL c. 21A, s. 11C.

The ZMTF discussed the pending bill (SB 2113) amending Chapter 90B. The ZMTF agreed that if the ZMTF recommends legislation, the best vehicle for that would be appropriate amendments to SB 2113. Among the topics discussed were: giving the Commonwealth the authority to issue state-wide regulations that would define from a scientific standpoint the types of aquatic invasive species; establish decontamination and other requirements for all vessels; and establish a tiered, flexible enforcement regime for the EPO and local law enforcement to enforce through civil and criminal sanctions.

II. Discussion & Draft Recommendations

A. Relationship of Interim Action Plan and ZMTF Recommendations

Phil Griffiths opened the discussion by noting that the ZMTF had agreed to provide recommendations to update the Interim Action Plan issued in August 2008. He suggested that the ZMTF Recommendations be used as guidance by the state in an updated Action Plan, which would then be subject to further revision based on experience this coming year.

B. Interim Action Plan—Specific Issues

1. Fishing Tournament Permits

The ZMTF discussed the issue of what conditions should be imposed on fishing tournament permits. Some members felt that organizers of tournaments should be required to avoid scheduling events at susceptible

lakes within 30 days after an event at a contaminated water body to reduce risk of contamination of the most susceptible lakes. They saw this as more effective than washing in eliminating the risk of infestation. They felt that this is consistent with the goal of reducing the probability of spread, and does not unreasonably restrict access. Others felt that this was unnecessary and unfeasible because it would be hard to control individuals that go from tournament to tournament (with different clubs or sponsors) and in any event the tournament participants would be required to follow the self-certification requirements regarding decontamination. Some ZMTF members also felt that it was not fair to single out fishing tournaments when there were many more individual fishermen that would not be subject to the same requirements. After further discussion, the general consensus of the ZMTF was that there should be a permit requirement of self certification by the fishing tournament sponsor (the responsible party pulling the permit) combined with self certification by each of the tournament participants. There also was a general consensus that the self-certification requirement should apply to all fishing permits, not just the tournament ones; that the permitting function should be used as an opportunity to educate people on the ZM issues; and that tournament sponsors should be requested to take drying time into consideration in their sequencing of tournaments.

2. Aquatic Invasive Species (AIS) Working Group

The ZMTF discussed the AIS Working Group, requesting that the ZMTF be furnished with a listing of the members of the Working Group together with a brief description of each party's role. Anne Carroll mentioned that the AIS Working Group acted in a coordinating role, but Phil Griffiths noted that the ZMTF recommendations could be used to raise the profile and authority of the AIS Working Group on the larger issue of aquatic invasive species.

3. Decontamination Procedures

Jonathan Yeo and Mark Tisa reviewed the proposed decontamination procedures developed by the Decontamination Working Group. The recommended decontamination procedures were based on a review and updating of the existing decontamination procedures from the ZM brochure. They noted that some had been modified and others had been eliminated, with the goal to recommend procedures that were effective but also practical for people to follow. The ZMTF generally approved the proposed decontamination procedures, with requested further clarification from DCR on: a) additional information on drying time under New England conditions; b) concentrations of Lysol and Chlorine; and c) nozzle temperatures needed to get 140° at the hull. The ZMTF also discussed putting in the brochure web links to further decontamination information; advice on the proper disposal of chemicals; and prioritizing the methods based on effectiveness.

4. Forms

Monitor Forms:

Anne Carroll welcomed further comments on the draft forms developed by the Form Working Group and circulated to the ZMTF. The ZMTF discussed including the following additional information on the Monitor Forms: a) parking lot entry log at beginning of shift; b) registration information on vehicles without self-certification form on dash (there was discussion of whether tickets could be issued based on the registration information); c) weather at the time of the shift; and d) information on the decontamination methods being used. The ZMTF agreed to take out certain columns (photo and pamphlet taken). ZMTF

members noted that the filling out of monitor forms was merely to gather data, not for enforcement purposes, and that monitors needed to receive training on a protocol so that data will be collected consistently.

