

# **Land and Water Resources Council**

## **2006 Annual Report**

to

**Governor John Elias Baldacci**

and the

**Joint Standing Committee on Natural Resources  
of the  
One Hundred Twenty Third Maine Legislature,  
First Regular Session**

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## INTRODUCTION

The Land and Water Resources Council (“Council”) submits this annual report to the Governor and the Maine Legislature's Joint Standing Committee on Natural Resources in accordance with 5 M.R.S.A. §3331, sub-§4. This report describes the Council's activities in 2006 and notes activities that the Council anticipates in 2007.

In 1993, the Maine Legislature established the Council to advise the Governor, the Legislature, and state agencies in the formulation of state policy regarding natural resources management to achieve state environmental, social, and economic objectives. The Council is established to consider natural resources issues of statewide significance and to counsel the Governor and Legislature on policy options for management and protection of natural resources. 5 M.R.S.A. §3331, sub-§2. The Council's agenda includes matters assigned to it by the Legislature or the Governor, as well as projects initiated at the request of a state agency or by the Council itself.

## COUNCIL MATTERS IN 2006

The Council's work in 2006 focused on oversight of two inter-agency policy development studies. Both studies, one to explore innovative options for managing Maine's bays and the other to review and recommend improvements for management of groundwater resources, were undertaken at the Legislature's direction.

### Bay Management Study

PL 2003 c. 660, Part B (LD 1857) directs the Council to undertake a two-year study “to explore and document potential new and innovative concepts for the management of Maine's embayments.” This study requirement stemmed from a prior study on aquaculture regulation. The law requires the Council to submit a final report by January 15, 2007, to the Legislature's Joint Standing Committee on Marine Resources. The main purposes of the now completed study were to explore the concept of bay management as a tool for planning and management of uses of nearshore<sup>1</sup> embayments and the potential role of local government in such planning and management, and to recommend management options for consideration by the Legislature.

The State Planning Office (SPO) and the Department of Marine Resources (DMR) led this study effort, which was supported by federal Coastal Zone Management Act funds. A project steering committee made up of eight public members<sup>2</sup> with expertise in

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<sup>1</sup> As used in this report, the terms “nearshore” and “coastal waters” refer to marine areas within three nautical miles of the shore that under the jurisdiction of and, with few exceptions, owned by the State of Maine.

<sup>2</sup> The steering committee members are: Paul Anderson, *Director, Maine Sea Grant*; Kathleen Billings, *Chair, Soft Shell Clam Advisory Council, Town of Stonington*; Heather Deese, *PhD Candidate, University of Maine*; Dewitt John, *Director of Environmental Studies, Bowdoin College*; Evan Richert, *Program Director, Gulf of Maine Census on Marine Life*; Jim Salisbury, *Retired CEO, Supreme Alaska Seafoods*;

relevant fields, advised SPO and DMR staff and the Council. DMR created and has maintained a website (<http://www.state.me.us/dmr/baystudy/baystudy.htm> ) to provide up-to-date information on the study's progress.

### **Overview of study activities in 2006**

While the initial aspects of the study, outlined in the Council's 2005 annual report, centered on information gathering through outreach and policy research, the focus in 2006 was on assessment of that information and development of recommendations. The following were the main elements of the study in 2006:

- Public meeting in Belfast on February 17<sup>th</sup> to discuss suggested approaches to address bay management issues;
- Consultation with state and federal agencies to identify current bay management-related initiatives, potential program enhancements, including opportunities for improved coordination and regionally-based management;
- Completion and submission of final reports and consideration of findings and recommendations from the study's two pilot projects, conducted in Taunton Bay and Muscongus Bay;
- Completion of a needs assessment regarding marine resources-related geographical information systems (GIS);
- Completion of a white paper on data and information needs for nearshore management;
- Preparation by SPO of a white paper on trends and current uses in Maine's nearshore, provided as an appendix to the bay management report;
- Meetings with the steering committee and a subcommittee of the Council;
- Development and publication of a draft report, including findings, policy goals and related recommendations; and
- Solicitation of public comments on draft recommendations through meetings with industry and conservation group stakeholders, a public meeting in Belfast, and publication of the draft report on the Internet with request for written comments

Staff prepared a draft report for the Council's consideration at its December 14, 2006, meeting. The draft report presented findings on coastal economic and social conditions, state-level governance, local and regional interests in nearshore management, public participation and satisfaction with coastal decision-making, and state funding of nearshore management, including:

- Most embayments in Maine are bordered by more than one town and many natural resource and infrastructure issues are more successfully managed on a multi-town or regional scale.

