



Department Of Environmental Management

Wetlands Task Force

Final Report



March 21, 2001

Acknowledgements

The Department of Environmental Management started its review of the Wetlands Program in December 1999. We sent out about twenty-five letters to people and requested their help in reviewing the DEM Wetlands Program. The Wetlands Task Force grew and over forty people volunteered their time to assist the Department of Environmental Management in this effort.

The DEM would like to express its gratitude to all the members of the environmental, municipal and regulated communities, program staff, along with the many state and federal agencies who participated in this review process. It was only through their time and energy that this report could be developed.

The recommendations of this report, for the most part, were generated by the output of the working groups. Sean Coffey, Bryan Wolfenden, Dave Reis, Chuck Horbert, Chris Mason, Hank Ellis and Russ Chateauneuf led these groups. It was through their efforts, the groups were able to develop the consensus needed to generate recommendations to the full Wetlands Task Force.

Special thanks goes to Carol Murphy, Sue Kiernan and Russ Chateauneuf for their hard work in guiding the technical analysis of the Task Force and the Final Report.

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Wetlands Task Force Final Report

EXECUTIVE SUMMARY

The Wetlands Program has undergone several program evaluations including an extensive review by a Governor appointed Advisory Committee on Wetlands, and an audit by KPMG. In order to continue this program evaluation process DEM formed a Wetlands Task Force, in January 2000, to investigate specific administrative, policy, regulatory and statutory changes that could be used to further streamline program operations, increase customer satisfaction and meet the mandates of the law. As a result of these meetings, DEM is moving forward with the following changes to the program:

Regulatory Changes

DEM will revise the Wetlands rules in four phases (Table 3).

Rule Revision 1

- ◆ Addresses the implementation of the new DEM-CRMC jurisdictional boundary as well as fee reductions for water quality improvement projects, wildlife habitat projects, and land reuse/ redevelopment projects.

Rule Revision 2

- ◆ Includes a simpler fee schedule that will reduce the number of calculation errors that result in application deficiencies. This simplified process will also reduce staff review time.
- ◆ Reorganizes the rules to provide better clarity about the application requirements, review criteria and approval process.
- ◆ Removes barriers in the regulations for pre-application meetings.
- ◆ Expands the administrative finding section to discuss the significance of the bordering areas in scientific terms.

Rule revision 3

- ◆ Continues to improve the clarity and predictability of the rules and the review process by incorporating new tiers of applications. Some of the major changes include development of a new:

Determination of Applicability application for those applicants who are outside of, but near, the limits of regulatory jurisdiction.

Request for Preliminary Determination application with reduced requirements for specific small projects such as planting projects and alterations to already developed residential lots. Approximately 20% of the permits issued for individual residential lots are on already developed property.

Rule Revision 4

- ◆ Will facilitate water quality improvement and habitat restoration projects.

Policy Changes

DEM will make policy changes in a number of areas to reduce the number, and improve the quality of wetlands applications (Table 4). Major changes include:

- ◆ Implementation of an internal coordinated review process for ISDS applications for single-family residences that are located near, but outside of wetlands.
- ◆ Development of a policy that facilitates water quality and wildlife habitat improvement projects through the existing regulatory framework.
- ◆ Development of new policies for meetings with the Wetlands Program staff.
- ◆ Development of a Memorandum of Agreement between DEM and CRMC regarding freshwater wetlands in the vicinity of the coast.

Administrative and Outreach

DEM will significantly expand its outreach effort with the goal of increasing application quality, minimizing review time and enhance compliance. OWR will develop new guidance materials and conduct workshops for consultants, applicants and municipalities.

I. INTRODUCTION

The Wetlands Program has undergone several program evaluations including an extensive review by a Governor appointed Advisory Committee on Wetlands, an audit by KPMG and a stakeholder review. DEM has modified the program as a result of these processes. In order to continue this program evaluation process DEM formed a Wetlands Task Force, in January 2000, to investigate specific administrative, policy, regulatory and statutory changes that can be used to further streamline program operations, increase customer satisfaction and meet the mandates of the law. The Wetlands Task Force consisted of members (Appendix A) of the affected regulated, environmental and legal communities. Other representatives included state, municipal and federal agencies along with members of the DEM staff.

The Task Force usually met on the first Thursday of each month from January to June 2000. A draft report was distributed to the Task Force that identified some of the concerns raised by the previous review groups, and DEM staff. At the first two meetings the Task Force developed a list of additional issues. The concerns raised were grouped into nine specific areas and were then assigned to a working group consisting of members of the Task Force for detailed analysis. Appendix B is a listing of the membership and the charters of each of the working groups. A number of issues that were raised by the DEM staff were discussed at a Task Force meeting and were approved for implementation. Appendix C is a list of those actions that were proposed for early consideration.

Due to the amount of information that was being generated by the working groups, it was determined that the web format would be effective in keeping all the Task Force members apprised of the process.

The record of the Task Force and working groups meetings were posted on the DEM web-site located at the following address:

<http://www.state.ri.us/dem/programs/ombuds/pstream/wetlands/index.htm>

II. SUMMARY OF ISSUES

As a result of the first two meetings thirty-seven issues were identified for further review. These issues were then assigned to nine working groups that met and discussed possible solutions to these issues.

The group identified problems with the existing DEM process for the evaluation of simple modifications to permits. They expressed there should be a way of having simple applications processed in an expedited manner. This task was assigned to DEM staff for study.

A second category of issues revolved around the need for consistency between the DEM and CRMC wetlands programs. It was thought that the programs, in some instances, were duplicating efforts. A working group was formed to discuss these issues.

A third category of issues centered on field enforcement issues and how DEM responds to complaints. Concerns were raised that DEM does not monitor the progress of construction activities and determine if permit conditions were being met. These issues were assigned to the Field Enforcement/ Complaint Response Working Group.

The fourth category of issues was related to wetland values, the cumulative impacts of alterations to wetlands and the value of small wetlands. There were other issues raised that questioned how DEM was incorporating the Wetlands Program into the Watershed approach. These issues were discussed at the Wetlands / Watersheds Working Group.

Another broad category of issues centered on how the program could be made more predictable and understandable. There was also a suggestion that DEM could provide more program information to the public and should spend more time in outreach activities. These issues were sent to the Public Education and Outreach Working Group for further discussion.

Concerns were raised that applications often needed to be revised because the regulations were too complex and applicants did not know how to interpret the rules. It was suggested that DEM should meet with applicants early in the process and respond to questions concerning the wetlands projects. DEM should also work with towns and municipalities to help them with wetlands issues. This issue was studied by the Inclusive Meetings Working Group.

A number of issues were raised concerning the need to evaluate the existing exemptions that are listed in the regulations. There was also a concern raised that wetlands enhancement projects should be processed faster and given a higher priority than other projects. These concerns were studied by the Beneficial Projects / Exemptions Working Group.

A question was raised about the need for a variance provision in the wetlands regulations. This issue was discussed at the Statutory Working Group.

A number of other issues were raised that required changes in the statute. People requested that we evaluate the definition of jurisdictional area, increasing the length of time for permit renewals / expiration, and clarifying the Declaration of Intent in the statute. The Statutory Working Group was assigned these issues for further analysis.

The use of Wetlands Professionals was discussed as a mechanism for streamlining permit applications. It was suggested that this group could certify the validity of their work and this certification could be used by DEM in the application process. This issue was assigned to the Certification Working Group.

The working groups all issued final reports that can be reviewed in Appendices D through L. The working groups final reports were analyzed and their recommendations generally fit into four categories, i.e., statutory issues, process issues, DEM public interactions and watersheds issues. The recommendations from these four groupings can be reviewed in Appendices M-P. These appendices tabulate the recommendations from all the working groups. An issue number identifies each recommendation.

One of the major impetuses of the Wetlands Task Force was to evaluate the program to determine if there were ways to streamline the program, increase customer satisfaction and to protect the wetland resource. Recommendations that concern program-streamlining issues have been separated from Appendices M through P and are grouped into Appendix Q.

The reports from the working groups were all analyzed and the recommendations were then distributed into statutory, regulatory, policy and administrative categories. Appendix R of the report describes the draft recommendations in each category and identifies the issue number by the working group that made the recommendation. These recommendations were then prioritized at the August 24, 2000 meeting of the Wetlands Task Force.

After the August 24, meeting, DEM staff met to review the results of this prioritization effort and to evaluate DEM's capacity to implement these changes. (Appendix S through V details the result of this prioritization effort. Numbers in the columns indicate the number of people who either supported or opposed the recommendation.) Section III of the report outlines the results of this analysis and details the final recommendations that will be included in DEM's Office of Water Resources Work Plan.

The Wetlands Task Force met again on December 14, 2000 and reviewed the Draft Final Wetlands Task Force Report. At this meeting the group recommended that DEM should report back to the Task Force on its progress in implementing changes. As a result of this suggestion, DEM will schedule a meeting in January, 2002 to review the status of the many regulatory, administrative and policy changes that were proposed as a result of the Task Force.

III. FINAL RECOMMENDATIONS

DEM staff has reviewed the recommendations of the Wetlands Task Force to determine if they are consistent with the goals of the DEM work plan and if there is capacity within the organization to implement the proposed changes. The Wetlands Task Force was formed primarily to evaluate streamlining opportunities for the program and to determine if services could be provided in a consistent manner that would be conducive to increased environmental protection. This evaluation initially centered on reviewing the regulatory, policy and administrative streamlining recommendations of Appendix Q.

The Office of Water Resources (Office) 2001 fiscal year wetlands workplan reflects an ambitious, approach to program development and permit streamlining. The intention is to move on those actions that can contribute immediately to streamlining efforts including policy, regulatory and administrative initiatives. Recognizing its priority, the office is proposing to fully apply existing resources toward this wetland streamlining effort. In addition, successful completion of the overall workplan requires the securement of additional contractual assistance utilizing federal wetland funds. The plan proposes to delegate newly defined outreach tasks to a contractor thus freeing up staff time to pursue regulatory

reform and program development. To expedite rule changes, the plan proposes to retain additional legal help to draft language changes. This will be contingent on EPA's approval for securing contractual services. This schedule can only be met if internal review is timely.

The remaining recommendations were then evaluated to determine if they would complement the streamlining efforts. Efforts were made to include as many of the recommendations as possible into the work plan. There were some issues that were not moved forward at this time, either because there was no capacity to implement the recommendation at this time, or they were considered a lower priority recommendation.

Among existing commitments, the Office will continue to work with EPA, the University of Rhode Island and stakeholders on the development of a proactive freshwater wetland restoration plan for the Woonasquatucket River watershed. This plan will be a prototype for other RI watersheds and will serve as a foundation for the development of a statewide freshwater wetland restoration strategy. This effort complements restoration planning work being done in the coastal zone.

In addition, the Office will complete background research and outline a statewide wetland conservation plan. This work will be coordinated with the existing planning initiatives of the Nonpoint and Groundwater programs. This broad action strategy for wetland protection will be fully developed in the 2002 fiscal year. Many of the recommendations of the Wetland Task Force Watersheds Working Group such as integration of local wetland protection measures will be revisited in this planning process. The results of a current project to assess the state's wetland mapping needs will be incorporated into the plan. Table 2 details the major projects that were already included in the DEM work plan that support the recommendations of the Wetlands Task Force.

Table 2 Projects Common to the Wetlands Task Force Recommendations and the DEM Work Plan		
Project Description	Issue Originator	Proposed Completion Date
Continue development of proactive freshwater wetland restoration strategy with URI and stakeholders. Phase 2 is restoration plan for Woonasquatucket River watershed. (EPA 104(b)3 wetland grant)	EPA, DEM WW-5d, WVO-2a	Phase 1 December '00 Phase 2- December '01
Participate in RI Habitat Restoration Team. Provide some technical assistance for freshwater restoration projects.	DEM	Ongoing
Manage URI project to determine wetland mapping needs and to assess mapping alternatives and costs (EPA 104(b)3 grant funded)	WTF O&E3b; DEM	January '01
Administer grants for local projects: 1) TNC Wetland Conservation Plan for Tiverton & Little Compton; 2) Town of Coventry restoration demonstration project; assist 3) EPA other FY99 grants	EPA, DEM WW-5e WVO-2aiii	1. December '01 2. August '01 3. September '01
Write wetlands status & trends report	EPA, WW-5d	March '01
Complete background research and outline issues for statewide Wetland Conservation Plan. Coordinate planning with other Office of Water Resources plans.	EPA, DEM WW-5d	Plan outline due September '01
Participate in N.E. Wetlands Workgroup through NEIWPC	DEM	Ongoing
Participate in N.E. Wetland Bioassessment Workgroup through EPA, Region 1	EPA, DEM	Ongoing
Participate in RI Invasive Species Forum	DEM	Ongoing

Statutory Changes

The Wetlands Task Force is not recommending statutory changes to the Wetlands Act. The Task Force discussed this issue at length and there was no consensus to reopen the Act. The Task Force however, made many recommendations that will result in streamlined program operations. Proposed regulatory changes should reduce the number of applications submitted to DEM and new processes should shorten the review time of applications. These proposals should be implemented and then determined if further statutory changes are needed.

If the Act were to be reopened, there were only three issues the Task Force recommended moving forward and including the following:

The existing Statement of Legislative Intent should be clarified and it was recommended that the language in the 1996 Governor's Advisory Commission be used. (S-2)

There was a recognition that some of DOT's projects have completion timelines greater than the limit prescribed in the statute. The Task Force recommended that DEM work directly with DOT to develop an administrative process to review major transportation projects according to the a timeframe and procedures consistent with DOT project planning and implementation needs.(S-1)

It was also suggested that posting of a bond for completion of mitigation work be considered. (S-04).

Regulatory Changes

In response to the Wetlands Task Force, DEM is planning a major effort to revise the Wetlands rules. Regulatory reform will be accomplished in 4 phases.

The first set of rules is pending further review with CRMC and it is anticipated to be heard in February 2001. The remaining regulation revisions will be ready for review by the following schedule: Phase 2 in late March, phase three in September 2001 and phase four will begin the process in September 2001. The rule revisions are outlined in Table 3.

The first rule revision, currently drafted, addresses the implementation of the new DEM-CRMC jurisdictional boundary as well as fee reductions for water quality improvement projects, wildlife habitat projects, and land reuse/ redevelopment projects. Successful implementation of the DEM-CRMC Rules and memorandum of agreement will increase interagency coordination and further reduce duplicative wetlands permitting.

The second rule revision will include a simpler fee schedule that will reduce the number of application deficiencies and reduce staff review time. Additionally we will reorganize the rules to provide better clarity about the application requirements, review criteria and approval process. We will eliminate unnecessary administrative restrictions to provide more flexibility and make the rules more user-friendly and understandable. Included in this revision will be removal of barriers in the regulations for pre-application meetings. This revision will also expand the administrative finding section to discuss the significance of the bordering areas in scientific terms.

The third rule revision will continue to improve the clarity and predictability of the rules and the review process by incorporating new tiers of applications. Some of the major changes include:

- Development of a new determination of applicability application for those applicants who are outside of, but near, the limits of regulatory jurisdiction. The goal is to reduce the number of persons who apply for projects outside of jurisdiction.
- Development of a new request for preliminary determination application with reduced requirements for specific small projects such as planting projects and alterations to already

developed residential lots. Approximately 20% of the permits issued for individual residential lots are on already developed property.

- Development of regulatory timelines to approve complete applications, by application type. It is proposed that DEM will develop appropriate wetlands application review timelines for each type of application. Review times will start when the applications are complete. DEM will also investigate refunding permit fees when timelines are not met.

The fourth rule revision will facilitate water quality improvement and habitat restoration projects.

**Table 3
Proposed Freshwater Wetland Rules Development**

Rule Number	Proposed Revision #1	Notes
2.03 A-F	New rules for “freshwater wetlands in the vicinity of the coast”	Result of legislative change
5.00	New definitions: <ul style="list-style-type: none"> • Freshwater wetlands in vicinity of the coast; • Water quality improvement project; and • Wildlife habitat project. 	Result of legislative change, DEM
7.04 B	The rule was deleted to allow for entities other than government and public utilities to pursue emergency permits.	DEM
9.01 A	The rule has been revised to allow private landowners to pursue permits for emergency alterations that represent threats to health and safety.	DEM
8.02 C	The rule has been revised to clarify that if an applicant proposes alterations on property owned by other(s), a notarized signature of the other landowner(s) is required, but the other landowner(s) does not become an applicant.	DEM
8.04 E6	This rule includes new reduced fee categories for wildlife habitat projects, water quality improvement projects, and land redevelopment/reuse projects in recognition of their potential environmental benefits. Also based on this revised rule, the fees for airport projects will be calculated by the Estimated Construction Costs (ECC) method.	DEM
8.05 C	The rule was reviewed and it was determined that the first sentence provided enough flexibility to allow applications to be processed out of sequence. The rule has been revised to specifically state that Critical Economic Concern applications will be processed out of sequence.	DEM
9.02	The rule has been revised to state that application files for wetland edge verification will be considered closed after 2 years if an applicant hasn’t responded to a request from the Wetland Program for more information.	DEM
9.05 E4a	The rule has been revised to extend the appeal period, after an <i>Application to Alter</i> decision, from 10 days to 30 days.	Result of legislative change
9.05 G2	The rule has been revised to allow an <i>Application to Alter</i> file to stay open for 30 days after a decision is made.	Result of legislative change
9.09 A	The rule has been revised to allow a permit to be modified if the proposed change involves increased disturbance into already disturbed wetland.	Wetlands Task Force # A-2
9.09 D	The rule has been revised to explain that a permit modification will not be approved if there is a proposed increase in disturbance into land areas not evaluated by the Program as part of the initial application.	Wetlands Task Force # A-2
15.10 A1)	The rule has been revised to extend the length of the appeal period during which an adjudicatory enforcement hearing can be requested from 10 days to 30 days.	Result of legislative change.

