

ZEBRA MUSSEL TASK FORCE (ZMTF)

U.S. Fish and Wildlife Service Regional Office
300 Westgate Center Drive
Hadley, MA 01035-9589

Meeting #4 – March 5, 2010

MEETING SUMMARY

Members Present: Anne Carroll, Phil Griffiths (Chair), Lee Hauge (by telephone), 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 focus on a discussion of the draft ZMTF Final Recommendations that had been circulated before the meeting, with the goal of reaching consensus and signing off on the document.

Note: Because many of the specific comments discussed at ZMTF Meeting #4 will be incorporated into the ZMTF Final Recommendations, this meeting summary will recount only the main topics discussed at the meeting.

Legislative Update:

Phil Griffiths advised that he had met with Senator Downing's staff last week to report that the ZMTF was addressing the ZM issues and that the ZMTF would be making some recommendations to the Legislature. Phil Griffiths reported to Senator Downing's staff that although the ZMTF's work was not finished, there was a general consensus on several of the ZM related issues, and that the ZMTF planned to hold a public meeting at the end of March or early April.

Phil Griffiths advised the ZMTF that the Energy and Natural Resources Committee needs to report out SB 2113 by the third week in March, so that comments on the bill needed to be submitted to the ENR Committee staff the week of March 8. Phil Griffiths noted that there would be plenty of opportunity to further amend the bill through the legislative process, but that the process needed to get started. Bill Logue noted that the ZMTF previously had discussed enforcement through boating regulation under Chapter 90B, but that after review EEA was proposing legislation that would provide broader and more responsive regulatory and enforcement authority through existing statutes regarding aquatic invasive species in addition to proposed Chapter 90B amendments. The ZMTF reviewed the proposed language later in the meeting.

Discussion Regarding Draft Final Recommendations

The current version of the Final Recommendations were sequenced so they can be clearly communicated by EEA to the Legislature and the public. The ZMTF then reviewed specific comments by members, summarized below are the major topics of discussion, organized by Section of the draft Recommendations.

Introduction

Jack Hickey asked that the Introduction be stronger regarding DFG/DCR's duty to protect natural resources and the environment and the tone of the Recommendations emphasize that the seriousness of the threat from ZMs requiring action. The ZMTF agreed that the Introduction include an outline of the responsibilities of DFG/DCR/DEP in regard to natural resources and the environment. Phil Griffiths noted that these issues affect the general public, not just the boating public, and that this needed to be recognized as part of the general responsibilities of the EEA agencies.

As an example of strengthening it was suggested that the Recommendations should state that the best way to prevent spread is to keep all watercraft/vessel out of ZM infected water bodies. After discussion, the ZMTF agreed to include and note that if you do go on to infected water bodies, vessel owners must follow the decontamination procedures. The group noted that the overall consensus thus far was that it would not be appropriate to keep the public from using Commonwealth water bodies, but the corresponding key message was that proper decontamination will be required if one uses the affected water bodies. Members representing lakes and ponds owners noted that they felt it is appropriate for DFG to prohibit daily boating in Laurel though continuation of the 2009 emergency order. As noted below other members of the ZMTF disagreed with this measure.

ZM Background

Jack Hickey asked that the Grazio and Montz study (2002) that concluded that there was "overwhelming" ZM mortality rate in dewatered zones be referenced in the recommendations. Mark Tisa advised that dewatering had not resulted in the complete eradication of ZM populations since those in the non-drawdown zone would continue to survive and the colony would rebound. Phil Griffiths also noted that there are no eradication methods that do not have other environmental impacts that would require further study — these include other endangered species, effect on wetlands, and effect Chapter 91 restrictions (Joseph Larson noted later in the meeting that the impacts upstream and downstream of drawdowns would also need to be studied.) Lee Hickey noted that many of the Berkshire waterbodies are man-made for mills and have been subject to periodic drawdowns. Jack suggested that the eradication issues may need to be worked out outside the ZMTF process, perhaps by recommending that scientists conduct a peer review study of the issues on a set timetable and as soon as possible. DCR representatives advised that, based on the scientific studies to date, the ZMTF should not communicate in the Recommendations that drawdowns are an effective way to eradicate ZMs, and that committing to study the effectiveness of drawdowns would also require the study of its effects on the environment and the resolution of other permitting implications. After discussion, the ZMTF agreed to include a footnote in the Recommendations citing to the Grazio and Montz study and the Natural Heritage responses to the Laurel Lake drawdown proposal.