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David Schmanska, *Harbormaster, St. George*; Barbara Vickery, *Director of Conservation Programs, ME Chapter of the Nature Conservancy*

- While there are federal, state, and local processes for nearshore management, there is currently no forum to advance comprehensive marine and coastal management efforts on a regional scale. Regional groups and initiatives provide a mechanism for beginning to examine coastal issues on a bay scale.
- While all areas of the coast experience some type of use conflicts or express concern about environmental conditions, the specific nature and types of issues can vary markedly in different places along the coast.
- Supporting regions to discover and act on their own issues will allow coastal management to respond to regional differences, rather than be a one-size-fits-all approach. However, implementing a clear state vision is also needed in order to make sure that public trust is protected and that coastal management achieves desired state goals.
- There are major gaps in our understanding of nearshore physical and biological processes; it is very difficult to locate and gather existing information, and there has been no concerted effort to create a robust marine GIS. Therefore, it is difficult to ascertain a complete understanding of current coastal conditions and changes over time.
- Seven state agencies, six federal agencies and coastal towns have major roles in various aspects of nearshore management. The existence of multiple and sometimes overlapping jurisdictions has proven confusing to citizens attempting to navigate the system, and often requires concerted efforts amongst staff to coordinate efforts.
- Existing state agencies and programs for coastal and marine management are already working with limited resources. Any new efforts to improve the State's stewardship of coastal waters should complement and not divert or diminish existing efforts and resources.

Based on these findings, the draft report articulates the following three policy goals for advancing, incrementally, toward an inclusive, integrated and eco-system based regional nearshore governance system:

- Move towards regional management of nearshore waters – The State will encourage and support regional initiatives to address locally-relevant issues by providing information, staff assistance and/or funding and by encouraging interlocal agreements. The State will also provide criteria that must be met for a group to receive support to ensure that support is directed to initiatives that are contributing to the state priorities for coastal waters.
- Increase the amount, availability and accessibility of nearshore data and information – The State will create and implement a long-term coastal marine science plan to identify and prioritize needed data. In addition, the State will also

enhance information exchange and marine geographic information systems for nearshore data in Maine.

- Implement a strong vision for Maine's nearshore resources – The State will implement, across relevant agencies, the Coastal Management Policies Act, and will institute several coordination mechanisms to improve interagency cooperation and communication. One specific task will be to adapt and improve how the recommendations in this report are carried out over time so that the State proactively strives for a regional ecosystem-based coastal management system.

The draft report's funding recommendations are based on determination that any new efforts to improve the State's stewardship of its coastal waters as trustee of Public Trust resources must complement and not divert or diminish efforts or resources devoted to vital and currently supported marine resource management-related initiatives and programs of statewide significance. Accordingly, the recommendations focus on well-targeted and regionally-oriented ways to develop scientific information and data, public awareness and interest, and local and regional capacity to support on-going, well-informed progress in place-based management tailored to nearshore areas' unique mix of problems and opportunities.

The draft report identifies discrete tasks, costs, and sources of support for each recommendation. A number of the recommendations could be addressed within existing resources or with anticipated federal grant funding, chiefly from the Coastal Zone Management Act. Others, particularly those associated with improving data and information resources and tools, would require new and additional sources of funding. In keeping with the incremental, adaptive approach it suggests, the draft report envisions implementation of its recommendations over several years, subject to available resources and then existing priorities.

At its December 14, 2006 meeting, the Council unanimously approved the findings and draft recommendations. The Council further directed staff to complete drafting of the full report for electronic distribution to the Council for its members' review, final approval via e-mail, and subsequent submission to the Legislature's Marine Resources Committee on or before January 15, 2007.