Table 3 (Continued)		
Proposed Freshwater Wetland Rules Development		
Rule Number	Proposed Revisions #2	Wetlands Task Force #
8.04	Revise the fee schedule to simplify both the presentation and the way the fees are calculated. Eliminate the fee additives (per sq. ft. of alteration, etc.). Eliminate fees for municipalities. Otherwise strive for revenue neutral fees.	DEM
6.00 through 14.00	Reorganize the rules for readability and clarity: improve application requirements and process descriptions, improve table of contents, and add an index. These revisions will be more presentation than content.	O&E 6b
6.00 through 14.00	Remove rules that address internal administrative operating procedures and create a new management procedure document as appropriate.	O&E 6a
3.00	Expand administrative findings section to discuss the significance of the bordering areas (perimeter wetland and riverbank wetland) in scientific terms	S-4
8.07 B. 8.07 C.	Delete these rules and develop a policy whereby meetings with the Program (as opposed to w/ OTCA) will be scheduled and conducted.	RIAWS 8/24; DEM
Rule Number	Proposed Revision #3	Wetlands Task Force #
----	Develop new <i>Determination of Applicability</i> application for those ~75 applicants per year who file a <i>Request for Preliminary Determination</i> and receive determination of non-jurisdiction. Roll applicant into the Preliminary Determination process if it is determined that an alteration is proposed.	A1-c
----	Develop new Abbreviated <i>Request for Preliminary Determination</i> application (PD1) with reduced requirements for specific projects including planting projects and alterations to already developed residential lots.	A1-a,b,d; BPE-1; BPE-9; C-5; O&E-1&5f; DEM
	Develop new regulatory timelines to approve complete applications, by application type. Investigate refunding permit fees, if review times are not met.	
14.00 and App. 5	Evaluate site plan requirements, particularly for small projects such as single family residential.	DEM
6.13	Consider revising exemption to allow others beside DEM FWS to undertake conservation projects as exempt activities or as a "FONSI"	BPE-9
7.01 B	Develop guidelines, BMPs, and/or performance standards for major projects outside of wetland jurisdictional areas that have the potential for significant wetland impacts.	WW-2
6.03L	Clarify the exemption on replacement of shoreline structures as to "in-kind" materials.	BPE-8
-----	Evaluate the CRMC fact sheet on program differences and revise rules as agreed upon. For example, the length of time permits are valid differs.	CRMC-1a
6.00	Revisit rule 6.00 and consider expanding the list of exempt activities.	DEM
App. 1	Revisit appendix 1 and consider expanding the list of activities considered insignificant alterations.	DEM
5.00 ++	Develop and add buffer zone and setback rules.	CRMC workgoup
Rule Number	Proposed Revision #4	Wetlands Task Force #
Several	Revisions to facilitate water quality improvement and wildlife habitat projects (phase 2)	DEM, EPA

Policy Changes

The proposed policy changes should reduce the number of wetlands applications filed with DEM and improve the quality of the applications and are detailed in Table 4. Major changes include:

- Implementation of an internal coordinated review process for applications for single-family residences that are located near wetlands. The Wetlands Program will complete field inspections in response to ISDS applications. There are approximately 75 applications per year that are determined to be 'not in jurisdiction.' Many of these applications are filed in response to questions raised during the review of the ISDS application.
- Development of a policy that facilitates water quality and wildlife habitat improvement projects through the existing regulatory framework. This is a prior EPA commitment. Application guidance and requirements will be described. Although these changes currently impact the workload of less than five applications a year, DEM expects an increase in these projects as proactive restoration plans are developed and additional funding sources become available.
- Development of new policies for meetings with the Wetlands Program. As mentioned above, the regulations will be changed to remove impediments to meet with staff. Policies will also be developed that will allow pre-application meetings with staff and to facilitate field meetings in instances where edge verifications are difficult to determine.
- Development of a Memorandum of Agreement between DEM and CRMC regarding freshwater wetlands in the vicinity of the coast.

Table 4 Final Policy Recommendations		
Policy Changes Description	Project Originator	Project Completion Date
Develop protocols that clarify responsibilities between DEM's compliance and permitting programs.	DEM	December '00
Complete DEM-CRMC Memorandum of Understanding for regulation of freshwater wetlands. (Phase 1 regulations)	CRMC-1a,b,c; DEM	December '00
Develop policy that encourages water quality and wildlife habitat projects. (Phase 1 regulations)	BPE-4; DEM	February '01
Revise and make public the internal memo on "insignificant alteration versus non-jurisdiction" decisions.	DEM	December '00
Develop trial policy for pre-application field meetings for problem wetland edges.	C-3	February '01
Develop policy for pre-application meetings with Program (Phase 2 regulations).	IM-1	February '01
Establish ISDS / Wetlands coordinated field review for projects that are near but outside regulated wetland.	Alt. C-2	May '01
Develop policy that promotes planting projects with recommended species and Best Management Practices (Phase 3 regulations).	DEM, BPE-2	September '01
Develop buffer zone and setback concept: a) Develop permit condition that identifies area to remain undisturbed as a buffer zone; b) Buffer zone mitigation and setbacks especially for residential lots.	CRMC-	a) December '00 b) July '01

Administrative Changes

DEM will be required to make administrative changes in order to implement many of the recommendations that have been noted above. Rather than detailing all these changes, this report highlights some of the issues that were discussed at the Task Force meetings. The changes encourage swifter processing of applications by empowering employees to make decisions and by changing the manner in which DEM processes applications. Table 5 is a summary of these changes.

Table 5 Final Administrative Recommendations		
Administrative Changes Description	Project Originator	Project Completion Date
Send deficiency notices to applicant, consultant, and/or attorney when requested.	S01	October '00
Revise the application form to encourage applicant's address to improve service to applicant; also add checkoff for CEC projects.	DEM	December '00
Authorize signature authority to lower staff level where appropriate.	DEM	December '00
Assign existing staff intermediate supervisory responsibilities.	DEM	December '00
Provide staff expanded access to FoxPro to update status.	DEM	October '00
Define overall processing sequence.	DEM	December '01
Redesign (simplify) existing application package (w/ Rules 3).	DEM	August '01
An accelerated review process was suggested for the following: i. Applications for Renewal where it has been established that work has not yet commenced. ii. Applications for projects that have been previously approved and need to be minimally modified, but do not qualify for review under an Application for Permit Modification (e.g. involve additional alteration or impacts to freshwater wetlands). (A-1f)	i. A-1e ii. A-1f	i. December '00 ii. December '00
DEM should notify the public, if requested, regarding the findings of wetland complaints upon completion of the complaint investigation.	FE -3	October '00
CRMC and DEM will develop a coordinated review process for applications for projects on the DEM side of the jurisdictional boundary and are located in CRMC's Special Management Plans.	CRMC-1c	January '01

Outreach

The Wetlands Task Force process drove home the point that DEM needs to provide clearer information to the various constituent groups, i.e. home owners, wetlands consultants, the building community and the municipalities. Simplification of the rules and conducting outreach activities is critical in having these groups understand and hopefully increase compliance with the regulations. DEM will significantly expand its outreach effort with the goal of increasing application quality and minimizing review time. OWR will develop new guidance materials and conduct workshops for consultants, applicants and municipalities. Numerous administrative changes will supplement the regulatory, policy and outreach projects described in Table 6.

Table 6 Final Outreach Recommendations		
Project Description	Issue Originator	Project Completion Date
Distribute permit guide and fact sheets to municipalities, consultants, RIBA, and realtors.	BPE6; DEM	October '00
Work with OTCA and continue the development of additional fact sheets on application types through the Phase 3 rules.	DEM	December '01
Write fact sheet of common deficiencies and solutions, and distribute to consultants.	DEM	March '01
Write fact sheet for regulated areas.	DEM	March '01
Convert application flow chart to fact sheet.	DEM O&E-1&5b	March '01
Develop sample standard site plans and applications for illustration purposes, display and put on DEM Web page. Include with this information examples of good and bad applications.	DEM O&E-1& 5g;	March '01
Develop Wetlands Program Web page (contingent upon staffing after 2/01) (EPA 104(b)3 funds)	DEM O&E-3c BPE-2, WW-5b	March '01
Make list and location of pending applications available on the DEM Website and update frequently, especially for municipalities.	O&E-1&5c	March '01
Update 1990 brochure for realtors.	DEM	May '01
Develop recommended drainage methodology for consultants to facilitate faster and consistent reviews.	DEM	March '01
Develop format for engineering calculations and computations to facilitate faster / consistent reviews.	DEM	March '01
Develop and conduct workshop for consultants with / OTCA. Coordinate with Board of Professional Engineers & RI Association of Wetland Scientists.	S-02; DEM	March '01
Conduct Wetlands open house for public with OTCA	DEM	May '01
Develop and conduct workshop for municipal officials with OTCA coordinate with the Department of Administration, URI - Cooperative Extension and League of Cities & Towns.	DEM	September '01
Update wetlands permit questions & answers guide after Phase 3 Rules have been promulgated.	DEM; O&E	Begin September '01
Review of web-based vernal pool manual with URI and DEM Office of Strategic Planning & Policy. (EPA 104(b)3 grant)	DEM WWO-2aiv	February '01
Create guidebook with photos and field descriptions of RI wetland types for property owners (pending funding)	DEM	Start October '01
Create wetland Best Management Practices manual with avoidance and minimization techniques; sample designs, etc. (pending funding).	BPE-3 WW-6B	Start October '01

Wetlands Task Force

Appendices A through V

**Appendix A
Wetlands Task Force Roster**

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**Appendix A
Wetlands Task Force Roster (Continued)**

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Appendix B – Working Group Charters
Wetlands Task Force Working Groups

Working Group Name	Issues	Team Leader	Working Group Members
Simple Applications, Application modifications	<ol style="list-style-type: none"> 1. Categorize applications to allow simple applications to be processed first. 2. Change the regulation to either allow for minor modifications to be processed under the regulations even if minor increases in limits of disturbance were proposed, or empower the supervisory staff to allow such processing despite the current restrictions of the Rule. 3. DEM should conduct simultaneous engineering and biological reviews of wetland applications. 	Chuck Horbert	Chuck Horbert
CRMC / DEM/ Federal Consistency	<ol style="list-style-type: none"> 1. The statewide wetlands program would benefit from DEM / CRMC / FEMA program consistency. 2. The DEM regulations concerning floodplain alterations in urban areas should be consistent with FEMA regulations. 3. Wetlands and storm water regulations should be consistent. 	Dave Reis	Carol Murphy, Dave Reis, John Boehnert, Joe Frisella, Dennis Esposito, Vin Palumbo, Peter Holmes, Dan Baudouin
Field Enforcement; Complaint Response	<ol style="list-style-type: none"> 1. If a construction activity infringes on a wetland, the problem activity currently needs to be removed, and an application then needs to be filed to address the wetland problem. Could the policy be changed to immediately stop the construction activity and then file an application, with the possibility that the wetland application can address the infringement of the wetland? 2. Program emphasis should include an oversight function that assures that permit conditions are being implemented in the field. 3. DEM should provide better feedback to the public in response to complaints concerning potential violations of the Wetlands Act. 	Hank Ellis	John Boehnert, Chuck Horbert
Watershed, Significance of Wetlands, Cumulative Impacts of Alterations	<ol style="list-style-type: none"> 1. Incorporate watershed concept into wetlands program. 2. Allow for local input on decisions concerning wetlands issues, especially who determines if a project is 'big' or 'small'. 3. Allow flexibility that permits the elimination of definitional wetlands of no value. 4. Regulations are value neutral and apply the same level of protection to all wetlands. 5. Regulations need to assess cumulative alterations on a wetlands system. 6. Small wetlands could be unique and need to be considered in the program. 7. Regulation of adjacent upland areas should be discussed and these areas should be evaluated for small wetland impacts. 8. A wetland mitigation policy should be considered. 	Chris Mason	Alison Walsh, Peter Holmes, Eugenia Marks, Jeff Brownell, Carol Murphy, Gary Ezvoski, Frank Golet, Sarah Porter, Peter Holmes

**Appendix B – Working Group Charters
Wetlands Task Force Working Groups (Continued)**

Working Group Name	Issues	Group Leader	Working Group Members
Permitting Process Outcomes: Outreach; Public Education; Communication & Wetlands Mapping	<ol style="list-style-type: none"> 1. The process needs to be more predictable. DEM should provide more guidelines or outreach activities on wetland issues. 2. Initiate additional public outreach explaining the positive portions of DEM activities in the program. 3. Utilize and maintain the Internet for communication, public education and application retrieval purposes. 4. The public needs to be better informed on wetland issues. This may lead to fewer conflicts about the development of marginal land. 5. Application of the rules by division staff should be consistent. 6. The regulations should be written clearly with guidance about wetland types and allowable alterations. Performance standards for wetland applications should be evaluated. 	Bryan Wolfenden	Ron Gagnon, Jeff Brownell, Sarah Porter, Joe Frisella, Mike DeLuca, Jennifer Perkins, Derry Riding, Carol Murphy
Inclusive Meetings, Staff Problem Solving	<ol style="list-style-type: none"> 1. Encourage meetings with wetlands staff and applicants throughout the application process. 2. DEM staff should be more proactive in the application process by providing advice on how to overcome regulatory problems. 	Ron Gagnon	Chuck Horbert, Michael DeLuca, Jennifer Perkins, Derry Riding
Beneficial Projects; Exemptions	<ol style="list-style-type: none"> 1. Cities and towns are not following proper procedures with respect to exempt activities and DEM should consider this sector for increased compliance activities This sector should be setting an example for the private sector. 2. Projects that have a beneficial environmental impact should be processed quicker. 3. Some of the existing exemptions should be reevaluated. Consider keeping the exemptions if BMP's are included in the project design. 4. Increase the number of exemptions. 5. Footprint vs. square foot issue 	Russ Chateauneuf	Paul Ryan, Alan Shoer, Joe Bachand, Chuck Horbert, Carol Murphy, Kendra Beaver
Variance Procedure	Investigate the inclusion of a variance procedure in the Wetlands Regulations	Dennis Esposito	Chuck Horbert, Vin Palumbo, Alan Shoer
Statutory Work Group	<ol style="list-style-type: none"> 1. Evaluate the definition of jurisdictional area. 2. Address municipal control provisions. 3. Increase the length of time for permit renewal / expiration. 4. Evaluate the issue of third party access to a property in order to delineate wetlands. 5. Address the need for a variance provision in the existing statute. 6. Consider clarifying and strengthening the Declaration of Intent of the statute to include a statement that the state policy should be a "no new net loss of wetlands". 	Sean Coffey	Jan Reitsma, Dennis Esposito, Frank Golet, Alan Shoer, Russ Chateauneuf, Jennifer Perkins, Joe Frisella, Alison Walsh, John Boehnert, Paul Ryan, Eugenia Marks, Jason Martiesian, Peter Holmes, Bob Ballou
Certification of Wetlands Biologists Work product	<ol style="list-style-type: none"> 1. Evaluate the opportunities to have wetlands professionals certify their work product as a means to streamline the DEM review process. 	Tom Getz	Russ Chateauneuf, Joe Frisella, Sarah Porter, Chris Mason

**Appendix C
DEM Staff Recommendations**

Proposed Regulatory Changes		
No	Phase 1	Status/ Project Completion Date
1	<ul style="list-style-type: none"> ◆ a.) Review fee schedule (Rule 8.04) to simplify fee calculation ◆ b.) Reduce fees for certain beneficial projects in recognition of their environmental benefits and, in some cases, more limited review requirements. 	a.) Draft prepared by 10/00. b.) Ongoing; 12/00
2	Expand language to allow emergency alterations for private landowners (Rule 7.04, 9.01). Currently the rule is limited to government agencies or public utilities.	Ongoing; 12/00
3	Expand listing of instances where an alteration would be considered insignificant.	Ongoing, will include Task Force recommendations.
4	Expand listing of activities that are allowed to take place in wetlands without a requirement for permitting (Exemptions 6.00).	Ongoing, will include Task Force recommendations.
5	Investigate changes to (Rule 9.09) to allow more flexibility in determining if a modification is minor.	Ongoing, 12/00
6	Provide for discretion to process applications out of sequence (Rule 8.05(C)) from the order in which received, based on criteria in the regulations.	Ongoing, 12/00
7	Modify language in Rule 9.05(G) that gives DEM the flexibility to keep a file open for formal applications that are pending a response from the applicant.	
8	Clarify language Rule 8.02(C) and/or issue fact sheet regarding requirement for authorization from owners (signatures on applications or a separate letter) who own property potentially affected by activities proposed by applicants; e.g. ponds (moorings and docks).	Ongoing, 12/00
9	Change the regulation to either allow for minor modifications to be processed under the regulations even if minor increases in limits of disturbances were proposed, or empower the supervisory staff to allow such processing despite the current restrictions of the Rule.	Ongoing, 12/00
10	Regulation revision to facilitate wetland restoration, water quality improvement and planting projects.	Phase 1 completed by 12/00.
Phase 2		Status/ Project Completion Date
1	Site plan requirements should be evaluated to determine if they should be made less exacting or clearer, particularly for smaller scale projects such as single family residential.	Ongoing, will include Task Force recommendations.
2	Include variance provisions in appropriate sections of the regulation.	Put on hold, will wait for Task Force recommendations.
3	Develop specific criteria that would quantify wetland impacts as significant or insignificant as per the statute.	Ongoing, will wait for additional Task Force recommendations.
4	Other changes as recommended by the Wetlands Task Force.	

Appendix C
DEM Staff Recommendations (continued)

No	Proposed Policy Changes	Status/ Project Completion Date
1.	Improve coordination with compliance staff by developing protocols that clarifies the responsibilities between the compliance and permitting programs.	Ongoing, 10/00
2.	Continue to encourage staff to suggest simple modifications or revisions to plans that will result in less adverse impact to wetlands and could lead to project approval.	Currently in effect.
3.	Write deficiency notices and other communications with applicants in clearer and less bureaucratic language.	Currently in effect.
4.	Develop a format for engineering calculations and computations that facilitates consistent and quicker engineering reviews.	Ongoing, 12/00
5.	Develop a recommended drainage methodology for consultants to use that allows quicker and more consistent reviews on the part of DEM engineers.	Ongoing, 12/00
6.	Emphasize the need to provide useful subwatershed mapping if proposing a project with substantial changes in drainage characteristics of a site.	Currently in effect.
7.	Revise review process to expedite applications for projects that appear to be outside the department's jurisdiction.	Ongoing, will wait for additional Task Force recommendations.
No.	DEM Staff Proposed Administrative Changes	Status/ Project Completion Date
1.	Develop additional informational fact sheets for the Wetlands Program.	Ongoing activity.
2.	Plan and host workshops for consultants, municipal officials and applicants on developing complete applications and meeting the requirements of the Rules and to gather feedback on the program.	Consultants-12/00 Municipal-Spring 01 Applicants- Spring 00 and 01
3.	Develop sample standard site plan drawings to illustrate to applicants what is and what is not acceptable.	Ongoing 12/00
4.	Develop a customer-friendly generic letter to be sent to all consultants identifying the most common deficiencies found on applications.	Ongoing 12/00
5.	Begin to track applications by watershed in conjunction with the Kyran permit streamlining recommendations.	
6.	Take the existing internal "Insignificant alteration vs. non-jurisdiction" memo and either make it public or develop a fact sheet from it. This will inform the public on when a permit is required.	
7.	Authorize signature authority to lower level staff where appropriate.	Ongoing discussion 10/00
8.	Assign existing staff intermediate supervisory responsibilities.	Ongoing discussion 10/00
9.	Conduct sufficiency / administrative reviews at lower staff levels with training.	
10.	Reconfigure the printers available to the program so that staff can print out reports reducing the frequency of errors.	In effect
11.	Provide expanded access to the FoxPro database to allow staff to update status information themselves, allowing instantaneous updates to the tracking system and eliminating unnecessary paperwork.	
12.	Revise the application to encourage applicant's address to be provided somewhere on the application package. This will allow DEM to provide better customer service to the applicant.	
13.	Redesign the existing application package to incorporate all approved changes of the task force. The purpose of the redesign is to simplify and clarify the existing application package.	Waiting for additional Task Force recommendations.

Appendix D - Statutory Working Group Final Report

TO: Wetlands Task Force
FROM: Sean O. Coffey, Chair – Statutory Working Group
(soc@p-a.com)
DIRECT DIAL: [401] 831.8173
DATE: May 2, 2000
RE: **Final Report of the Statutory Working Group**

This Final Report will summarize the discussions and deliberations of the members of the Statutory Working Group during its meetings of February 24, March 15, April 13 and 27, 2000. Each meeting commenced at 8:30 a.m. in the Director's Conference Room at DEM and lasted for approximately two hours. Based on the charge from the Task Force, the Statutory Working Group focused its discussions on a number of specific issues identified by the full Task Force. The Working Group analyzed each of these issues for (1) its impact on the wetlands regulatory program, the resource being protected and the regulated community; (2) the importance of the statutory change being proposed; and (3) whether an alternative regulatory change could be fashioned to address the issue, concern or problem. In addition, the Task Force reviewed a revised version of the wetlands reform legislation originally introduced on behalf of the Governor in 1996 and amended by the Senate (96-S 3142 Sub A, as amended) as well as legislation considered by the House in 1999 (99-H 5795 Sub A/001), to determine whether the Subcommittee should recommend to the Task Force and the Director the introduction in the General Assembly of comprehensive wetlands reform legislation.