After discussion the ZMTF agreed that Recommendations state that the public right of access to water bodies comes with a responsibility to protect natural resources.

Outreach and Education

The ZMTF agreed to a goal of placing signage and/or kiosks at all access points, but that the signage/kiosk needs must be inventoried and priced, and then available resources need to be identified, with the higher risk locations being the priority. LAPA had a preliminary estimate of 150 signs for western Massachusetts lakes. EEA will, by the time of public forum, make a commitment as to what signs/kiosks the Commonwealth can furnish. The ZMTF also discussed what information should be put on the signs, and the consensus was that that a working group (Anne Carroll, Dennis Regan, Jim McGrath, Jack Hickey) should agree on locations, language (using what can be stated based on existing statutory and regulatory authority) and available funding.

Boat Decontamination Procedures

After discussion of the decontamination procedures, the ZMTF agreed that the Recommendations would include (with some changes and clarifications) the listed decontamination procedures, but that the Recommendations would also include in a footnote reference to the EEA web site where a complete list of all available decontamination procedures will be maintained. The ZMTF also agreed that, where applicable, the term "boat" should be replaced with the term "vessel" to make it consistent with legislation and regulation and to emphasize that the decontamination procedures applied to all water craft. The ZMTF also agreed to broaden the definition of "equipment" to include more than just boat equipment.

Enforcement and Legislation

The ZMTF confirmed that the flexible and tiered enforcement strategy was calibrated with the ZMTF's Recommendations to focus first on voluntary compliance through education and self-certification, with flexible options for law enforcement to further encourage and, if needed, require compliance. John Pajak advised that the proposed legislation would be effective from an enforcement standpoint.

Phil Griffiths acknowledged the work of the Legal Team (Richard Lehan, DFG; Gary Davis, DCR; Sam Bennett, DEP; Deidre Buckley, MEPA; Chris, Baker, EEA; and Jessica Burgess, DAR) to advise the ZMTF on the best approach to legislation to effectuate the ZMTF Recommendations. The consensus of the Legal Team was that the legislative changes would best be effectuated by amendments to Chapter 21, s. 37B (the statute giving DCR authority to establish and maintain an Aquatic Nuisance Control Program). In summary, the proposed legislation would 1) under Chapter 21 allow a) DCR to take a broader AIS approach by having the capability to declare an AIS a nuisance and then implement management measures to address the nuisance, and b) authorize DCR to promulgate regulations and orders to enforce its authority, and 2) under Chapter 90B would allow OLE to issue citations and levy a graduated set of fines and punishments for violations of the DCR regulations/management measures; it would also allow DCR to initiate civil enforcement actions. The ZMTF agreed with the following fine structure: 1st offense—\$100-300; 2nd offense--\$500-1000; 3rd offense--\$1000 up to a maximum of \$10,000, with imprisonment

Jack Hickey asked whether the ZMTF should also consider pending House Bill 3441 creating an Aquatic Plant Management Fund through a \$5 fee on motorboats which would generate about \$350,000 in revenue and cover his estimated cost of \$250,000 for staffing of ramp monitors for the full day and season. After discussion, the ZMTF concluded that the general statement about fees and surcharges in the Recommendations future actions section was sufficient but that specific support HB 3441 had not had time for thorough analysis by the ZMTF.

The ZMTF agreed that ramp monitors would be responsible to educate ramp users, but could call on law enforcement if needed. The Office of Law Enforcement (OLE) is compiling a description of current law enforcement authority in relation to the ZMTF's Recommendations and will contact local law enforcement agencies by early April and conduct training by the end of May. This will include the determination of who holds authority to close ramps and access points in the event of infestation. LAPA asked to be alerted to this training and told of any community indicating an inability to send representatives to the training session.