Self-Certification Forms:

Anne Carroll advised that the Self-Certification Forms will be updated to include the ZMTF recommended decontamination procedures. The ZMTF discussed the listing of locations from which boats may have been brought—the general consensus was to list NY lakes as updated from the NY web site and to list MA lakes that were identified in the high and moderate risk categories from the DCR study. If space on the forms is insufficient this may be summarized and a complete list posted on the kiosk at the ramp.

5. Laurel Lake Management Issues

Anne Carroll presented a summary of DCR's proposed action plan for Laurel Lake. The proposed steps included: a) educational outreach; b) core hours monitor coverage; c) kiosks with ZM information; d) visible signage at access points; e) required decontamination and self-certification when leaving the lake (both short term and year round boats); and f) access to a washing facility on DCR property. Anne also circulated information on a portable washing station (Hydro Tek) that DCR could put at the washing facility.

The ZMTF discussed whether putting removable ropes across non-OFBA access points would help/hurt; whether highly visible signage at access points was a better and more effective approach; whether the small parking lot at Laurel Lake would be controllable, especially early morning and early evening hours; and whether fish stocking of the lake was adding to increased usage when lower usage would reduce the number of potential boat vectors for ZM transport.

Lee Hauge requested that fishing stocking not occur in contaminated lakes including Laurel Lake because it attracts traffic to the Lake and increases risk of contamination. He felt that fisherpeople who fish for stocked species are probably less likely to be aware of the zebra mussel problem, and less likely to decontaminate their boats after leaving the lake. The fish scheduled to be released in Laurel Lake can be released elsewhere, so the fishing public is not unreasonably inconvenienced by not stocking Laurel Lake, and the risk is reduced. Phil Griffiths committed to looking into the issue and responding to the ZMTF.

The ZMTF also discussed whether Laurel Lake should be closed completely—some members felt that that was the most effective way to prevent ZM spread; others felt that there was a responsibility to the public to maintain access to the lake and that controls recommended by the ZMTF would be adequate to combat the ZM threat. There was a general consensus that DCR should review its proposed action plan with the Laurel Lake Association, affected towns and local organizations. There also was a consensus on getting further local input on the most effective location for the proposed washing facility and the best hours and locations for monitors. Jack Hickey indicated that car washes in Pittsfield and Stockbridge have the potential to be upgraded into wash stations. The ZMTF also discussed whether the washing facilities would be "certified" in some fashion—the consensus was that washing facilities operators would be educated on the recommended decontamination procedures.

5. Enforcement Options

John Pajak reviewed two options: a) under the authority of MGL c. 90B, s. 11 immediately issue interim regulations that would require compliance with ZM procedures and would permit enforcement by the EPO or b) propose amendments to SB 2113 to specifically permit the issuance of such regulations and enforcement options. John suggested a tiered enforcement approach: verbal warning; written warning; non-criminal citation; and arrest and criminal prosecution. John also noted that it was more likely that the courts would enforce a penalty range up to about \$250 for a non-criminal citation; he also noted that a higher maximum fine (say \$5000) would probably not be enforced by the courts. The ZMTF also discussed defining the offense in the regulations. Members from the Lakes and Ponds Association felt that a high upper limit on fines, which could be printed on signs, would get peoples attentions and encourage compliance. After further discussion, the ZMTF consensus was that the existing OFBA enforcement and other interim measures recommended by the ZMTF should be pursued at this point, but that on a parallel track EEA should confer with the legislature about amendments to SB 2113 and to incorporate into the ZMTF Recommendations on giving the State the authority to issue AIS regulations and enforce them through the EPO and local law enforcement.