Comprehensive Wetlands Reform Legislation

Each of the members was aware that wetlands reform legislation initially developed by the Governor's Wetlands and ISDS Task Force originally introduced in 1996 failed passage in 1996 and in each subsequent General Assembly. In general terms, the members of the Working Group felt that comprehensive statutory change based on the deliberations of the Governor's Task Force was a good resolution to many of the issues discussed at that time. The Statutory Group agreed that the issues identified in 1996 by the Governor's Task Force still need to be addressed through legislative change.

The April 27, 2000 meeting of the Working Group was dedicated to a discussion of whether to recommend reintroduction of comprehensive wetlands reform legislation based on the 1996 Senate version referenced above. It was the consensus of the Working Group that in light of improvements in scientific knowledge concerning the importance of wetlands and buffering lands that additional work should be done to forge a new consensus on comprehensive wetlands reform legislation. In addition, it was the sense of the Subcommittee that it was not the appropriate vehicle to develop a consensus on such legislation.

In light of the obstacles to legislative action, effort should be made to address many of the issues identified by the Task Force through regulatory changes, if possible, in order

Appendix D - Statutory Working Group Final Report –(Continued)

to show a commitment by DEM to reform and a willingness to make regulatory changes consistent with wetlands reform which would protect the resource, improve the program's performance and bring the Wetlands Program into line with the current state of the science.

Task Force Issues

The following is a summary of the discussion concerning the specific issues identified by the Task Force for review by the Statutory Working Group:

1. **Increase the length of time for permit renewals/expiration.** The Task Force identified the duration of permits as an issue requiring some discussion by the Statutory Working Group. Some parties expressed concern that the current time limit for permits (one-year permit with three successive one-year renewals) is not sufficient for completion of certain major transportation or development projects. It was suggested by Sean Coffey that perhaps issuance of a draft permit for significant transportation and development projects could provide a period of time of up to two years for DOT or a major developer to complete other necessary local permitting or transportation related permitting before the aggregate four-year term of the permit would begin to run. This concept was discussed further at the March 15 and April 13, 2000 meetings, and the consensus of the Group was that it could create an even more cumbersome process for the Department. As an alternative, the Group discussed proposing statutory language to eliminate all time limits in the Wetlands Act and delegating to the Director authority to prescribe time limits for permits or renewals or alternatively giving the Director authority in accordance with regulations to authorize additional time for DOT transportation projects or projects of the Economic Development Corporation. On April 13, the Working Group recommended that DEM work directly with DOT to develop an administrative process to review major transportation projects according to the a timeframe and procedures consistent with DOT project planning and implementation needs.

2. **Consider clarifying and strengthening the Declaration of Intent of the statute to include a statement that the State policy should be “no net loss of wetlands”.** The Working Group concluded that it was important to obtain a clear expression of legislative intent by the General Assembly which better reflects the value and importance of wetlands and the need for their protection in modern scientific terms. It was noted that there had been no substantial change to the Declaration of Intent since it was adopted in 1971. The Task Force members reviewed the revised Statement of Legislative Intent included in the 1996 Governor's Task Force legislation and concluded that statutory changes with respect to legislative intent would be appropriate for inclusion in legislation and submission to the General Assembly.

3. **Address the need for a variance provision in the existing statute.** Some members of the Working Group suggested that a variance procedure might be appropriate to assure that due process requirements are met within the wetlands program. Upon further discussion, it was the consensus of the Working Group that a variance procedure would be required if the Wetlands Task Force considers adopting specific minimum standards (e.g. prohibitions, buffers setback minimums) to provide some opportunity for an applicant to demonstrate a need for relief. On the other hand, if the program continues with its current approach to evaluating the impact on wetlands on essentially an ad hoc basis, then the addition of a variance process may be avoided. It was the consensus of the Working Group that if a variance process is required, it could be created by regulation without the necessity of legislation.

Appendix D - Statutory Working Group Final Report –(Continued)

4. **Evaluate the definition of jurisdictional area, including buffer zones.** The Task Force reviewed the 1996 and 1999 version of the wetlands legislation which redefines the areas adjacent to the wetlands as “bordering lands” and in certain cases increases the size of bordering lands. It was noted in the discussions of the Working Group that the treatment of the “areas within 50, 100 or 200 feet” of a particular wetland type as part of the wetlands had created the impression that the wetlands program had exceeded its authority to protect wetlands by extending the reach of the program into the bordering areas. The Group acknowledged that the bordering areas were worthy of protection and regulation based on their significance in protecting or enhancing the value of the adjacent wetlands. It was generally recommended that while it is important to eventually return to the General Assembly with a proposed redefinition of the bordering lands that it would be useful in the interim for DEM to segregate the “areas within” some distance from the wetlands proper and develop regulations and performance standards to assess work proposed within those areas. It was also suggested that the administrative findings section of the regulations be expanded to discuss the significance of the bordering areas in current scientific terms and that regulations be developed to establish BMPs and standards for evaluating work which falls within the bordering areas adjacent to specific wetlands types. It was also suggested that protection of bordering lands may best be incorporated into an overall watershed planning approach.

5. **Include municipal control and oversight provisions in the Wetlands Program.** The Working Group declined to make any recommendation concerning the current statutory provisions concerning municipal oversight of wetlands projects or to make recommendations. It was suggested that an effort should be undertaken by the wetlands program to solicit and incorporate municipal involvement and comment on wetlands applications early in the review process.

6. **Evaluate the issue of third party access to property in order to delineate wetlands.** This issue involves the need to map portions of wetlands which may exist on property adjacent to a wetlands site which is not owned by the applicant. According to wetlands staff participating in the Working Group, procedures have been developed to avoid the need for extensive offsite mapping of wetlands on adjacent properties as part of the wetlands review process. Therefore, no further action was recommended.

Other Issues

The April 27, 2000 meeting of the Working Group also discussed several issues raised by the Director and other members of the Group.

Accuracy of information provided with applications. The Director pointed out that often, the application review process gets delayed because of inaccurate information submitted by engineers and wetlands professionals. Several Working Group members recommended that more specific criticism in deficiency notices should be incorporated into the wetlands review process and copies of any deficiency notices directed to the applicant and the applicant’s attorney. In addition, it was suggested that the Department reach out to the Board of Professional Engineers and the Association of Wetlands Scientists to discuss educational programs and other methods of improving the completeness and accuracy of information provided. The Group also discussed the problem of strict compliance with wetlands permitting requirements. It was suggested that by rule, for specific types of projects, DEM could require professional oversight and certification of compliance with permit provisions as a condition of the issuance of a permit. It was also suggested that posting of a bond for completion of

Appendix D - Statutory Working Group Final Report –(Continued)

mitigation work should be considered. However, such a requirement would require legislative authorization.

2. **CRMC/DEM jurisdiction.** It was brought to the Group's attention that the Providence Foundation had communicated with the Director of DEM and the Executive Director of the Coastal Resources Management Council proposing that overlapping jurisdiction be eliminated by essentially drawing a line at the Point Street Bridge and providing that north of the Bridge, the freshwater wetlands program at DEM would exert exclusive jurisdiction while the CRMC exercise jurisdiction south of that point. The CRMC Executive Director cited concerns that such a determination would be inconsistent with Rhode Island law and federal mandates. After further discussion, it was suggested that the CRMC and DEM develop a coordinated review process for work north of the Point Street Bridge and that DEM consider relying on the CRMC wetlands review in making its determinations concerning permits. CRMC would continue its broad review of coastal wetlands and other values required under state legislation and federal mandates. CRMC would retain federal 401-certification responsibility.

Conclusion

In conclusion, the members of the Working Group thanked Director Reitsma for the opportunity to discuss these significant issues directly with him and DEM staff. Members of the Working Group also offered their continued assistance in the future.

Appendix E – Application Processing / Quick Reviews Recommendations

Reviews Which Currently Receive Accelerated Processing

1. Applications for projects which have received a “Certificate of Critical Economic Concern” from the RI Economic Development Corporation.
2. Agricultural Wetlands Projects proposed by farmers through the Division of Agriculture.
3. Responses to deficiency letters, where the deficiency required relatively simple, straightforward responses and no field review is necessary.
4. Applications for Permit Modification.
5. New Requests for Preliminary Determination, sent in response to a Determination of Significant Alteration for a prior application on the same site, where alternatives were set forth by DEM in the Determination letter and acted upon by the applicant in a positive fashion.
6. Applications for a Wetland Determination Only on small (<5 acres), easily accessible lots where a review of aerial photographs or knowledge of the general area indicates that a site inspection will not involve excessive field time; and
7. Applications for proposed projects located entirely outside of all freshwater wetlands (including perimeter and riverbank wetlands, and floodplain), where the wetland edge has been previously verified by RIDEM.

Note: Numbers 3 through 7 above are known in the program as “Category 1” applications.

It is recommended that the Program continue accelerated processing of the listed reviews. Additionally, an accelerated review process may be contemplated for the following general situations:

1. An application submitted for a project type listed in Rule 6.00 as exempt from requiring a permit, yet the applicant wants official confirmation from the agency of its exempt status.
2. An application for a project which is not currently specifically exempted, but which the applicant feels should be exempt since it so closely relates to a listed exempt activity. For example, a proposal to place a permanent picnic table in an existing lawn area that meets all size and distance requirements in Rule 6.05 but is not a specifically listed “property accessory”. Or, someone wants to plant a single tree in a lawn area.
3. An application for a project that does not appear to alter or affect wetland areas, and the applicant wants confirmation of this. This could be a proposed house located outside of verified wetland edges, or something like a proposed fire truck pump-and-spray drill where all water pumped out of a pond is discharged right back into it.
4. Applications whose primary purpose is to improve/restore wildlife habitat or improve/restore water quality. *Note: Accelerating these types of projects, which in reality are generally complex projects to review, will likely result in noticeably increased review times for other application types.*
5. Applications for Renewal where it has been established that work has not yet commenced.
6. Applications for projects that have been previously approved and need to be minimally modified, but for whatever reason do not qualify for review under an Application for Permit Modification (e.g. involve additional alteration or impacts to freshwater wetlands).

Right now, we are pretty much trying to accelerate reviews for no. 5 above. I think accelerated reviews for the instance of number 6 can be accommodated in the same fashion of the “Category 1” reviews described at the beginning of this document. I suggest a discussion on how best to deal with numbers 1 through 4. My feeling is that a special application process with a unique fee

Appendix E – Application Processing / Quick Reviews Recommendations (Continued)

schedule will have to be developed. The issues related to no. 4 will likely be more difficult than the other three, since such projects are typically more complex, and require a technically intense review; attempts to accelerate reviews of many of these could have adverse effects on review times of all other application types. In any case, creating accelerated reviews for any of numbers 1 through 4 above will require changes to the Rules, probably in the form of additional subsections to Rules 7.00, 8.00 and 9.00 at a minimum.

Another major consideration to keep in mind: without adequate staffing, all of this effort will fall apart. In order to be able to accelerate the review of what essentially will be additional applications we may never have gotten before, yet still maintain reasonable review times for other projects, we need to have adequate staff to keep such projects moving through. If staff numbers fall and are not quickly replaced, our efforts will necessarily have to be concentrated on reviewing new construction projects that are actually altering wetlands to avoid our review times for such projects becoming unacceptably lengthy.

Proposed Modifications to Rule 9.09 Application for Permit Modification

Rule 9.09(A): “Prior to the expiration of a valid permit, a permittee may apply to the Department requesting approval to incorporate minor modification(s) to the originally permitted project. Such modification(s) in all cases may not change the primary intent of the original permitted project and may not increase, ~~in any way,~~ the limits of wetland disturbance previously permitted unless such increases occur in existing paved, lawn, or otherwise developed areas, or increase the anticipated impacts from that previously permitted by the Department, ~~and~~ Any modifications must be minor in nature in relation to the originally permitted project.

Rule 9.09(B): No changes.

Rule 9.09(C): No changes.

Rule 9.09(D): An Application for Permit Modification will not be approved if, in the opinion of the Director, the modification(s): are not minor in nature in relation to the originally permitted project; change the intent of the original project; ~~increase in any way the limits of disturbance previously permitted~~ involve increases of wetland disturbance into vegetated areas not previously evaluated by the Department; or increase the anticipated impacts from that previously permitted by the Department.

Rule 9.09(E): No changes.

You will note that the only allowance for increases in the limits of disturbance are for either areas outside of wetlands or, if within wetland, only into existing paved or developed areas. Evaluating increases in limits of disturbance, even small increases, into vegetated areas involves additional site inspections and evaluation, and that is well beyond the intent of the Rule. I think the proposed wording would have resolved most of the instances that have come up in the past. I want to keep this as clear cut as possible; as more flexibility is built into the process, it increases dramatically the likelihood of time spent arguing over each other's opinions of what is “minor”, something that is in everyone's interest to avoid.

Appendix F – Beneficial Projects / Exemptions Working Group Recommendations

June 28, 2000

This subgroup met four times and discussed various approaches to handling low impact activities under the Wetland permitting program. Activities include projects that can be exempted from permitting requirements and other low impact projects, including beneficial projects that should involve DEM review. Other beneficial projects that involve a relatively high degree of wetland alteration were also discussed. The Task Force identified the following items for review by our subgroup:

1. Cities and towns are not following proper procedures with respect to exempt activities and DEM should consider this sector for increased compliance activities This sector should be setting an example for the private sector.
2. Projects that have a beneficial environmental impact should be processed quicker.
3. Some of the existing exemptions should be reevaluated. Consider keeping the exemptions if BMP's are included in the project design.
4. Increase the number of exemptions.
5. Footprint vs. square foot issue on building additions.

The first item reviewed was the exemptions for building additions. The current exemption allows for a two-story addition to a single-family home, limited to 600 SF in footprint. There is no need to revise the exemption language to include two-story additions.

Multi-family residential buildings and commercial and industrial buildings may expand to two stories but may not be expanded in footprint. The reason for the height limitation is the concern that shading may impact nearby wetland values. The reason horizontal expansions are not exempt is concern that these land uses are more likely to result in multiple project expansions over a period of years. Successive small additions may result in significant impacts to nearby wetland functions and values and therefore should be reviewed at each step.

The second item concerned the replacement of shoreline walls and protective revetments. This activity is also currently exempt. A clarification is requested concerning the apparent limitation that the replacement structure must be "in-kind". Inferior building materials should not be replaced in-kind. In addition, modern technical standards and practices may call for a different material that may prove superior in many respects to the original materials.

Many specific activities were discussed or mentioned for consideration under the exempt or other simplified review category. These include: footpaths, dry-hydrants, planting projects, low volume water withdrawals, walkways to pond edges, habitat restoration, water quality restoration, monument placement, placement of picnic tables, view corridors. For those activities that were discussed in any detail, generally there was not agreement that these activities should be made exempt. Habitat restoration projects and water quality restoration projects in wetlands, in particular, are generally not thought of as low impact projects.

Substantial discussion occurred on the idea of a new permit category or permit type for low impact activities. It was often referred to as a FONSI (Finding of No Significant Impact) process in the subgroup meetings for lack of a definitive name, although it was acknowledged that a more appropriate term might be introduced as the process is further considered. The FONSI permit type would have the following attributes: low or no fee, simple application submittal requirements, and expeditious or priority processing. In order to limit the scope of projects that might qualify for FONSI, and allow a clear distinction from the Preliminary Determination (PD) application type, initial thoughts are that these projects or activities should be specifically listed

Appendix F - Beneficial Projects / Exemptions Working Group Recommendations (Continued)

in the Rules (e.g. footpaths, plantings, etc.) as is done with exemptions. Special design provisions might be included in the description of the activities, and possibly elaborated upon in separate informational guidance material similar to BMPs. The process might also be applicable to exempt activities in cases where the property owner wants or needs a definitive opinion from the agency that a planned activity is indeed exempt. Application submittal requirements should be limited, not require professional assistance to complete, and may require the applicant to state the listed activity in the Rule for which a review is requested.

The subgroup concluded that the FONSI process should not be limited to “beneficial” projects. What constitutes a beneficial project is subject to many interpretations. In addition, attempting to place such a restriction on the process may limit its utility for many otherwise low impact activities. The extent to which non-jurisdictional activities should be included needs further discussion.

In the case where DEM might be required to conduct a site visit, DEM should reserve the option of requesting additional review time. The process would be most useful on low impact projects where DEM involvement and expertise would add constructively to the process. Also, it might stop a person from unwittingly undertaking a project that damages wetlands by affording that person a low cost, expedited review.

One thought is that the FONSI might be a registry-type process where the involvement of the department is completely discretionary. Such a process would serve mostly to inform DEM about the planned activity, register the activity with DEM, and afford an opportunity for DEM to guide the applicant, comment on the activity, or to direct the applicant to a higher level process, if necessary. An acknowledgement of receipt of the application would be sent automatically upon receipt of the application. If no other response were issued by DEM within 30 days, the applicant would presume DEM concurred with the request for FONSI.

A list of draft recommendations follows. The subgroup has not had an opportunity to review and comment on this draft. Their input will be requested prior to advancement or adoption of any of the recommendations.

Draft List of Recommendations from the Exemptions/Beneficial Projects Subgroup

1. The department should consider the creation of a new category or type of permit (FONSI for now) for low impact projects that would have the following attributes:
 - a. The FONSI is designed for activities that do not impact wetlands, but are physically situated in or near regulated wetlands.
 - b. The process may also be applied to exempt activities.
 - c. The process should be optional; i.e. the applicant could instead apply for a PD or, if it was exempt, proceed with the activity at his/her own risk.
 - d. The goal of wetlands protection would be advanced in one or more ways by a departmental review or registration of the proposed activity.
 - e. Activities must be very low or no impact projects.
 - f. Activities should not overlap with applications that should be handled through the normal PD process.
 - g. Specific activities should be listed, in the fashion similar to exempt activities.
 - h. Application preparation should not require the assistance of a professional.
 - i. A site visit by staff should be optional.
 - j. The application would be processed within 30 days.

Appendix F -Beneficial Projects / Exemptions Working Group Recommendations (Continued)

- k. DEM would retain the option to conclude that the activity should be reviewed under a higher level/tier process.
 - l. DEM would retain the option to request additional review time.
 - m. If no action within 30 day time period after receipt, the applicant may presume that the activity is acceptable as submitted provided he/she had received confirmation that application was received by DEM.
 - n. There would be a low or nominal fee (say \$50.00).
2. Consider publicizing on DEM website, project descriptions of activities that were actually approved by DEM or that may be reviewed under a FONSI process. This will lead property owners to make more informed decisions about activities that they propose in or near wetlands
 3. Consider including Fact Sheets on appropriate BMPs with FONSI application decisions.
 4. For environmentally beneficial projects, the sole purpose being to restore wetland habitat or restore water quality, and which would involve a high degree of impact (e.g. substantial wetland alteration), consider:
 - a. Requiring or strongly encouraging pre-application meetings
 - b. Developing fact sheets targeted for commonly proposed projects, providing a suggested best design approach, BMPs, etc.
 - c. Implementing a significantly reduced fee.
 5. For large-scale wetland restoration projects that may involve multiple phases, consider a process for regulatory review of a “plan of restoration” under the wetland permitting program. Once the plan is approved, subsequent phases conforming to the plan may be approved through a more streamlined process.
 6. Expand education and outreach for exempt activities and other activities that involve no review or limited review by the department.
 7. Expand listing of exempt activities where appropriate.
 8. Clarify the exemption on replacement of shoreline structures as to limitations related to “in-kind” materials.
 9. Consider allowing other groups beside DEM and Fish and Wildlife to undertake conservation projects similar to those allowed under Rule 6.13, as an exempt activity or under another a FONSI type process.