Improvements to the self-certification and monitor forms

The ZMTF agreed that the self-certification forms and monitor forms should be based on current circumstances and authority, but that they could be updated if there are changes in statutory and regulatory authority. LAPA asked that, because of the number of infected waterbodies in New York, that brochures and forms indicate that vessels be cleaned after any activity in New York. Other members noted that there were infected waters in other surrounding states. After some discussion about how to address the listing of infested water bodies outside the Commonwealth (especially New York), the ZMTF agreed to have updated information available at the kiosks so that the public would be informed about what water bodies needed to be listed on the self-certification form. With this clarification, the currently proposed forms were confirmed by the ZMTF and will be included with the Final Recommendations.

Laurel Lake, Laurel Brook and Housatonic Management Measures

Phil Griffiths noted that although the Commonwealth does not have the resources to have paid monitors at *all* high risk water body boat ramps, EEA is committed to doubling the paid monitor coverage from last year. He noted the need to supplement with volunteers. LAPA suggested continuing the emergency closure of Laurel Lake would free resources to monitor other lakes at high risk. Anne Carroll will work with local partners (including LAPA and the City of Pittsfield) to determine the most effective way to deploy the paid monitors based on boat ramp usage, and to do educational outreach for Laurel Lake residents, including a separate training session for Laurel Lake residents and the selectmen and conservation commission members from Lenox and Lee. The ZMTF discussed the challenges of engaging and coordinating volunteers, and agreed that ZMTF members and local partners would have to continue to work together to try to staff as many ramps as practicable despite the difficulty of volunteer coordination. Phil Griffiths advised that he will be prepared to update the public on the decontamination site/car wash options at the public forum.

In relation to Laurel Lake, the ZMTF discussed LAPA's recommendation that Laurel Lake continue to be closed to boating as the most effective measure control the spread of ZMs to other water bodies. Alternatively LAPA suggested a wash station at the lake, monitors from dawn to dusk and closure when monitors are not present. LAPA representatives noted that they felt the risk from Laurel lake is higher to local lakes than popular lakes that are infected in nearby states. The ZMTF members discussed the need to balance the ZM management measures with the right of public access and the risk of spread. Some members expressed the opinion that, to be truly effective, Laurel Lake would need to be quarantined through a complete ban applying to all users of the lake, including residents with posting of "no trespass" signs. This raises issues of ensuring an effective way to police it; potential of legal challenges testing the ability of the Commonwealth to close the lake to all uses, given legally required public access, and possibly raising questions about who enforces closure measures; and implicating other wetlands and riparian interests. The existence of many vector sources for ZM infestation other than Laurel Lake (New York, Vermont and Connecticut) was noted and that stopping the use of Laurel Lake would address only one possible source. Protecting the public's right of access to water bodies was also noted as management consideration, as was the issue of equity if state ramps are closed but other access is not. The issue of precedent for other water bodies that would be closed if they become infested was raised. The particular

difficulty associated with rivers was noted. Lastly it was noted that no other states have taken this measure.

The ZMTF agreed that the general consensus of most ZMTF members was that the management measures proposed for Laurel Lake, Laurel Brook and the Housatonic River represented an appropriate balancing of competing interests, but that the ZMTF Final Recommendations should reflect LAPA's disagreement on this point.

Jack Hickey suggested that other scientists do not agree with the proposed Laurel Lake management measures, and that a science group should be convened to address the open issues. Jack will put together list of scientific issues and send it to Phil Griffiths for EEA's consideration. Mark Tisa noted that the Division of Fish and Wildlife was beginning a five year study of Laurel Lake, and that part of the study could include monitoring of ZMs, an assessment of their effect on the lake, and the effectiveness of the management measures. This could lead to adaptive management measures based on the results of the study.

Other Issues

The ZMTF agreed that in the Fall of 2010 the AIS Working Group should assess the results of the ZMTF Final Recommendations on the ZM situation. Anne Carroll also suggested updating the AIS action plan working under the auspices of the AIS Working Group auspices.