## **Groundwater management study**

PL 2005 c. 452 directs the Council to conduct a comprehensive review of Maine law governing ground water withdrawals and report its recommendations to the Legislature's Natural Resources Committee by November 2006. The law, which directs the Maine Geological Survey (MGS) to lead this effort with Council oversight, calls for formation of a work group to identify any changes in state law needed to ensure a consistent, integrated and scientifically sound state policy that ensures that the withdrawal of groundwater does not have an undue adverse effect on waters of the State.

The work group, whose members represented a broad spectrum of public and private interests with regard to ground water activities, met eleven times during the

year to complete the study. Initial meetings provided an introduction and background information on Maine's water resources and current regulatory setting. Subsequent meetings focused on new approaches to groundwater regulation. MGS prepared a preliminary analysis of watersheds at risk which proved instrumental in focusing the recommendations of this report.

At the Council's December 14, 2006 meeting, MGS presented a draft report with the following recommendations:

- Watershed approach. Recognizing state resource constraints, focus state groundwater management efforts on watersheds where there is potential for problems (rather than a new statewide program), using the following tiered approach:
  - *Tier 1*: Conduct a full assessment of water supply and demand, including build-out analysis of community water needs;
  - *Tier 2*: If Tier 1 analysis indicates need, work with parties to develop a water-use management plan for the watershed; and
  - *Tier 3*: If over-subscription of water use remains after Tier 2 analysis, there may be a need for a binding dispute resolution process to resolve issues.
- Ground Water Committee. Establish a ground water committee comprised of state agency staff with ground water responsibilities that, subject to Council oversight, would advise the Council on groundwater policy issues and, using existing budgeted resources, assume the following responsibilities:
  - Review ground water withdrawal activities;
  - Coordinate state ground water information;
  - Direct appropriate ground water investigations in "watersheds at risk";
  - Convene planning groups of stakeholders as needed to address withdrawals in "watersheds at risk", in significant local aquifers, or in multi-municipal ground water issues;
  - Provide technical assistance to towns;
  - Develop and disseminate educational materials on water resources, regulatory regime; and
  - Develop educational materials that clearly describe the various regulations governing ground water withdrawals and how agencies interact in their implementation and disseminate this information via meetings, conferences, internet resources, and other means.
- Amend existing state ground water management laws and regulations as follows:
  - *Drilled well reporting*: Change definition to include all wells for water withdrawal;

- *Natural Resource Protection Act (NRPA)*: Modifications to NRPA to address non-agricultural high-yield wells;
- *Bulk water transport*: The group recommends that the Legislature review the predicate findings (22 MRSA §2660-A, sub-§3) to see if they are relevant;
- *Agricultural wells*: High-yield agricultural wells would be reviewed by the Agricultural Water Management Board under a farm plan; and
- *LURC jurisdiction*: LURC will review its standards and rules governing water withdrawal to identify and make changes as needed to: (1) clarify the existing regulations; (2) assure consistency with DEP and DHHS, where applicable; and (3) assure that the Commission's statutory authority over groundwater withdrawal is clearly reflected.

The work group did not recommend changes to the regulations governing public water supplies. With the exception of the group's recommendation regarding regulation of bulk water transfers, there was general agreement among work group members on all recommendations.

MGS estimated the aquifer investigations in watersheds at risk will cost about \$100,000 annually. MGS noted its intention to contribute an additional \$120,000 to this effort by redirecting the work (1.5 FTE) of staff hydrogeologists.

At its December 14, 2006, meeting, the Council unanimously approved the draft report and its recommendations for final, technical editing and subsequent submission to the Legislature's Natural Resources Committee as soon as practicable.

## **Managing Public Drinking Water Supplies**

In accordance with PL 2005 c. 140, the State's Drinking Water Program (DWP), within the Department of Health and Human Services, conducted a public process in 2006 to discuss and refine recommendations for continued improvement of the safety of public drinking water supplies. The legislative mandate for this study grew out of the DWP's 2005 report to the Legislature, *Integrating Public Water Supply Protection into the State of Maine's Vision*, which identified significant gaps in state law and policy regarding drinking water source protection.