Appendix G -Field Enforcement / Complaint Resolution Working Group Recommendations

Basically, this Subcommittee report will present the viewpoints of two of its members (i.e., Attorney John Boehnert of Partridge, Snow & Hahn and Hank Ellis of DEM). It is presented for the consideration of the full committee in point/counterpoint format because consensus was not achieved on each of the issues. In fairness to John (and myself) the comments in this report were not edited as to the substance of our original comments. Consequently, these reviews are somewhat extensive.

Issue 1. If a construction activity infringes on a wetland, the problem activity currently needs to be removed, and an application then needs to be filed to address the wetland problem. Could the policy be changed to immediately stop the construction activity and then file an application, with the possibility that the wetland application can address the infringement of the wetland?

Point (Hank Ellis): Hank Ellis began discussion of this subject by stating that the Wetland Compliance Program has been dealing with this matter for almost 6 years. If a construction activity infringes on a wetland and a permit has not been obtained, the Compliance Program has allowed many construction projects to remain in place. The key factors in authorizing an activity to remain are the severity of the alteration and whether the party involved had previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the department. The only time a permanent alteration is allowed to remain in place is for insignificant alterations. When these are allowed, the submission of plans and a review fee is required. In these cases, the review fee represents the amount of money that would have been required if an application was properly submitted to the Permitting Program. These “after-the-fact approvals” by the Compliance Program may or may not involve some restoration of the altered wetland.

By keeping the enforcement action and its ultimate resolution within the confines of the Compliance Program for these relatively few cases, we believe that we significantly benefit the violator/landowner who **inadvertently** alters the freshwater wetland, we benefit the Permitting Program, and the wetland resource is protected using the same standards as those used by the Permitting Group. Those persons who inadvertently violate the Freshwater Wetlands Act are saved the tremendous time and inconvenience of flip-flopping between programs within the Department; the Permitting Program is saved the added burden of reviewing a proposal that is complicated by the presence of an unauthorized alteration; and the wetland resource is protected in a consistent manner as required under state law.

In the case of a major violation of the Freshwater Wetlands Act, where the Compliance Program determines that the unauthorized construction activity is a significant alteration, we will require full restoration of the affected wetland. In these cases a Notice of Intent to Enforce or a Notice of Violation is issued to the violator. We feel that it is entirely inappropriate to forward **all** violations to Permitting because of the inherent unfairness involved for the applicant who follows all the rules and the tremendous burden placed on the Permitting Program. This procedure also fails to quickly protect/restore the wetland resource in the most severe instances and it gives the violator an unjustified sense of well being regarding the outcome of their application.

Counterpoint: (John Boehnert): John Boehnert responded by suggesting that the following factors be considered by the Department in making a determination whether or not a structure, such as a foundation, must be removed:

Appendix G -Field Enforcement / Complaint Resolution Working Group Recommendations (Continued)

1. The harm which would be caused to the wetland by such removal.
2. The harm which would be caused to the wetland by the continued presence of the structure, and whether such harm can be mitigated.
3. The permissibility of the construction activity (If this involves home construction activity on an unbuildable lot, for example, the decision regarding removal may be an easy one).
4. The value of the wetland affected.
5. Evidence of intent to violate the wetlands laws (For example, is this a dispute among biologists as to the actual delineation of a wetland line).
6. Is compensatory mitigation available to offset the existing impact on wetlands?
7. Can the harm to the wetland or the requisite “punishment” to the violator be accomplished by the adjustment of the level of fines?
8. The likelihood that new activity elsewhere on the site could also displace or alter other wetlands or constitute a significant alteration.
9. The extent and expense of the structure (A concrete slab for the storage of rubbish barrels may be treated differently than a basement foundation).
10. The involvement of the Department in prior approval of site activity (for example, if the Department’s ISDS section has approved construction of an ISDS system which is later found to infringe on wetlands, equity may weigh in favor of the landowner).

Point (Hank) and counterpoint (John) Hank Ellis discussed each of John’s issues above. John’s responses have been taken from his May 4, 2000 letter.

1. The harm which would be caused to the wetland by such removal.

Hank: I have been working in the field of wetland restoration for almost 18 years. During that time, acres of fill and entire houses (not just foundations) have been removed from wetlands. It has been my experience that any damage caused by the “restoration” of a wetland (in this scenario, the removal of a foundation) is temporary. We (both the enforcement and permitting biologists) have become very good at minimizing additional harm during the restoration process and we frequently require mitigation plantings and soil stabilization to facilitate the recovery of the disturbed wetland. The ability of plant communities to reclaim a disturbed area is amazing. From my perspective, I do not find that this issue is one of concern.

2. The harm which would be caused to the wetland by the continued presence of the structure, and whether such harm can be mitigated.

Hank: It is clear that the “harm” factor raises numerous “value oriented” issues and I believe it touches on the crux of the entire wetland program. I believe that Chuck should comment on the mitigation of harm issue as it pertains to the application process.

Harm is an undefined, relative term. However, because they are defined in the *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*, the more appropriate terms to use would be significant alteration, unnecessary, undesirable, and random. These are the standards by which all proposals are judged, especially the more damaging ones. The term Significant Alteration states that a proposed project in its area, scope, and/or duration, appears to represent more than a minimal change or modification to the natural characteristics, functions, and/or values of any freshwater wetlands(s); may be detrimental to the basic natural capabilities or values associated with any freshwater wetland(s); and/or appears to be random, unnecessary, and/or undesirable. Undesirable Alteration means any proposed activity or alteration that is likely to reduce or degrade any freshwater wetland functions and values.

Appendix G -Field Enforcement / Complaint Resolution Working Group Recommendations (Continued)

Unnecessary Alteration means any proposed alteration which is not essential, vital, or indispensable to the proposed project and which can be achieved without altering or disturbing freshwater wetlands and Random Alteration means any alteration which is arbitrary or without justification.

To further determine the basis of any harm to a wetland, it is necessary to discuss natural characteristics, basic natural capabilities, functions, and values of each wetland affected by a proposal (either before or after-the-fact). Some of the functions and values of wetlands are broken down into the following categories 1) Wildlife and Wildlife Habitat, 2) Recreation and Aesthetics, 3) Flood Protection, 4) Surface and Groundwater, and 5) Water Quality.

The discussion above was made only to illustrate how much is involved in the determination of significance regarding a proposed alteration within a freshwater wetland. To respond to the first half of the factor stated above, I would suggest that the continued presence of a structure in a swamp or any type of wetland would almost always affect the one or more of the functions and values of a given wetland. The presence of a foundation in a swamp implies that trees and shrubs have been cut down, the area has been grubbed (all stumps removed), and the site has been graded. This type of activity eliminates wildlife habitat in the affected area. In addition, the structure may be displacing flood storage, it could be impacting a recreational area, or the future use of the site may impact water quality through the use of lawn fertilizer, pesticides, and herbicides. Also, runoff from paved driveways may contribute to degraded water quality. Even if flood displacement, water quality, and recreational issues were not factors, wildlife habitat is affected. To leave the alteration in place perpetuates the loss of habitat.

Mitigation for loss habitat may be appropriate in some instances, but I suggest that we rarely know what exists on site prior to the proposed alteration. From redback salamanders to Black Racers (snakes) and from Ovenbirds to White-footed mice, the actual harm to wildlife populations is theorized at it's best and overlooked at it's worst. Before harm can be mitigated, it is necessary to define what is meant by harm and to determine the variables (e.g., populations, plant communities) that should be involved in mitigation.

(John): As you know, I have suggested that factors 1 and 2 be considered (i.e., harm which would be caused to the wetland by such removal, and the harm which would be caused to the wetland by the continued presence of the structure, and whether such harm could be mitigated). While I appreciate your thorough (and to me, enlightening) discussion of harm, I understand the approach is that any harm occasioned by removal is temporary, while any harm occasioned by continued presence of a structure, such as a foundation, is permanent. While that may be, would the incursion of a foundation in a swamp which resulted in the displacement of 10 sq. ft. or 15 sq. ft. of swamp be considered such "permanent harm" as requiring removal of a foundation. As your discussion suggests, harm is necessarily relative, and to the extent there is a minor displacement of a swamp, for example, it may well be argued that the "permanent harm is de minimus.

3. The permissibility of the construction activity (If this involves home construction activity on an unbuildable lot, for example, the decision regarding removal may be an easy one).

Appendix G -Field Enforcement / Complaint Resolution Working Group Recommendations (Continued)

Hank: The permissibility to construct a foundation, for a future home, within a swamp would be highly unlikely within the Permitting Program, especially considering the significance standard set forth in the Rules. Perhaps this is what you are referring to by “unbuildable lot”. (Note: the term unbuildable lot is unreliable and misleading because the usefulness of the lot for building is totally dependent on the proposed project. While one project may be denied another may be approved).

The same standard applies to a violation encountered in the Enforcement Program. As I commented in earlier correspondence, we attempt to approve those violations that can be considered an insignificant alteration. We ask that a proper plan and review fee be submitted in those instances where this action is deemed appropriate. However, in most instances where it is not deemed appropriate (i.e., the proposal would have been a significant alteration requiring public review and more impact analysis), we require restoration of the wetland as best as practical.

4. The value of the wetland affected.

Hank: This factor is informally considered during the investigation stage of each complaint. The nature and extent of the violation and the value of the wetland go hand in hand during our investigation.

John: With regard to the consideration of the value of the wetland, while I understand this is informally considered during the investigative stage, the investigator may have a different idea of the value of the particular wetland than the owner's biologist, and there may be considerations not available or known to the investigator, such as the "value" of the wetland when considered in the context of the watershed in which it is located.

5. Evidence of intent to violate the wetlands laws (For example, is this a dispute among biologists as to the actual delineation of a wetland line).

Hank: Unless a landowner or someone leasing the land has been previously warned by the Department it is impossible to determine intent. (John, I'm not sure what you mean by dispute among biologists).

John: The 5th factor I suggested be considered, which you indicate was not considered, was evidence of intent to violate the wetlands laws. I indicated, for example, that there might be an issue of a dispute among biologists as to the actual delineation of a wetland line. What I meant by that is that two trained and competent biologists, one working for DEM and one working for the owner, might legitimately disagree on the boundary line of the wetland. The DEM biologist determines the foundation is located within the wetland and the owner's biologist determines the foundation is not located within a wetland. If the owner's biologist stakes the wetland line as he determined it, and the foundation was constructed within that boundary, it is strong evidence that the owner had no intent to violate the wetlands laws. I suggest this be considered as a factor in determining whether or not the foundation would be required to be removed. It is a factor based upon simple equity.

6. Is compensatory mitigation available to offset the existing impact on wetlands?

Hank: Compensatory mitigation for flood storage is almost always allowed, provided the location of the mitigation area is not in an undisturbed wetland. Mitigation for wildlife habitat is another matter. I believe Chuck should address this issue. I am under the impression that this does not happen very often because the burden on the applicant (in the case of an application) is

Appendix G -Field Enforcement / Complaint Resolution Working Group Recommendations (Continued)

significant (i.e., to prove that the mitigation area will substitute for the lost habitat due to construction).

7. Can the harm to the wetland or the requisite “punishment” to the violator be accomplished by the adjustment of the level of fines?

Hank: I personally do not believe that harm to the wetland can be offset by penalties. The purpose of penalties is deter future noncompliance by the person in violation or, conversely, encourage the continued compliance of people who are not violators. Obviously, the penalty should reflect the nature and severity of the violation.

John: I have suggested that factor 7 would be a determination of whether the harm to the wetland or the requisite punishment to the violator could be accomplished by the adjustment of the level of the fine, and understand your position to be that no harm to a wetland could be offset by penalties. While I understand the penalty may not necessarily reverse the harm, it would seem that where the level of harm was de minimus, or slight, that in lieu of requiring removal of the foundation, the penalty could reflect the continuing nature of the harm.

8. The likelihood that new activity elsewhere on the site could also displace or alter other wetlands or constitute a significant alteration.

Hank: John, I’m not sure what is meant here.

John: I suggested factor 8 to consider the likelihood that new activity elsewhere on this site could also displace or alter other wetlands or constitute a significant alteration. By this I mean that if a lot is considered buildable for purposes of zoning, and the location of a house anywhere on the lot could be seen to constitute some alteration of a wetland, the existing incursion in the wetland by the foundation may be allowed to remain rather than be removed on the basis that to do otherwise would make the lot unbuildable as a result of the presence of wetlands, and would implicate compensation requirements by the State under the Just Compensation Clause of the Constitution.

9. The extent and expense of the structure (A concrete slab for the storage of rubbish barrels may be treated differently than a basement foundation).

Hank: I do not believe that the issue of expense should enter into a decision regarding the appropriateness of a project.

John: Another factor I considered was the extent and expense of the structure, with the idea that it may be far less expensive to remove a concrete slab for the storage of rubbish barrels than to remove an entire foundation for a house. I understand the Department's position to be that it did not consider the expense involved in the compliance with the order by the owner. I simply disagree with this approach.

10. The involvement of the Department in prior approval of site activity (for example, if the Department’s ISDS section has approved construction of an ISDS system which is later found to infringe on wetlands, equity may weigh in favor of the landowner).

Hank: I believe a similar issue was litigated in the Frederick and Louise Williams case. The superior court confirmed the decision of DEM and the Supreme Court did not hear the appeal.

Appendix G -Field Enforcement / Complaint Resolution Working Group Recommendations (Continued)

The only way to avoid this problem in the future is to train all inspectors (e.g., ISDS, Wetlands, Waste, Hazardous Materials, Air) to identify all environmental problems which may occur on a piece of property during their review of an application. I'm not sure this is possible given the constraints of the state personnel system and the education requirements of each discipline.

John: With regard to the last factor, whether the Department gave prior approvals with regard to site activity which in fact implicated the infringement of a wetland, I again continue to believe that as a matter of equity this is a factor which should be considered by the Department in its determination of whether or not to require the removal of a structure located in a wetland.

Counterpoint: (John Boehnert) This is the remainder of John's May 4, 2000 letter on the issues.

With reference to my concern that the Department requires the removal and full restoration of an affected wetland by construction activity which constitutes a "significant alteration", prior to a permitting request, I understand that this position is taken because the Department has determined that the construction activity (in our example, the construction of a foundation in a wetland) "will result in an unacceptable impact to the wetland and must be removed". It is indicated that in making this decision the Department considers many of the factors I suggested in my March 6, 2000 letter be considered during the permitting process for a significant alteration.

I further understand the Department's position to be that by ordering the removal and restoration prior to permitting for a significant alteration, the Department has in fact "saved the violator from expending significant time and money in pursuing a permit that will almost certainly be denied", and has resulted in the wetlands restoration process beginning sooner. I certainly understand this rationale, and the common sense approach of why spend 6 to 12 months in a permitting process which will necessarily result in denial.

My primary response is based upon considerations of administrative law. To the extent the Department wishes to conclude and convey to an applicant in a pre-application conference that the application is almost certain to be denied, the applicant can make its decision whether or not to proceed. But that is a different matter than the applicant told it cannot proceed without removing its foundation, when that determination is made by the Department without benefit of a full application process, including an adjudicatory hearing on a denial of that permit, based upon the record developed in the application process.

I very much appreciate the time you have taken to respond in detail to my comments, and I appreciate understanding your reasoning in making these enforcement determinations. I am hopeful that this exchange will prove of some benefit to the Wetlands Task Force as well.

Issue 2. *Program emphasis should include an oversight function that insures that permit conditions are being implemented in the field.*

We have initiated compliance checks as part of our routine program activity. On December 2, 1999 Chuck Horbert of the Permitting Program forwarded a list of approved projects to the Compliance Program where it was known that the construction project was presumed to be underway. From the Permitting perspective, these cases were thought to be the more sensitive environmental projects that have the potential for significant harm if they are not constructed as approved. We have been making the effort to inspect several of these per month.

Appendix G -Field Enforcement / Complaint Resolution Working Group Recommendations (Continued)

Issue 3. *DEM should provide better feedback to the public in response to complaints concerning potential violations of the Wetlands Act.*

If someone wishes to be notified of our findings regarding a wetland complaint we will take their name and respond to them after we have completed our investigation.

Conclusion: Since issues 2 and 3 have already been addressed, the only issue before the full committee is Issue 1. Based on the comments made above it is clear that this Issue was partially misstated from the beginning. All unauthorized construction activity infringing on a wetland is not removed immediately. It depends entirely on the severity of the alteration whether the unauthorized alteration is removed or if it is allowed to remain. I believe the point/counterpoint discussion above will be helpful to the committee regarding the appropriateness of “after-the-fact” applications for the most severe freshwater wetland violations. If anyone has any questions I can be reached at 401-222-4700 Ext. 7401.

Hank Ellis

Appendix H - CRMC/DEM Program Consistency Working Group Recommendations

RIDEM/ CRMC CONSISTENCY WORKGROUP FINAL REPORT AND MINUTES MAY 12, 2000

A. Minutes of April 19, 2000 meeting.

The following items were discussed:

1. State of Rhode Island Stormwater Design and Installation Standards Manual: This manual was developed jointly by RIDEM and CRMC. CRMC currently utilizes the design criteria in this manual as "standards" whereas RIDEM utilizes the manual as guidance.
2. CRMC Special Area Management Plans: Current practice, rules and agreements between RIDEM and CRMC require that both agencies review permit applications within certain portions of the Salt Pond SAMP (North of Route 1) and the Narrow River SAMP (West of Route 1 and North of Gilbert Stuart/ Snuff Mill Roads). Suggestions were offered that CRMC and RIDEM perform concurrent reviews and utilize a combined public notice period.
3. FEMA regulations and flood plain management within urban areas: Possible area for discussion amongst agency engineers at some future time.
4. CRMC Warwick Jurisdictional Determinations: Dave Reis informed the work group that CRMC would be requiring jurisdictional determinations within all portions of Warwick seaward of the RIDEM/CRMC "roadway line". This service is being offered to help the City identify jurisdictional areas now rapidly building-out as a result of sewer line extensions.
5. Providence Foundation: It was reported that the foundation will pursue additional measures to avoid cases where both RIDEM and CRMC have jurisdiction.
6. RIDEM/CRMC Fact Sheet: The current fact sheet which outlines RIDEM and CRMC program differences will be used to help identify additional areas which may be made more consistent, where possible.
7. RIDEM/CRMC Dual Jurisdiction: Where possible, future agreements (memorandum) between RIDEM and CRMC should attempt to give one agency exclusive jurisdiction to avoid the need for 2 permits.

B. Prior Workgroup Meetings:

Meetings of the workgroup were also held on March 22 and February 29. Items discussed include the following (see attached minutes for details):

1. RIDEM/CRMC use of "buffer zones" and "setbacks".
2. ISDS Denitrification requirements.
3. Additional discussion of Agenda Items noted herein.