Jonathan Yeo informed the ZMTF on the actions being taken by the MWRA on the Quabbin Reservoir including a boat storage and decontamination plan and study of the viability of ZM in Quabbin waters.

Jack Sheppard advised that the fishing derby permit requirements will now include the following requirements: each boater fill out a self-certification form and the conservation or tournament director will fill out an additional self-certification form as to the entire group. The forms will be sent out to approved and future permittees. Lee Hauge reiterated LAPA's suggestion that the Recommendations include a requirement for a 30-day period after fishing derby permits on an infected water body for the same group. Others noted that people fish in multiple tournaments and independently so this would not serve the intended purpose. After discussion, the ZMTF agreed that there was not a consensus to add LAPA's suggestion to the Recommendations as the self-certification requirements will be equally effective.

On the Laurel Lake fish stocking, Mark Tisa explained that the trout being stocked are cold water fish and their introduction early in the season did not correlate with the water temperatures needed for ZM veliger production. Lee Hauge agreed that fish may be stocked when ZMs are not reproducing, but believes the fish will still attract people to the lake later in the season when veligers are present. Phil Griffiths pointed out that the fish stocking decision is made by the Massachusetts Fisheries and Wildlife Board, and Joseph Larson advised that the FWB has historically made decisions based on the science behind any proposed action. Lee said he hoped that behavioral science would be part of the basis for decisions to account for the behavior of the fishing public. It was agreed to recommend to the Fisheries and Wildlife Board that they consider the potential for spread of zebra mussels in fish stocking decisions.

The draft Lake Onota ZM plan was suggested as a template action plan for newly contaminated lakes. The ZMTF discussed the elements of the Lake Onota plan as follows:

1. Contact DCR—all agreed this was appropriate.
2. Harbormaster close of ramps — the agencies noted that only OFBA has authority to close state ramps, but an option would be to implement the same management measures as at Laurel Lake— there was not a consensus on automatic closure, but temporary closure could be reviewed as an

option—some ZMTF members noted that based on the experience to date with Laurel Lake, more is known and reaction times can be quicker as a result with OFBA having signs and kiosks prepared for immediate installation.

3. Survey of lake -- all agreed this was appropriate.
4. Eradication steps—See previous discussion
5. Drawdowns—See previous discussion

The need for a clear plan in place on what practical steps people can take if an infestation occurs was apparent. The EEA agencies with permitting authority will identify what process/requirements apply so that there is a roadmap for potential actions and what additional scientific information would be required, without predicting the outcome of the process. The result of this assessment will be the ability to advise local communities that if there is an infested water body, here are the available options and the implications of these options. EEA will look into establishing a “rapid response team” to be available to communities to assist them if an infestation occurs.

Next Steps

Public Forum Plans:

- Task Force Final Recommendations will be released the week of March 15
- Tentatively, the public forum is scheduled for April 7, 6 to 8 p.m., MODR will inquire about the availability of Berkshire Community College
- At the forum Phil Griffiths will present an overview of the Recommendations (he will circulate bullet points on key issues to ZMTF beforehand), followed by Q&A
- The purpose of the forum is informational and will provide feedback to EEA and the ZMTF on the Final Recommendations so that each party can take them into account as it moves forward with implementation of its part of the Recommendations
- The EEA web site will include a place for comments to be posted, with notice that they are “feedback for implementation, but a specific response will not be made”
- MODR will put together a “save the date” flyer and email blast to get out notice of the meeting, with a request that each ZMTF member re-send it to their email lists
- Phil Griffiths will contact Senator Downing’s and Representative Pignatelli’s offices for assistance on getting notice out to local constituents

Final Recommendations

- MODR will circulate a revised draft of the Recommendations to the ZMTF the week of March 8, with comments due back by the end of the week—Phil Griffiths will review when he gets back on March 15 and the final Recommendations will go out at that time
- Signatures on the Recommendations will be held in escrow until MODR is notified that each signatory is satisfied with the draft of the Final Recommendations.