At the Council's June and December 2006 meetings, DWP staff provided briefings on this effort, focused in part on developing recommendations to ensure that potential effects on drinking water supplies are duly considered and addressed when local and state land use decisions are made. At the Council's December meeting, DWP staff invited further comments from Council member agencies on its draft report and recommendations, due the Legislature's Natural Resources Committee in February 2007. In keeping with the study recommendations, the Council noted oversight of implementation of inter-agency aspects of the study recommendations as a potential Council activity in 2007.

## **Lakes Heritage Trust Fund**

5 MRSA §3331, sub-§6 authorizes the Council to manage the Lakes Heritage Trust Fund and requires the Council to include in its annual report “an accounting of all donations to and expenditures from” the Fund. In 2006, the Fund received no donated or other funds and the Council made no expenditures from the Fund.

## **Interagency coordination**

The Council met quarterly in 2006 and coordinated its role and agenda in relation to the Energy Resources Council and other forums for discussion among the State’s natural resources agency commissioners. This approach has proven an efficient and effective means for facilitating timely communication among agency decision makers and resulting action on natural resources policy issues of concern to multiple agencies. Sub-cabinet level discussions among state natural resources agencies, for example, have been a useful forum for identifying issues that involve multiple state agencies with potentially conflicting missions or mandates that are of interest to stakeholders outside of state government and thus may necessitate and benefit from further commissioner-level consideration via the Council.

## **UPCOMING ISSUES IN 2007**

Topics which the Council anticipates it will address in the coming year include the following:

- Oversight of implementation of bay management recommendations; Ocean and Coastal Resources subcommittee

See discussion above

- Oversight of implementation of ground water study recommendations; Ground Water subcommittee

See discussion above

- Oversight of implementation of inter-agency aspects of DHHS’ public drinking water supply protection recommendations

See discussion above

- Oversight of implementation of inter-agency aspects of DEP’s in-stream flow rules

DEP recently provisionally adopted rules (DEP rules ch. 587) pursuant to 38 MRSA §§470-E and 470-H to "establish water use standards for maintaining in-stream flows and GPA lake or pond water levels that are protective of aquatic life and other uses and that establish criteria for designating watersheds most at risk from cumulative water use. Standards adopted ... must be based on the natural variation of flows and water levels, allowing variances if use will still be protective of water quality within that classification." When these major substantively rules have been approved by the Legislature and subsequently adopted by the BEP, DEP anticipates conferring with the Council on implementation-related issues of concern to multiple agencies.

- Coastal dredging; dredged materials management

In keeping with recommendations that DEP and MDOT presented to the Natural Resources Committee at its request in December 2005 regarding LD 1592 from the first regular session of the 122<sup>nd</sup> Legislature, the Council will continue to oversee an interagency-stakeholder coastal dredging work group. The work group will consider, among other matters, means to improve state –federal coordination on coastal dredging issues and state maintenance and improvement dredging priorities, and coordinate state agency participation in discussions of New England Regional Dredging Team led by the Environmental Protection Agency and Army Corps of Engineers. These discussions may result in policy recommendations for consideration by the Council.

- Priority watersheds

With input from a variety of agencies and stakeholders, DEP is updating and revising the State's list of priority watersheds for nonpoint source water pollution control. DEP developed the list in 1998 through the interagency Watershed Management Committee previously established by the Council, which reviewed and endorsed the list. DEP anticipates presenting the new list to the Council for its consideration in the first half of 2007.

- Interagency coordination

The Council intends to continue to coordinate its role and activities in relation to the Energy Resources Council and other forums for discussion among the State's natural resources agency commissioners. To that end, the Council intends to continue to meet quarterly on a quarterly basis in 2007.

## **CONCLUSION**

The Council continues to provide a decision maker level forum for development and communication of consistent state positions on issues and policies that have statewide natural resources implications and that require coordination among multiple agencies.

As in past years, the Council's work was enabled, benefited from, and continued to promote close collaboration among the state natural resources agencies. The Council thanks state agency personnel, as well as their federal and municipal colleagues and members of the public, including in particular those who shared their time and expertise as members of the bay management steering committee and groundwater work group, for their hard work and participation in the meetings and discussions that helped inform and enlighten the Council's discussions and recommendations.