Respectfully submitted,
Dave Reis, Workgroup Leader

Appendix I - Certification - Working Group Recommendations

Certification Report

The issue was raised at the Wetlands Task Force meeting on the possibility of having wetlands biologists certify their work in the Wetlands application process. It was suggested that this would be a way to utilize the expertise of the private sector and would be a way of streamlining the existing process. One meeting was held in late March to discuss this issue. The meeting ended with the recommendation that the group not meet again because there was agreement that this concept would not be helpful in the process. Included below is the results of this meeting and recommendations of the group:

1. There was no support for a certification program for wetlands biologists. There was no support for a certification program in 1998 when RIAWB polled their membership. The group also thought the number of people covered were too small (20-30 people) to create a bureaucracy to support the certification effort, but a limited certification program might be acceptable. This could be used as a marketing tool for participating biologists. However biologists could still be involved with delineation activities even if they were not certified. If DEM were to certify the work of wetlands biologists, some criteria to consider would be:
 - a. Membership in RIAWB, and / or
 - b. "x" years of experience in wetlands delineation, and an educational background in botanical taxonomy and soils.
2. There may not be a real need for a certification program. The private sector biologists are known by DEM and we are aware of their work performance. There was another suggestion that we track the performance of wetland professionals using objective criteria and using these performance measures as a basis for focusing our regulatory oversight efforts; that is, we should not have to do as much checking with someone who has a good track-record.
3. There was reluctance for biologists to "certify" their work because field conditions may change with the seasons and there may be genuine professional differences of opinions on wetlands delineation.
4. Biologists and land surveyors / engineers wanted the application form to explicitly detail their work product in an application. The form should have a separate signature line that allows them to separately indicate their responsibility in a particular project or application. Right now, it is not much of an issue, but if the department should evaluate and track the work of this group (See number 2 above); it's understandable that their involvement should be more explicitly noted in the application.
5. The regulated community only supported a "certification process" if this increased the predictability of the process, and if applications were to be processed faster.
6. There was general agreement that the private sector did a good job in the delineation of wetlands edges. However, a mistake on one or two key flags could easily delay a project. The accurate representation of those features on a plan is another common problem, and is not always the fault of the biologist.
7. The department was de-emphasizing the delineation of wetlands edges.
8. Ninety percent of preliminary determinations are processed as insignificant alterations or non-jurisdictional. Five percent of these actions are significant alterations, which will require review under the formal process; and five per cent are withdrawn. In the last instance, this is sometimes good but other times possibly an indicator that the applicant doesn't understand the process, changed their plans, decided not to spend more money to complete the process or the process is taking too long.

9. Prioritize the program goals to emphasize wetlands with higher values. Perhaps use the Frank Golet handout from the watersheds meetings as a basis to regulate wetlands.
10. Can we use Wetlands biologists to “certify” edges on ISDS plans for activities that are being conducted outside the jurisdictional area and reduce the number of projects that are being referred to the Wetlands program by the ISDS program?
11. Joint training efforts will help the regulated community and the regulators to get a better understanding of issues of mutual concern.
12. Delineation of wetlands edges was not a major cause of delays and this was a relatively predictable process. The process could be streamlined by encouraging more interactions in the field between DEM and the regulated community. There was a mutual benefit for DEM and the regulated community to meet in the field, especially when there were instances where wetlands edges were not easily demarcated and where the previous land usage was farming.

The real issue raised by the group was getting permits issued faster and putting predictability into the process. It was agreed that certifying the work of wetlands biologists would not get us to this point. Based on the meeting, the following recommendations were made:

1. Certification of biologists or allowing private biologists to certify wetlands edges, in all instances, would not make the application process more predictable or significantly lessen processing time.
2. DEM policy should allow our employees to meet with applicant’s biologist in the field to verify edges that are difficult to delineate.
3. Change the ISDS process to allow wetlands biologists or designers to certify that construction activities depicted on the ISDS plan will take place outside the area of jurisdiction for wetlands. The applicant would have to assume all risks for work not properly done. This may reduce pressure to have a joint application process for all ISDS/wetlands applications. An ISDS rule change may be necessary to implement this recommendation.
4. Encourage joint training for private and public wetlands biologists. Training should include both field training on technical issues such as delineation, and classroom training regarding rule interpretation and procedures.
5. Develop a simplified application process for single family homes.

Appendix J - Inclusive Meetings Working Group Recommendations

Rhode Island Department of Environmental Management
Office of Technical and Customer Assistance

POLICY FOR PRE-APPLICATION MEETINGS

The Office of Technical and Customer Assistance is a non-regulatory program located in the Department's Bureau of Environmental Protection. The Office provides assistance to the general public, state and local governments, and the business community concerning compliance with rules, regulations, environmental standards, and the permitting process.

Pre-application meetings are an important component of the permitting process. The Department recommends these meetings for large projects that may involve more than one permit, for applicants that are not familiar with the Department's permitting process, or for any applicant that may have questions about permitting their project.

SCHEDULING A MEETING

Meetings can be scheduled by contacting Ron Gagnon, 222-6822, extension 7500, or Carolyn Weymouth, 222-6822, extension 4422.

MEETING GUIDELINES

Meeting requests for wetland projects that have no edge determination, or have not been the subject of a previous application, are handled by OTCA. Wetlands staff do not participate because they are not familiar with the site and cannot offer any assistance or answer questions concerning specific issues.

If the site has a wetlands edge determination, or has been the subject of a previous wetlands application, a wetlands supervisor will participate in the meeting.

For projects involving Air Pollution Control, Hazardous or Solid Waste Management, Storm Water or Waste Water Discharges, Above Ground or Underground Storage Tanks, Septic System Design, or any other Department permitting program, appropriate staff from each program will participate.

Site plans, environmental reports, or other project information can be submitted to the Office of Technical and Customer Assistance before the meeting, or brought to the meeting, to help ensure that all permitting issues can be addressed.

Pre-application meetings are intended to provide an applicant with a clear understanding of the types of permits that will be required, the information that must be submitted as part of a permit application, and the process the Department will follow in reviewing and making a decision concerning the application.

The meetings are not intended to review specific issues concerning regulatory decisions that must be made as part of the permit review process. The Department will provide explanations of specific rules but will not make decisions concerning how they may apply to a specific project until the project is fully reviewed under the permitting process.

A summary letter is issued after the meeting to the party that requested the meeting, with copies to all that attended the meeting.

Appendix K - Outreach /Public Education Working Group Recommendations

April 27, 2000

Present: Derry Riding, Michael DeLuca, Carol Murphy, and Bryan Wolfenden

Members agreed to re-visit the Issues List as provided by the Task Force and to merge and revise with other issues identified by the work group over the past several meetings.

Issue 1. The process needs to be more predictable. DEM should provide more guidelines or outreach activities on wetland issues.

The **problem statement** related to this issue was identified as a public perception that the process has often been unpredictable and inconsistent for individuals, developers, builders and community officials. The **objectives** are to make the permitting process more consistent, predictable and timely.

Also incorporated within this issue is Issue #5. Which states that, "Application of the rules by division staff should be consistent."

Recommendations:

1. Use the best available technology to provide mapping resources with the appropriate warning and disclaimer to the public using the Internet.
2. Put on paper the internal review process and screening steps with time frames for turn-around/resolution.
3. Post a daily listing of project review status on the web to indicate where the permit is in the process. Allow public access to this information with the appropriate level of security and confidentiality.
4. Improve communication and coordination between DEM and local community officials in the application process. This may include holding a joint pre-application meeting.
5. Provide consistent internal guidance to all personnel on screening criteria and how to assess if the proposed project is one that may present significant alterations or impacts. Essentially, that more experienced personnel be involved in training newer personnel, and that there be internal agreement and consistency with this training which is science-based.
6. Possibly fast-track small projects.
7. Provide realistic examples of good and bad permit applications, perhaps as an attachment to the application form. Include wetland information resources and locations on the application packet.
8. The DEM should make a major commitment to staff training and education and provide the resources to support the goal of excellence by all employees in technical and customer service subjects.

Issue 2. Initiate additional public outreach activities explaining the positive portions of DEM activities in the program.

The problem statement is that, the general public does not know enough about the values of wetland protection, and how the quality of their lives is affected. The **objective** is to increase public awareness of wetland values and benefits of protection, and to raise awareness of the DEM mission and activities related to this.

Recommendations:

1. Assign the task of increasing public awareness and education to a Education Advisory Committee which should be composed of public and private sector partners as well as education professionals to assist the DEM in developing an education and outreach strategy related to wetlands and DEM's regulatory mission.
2. Partner with existing efforts by other organizations (URI. Cooperative Extension Service, RI Resource Conservation & Development Council, RI Chapter of American Planning Association, RI Association of Wetland Scientists, RI Conservation Districts, Society of Environmental Professionals, Grow Smart, and science fairs, etc.) to implement the strategic wetlands outreach plan developed by

Appendix K - Outreach /Public Education Working Group Recommendations (Continued)

the Education Advisory Committee. *Revisions made to spell out organizations and include two more potential partners.*

3. Create short education spots on TV with strong visual content.
4. Provide adequate resources in DEM budget for education and outreach plan development and implementation.
5. DEM should expand the definition of “public,” to include municipalities, other government entities, developers, and private sector endusers and customers.
6. Support staff providing training to the public on weekends and in evenings and ensure they are compensated for such work.

Issue 3. Utilize and maintain the Internet for communication, public education and application retrieval purposes.

The **problem statement** is that the DEM does not fully utilize the potential of the best available (readily) technology for sharing and distributing information. This also is related to Issue 4; about the public needing to be better informed on wetland issues.

Recommendations:

1. Determine the available wetland mapping resources, and which ones most effectively meet customer needs and make available on the internet for informational purposes and a general planning tool with the appropriate disclaimers re: sight specific determinations. Widely publicize the availability of this current information and make it user friendly.
2. Determine with other agencies and entities, what the wetland mapping needs are for the state and if the present photographic and mapping databases are adequate for meeting those needs. Assess the alternatives and develop and implement a plan to provide mapping which meets proscribed standards for endusers and customers.
3. Provide an interface on the Internet which municipalities and the public can use to access general and specific wetlands data and information including permit application status and educational virtual tours and guidance.
4. Cross reference links and information on the Internet.

Issue 6. The Regulations should be written clearly with guidance about wetland types and allowable alterations. Performance standards for wetland applications should be evaluated.

The **problem statement** for this issue is the permit application processes and regulations are difficult to understand and follow.

Recommendations:

1. Separate the internal administrative procedures from the regulations and application process. *Revise to state, “Remove those rules that address internal administrative operating procedures and create a new management procedures document. The Rules and Regulations should address the wetlands application requirements, technical review criteria, etc. but not the internal operating procedures.*
2. Create a, “cookbook style,” and index for the application process. Include glossary where appropriate. *Recommended revisions, to omit phrase “cookbook style,” as this may infer simplistic process. Add, Improve the Table of Contents, and create an index. Improve the application requirements and process descriptions within the Rules.*
3. Have this same format with indices on the Internet.

Appendix L - Wetlands / Watersheds Working Group Recommendations

SUMMARY OF MAJOR RECOMMENDATIONS

INTRODUCTION

Seven issues identified by the RIDEM Wetlands Task Force in January 2000 were assigned to the Wetlands Watershed Working Group for discussion. This report summarizes major recommendations of the group. The group's recommendations are organized in accordance with the major issue identified by the Task Force (identified below in ***bold italics***). Other important issues that arose during deliberations of the group are included at the end of this summary. Over the course of four meetings the working group developed a list of over thirty recommendations (see Appendix A). The working group ranked these recommendations and renumbered them by priority. This summary presents the group's high and moderate priority recommendations, in order of overall rank, and consolidates similar recommendations under a single heading.

MAJOR RECOMMENDATIONS

1. Regulations are value neutral and apply the same level of protection to all wetlands.

While the existing permitting staff does consider each project on a case-by-case basis, recognizing each individual wetland's values, there is a concern that the importance of the wetland in the larger watershed context is often overlooked. Also, there are no rules or guidelines that articulate the degree to which the level of protection is related to wetland functions and values. The following recommendations were therefore made:

- A. The level of wetland protection afforded by RIDEM should consider the wetland's importance in the context of its watershed (with regard to water - related functions). The context for evaluating certain wetland functions such as wildlife habitat may include other types of evaluation areas (e.g. contiguous tracts of forest that might span watershed divides).
- B. The level of wetland protection should relate to the type, functions, and values of a wetland and its sensitivity to certain land uses / site development activities. Table 1 provides an example approach where buffer zone width is tiered by type of wetland (tiered buffer zone approach). Such a table helps to articulate the rationale for wetland permit decisions. It also can provide communities guidance regarding its own resource protection initiatives.

2. Regulation of adjacent upland areas should be discussed and these areas should be evaluated for [indirect] wetland impacts.

The working group agreed that RIDEM should identify mechanisms to minimize impacts to the physical, chemical and biological character of wetlands caused by alteration of adjacent uplands. Specifically:

- A. RIDEM should develop guidelines, BMPs and/or performance standards for major projects outside of wetland jurisdictional resource areas that have the potential for significant wetland impacts (pursuant to Rule 7.01 B). In addition, more specific examples of qualifying projects should be developed (e.g. moderate to high yield wells, landfill caps/liners, golf courses, creation of large impermeable surfaces).

3. Regulations need to assess cumulative alterations on a wetlands system.

There was much discussion in the working group on this issue. The group recognized that the RIDEM Freshwater Wetlands Program does a fine job in preventing loss of wetlands in the state. The real issue is the program's ability to prevent the deterioration of wetland systems as a result of cumulative indirect

Appendix L - Wetlands / Watersheds Working Group Recommendations (Continued)

impacts. There was the thought that cumulative alterations were changing the characteristics of some wetland systems. The group also recognized that there is currently insufficient guidance available to assess these cumulative impacts. The following recommendations received the highest priority:

- A. In absence of a protocol for cumulative impact assessment, RIDEM should deal with potential cumulative impacts by promoting avoidance and minimization of project impacts to wetlands as required by current regulation.
- B. RIDEM wetland policies, review criteria, and/or guidelines should address cumulative impacts of alterations to small wetlands and the significance of individual wetland alterations in light of a watershed's specific wetland functions and values.
- C. Existing and potential future Exempt Activities (Rule 6.00) should be evaluated with respect to their cumulative effect on wetlands.

4. *Allow for local input on decisions concerning wetlands issues, especially who determines if a project is significant or insignificant.*

There is a concern that important information regarding a project's impact on wetlands is sometimes overlooked by RIDEM because knowledgeable parties are not aware of all wetland permit applications submitted to RIDEM. The working group therefore made the following recommendation:

- A. RIDEM should provide information and allow input from citizens, watershed stakeholders, and local government in RIDEM's determinations of project significance. Input could be active where DEM notifies groups of preliminary meetings or can be passive by posting information on the DEM homepage.

5. *Incorporate watershed concept into wetlands program.*

RIDEM wetlands permitting, enforcement and planning/policy groups should be integrated into the watershed approach. A draft report entitled "Rhode Island Watershed Approach Framework" provides the following definition:

"Watershed Approach: A strategy that promotes the integration of both public and private stakeholder interests in working towards a common goal – to support the sustainable use of natural resources. The approach is based on the understanding that many environmental management issues are best addressed at the watershed level, and that management is greatly enhanced by the involvement and collaboration of a wide range of people living and working in the area." (RI Watershed Approach Committee Writing Committee, Draft June 1999)

RIDEM should articulate specific aspects of the wetlands program that should employ the watershed approach and how it should be done. Specific recommendations include:

- A. The RIDEM wetland application form (and all applications) should be amended to add a space to enter the watershed within which the proposed project occurs.
- B. Wetland alteration data should be maintained by watershed and made available on the Internet. Information should include: formal actions of the department, wetland gains and losses, alterations outside of biological wetlands (especially alterations to Perimeter Wetland and Riverbank Wetland).
- C. RIDEM should develop guidelines for use by staff and consultants on the application of the watershed approach to the assessment of wetland functions, project impacts, and mitigation. For example, RIDEM should provide guidelines regarding watershed scales to be used for project evaluations.

Appendix L - Wetlands / Watersheds Working Group Recommendations (Continued)

- D. RIDEM should provide guidance & incentives for individual watershed groups to focus on wetlands and develop an action agenda and management plan to address needs/problems. Specifically, RIDEM outreach to communities should incorporate information/guidance on watershed approach (education, funding, model ordinances, etc.), and provide guidance on development of special area management plans.
- E. The wetland component to the watershed approach should be integrated into land acquisition planning by RIDEM itself and through RIDEM technical assistance and grants to others.
- F. Include consideration of wetlands in water quality standards (& decisions) per EPA “Draft Core Essential Elements of Comprehensive State & Tribal Wetlands Program” Specifically, RIDEM should assign designated uses to wetlands, improve water quality standards, establish biological assessment methods and biological standards, and incorporate wetlands into anti-degradation policy.

6. *A wetland mitigation policy should be considered.*

- A. RIDEM should have a wetland mitigation policy and guidelines which follow the “sequencing” articulated in the federal Memorandum of Agreement on mitigation, i.e. avoidance, minimization, and compensation, in that order.
- B. Best management practices (& performance standards) should be articulated for different types of projects and project features as they relate to wetland protection. (consider matrix approach: project type/feature by wetland type/function).

7. *Allow flexibility that permits the elimination of definitional wetlands of limited value.*

The working group recommended that the original wording of this issue be changed from “...wetlands of no value.” to “... wetlands of limited value.” in recognition of the fact that most wetland professionals believe that all wetlands have some value. Even with this change, the working group could not easily articulate what criteria could safely be used to identify such “limited value wetlands”. It was agreed that such determinations are best made on a case-by-case basis, as is now the practice.

OTHER IMPORTANT RECOMMENDATIONS:

The following additional recommendations arose during the group’s discussion of the seven Task Force issues discussed above:

1. *Improved Interagency Coordination*

- A. CRMC’s regulation of freshwater wetlands in the vicinity of the coast should be consistent with any new policies, regulations and procedures implemented as a result of these recommendations.
- B. RIDEM should continue to foster improved interagency coordination amongst federal, state, and local authorities.

Appendix L - Wetlands / Watersheds Working Group Recommendations (Continued)

2. Enhanced Community Involvement in Wetland Protection

A. RIDEM should promote/support improved wetland protection through local initiatives tailored to the needs and capabilities of individual communities and watersheds:

- RIDEM outreach to communities should incorporate information/guidance on watershed approach (education, funding, model ordinances, etc.).
- Provide guidance on development of special area management plans.
- Work with RIDOA Statewide Planning regarding State Guide Plans and local Comprehensive Plans. (e.g. through development of issue oriented Guide Plans such as the RI Nonpoint Source Pollution Management Plan, and watershed oriented Guide Plans such as the Scituate Reservoir Watershed Management Plan).
- Possible use of local conservation commissions / agents for RIDEM wetland compliance inspections (follow-up on permits and restorations) – training would be required.
- Provide means for local conservation commissions to have more impact on RIDEM wetland decisions.
- Assist local commissions or groups in the identification and protection of vernal pools by providing guidance and training.
- Provide guidance on development of watershed protection regulations, more stringent ISDS regulations (e.g. wastewater management districts), and extended buffer zones and setbacks.