6. Outreach/Education

The ZMTF reviewed the outreach spreadsheet that Jim McGrath circulated—the spreadsheet was circulated to the ZMTF so that members could sign up for certain of the outreach/education actions. The ZMTF discussed the issue of information kiosks at each of the access points. DCR has a standard kiosk design that is used for the OFBA ramps. This standard design will be shared with other organizations so that they can, on a volunteer basis, construct them for use at other access points. DCR also will look into whether it can supply more durable metal signs for the other access points. It was noted that the web site on the Lakes and Ponds section of the DCR web site now has ZMTF information posted on it, and that MODR has a dedicated mail box for comments from the public and stakeholders on the recommendations when they are released.

7. Resources/Collaboration

Jack Hickey went over the cost spreadsheet that LAPA prepared. The ZMTF discussed the option of raising revenue needed for the ZM program through an increase in registration fees. The general consensus was that the ZMTF Recommendations should endorse a dedicated fee to address, on a statewide basis, the issue of aquatic invasive species. DCR advised that it was seeking funds for paid monitors for the upcoming boating season, but given the current budget problems did not know how much money it would have—it was noted that there would be a need for volunteer monitors to supplement paid monitors.

8. Other business

Lee Hauge suggested that although the ultimate impact of ZMs on Massachusetts water bodies is an unknown at this point. Possible impacts include those on swimming and recreation, changes to the food change, impacts on other species including threatened and endangered species, changes in water clarity, damage to mechanical systems and other impacts. Although these outcomes may or may not occur this should not stop the ZMTF from taking steps to prevent the spread of ZMs. He suggested that these impacts be included in the final recommendations. Consequently, Lee raised the issue of the mission statement that

he had proposed at the first ZMTF and was later distributed to the ZMTF. After discussion, the ZMTF agreed to include the proposed mission statement in the ZMTF Final Recommendations as a mission for any ongoing work group on ZM. That mission is

"Plan and implement a program which reduces the probability of spread of this threat from infested locations to other water bodies, does not unreasonably restrict public access, is compatible with the Massachusetts Aquatic Species Management Plan, and is consistent with the level of financial resources which can reasonably be committed to this critical issue."

Phil thanked the ZMTF members for participating in a productive process that will result in concrete steps that will make a difference in the ZM challenge. He also advised that he would consult with the Legislature on the ZMTF Recommendations and that EEA would convene a public forum in the Berkshires to get the public's input on the ZMTF Recommendations—he urged members of the ZMTF to participate in the forum if they could. Phil also mentioned that EEA would need to assess available resources to implement the ZMTF Recommendations and that he would reach out to the AIS Working Group as part of the process.

III. Action Items

The ZMTF agreed on the following interim dates:

- Within the next two weeks a draft of the Final Recommendations will be circulated for comments
- Within the next three weeks the ZMTF will hold a two-hour meeting to review and approve the form of the Final Recommendations
- By the end of February the public forum will be held.

Specific Action Items:

1. Compile list of all member organizations in the AIS Working Group with brief description of role of each (Anne)
2. Update Decontamination Procedures to address: (Jonathan and Mark)
 - a. Reference to drying times under NE conditions
 - b. Clarify Lysol concentration
 - c. Clarify temperature at nozzle to get 140 degrees at hull
 - d. Clarify Chlorine concentration
3. Update brochure to address: (Anne)
 - a. Inclusion of updated decontamination procedures and reference links to more data on web site
 - b. New line drawing of ZM
4. Update forms to address comments from ZMTF (Anne)
5. Confer with ZMTF members on possible location of Laurel Lake decontamination/washing facility (Jonathan)
6. Estimate number of signs needed for all access points on the High and Medium Risk water bodies and see if DCR can line up production (LAPA to get location and number info to Jack)
7. Distribute standard kiosk design and see if there are volunteers to build/maintain for non-OFBA ramps (Jack to distribute and LAPA to see if volunteers available to build)
8. Review fish stocking policy on Laurel Lake (Phil with staff)

9. Get input from Laurel Lake preservation association, et al. on DCR's proposed plan for Laurel Lake (Anne, with LAPA assistance)
10. Get information to ZMTF on the process for increasing registration fees (Phil with staff)