Table 1.	
Tiered Buffer Zones and Key Considerations in Assignment of Wetland Types to Buffer Tiers.	
TIER 1 (150-ft buffer)	
Tier / Wetland type	Key considerations
Perennial watercourses	<ul style="list-style-type: none"> • High aquatic habitat value • High water-based recreation potential • High aesthetic value • High water supply potential • Provides linkages among other wetland types • High sensitivity to water quality impacts • High offsite impact potential • High wetland wildlife habitat value in bordering land • Bordering land is detritus source for aquatic food chains • High flood hazard in bordering land • High erosion hazard in bordering land
TIER 2 (100-ft buffer)	
Permanent or semi-permanent standing water bodies and permanently or semi-permanently flooded vegetated wetlands	<ul style="list-style-type: none"> • High aquatic habitat value • High water-based recreation potential • High water supply potential

Table 1	
TIER 2 (100-ft buffer) (Continued)	
Tier / Wetland type	Key considerations
Permanent or semi-permanent standing water bodies and permanently or semi-permanently flooded vegetated wetlands.	• High-moderate flood storage potential
	• High aesthetic value
	• High sensitivity to water quality impacts
	• Moderate offsite impact potential
	• High wetland wildlife habitat value in bordering land
	• Bordering land is detritus source for aquatic food chains
	• High-moderate flood hazard in bordering
	• High-moderate erosion hazard in bordering land
Bogs and fens	• Unique or restricted flora
	• High-moderate habitat value for wetland-dependent wildlife
	• High aesthetic value
	• High educational value
	• Extremely high sensitivity to nutrient additions
Natural Heritage sites	• Extremely high sensitivity to human foot traffic
	• Rare, threatened, or endangered plants, animals, or habitats
	• High educational and research value
	• High sensitivity to water quality impacts
Critical amphibian habitats (CAH) ¹	• High aesthetic potential
	• Required for reproduction by listed species
	• Extremely high sensitivity to water quality impacts
	• Essential amphibian non-breeding habitat in bordering land
	• Bordering land is detritus source for aquatic food chains
TIER 3 (75-foot buffer)	
Tier / Wetland type	Key considerations
Seasonal standing water bodies other than CAH¹	• High-moderate habitat value for wetland-dependent wildlife
	• High-moderate flood storage value
	• Essential habitat for certain aquatic invertebrates
	• Extremely high sensitivity to water quality impacts
	• Bordering land is detritus source for aquatic food chains

Table 1	
TIER 3 (75-foot buffer) (Continued)	
Tier / Wetland type	Key considerations
Seasonally or temporarily -flooded vegetated wetlands other than CAH¹	<ul style="list-style-type: none"> • High-moderate habitat value for wetland dependent wildlife
	<ul style="list-style-type: none"> • High-moderate flood storage value
	<ul style="list-style-type: none"> • High water quality improvement value
	<ul style="list-style-type: none"> • Potential detritus source for aquatic food chains
	<ul style="list-style-type: none"> • Seasonal water-based recreation potential
	<ul style="list-style-type: none"> • Moderate sensitivity to water quality impacts
	<ul style="list-style-type: none"> • Potential flood hazard in bordering land
	<ul style="list-style-type: none"> • High water table hazard in bordering land
Intermittent watercourses	<ul style="list-style-type: none"> • High-moderate aquatic habitat value
	<ul style="list-style-type: none"> • Low-moderate water supply potential
	<ul style="list-style-type: none"> • High sensitivity to water quality impacts
	<ul style="list-style-type: none"> • High offsite impact potential
	<ul style="list-style-type: none"> • Bordering land is detritus source for aquatic food chains
	<ul style="list-style-type: none"> • High-moderate flood hazard in bordering land
	<ul style="list-style-type: none"> • High-moderate erosion hazard in bordering land
TIER 4 (50-ft buffer)	
Tier / Wetland type	Key considerations
<ul style="list-style-type: none"> • Seasonally saturated vegetated wetlands 	<ul style="list-style-type: none"> • High water quality improvement value
	<ul style="list-style-type: none"> • High open space value
	<ul style="list-style-type: none"> • Moderate-high wildlife habitat value
	<ul style="list-style-type: none"> • Moderate groundwater discharge value
	<ul style="list-style-type: none"> • High water table hazard in bordering land

¹Critical amphibian habitats (CAH) are those freshwater wetland habitats, commonly referred to as vernal pools, that support breeding wood frogs, spotted salamanders, or marbled salamanders.

Appendix M
Statutory Working Group Recommendations

*Key A=Administrative, P=Policy, R=Regulatory, S=Statutory

Issue #	Issue	*A	P	R	PS
S-1	Eliminate all time limits in the Wetlands Act and delegate to the Director authority to prescribe time limits for permits or renewals or alternatively give the Director authority in accordance with regulations to authorize additional time for DOT projects or projects of the Economic Development Corporation.				X
S-2	The existing Statement of Legislative Intent should be clarified and the language proposed as a result of the 1996 Governor's Advisory Commission legislation should be used.				X
S-3	A variance procedure is not required if the program continues with its current approach of evaluating the impact on wetlands on essentially an ad hoc basis. If the Wetlands Task Force considers adopting specific minimum standards (e.g. prohibitions, buffers, and setback minimums) then the addition of a variance process may be necessary, but it could be created by regulation.			X	
S-4	It was generally recommended to return to the General Assembly with a proposed redefinition of the bordering lands. In the interim, DEM should segregate the "areas within" some distance from the wetlands proper and develop regulations and performance standards to assess work proposed within those areas. It was also suggested that the administrative finding section of the regulations be expanded to discuss the significance of the bordering areas in current scientific terms and that regulations be developed to establish BMPs and standards for evaluating work which falls within the bordering areas adjacent to specific wetlands types. It was also suggested that protection of bordering lands might best be incorporated into an overall watershed planning approach.			X	X
S-5	The Working Group declined to make any recommendation concerning the current statutory provisions on municipal oversight of wetlands projects. It was suggested that an effort should be undertaken by the Wetlands Program to solicit and incorporate municipal involvement and comment on wetlands applications early in the review process.				
S-6	Procedures have been developed to avoid the need for extensive offsite mapping of wetlands on adjacent properties as part of the wetlands review process. Therefore there is no need to propose statutory revisions to allow third party access to property in order to delineate wetlands.				
Other					
S-O1	Copies of any deficiency notices directed to the applicant and the applicant's attorney.	X			
S-O2	DEM should reach out to the Board of Professional Engineers and the Association of Wetlands Scientists to discuss educational programs and other methods of improving the completeness and accuracy of information provided.	X			
S-O3	For specific types of projects, DEM could require professional oversight and certification of compliance with permit provisions as a condition of the issuance of a permit. This could increase compliance with wetlands permitting requirements.			X	
S-O4	It was also suggested that posting of a bond for completion of mitigation work be considered. However, such a requirement would require legislative authorization.				X

Appendix N Wetlands Process Issues Recommendations

*Key A=Administrative, P=Policy, R=Regulatory, S=Statutory PS= Permit Streamlining

Issue #	Issue	*A	P	R	S	PS
Application Processing –Quick Reviews						
A-1	An accelerated review process may be contemplated for the following general situations:					
A-1a	An application submitted for a project type listed in Rule 6.00 as exempt from requiring a permit, yet the applicant wants official confirmation from the agency of its exempt status.			X		X
A-1b	An application for a project which is not currently specifically exempted, but which the applicant feels should be exempt since it so closely relates to a listed exempt activity.			X		X
A-1c	An application for a project that does not appear to alter or affect wetland areas, and the applicant wants confirmation of this			X		X
A-1d	Applications whose primary purpose is to improve/restore wildlife habitat or improve/restore water quality.			X		X
A-1e	Applications for Renewal where it has been established that work has not yet commenced.	X				X
A-1f	Applications for projects that have been previously approved and need to be minimally modified, but for whatever reason do not qualify for review under an Application for Permit Modification (e.g. involve additional alteration or impacts to freshwater wetlands).	X				X
A-2	Modify regulation 9.09 to allow for increases in the limits of disturbance for either areas outside of wetlands or, if within wetland, only into existing paved or developed areas.			X		X
Beneficial Projects & Exemptions						
BPE-1	DEM should consider the creation of a new category or type of permit (Tier 1 for now) that would have the following attributes: low or no fee, simple application submittal requirements, and expeditious or priority processing for low impact projects			X		
BPE-2	Publicize on the DEM website, project descriptions of activities that were approved by DEM or may be reviewed under a Tier 1 process.	X				
BPE-3	Include fact sheets on appropriate BMP's with Tier 1 decisions.	X				
BPE-4	Environmentally beneficial projects which involve a high degree of impact would benefit by the encouragement of pre-application meetings, a significantly reduced fee and the development by DEM of fact sheets targeted for commonly proposed projects, providing a suggested best design approach, BMPs, etc	X		X		
BPE-5	Development of a new regulatory review process for large-scale wetland restoration projects that may involve multiple phases. Once the plan is approved, subsequent phases conforming to the plan may be approved through a more streamlined process			X		X
BPE-6	Expand education and outreach for exempt activities and other activities that involve no review or limited review by DEM	X				
BPE-7	Expand listing of exempt activities where appropriate.			X		X
BPE-8	Clarify the exemption on replacement of shoreline structures as to limitations related to "in-kind" materials.			X		
BPE-9	Consider allowing other groups beside DEM/F&W to undertake conservation projects similar to those allowed under Rule 6.13, as an exempt activity or under another a Tier 1 type process.			X		

Appendix N (Continued)
Wetlands Process Issues Recommendations

*Key A=Administrative, P=Policy, R=Regulatory, S=Statutory PS= Permit Streamlining

Issue #	Issue	*A	P	R	S	PS
Field Enforcement / Complaint Resolution						
FE-2	Inspect construction activities concerning permit applications in sensitive environmental areas that have the potential for significant harm. (These compliance checks were initiated in December, 1999.)	X				
FE-3	DEM should notify the public, if requested, regarding the findings of a wetland complaint upon completion of the complaint investigation.	X				
CRMC / DEM / FEMA Consistency						
CRMC-1a	DEM and CRMC program staff will evaluate the fact sheet on program differences and will discuss ways to minimize these differences.	X		X		
CRMC-1b	Finalize the Memorandum of Agreement between RIDEM and CRMC that explains the permitting procedures in areas where each agency may share jurisdiction. The statute we may need to be amended to clarify some of the enforcement responsibilities for freshwater wetlands.		X		X	X
CRMC-1c	CRMC and DEM should perform concurrent reviews and utilize a combined public notice period for projects that require dual reviews that are located in CRMC's Special Area Management Plans.	X				
Certification of the Work of Wetlands Biologists						
C-2	Change the ISDS process to allow wetlands biologists or designers to certify that construction activities depicted on the ISDS plan will take place outside the area of jurisdiction for wetlands. The applicant would have to assume all risks for work not properly done. This may reduce pressure to have a joint application process for all ISDS/wetlands applications. An ISDS rule change may be necessary to implement this recommendation.	X		X		X
C-3	DEM policy should encourage employees to meet with applicant's biologist in the field to verify edges that are difficult to delineate.		X			X
C-4	Encourage joint training for private and public wetlands biologists. Training should include both field training on technical issues such as delineation, and classroom training regarding rule interpretation and procedures.	X				X
C-5	Develop a simplified application process for single family homes.			X		X

Appendix O
Public Interaction Issues Recommendations

*Key A=Administrative, P=Policy, R=Regulatory, S=Statutory PS= Permit Streamlining

Issue #	Issue	*A	P	R	S	PS
Inclusive Meetings / DEM Problem Solving						
IM-1	OTCA has developed a policy for pre-application meetings. The Department recommends these meetings for large projects that may involve more than one permit, for applicants that are not familiar with the Department's permitting process, or for any applicant that may have questions about permitting their project.		X			X
Outreach / Public Education						
O&E-1&5-a	Use the best available technology to provide mapping resources with the appropriate warning and disclaimer to the public using the Internet.	X				
O&E-1&5-b	Put on paper the internal review process and screening steps with time frames for turn-around/resolution.		X			
O&E-1&5-c	Post a daily listing of project review status on the web to indicate where the permit is in the process. Allow public access to this information with the appropriate level of security and confidentiality.	X				
O&E-1&5-d	Improve communication and coordination between DEM and local community officials in the application process. This may include holding a joint pre-application meeting.		X			
O&E-1&5-e	Provide consistent internal guidance to all personnel on screening criteria and how to assess if the proposed project is one, which may present significant alterations or impacts. Essentially, that more experienced personnel be involved in training newer personnel, and that there be internal agreement and consistency with this training which is science-based.	X				
O&E-1&5-f	Possibly fast-track small projects.	X		X		X
O&E-1&5-g	Provide realistic examples of good and bad permit applications, perhaps as an attachment to the application form. Include wetland information resources and locations on the application packet.	X				X
O&E-1&5-h	The DEM should make a major commitment to staff training and education and provide the resources to support the goal of excellence by all employees in technical and customer service subjects.	X				
O&E-2a	Assign the task of increasing public awareness and education to a Education Advisory Committee which should be composed of public and private sector partners as well as education professionals to assist the DEM in developing an education and outreach strategy related to wetlands and DEM's regulatory mission.		X			X
O&E-2b	Partner with existing efforts by other organizations (URI. Cooperative Extension Service, RI Resource Conservation & Development Council, RI Chapter of American Planning Association, RI Association of Wetland Scientists, RI Conservation Districts, Society of Environmental Professionals, Grow Smart, and science fairs, etc.) to implement the strategic wetlands outreach plan developed by the Education Advisory Committee.	X				X
O&E-2c	Create short education spots on TV with strong visual content.	X				
O&E-2d	Provide adequate resources in DEM budget for education and outreach plan development and implementation.	X				X
O&E-2e	DEM should expand the definition of "public," to include municipalities, other government entities, developers, and private sector end-users and customers.	X				
O&E-2f	Support staff providing training to the public on weekends and in evenings and ensure they are compensated for such work.	X				
O&E-3a	Determine the available wetland mapping resources, and which ones most effectively meet customer needs and make available on the internet for informational purposes and a general planning tool with the appropriate disclaimers re: sight specific determinations. Widely publicize the availability of this current information and make it user friendly.	X				

Appendix O
Public Interaction Issues Recommendations (Continued)

*Key A=Administrative, P=Policy, R=Regulatory, S=Statutory PS= Permit Streamlining

Issue #	Issue	*A	P	R	S	PS
O&E-3b	Determine with other agencies and entities, what the wetland mapping needs are for the state and if the present photographic and mapping databases are adequate for meeting those needs. Assess the alternatives and develop and implement a plan to provide mapping which meets proscribed standards for end-users and customers.		X			
O&E-3c	Provide an interface on the Internet which municipalities and the public can use to access general and specific wetlands data and information including permit application status and educational virtual tours and guidance.	X				
O&E-3d	Cross reference links and information on the Internet.	X				
O&E-6a	Remove those rules that address internal administrative operating procedures and create a new management procedures document. The Rules and Regulations should address the wetlands application requirements, technical review criteria, etc. but not the internal operating procedures.			X		
O&E-6b	Improve the Table of Contents, and create an index. Improve the application requirements and process descriptions within the Rules.			X		
O&E-6c	Have this same format with indices on the Internet.	X				

Appendix P Watersheds Recommendations

*Key A=Administrative, P=Policy, R=Regulatory, S=Statutory PS= Permit Streamlining

Issue #	Issue	*A	P	R	S	PS
WW-1a	The level of wetland protection afforded by DEM should consider the wetland's importance in the context of its watershed (with regard to water - related functions). The context for evaluating certain wetland functions such as wildlife habitat may include other types of evaluation areas (e.g. contiguous tracts of forest that might span watershed divides).		X			
WW-1b	The level of wetland protection should relate to the type, functions, and values of a wetland and its sensitivity to certain land uses / site development activities. Table 1 provides an example approach where buffer zone width is tiered by type of wetland (tiered buffer zone approach). Such a table helps to articulate the rationale for wetland permit decisions. It also can provide communities guidance regarding its own resource protection initiatives.		X	X		X
WW-2	DEM should develop guidelines, BMPs and/or performance standards for major projects outside of wetland jurisdictional resource areas that have the potential for significant wetland impacts (pursuant to Rule 7.01 B). In addition, more specific examples of qualifying projects should be developed (e.g. moderate to high yield wells, landfill caps/liners, golf courses, creation of large impermeable surfaces).		X	X		X
WW-3a	In absence of a protocol for cumulative impact assessment, DEM should deal with potential cumulative impacts by promoting avoidance and minimization of project impacts to wetlands as required by current regulation.	X				
WW-3b	RIDEM wetland policies, review criteria, and/or guidelines should address cumulative impacts of alterations to small wetlands and the significance of individual wetland alterations in light of a watershed's specific wetland functions and values.		X	X		
WW-3c	Existing and potential future Exempt Activities (Rule 6.00) should be evaluated with respect to their cumulative effect on wetlands.			X		
WW-4	DEM should provide information and allow input from citizens, watershed stakeholders, and local government in DEM's determinations of project significance. Input could be active where DEM notifies groups of preliminary meetings or can be passive by posting information on the DEM homepage.	X				
WW-5a	The DEM wetland application form (and all applications) should be amended to add a space to enter the watershed within which the proposed project occurs.	X				
WW-5b	Wetland alteration data should be maintained by watershed and made available on the Internet. Information should include: formal actions of the department, wetland gains and losses, alterations outside of biological wetlands (especially alterations to Perimeter Wetland and Riverbank Wetland).	X				
WW-5c	DEM should develop guidelines for use by staff and consultants on the application of the watershed approach to the assessment of wetland functions, project impacts, and mitigation. For example, DEM should provide guidelines regarding watershed scales to be used for project evaluations.		X			
WW-5d	DEM should provide guidance & incentives for individual watershed groups to focus on wetlands and develop an action agenda and management plan to address needs/problems. Specifically, DEM outreach to communities should incorporate information/guidance on watershed approach (education, funding, model ordinances, etc.), and provide guidance on development of special area management plans.	X	X			
WW-5e	The wetland component to the watershed approach should be integrated into land acquisition planning by DEM itself and through DEM technical assistance and grants to others.	X	X			

Appendix P

Watersheds Recommendations (Continued)

*Key A=Administrative, P=Policy, R=Regulatory, S=Statutory PS= Permit Streamlining

Issue #	Issue	A	P	R	S	PS
WW-5f	Include consideration of wetlands in water quality standards (& decisions) per EPA "Draft Core Essential Elements of Comprehensive State & Tribal Wetlands Program" Specifically, DEM should assign designated uses to wetlands, improve water quality standards, establish biological assessment methods and biological standards, and incorporate wetlands into anti-degradation policy.			X		
WW-6a	DEM should have a wetland mitigation policy and guidelines which follow the "sequencing" articulated in the federal Memorandum of Agreement on mitigation, i.e. avoidance, minimization, and compensation, in that order.				X	
WW-6b	Best management practices (& performance standards) should be articulated for different types of projects and project features as they relate to wetland protection. (Consider matrix approach: project type/feature by wetland type/function).	X	X	X		X
Other WWO-1a	CRMC's regulation of freshwater wetlands in the vicinity of the coast should be consistent with any new policies, regulations and procedures implemented as a result of these recommendations.	X				
WWO-1b	DEM should continue to foster improved interagency coordination amongst federal, state, and local authorities.	X				
WWO-2a	DEM should promote/support improved wetland protection through local initiatives tailored to the needs and capabilities of individual communities and watersheds e. g.:	X	X			
WWO-2ai	<ul style="list-style-type: none"> • DEM outreach to communities should incorporate information/guidance on watershed approach (education, funding, model ordinances, etc.). 	X	X			
WWO-2aii	<ul style="list-style-type: none"> • Provide guidance on development of special area management plans. 	X				
WWO-2aiii	<ul style="list-style-type: none"> • Work with DOA Statewide Planning regarding State Guide Plans and local Comprehensive Plans. (e.g. through development of issue oriented Guide Plans such as the RI Nonpoint Source Pollution Management Plan, and watershed oriented Guide Plans such as the Scituate Reservoir Watershed Management Plan). 		X			
WWO-2aiv	<ul style="list-style-type: none"> • Possible use of local conservation commissions / agents for DEM wetland compliance inspections (follow-up on permits and restorations) – training would be required. 			X		
WWO-2av	<ul style="list-style-type: none"> • Provide means for local conservation commissions to have more impact on DEM wetland decisions. 	X				
WWO-2avi	<ul style="list-style-type: none"> • Assist local commissions or groups in the identification and protection of vernal pools by providing guidance and training. 	X				
WWO-2avii	<ul style="list-style-type: none"> • Provide guidance on development of watershed protection regulations, more stringent ISDS regulations (e.g. wastewater management districts), and extended buffer zones and setbacks. 	X	X			

Issue #	Appendix Q Draft Wetlands Program Permit Streamlining Recommendations
	Statutory Recommendation
CRMC-1b	The statute we may need to be amended to clarify some of the DEM / CRMC enforcement responsibilities for freshwater wetlands.
	Regulatory Recommendations
S-4	<ul style="list-style-type: none"> • It was generally recommended to return to the General Assembly with a proposed redefinition of the bordering lands. • In the interim, DEM should segregate the “areas within” some distance from the wetlands proper and develop regulations and performance standards to assess work proposed within those areas. • It was also suggested that the administrative finding section of the regulations be expanded to discuss the significance of the bordering areas in current scientific terms. • That regulations should be developed to establish BMPs and standards for evaluating work which falls within the bordering areas adjacent to specific wetlands types. • It was also suggested that protection of bordering lands might best be incorporated into an overall watershed planning approach.
A-1a	Accelerate the application review process for project types listed in Rule 6.00 as exempt from requiring a permit, because the applicant wants official confirmation from the agency of its exempt status.
A-1b	Accelerate the application review process for projects that are not currently specifically exempted, but which the applicant feels should be exempt since it closely relates to a listed exempt activity.
A-1c	Accelerate the application review process for applicants who requests confirmation of projects that do not appear to alter or affect wetland areas.
A-1d	Accelerate the application review process for applications whose primary purpose is to improve/restore wildlife habitat or improve/restore water quality.
A-2	Modify regulation 9.09 to allow for increases in the limits of disturbance for either areas outside of wetlands or, if within wetland, only into existing paved or developed areas.
BPE-1	DEM should consider the creation of a new category or type of permit (FONSI)
BPE-5	DEM should develop a new regulatory review process for large-scale, multi-phase wetland restoration projects.
BPE-7	DEM should expand the listing of exempt activities, where appropriate.
C-2	Change the ISDS process to allow wetlands biologists or designers to certify that construction activities depicted on the ISDS plan will take place outside the area of jurisdiction for wetlands. The applicant would have to assume all risks for work not properly done. This may reduce pressure to have a joint application process for all ISDS/wetlands applications. An ISDS rule change may be necessary to implement this recommendation.
C-5	Develop a simplified application process for single family homes.
O&E-1&5-f	Possibly fast-track small projects.
WW-1b	The level of wetland protection should relate to the type, functions, and values of a wetland and its sensitivity to certain land uses / site development activities. Table 1 provides an example approach where buffer zone width is tiered by type of wetland (tiered buffer zone approach). Such a table helps to articulate the rationale for wetland permit decisions. It also can provide communities guidance regarding its own resource protection initiatives.
WW-2	DEM should develop guidelines, BMPs and/or performance standards for major projects outside of wetland jurisdictional resource areas that have the potential for significant wetland impacts (pursuant to Rule 7.01 B). More specific examples of qualifying projects should be developed (e.g. moderate to high yield wells, landfill caps/liners, golf courses, creation of large impermeable surfaces).
WW-6b	Best management practices (& performance standards) should be articulated for different types of projects and project features as they relate to wetland protection. (Consider matrix approach: project type/feature by wetland type/function).

Appendix Q (Continued)	
Draft Wetlands Program Permit Streamlining Recommendations	
Policy Recommendations	
CRMC-1b	A memorandum of Agreement needs to be developed between RIDEM and CRMC that explains the permitting procedures in areas where there are dual agency jurisdiction.
C-3	DEM policy should encourage employees to meet with applicant's biologist in the field to verify edges that are difficult to delineate.
IM-1	The Department should develop a policy for pre-application meetings. DEM should coordinate these meetings for large projects that may involve more than one permit, for applicants that are not familiar with the Department's permitting process, or for any applicant that may have questions about permitting their project.
O&E-2a	Assign the task of increasing public awareness and education to a Education Advisory Committee which should be composed of public and private sector partners as well as education professionals to assist the DEM in developing an education and outreach strategy related to wetlands and DEM's regulatory mission.
WW-2	DEM should develop guidelines, BMPs and/or performance standards for major projects outside of wetland jurisdictional resource areas that have the potential for significant wetland impacts (pursuant to Rule 7.01 B). In addition, more specific examples of qualifying projects should be developed (e.g. moderate to high yield wells, landfill caps/liners, golf courses, creation of large impermeable surfaces).
WW-6b	Best management practices (& performance standards) should be articulated for different types of projects and project features as they relate to wetland protection. (Consider matrix approach: project type/feature by wetland type/function).
Administrative Recommendations	
S-O1	Copies of deficiency notices should be directed to the applicant and the consultant and/or attorney
S-O2	DEM should reach out to the Board of Professional Engineers and the Association of Wetlands Scientists to discuss educational programs and other methods of improving the completeness and accuracy of information provided.
A-1e	Accelerate the review of Applications for Renewal where it has been established that work has not yet commenced.
A-1f	Accelerate the review of applications for projects that have been previously approved and need to be minimally modified, but for whatever reason do not qualify for review under an Application for Permit Modification (e.g. involve additional alteration or impacts to freshwater wetlands).
CRMC-1a	DEM and CRMC staff should continue to evaluate the fact sheet on program differences to minimize the program differences / overlaps.
CRMC-1c	CRMC and RIDEM should evaluate performing concurrent reviews and the utilization of a combined public notice period in projects that are located in CRMC Special Area Management Plans.
C-2	Change the ISDS process to allow wetlands biologists or designers to certify that construction activities depicted on the ISDS plan will take place outside the area of jurisdiction for wetlands. The applicant would have to assume all risks for work not properly done. This may reduce pressure to have a joint application process for all ISDS/wetlands applications. An ISDS rule change may be necessary to implement this recommendation.
C-4	Encourage joint training for private and public wetlands biologists. Training should include both field training on technical issues such as delineation, and classroom training regarding rule interpretation and procedures.
O&E-1&5-f	Possibly fast-track small projects.
O&E-1&5-g	Provide realistic examples of good and bad permit applications, perhaps as an attachment to the application form. Include wetland information resources and locations on the application packet.
O&E-2b	Partner with existing efforts by other organizations (URI. Cooperative Extension Service, RI Resource Conservation & Development Council, RI Chapter of American Planning Association, RI Association of Wetland Scientists, RI Conservation Districts, Society of Environmental Professionals, Grow Smart, and science fairs, etc.) to implement the strategic wetlands outreach plan developed by the Education Advisory Committee.
O&E-2d	Provide adequate resources in DEM budget for education and outreach plan development and implementation.

Appendix R – Wetlands Task Force Draft Recommendations

A. TASK FORCE DRAFT STREAMLINING RECOMMENDATIONS

Regulatory

The Wetlands Task Force investigated ways to streamline the Wetlands Program application process. The jurisdictional area was discussed at length. It was suggested that DEM should adopt CRMC's method of defining jurisdictional areas. The group discussed this CRMC concept and some thought DEM should consider changing the terminology to regulate wetlands using the buffer zone and setback concepts within the 50 foot perimeter wetland, and the 100 foot and 200 foot riverbank wetland. The wetland definition should be simplified and DEM should use a more scientific definition of wetlands; the 50', 100' and 200' area should not be called wetlands, but be treated as uplands.

In practice, DEM does consider the value of a wetland in the regulatory process and the 50', 100' and 200' areas are regulated as buffer zones now. This policy is not clearly noted and should be formalized. Performance standards and guidance should be developed to clarify the regulations (S-4).

In the above scenario, the level of wetland protection would relate to the type, functions, and values of a wetland and its sensitivity to certain land uses / site development activities. Table 1 (See Appendix L, page 45) provides an example approach where buffer zone width is tiered by type of wetland. Such a table helps to articulate the rationale for wetland permit decisions. It also can provide communities guidance regarding its own resource protection initiatives. (WW-1b)

The following streamlining recommendations were made:

1. An accelerated review process should be developed for the following general situations: (A-1a)
 - Requests for projects listed in Rule 6.0 as exempt, but the applicant wants official confirmation from DEM of its exempt status. (A-1b)
 - Projects which are not currently specifically exempted, but which the applicant feels should be exempt since it so closely relates to a listed exempt activity. (A-1c)
 - Confirmation for a project that does not appear to alter or affect wetland areas. (A-1d)
2. DEM should consider the creation of a new category or type of permit (FONSI for now) that would have the following attributes: low or no fee, simple application submittal requirements, and expeditious or priority processing for low impact projects (BPE-1).
3. Development of a new regulatory review process for large-scale wetland restoration projects that may involve multiple phases. Once the plan is approved, subsequent phases conforming to the plan may be approved through a more streamlined process (BPE-5).
4. Expand listing of exempt activities where appropriate (BPE-7).
5. Develop a simplified application process for single family homes (C-5).
6. DEM should fast-track small projects (O&E-1&5f).
7. DEM and CRMC program staff should continue to evaluate the fact sheet on program differences and will discuss ways to minimize these differences thereby reducing program overlaps (CRMC-1a).

Appendix R – Wetlands Task Force Draft Recommendations (Continued)

- 8 Best management practices (performance standards) should be articulated for different types of projects and project features as they relate to wetland protection. BMP's and standards could make the application process more predicible. (Consider matrix approach (Table 1): project type/feature by wetland type/function) (WW-6b)
- 9 Modify regulation 9.09 to allow for increases in the limits of disturbance for either areas outside of wetlands or, if within wetland, only into existing paved or developed areas (A-2).

Policy

Program streamlining efforts suggested DEM should develop additional tools for the wetlands program and include technical, operational and outreach activities. These suggestions include the following:

1. DEM should develop guidelines, BMPs and/or performance standards for major projects outside of wetland jurisdictional resource areas that have the potential for significant wetland impacts (pursuant to Rule 7.01 B). In addition, more specific examples of qualifying projects should be developed (e.g. moderate to high yield wells, landfill caps/liners, golf courses, creation of large impermeable surfaces). (WW-2)
2. Best management practices and performance standards should be articulated for different types of projects and project features as they relate to wetland protection. (Consider matrix approach: project type/feature by wetland type/function). (WW-6b)
3. DEM policy should encourage employees to meet with applicant's biologist in the field to verify edges that are difficult to delineate. (C-3)
4. DEM should develop a policy for pre-application meetings. The Department should coordinate these meetings for large projects that may involve more than one permit, for applicants that are not familiar with the Department's permitting process, or for any applicant who may have questions about permitting. (IM-1)
5. DEM should create an Education Advisory Committee that should be composed of public and private sector partners as well as education professionals. This committee can assist DEM in developing an education and outreach strategy related to the Wetlands Program and DEM's regulatory mission. (O&E-2a)
6. The Memorandum of Agreement between RIDEM and CRMC that explains the permitting procedures in areas where each agency may share jurisdiction should be finalized. The statute may need to be amended to clarify some of the enforcement responsibilities for freshwater wetlands. (CRMC-1b)

Administrative

Permit streamlining opportunities came in two forms on the administrative level, i.e., application processing modifications and program consistency with other agency's programs, especially CRMC.

1. One major issue that was raised during the process was the impact of the submission of poor quality wetlands application by the private sector. Processing delays were experienced because these applications often go through an iterative process of DEM finding deficiencies and then being sent back for modifications. The process could be improved by:
 - DEM meeting with the Board of Professional Engineer and the RI Association of Wetland Scientist to discuss educational programs and other methods of improving the completeness and accuracy of information provided. (S-O2)

Appendix R– Wetlands Task Force Draft Recommendations (Continued)

- DEM providing realistic examples of good and bad permit applications, perhaps as an attachment to the application form. This should also include other wetland information resources in the application packet. (O&E-1&5-g)
 - DEM should encourage joint training for private and public wetlands biologists. Training should include both field training on technical issues such as delineation, and classroom training regarding rule interpretation and procedures. (C-4)
 - Copies of any deficiency notices should be directed to the applicant and the applicant's consultant/attorney. (S-O1)
2. Other suggestions for application processing streamlining include:
- Change the ISDS process to allow wetlands biologists or designers to certify that construction activities depicted on the ISDS plan will take place outside the area of jurisdiction for wetlands. This may reduce pressure to have a joint application process for all ISDS/Wetlands applications. An ISDS rule change may be necessary to implement this recommendation. (C-2)
 - DEM should fast-track small projects. (O&E-1&5-f)
 - Application quality could be improved if DEM would develop best management practices (& performance standards) that could be articulated for different types of projects and project features as they relate to wetland protection. (WW-6b)
 - An accelerated review process was suggested for the following:
 - i. Applications for Renewal where it has been established that work has not yet commenced. (A-1e)
 - ii. Applications for projects that have been previously approved and need to be minimally modified, but do not qualify for review under an Application for Permit Modification (e.g. involve additional alteration or impacts to freshwater wetlands). (A-1f)

B. TASK FORCE DRAFT STATUTORY RECOMMENDATIONS

The Statutory Working Group was tasked with reviewing six issues concerning possible changes to the Wetlands Act. Appendix M is a listing of the statutory recommendations. The working group reviewed the six issues and recommended three issues for further legislative action:

1. The existing Statement of Legislative Intent should be clarified to include a statement of the policy of the state to be no net loss of wetlands and it was recommended that the language in the 1996 Governor's Advisory Commission be used. (S-2)
2. Elimination of all time limits in the Wetlands Act and delegate the Director the authority to prescribe time limits for permits or renewals or alternatively give the Director authority in accordance with regulations to authorize additional time for DOT projects or projects of the Economic Development Corporation. (S-1)
3. It was also suggested that posting of a bond for completion of mitigation work be considered. (S-04)

Two other statutory issues were raised by other working groups that should be investigated and include:

1. The statute may need to be amended to clarify some of the enforcement responsibilities for freshwater wetlands in the DEM and CRMC programs. (CRMC-1b)

Appendix R – Wetlands Task Force Draft Recommendations (Continued)

2. DEM should have a wetland mitigation policy and guidelines which follow the “sequencing” articulated in the federal Memorandum of Agreement on mitigation, i.e. avoidance, minimization, and compensation, in that order. (WW-6a)

C. TASK FORCE DRAFT REGULATORY RECOMMENDATIONS

Regulatory changes were discussed at the working group level and at numerous task force meetings and could be characterized as program streamlining, regulation reorganization and specific changes to the regulations. The program streamlining activities were discussed in Section A.

Regulation Reorganization

One concept that was discussed throughout the process was the need to make the regulatory process transparent to the public and the regulated community. It was thought that the existing regulations were lengthy and in some respects confusing. There were many discussions where staff indicated information was in the regulations, but other task force members were unable to locate this material. It was recommended that, at a minimum, the regulations should be revised for clarity purposes. Two specific recommendations were made concerning this issue:

1. Improve the Table of Contents of the regulations, and create an index. (O&E-6b)
2. Revise the rules and separate the internal administrative operating procedures from the document. The regulations should address the wetlands application requirements, technical review criteria, but not the internal operating procedures. (O&E-6a)

Specific Regulatory Changes

1. Environmentally beneficial projects which involve a high degree of impact would benefit by the facilitation of pre-application meetings, a significantly reduced fee and the development by DEM of fact sheets targeted for commonly proposed projects, providing a suggested best design approach, BMPs, etc. (BPE-4)
2. Consider allowing other groups beside DEM and Fish and Wildlife to undertake conservation projects similar to those allowed under Rule 6.13, as an exempt activity or under another a FONSI type process (BPE-9).
3. Clarify the exemption on replacement of shoreline structures as to limitations related to “in-kind” materials (BPE-8).
4. DEM should develop guidelines, BMPs and/or performance standards for major projects outside of wetland jurisdictional resource areas that have the potential for significant wetland impacts (pursuant to Rule 7.01 B). In addition, more specific examples of qualifying projects should be developed (e.g. moderate to high yield wells, landfill caps/liners, golf courses, creation of large impermeable surfaces). (WW-2).
5. Revise the regulations to allow the use of local conservation commissions personnel to conduct wetland compliance inspections (follow-up on permits and restorations). Training would be required. (WVO-2aiv)
6. If the Wetlands Task Force considers adopting specific minimum standards (e.g. prohibitions, buffers, and setback minimums), then the addition of a variance process may necessary. (S-3).

Appendix R – Wetlands Task Force Draft Recommendations (Continued)

Appendix R-1 is the compilation of the non-program streamlining regulatory recommendations. These recommendations need to be prioritized and ultimately scheduled for possible implementation.

Appendix R-1 – Combined Working Group Regulatory Recommendations

Regulatory Recommendations Prioritization / Status							
Issue #	Issue Description	Group Consensus		Priority			Ongoing DEM Project/ Completion Date
		Yes	No	H	M	L	
S-3	A variance procedure is not required if the program continues with its current approach to evaluating the impact on wetlands on essentially an ad hoc basis. If the Wetlands Task Force considers adopting specific minimum standards (e.g. prohibitions, buffers setback minimums) then the addition of a variance process may be necessary, but it could be created by regulation.						
BPE-4	Environmentally beneficial projects which involve a high degree of impact would benefit by the encouragement of pre-application meetings, a significantly reduced fee and the development by DEM of fact sheets targeted for commonly proposed projects, providing a suggested best design approach, BMPs, etc.						
BPE-8	Clarify the exemption on replacement of shoreline structures as to limitations related to "in-kind" materials.						
BPE-9	Consider allowing other groups beside DEM and Fish and Wildlife to undertake conservation projects similar to those allowed under Rule 6.13, as an exempt activity or under another a FONSI type process.						
O&E-6a	Remove those rules that address internal administrative operating procedures and create a new management procedures document. The Rules and Regulations should address the wetlands application requirements, technical review criteria, etc. but not the internal operating procedures.						
O&E-6b	<ul style="list-style-type: none"> ◆ Improve the Table of Contents, and create an index. ◆ Improve the application requirements and process descriptions within the Rules. 						
WW-3b	DEM wetland policies, review criteria, and/or guidelines should address cumulative impacts of alterations to small wetlands and the significance of individual wetland alterations in light of a watershed's specific wetland functions and values.						
WW-3c	Existing and potential future Exempt Activities (Rule 6.00) should be evaluated with respect to their cumulative effect on wetlands.						
WW-5f	Include consideration of wetlands in water quality standards (& decisions) per EPA "Draft Core Essential Elements of Comprehensive State & Tribal Wetlands Program" Specifically, DEM should assign designated uses to wetlands, improve water quality standards, establish biological assessment methods and biological standards, and incorporate wetlands into anti-degradation policy.						
WWO-2aiv	Possible use of local conservation commissions / agents for DEM wetland compliance inspections (follow-up on permits and restorations) – training would be required.						

D. TASK FORCE DRAFT POLICY RECOMMENDATIONS

Policy recommendations were grouped in the following categories: general program policies, customer service, and outreach.

General Wetlands Program Policy

The majority of the policy recommendations were from the Watersheds Working group and include the following:

- 1 The level of wetland protection afforded by DEM should consider the wetland's importance in the context of its watershed (with regard to water-related functions). The context for evaluating certain wetland functions such as wildlife habitat may include other types of evaluation areas (e.g. contiguous tracts of forest that might span watershed divides). (WW-1a)

Appendix R – Wetlands Task Force Draft Recommendations (Continued)

- 2 The level of wetland protection should relate to the type, functions, and values of a wetland and its sensitivity to certain land uses / site development activities. Table 1 in Appendix L, provides an example approach where buffer zone width is tiered by type of wetland (tiered buffer zone approach). Such a table helps to articulate the rationale for wetlands permit decisions. It also can provide communities guidance regarding its own resource protection initiatives. (WW-1b)
- 3 DEM wetland policies, review criteria, and/or guidelines should address cumulative impacts of alterations to small wetlands and the significance of individual wetland alterations in light of a watershed’s specific wetland functions and values. (WW-3b)
- 4 DEM should develop guidelines for use by staff and consultants on the application of the watershed approach to the assessment of wetland functions, project impacts, and mitigation. For example, DEM should provide guidelines regarding watershed scales to be used for project evaluations. (WW-5c)
- 5 The wetland component to the watershed approach should be integrated into land acquisition planning by DEM itself and through DEM technical assistance and grants to others. (WW-5e)
- 6 DEM should promote/support improved wetland protection through local initiatives tailored to the needs and capabilities of individual communities and watersheds (WWO-2a) e. g.:
 - DEM outreach to communities should incorporate information/guidance on watershed approach (education, funding, model ordinances, etc.). (WWO-2ai)
 - Work with RIDOA Statewide Planning regarding State Guide Plans and local Comprehensive Plans, e.g. through development of issue oriented Guide Plans such as the RI Nonpoint Source Pollution Management Plan, and watershed oriented Guide Plans such as the Scituate Reservoir Watershed Management Plan. (WWO-2aiii)
 - Provide guidance on development of watershed protection regulations, more stringent ISDS regulations, e.g. wastewater management districts, and extended buffer zones and setbacks. (WWO-2avii)

Customer Service

- 1 DEM should publicize its wetlands application review process and the general time frames for each step. (O&E-1&5-b)
- 2 Improve communication and coordination between DEM and local community officials in the application process. This may include holding a joint pre-application meeting. (O&E-1&5-d)
- 3 Determine with other agencies and entities, the wetland mapping needs for the state and if the present photographic and mapping databases are adequate for meeting those needs. Assess the alternatives and develop and implement a plan to provide mapping which meets proscribed standards for end-users and customers. (O&E-3b)

Outreach

DEM should provide guidance and incentives for individual watershed groups to focus on wetlands and develop an action agenda and management plan to address needs/problems. Specifically, DEM outreach to communities should incorporate information/guidance on watershed approach (education, funding, model ordinances, etc.), and provide guidance on development of special area management plans. (WW-5d)

Appendix R-2 is the compilation of the policy recommendations. These recommendations need to be prioritized and ultimately scheduled for possible implementation.

Appendix R-2 – Combined Working Group Policy Recommendations

Policy Recommendations Prioritization / Status							
Issue #	Issue Description	Group Consensus		Priority			Ongoing DEM Project/ Completion Date
		Yes	No	H	M	L	
O&E-1&5-b	DEM should publicize its wetlands review process and the general time frames for each step.						
O&E-1&5-d	Improve communication and coordination between DEM and local community officials in the application process. This may include holding a joint pre-application meeting.						
O&E-3b	Determine with other agencies and entities, what the wetland mapping needs are for the state and if the present photographic and mapping databases are adequate for meeting those needs. Assess the alternatives and develop and implement a plan to provide mapping which meets proscribed standards for end-users and customers.						
WW-1a	The level of wetland protection afforded by DEM should consider the wetland's importance in the context of its watershed (with regard to water - related functions). The context for evaluating certain wetland functions such as wildlife habitat may include other types of evaluation areas (e.g. contiguous tracts of forest that might span watershed divides).						
WW-1b	The level of wetland protection should relate to the type, functions, and values of a wetland and its sensitivity to certain land uses / site development activities. Table 1 (Appendix L) provides an example approach where buffer zone width is tiered by type of wetland (tiered buffer zone approach). Such a table helps to articulate the rationale for wetland permit decisions. It also can provide communities guidance regarding its own resource protection initiatives.						
WW-3b	DEM wetland policies, review criteria, and/or guidelines should address cumulative impacts of alterations to small wetlands and the significance of individual wetland alterations in light of a watershed's specific wetland functions and values.						
WW-5c	DEM should develop guidelines for use by staff and consultants on the application of the watershed approach to the assessment of wetland functions, project impacts, and mitigation. For example, DEM should provide guidelines regarding watershed scales to be used for project evaluations.						
WW-5d	DEM should provide guidance & incentives for individual watershed groups to focus on wetlands and develop an action agenda and management plan to address needs/problems. Specifically, DEM outreach to communities should incorporate information/guidance on watershed approach (education, funding, model ordinances, etc.), and provide guidance on development of special area management plans.						
WW-5e	The wetland component to the watershed approach should be integrated into land acquisition planning by DEM itself and through DEM technical assistance and grants to others.						
WWO-2a	DEM should promote/support improved wetland protection through local initiatives tailored to the needs and capabilities of individual communities and watersheds.						
WWO-2ai	DEM outreach to communities should incorporate information/guidance on watershed approach (education, funding, model ordinances, etc.).						
WWO-2aiii	Work with RIDOA Statewide Planning regarding State Guide Plans and local Comprehensive Plans. (e.g. through development of issue oriented Guide Plans such as the RI Nonpoint Source Pollution Management Plan, and watershed oriented Guide Plans such as the Scituate Reservoir Watershed Management Plan).						
WWO-2avii	Provide guidance on development of watershed protection regulations, more stringent ISDS regulations (e.g. wastewater management districts), and extended buffer zones and setbacks.						

Appendix R – Wetlands Task Force Draft Recommendations (Continued)

E. TASK FORCE DRAFT ADMINISTRATIVE RECOMMENDATIONS

The Wetlands Task Force Working Groups administrative recommendations were grouped into three categories, i.e., Outreach and Internet Use, Permit Streamlining Opportunities and Wetlands Program Consistency. (The permit streamlining issues have been discussed in Section IV.) Although the charters of each working group were different, the solutions to many of the problems had similar elements. The common thread of these recommendations was that program efficiencies could be achieved if the process could be understood by the public, the application process was improved, simplified and consistent with CRMC's. A coordinated approach was needed to conduct public outreach activities and DEM should make better use of the Internet to get its message out.

Outreach and Internet Use

The majority of the recommendations focused on outreach activities. Use of the Internet is a subset of the outreach issue. One of the major recommendations was the establishment of an Education Advisory Committee. This committee would be composed of public and private members and would be charged with assisting DEM in developing an education and outreach strategy relating to the Wetlands Program and DEM's regulatory mission. DEM could develop partnerships with other organizations to implement the strategic wetlands outreach plan developed by the Education Advisory Committee (O&E-2b).

Some organizations suggested were: URI Cooperative Extension Service, RI Resource Conservation & Development Council, RI Chapter of American Planning Association, RI Association of Wetlands Scientists, RI Conservation Districts, Society of Environmental Professionals and Grow Smart.

The outreach strategies of the Educational Advisory Committee could include the following:

- 1 Creation of short education spots on TV that has a strong visual content. (O&C-2c).
- 2 Working with DEM to provide guidance and incentives for individual watershed groups to focus on wetlands and the development of an action agenda and management plan to address needs/problems. DEM's outreach to communities should incorporate information/guidance on watershed approach (education, funding, model ordinances, etc.), and provide guidance on development of special area management plans (WW-5d).
- 3 Working with DEM to promote/support improved wetland protection through local initiatives tailored to the needs and capabilities of individual communities and watersheds e.g. (WWO-2a):
 - DEM outreach to communities should incorporate information/guidance on watershed approach (education, funding, model ordinances, etc). (WWO-2ai)
 - Provide guidance on development of special area management plans. (WWO-2aai)
 - Provide means for local conservation commissions to have more impact on RIDEM wetland decisions. (WWO-2aiii)
 - Assist local commissions or groups in the identification and protection of vernal pools by providing guidance and training. (WWO-2aiv)

Appendix R – Wetlands Task Force Draft Recommendations (Continued)

- Provide guidance on development of watershed protection regulation, more stringent ISDS regulations (e.g. wastewater management districts), and extended buffer zones and setbacks. (WVO-2av)

Other outreach strategies could include the following:

- 1 DEM should notify the public, if requested, regarding the findings of wetland complaints upon completion of the complaint investigation. (FE-3)
- 2 Expand education and outreach for exempt activities and other activities that involve no review or limited review by the department. (BPE-6)
- 3 DEM should budget adequate resources for education and outreach plan development and implementation (O&E-2d) and should support staff who provide training to the public on weekends and in evenings by compensation them for such work. (O&E-2f)
- 4 DEM should provide information and allow input from citizens, watershed stakeholders, and local government in DEM's determinations of project significance, i.e., preliminary determinations. Input could be active where DEM notifies groups of preliminary meetings or can be passive by posting information on the DEM homepage. (WW-4)
- 5 Provide the public with fact sheets on appropriate BMPs, and proposed FONSI application decisions. (BPE-3)

A number of the groups suggested that DEM should expand its use of the Internet and use this tool as a means of providing the public with environmental information (O&E-1&5a). It was suggested that DEM should inventory available wetland mapping resources, determine which ones most effectively meet customer needs and make them available on our website for informational purposes and as a general planning tool. DEM should also provide the public with the appropriate disclaimers concerning the limitations of these tools (O&E-3a).

The kinds of information that should be made available on the DEM website include:

- Wetlands application review status, (O&E-1&5c)
- Both general and specific wetlands data, information including educational materials and guidance. (O&E-3c)
- Wetland alterations to include: formal actions of the department, wetland gains and losses, alterations outside of biological wetlands (especially alterations to Perimeter Wetland and Riverbank Wetland). (WW-5b)
- Project description of activities that were actually approved by DEM or that may be reviewed under a FONSI process. (BPE-2)

Wetland Program Consistency

Program consistencies were discussed in two different contexts, one internally and the other one relating to DEM relationships with external regulatory agencies. The internal concern raised was the perception that wetlands applications were processed differently by different employees. In order to minimize that occurrence, DEM should develop a training program for all employees who process wetlands application (O&E-1&5-e and O&E-1&5-h). More experienced personnel should train newer personnel, and this should help with reducing application processing inconsistencies.

Appendix R –Wetlands Task Force Draft Recommendations (Continued)

With respect to the external issue, there was significant discussion on the overlap of the CRMC and DEM freshwater wetlands regulatory program and the need to foster improved interagency coordination among federal, state and local authorities (WWO-1b). The group was informed that these two agencies were working hard to minimize these overlap issues, but these efforts needs to be finalized. There were two areas where efforts were being directed:

- a.) DEM and CRMC program staff should continue to evaluate the fact sheet on program differences and will discuss way to minimize these differences, (CRMC-1a) and
- b.) CRMC and DEM will perform concurrent reviews and utilize a combined public notice period for projects that require dual review and are located in CRMC’s Special Area Management Plans. (CRMC-1c)

Appendix R-3 is the compilation for the non-permit streamlining administrative recommendations. These recommendations need to be prioritized an ultimately scheduled for possible implementation.

Appendix R-3 – Combined Working Group Administrative Recommendations

Administrative Recommendations Prioritization / Status							
Issue #	Issue Description	Group Consensus		Priority			Ongoing DEM Project/ Completion Date
		Yes	No	H	M	L	
S-01	Copies of any deficiency notices directed to the applicant and the applicant’s attorney.						
FE-2	Inspect construction activities concerning permit applications in sensitive environmental areas that have the potential for significant harm.						
FE-3	DEM should notify the public, if requested, regarding the findings of a wetland complaint upon completion of the complaint investigation.						
BPE-2	Publicize on the DEM website, project descriptions of activities that were approved by DEM or may be reviewed under a Tier 1 process.						
BPE-3	Provide the public with fact sheets on BMP’s, and proposed FONSI’ application decisions						
BPE-4	Environmentally beneficial projects which involve a high degree of impact would benefit by the encouragement of pre-application meetings, a significantly reduced fee and the development by DEM of fact sheets targeted for commonly proposed projects, providing a suggested best design approach, BMPs, etc						
BPE-6	Expand education and outreach for exempt activities that involve little or no review by DEM.						
CRMC -1a	CRMC developed a fact sheet that details the major differences between the DEM and CRMC programs. Program staff will evaluate this fact sheet and will discuss ways to minimize the differences in the two agency rules.						
CRMC -1c	CRMC and DEM will perform concurrent reviews and use a combined public notice period for projects that require dual reviews and are located in CRMC’s SAM Plans.						
CRMC -3	The State of Rhode Island Stormwater Design and Installation Standards Manual was developed jointly by RIDEM and CRMC. CRMC currently utilizes the design criteria in this manual as "standards" whereas RIDEM utilizes the manual as guidance.						
O&E- 1&5-a	Use the best available technology to provide mapping resources with the appropriate warning and disclaimer to the public using the Internet.						
BPE-2	DEM should post information concerning the description of activities that were actually approved under the FONSI process.						
O&E- 1&5-c	Post a daily listing of project review status on the web. Allow public access to this information with the appropriate level of security and confidentiality.						
O&E- 1&5-e	Provide consistent internal guidance to all personnel on screening criteria and how to assess if the proposed project is one, which may present significant alterations or impacts. Essentially, that more experienced personnel be involved in training newer personnel, and that there be internal agreement and consistency with this training which is science-based.						
O&E- 1&5-h	The DEM should make a major commitment to staff training and education and provide the resources to support the goal of excellence by all employees in technical and customer service subjects.						

Appendix R-3 – Combined Working Group Administrative Recommendations (Continued)

Administrative Recommendations Prioritization / Status						
O&E-2c	Create short education spots on TV with strong visual content.					
O&E-2d	DEM should budget adequate resources for education and outreach plan development and implementation.					
O&E-2e	DEM should expand the definition of “public,” to include municipalities, other government entities, developers, and private sector end-users and customers.					
O&E-2f	Support staff providing training to the public on weekends and in evenings and ensure they are compensated for such work.					
O&E-3a	Determine the available wetland mapping resources, and which ones most effectively meet customer needs and make available on the internet for informational purposes and a general planning tool with the appropriate disclaimers re: sight specific determinations. Widely publicize the availability of this current information and make it user friendly.					
O&E-3c	Provide an interface on the Internet which municipalities and the public can use to access general and specific wetlands data and information including permit application status and educational virtual tours and guidance.					
O&E-3d	Cross reference links and information on the Internet.					
O&E-6c	Have this same format with indices on the Internet.					
WW-3a	In absence of a protocol for cumulative impact assessment, DEM should deal with potential cumulative impacts by promoting avoidance and minimization of project impacts to wetlands as required by current regulation.					
WW-4	DEM should provide information and allow input from citizens, watershed stakeholders, and local government in DEM's determinations of project significance. Input could be active where DEM notifies groups of preliminary meetings or can be passive by posting information on the DEM homepage.					
WW-5a	The DEM wetland application form (and all applications) should be amended to add a space to enter the watershed within which the proposed project occurs.					
WW-5b	Wetland alteration data should be maintained by watershed and made available on the Internet. Information should include: formal actions of the department, wetland gains and losses, alterations outside of biological wetlands (especially alterations to Perimeter Wetland and Riverbank Wetland).					
WW-5d	DEM should provide guidance & incentives for individual watershed groups to focus on wetlands and develop an action agenda and management plan to address needs/problems. Specifically, DEM outreach to communities should incorporate information/guidance on watershed approach (education, funding, model ordinances, etc.), and provide guidance on development of special area management plans.					
WW-5e	The wetland component to the watershed approach should be integrated into land acquisition planning by DEM itself and through DEM technical assistance and grants to others.					
WW-6b	Best management practices (& performance standards) should be articulated for different types of projects and project features as they relate to wetland protection. (consider matrix approach: project type/feature by wetland type/function).					
Other WWO-1a	CRMC's regulation of freshwater wetlands in the vicinity of the coast should be consistent with any new policies, regulations and procedures implemented as a result of these recommendations.					
WWO-1b	DEM should continue to foster improved interagency coordination amongst federal, state, and local authorities.					
WWO-2a	DEM should promote/support improved wetland protection through local initiatives tailored to the needs and capabilities of individual communities and watersheds e. g.:					
WWO-2ai	• DEM outreach to communities should incorporate information/guidance on watershed approach (education, funding, model ordinances, etc.).					
WWO-2aii	• Provide guidance on development of special area management plans.					
WWO-2avi	• Assist local commissions or groups in the identification and protection of vernal pools by providing guidance and training.					
WWO-2avii	• Provide guidance on development of watershed protection regulations, more stringent ISDS regulations (e.g. wastewater management districts), and extended buffer zones and setbacks.					

Issue #	Appendix S Wetlands Program Permit Streamlining Prioritization	Group Priority	
		Yes	No
	Statutory Recommendation		
CRMC-1b	The statute we may need to be amended to clarify some of the DEM / CRMC enforcement responsibilities for freshwater wetlands.		
	Regulatory Recommendations		
S-4	<ul style="list-style-type: none"> It was generally recommended to return to the General Assembly with a proposed redefinition of the bordering lands. In the interim, DEM should segregate the “areas within” some distance from the wetlands proper and develop regulations and performance standards to assess work proposed within those areas. It was also suggested that the administrative finding section of the regulations be expanded to discuss the significance of the bordering areas in current scientific terms. That regulations should be developed to establish BMPs and standards for evaluating work which falls within the bordering areas adjacent to specific wetlands types. It was also suggested that protection of bordering lands might best be incorporated into an overall watershed planning approach. 	1	6
A-1a	Accelerate the application review process for project types listed in Rule 6.00 as exempt from requiring a permit, because the applicant wants official confirmation from the agency of its exempt status.	1	
A-1b	Accelerate the application review process for projects that are not currently specifically exempted, but which the applicant feels should be exempt since it closely relates to a listed exempt activity.	1	
A-1c	Accelerate the application review process for applicants who requests confirmation of projects that do not appear to alter or affect wetland areas.	1	
A-1d	Accelerate the application review process for applications whose primary purpose is to improve/restore wildlife habitat or improve/restore water quality.	3	
A-2	Modify regulation 9.09 to allow for increases in the limits of disturbance for either areas outside of wetlands or, if within wetland, only into existing paved or developed areas.		3
BPE-1	DEM should consider the creation of a new category or type of permit (FONSI)	2	
BPE-5	DEM should develop a new regulatory review process for large-scale, multi-phase wetland restoration projects.		
BPE-7	DEM should expand the listing of exempt activities, where appropriate.		2
C-2	Change the ISDS process to allow wetlands biologists or designers to certify that construction activities depicted on the ISDS plan will take place outside the area of jurisdiction for wetlands. The applicant would have to assume all risks for work not properly done. This may reduce pressure to have a joint application process for all ISDS/wetlands applications. An ISDS rule change may be necessary to implement this recommendation.	1	1
C-5	Develop a simplified application process for single family homes.		2
O&E-1&5-f	Possibly fast-track small projects.	1	
WW-1b	The level of wetland protection should relate to the type, functions, and values of a wetland and its sensitivity to certain land uses / site development activities. Table 1 provides an example approach where buffer zone width is tiered by type of wetland (tiered buffer zone approach). Such a table helps to articulate the rationale for wetland permit decisions. It also can provide communities guidance regarding its own resource protection initiatives.	2	2
WW-2	DEM should develop guidelines, BMPs and/or performance standards for major projects outside of wetland jurisdictional resource areas that have the potential for significant wetland impacts (pursuant to Rule 7.01 B). More specific examples of qualifying projects should be developed (e.g. moderate to high yield wells, landfill caps/liners, golf courses, creation of large impermeable surfaces).		1
WW-6b	Best management practices (& performance standards) should be articulated for different types of projects and project features as they relate to wetland protection.	4	

(Consider matrix approach: project type/feature by wetland type/function).		
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Issue #	Appendix S (Continued) Wetlands Program Permit Streamlining Prioritization	Group Priority	
		Yes	No
Policy Recommendations			
CRMC-1b	A memorandum of Agreement needs to be developed between RIDEM and CRMC that explains the permitting procedures in areas where there are dual agency jurisdiction.	2	
C-3	DEM policy should encourage employees to meet with applicant's biologist in the field to verify edges that are difficult to delineate.		
IM-1	The Department should develop a policy for pre-application meetings. DEM should coordinate these meetings for large projects that may involve more than one permit, for applicants that are not familiar with the Department's permitting process, or for any applicant that may have questions about permitting their project.	1	
O&E-2a	Assign the task of increasing public awareness and education to a Education Advisory Committee which should be composed of public and private sector partners as well as education professionals to assist the DEM in developing an education and outreach strategy related to wetlands and DEM's regulatory mission.	1	
WW-2	DEM should develop guidelines, BMPs and/or performance standards for major projects outside of wetland jurisdictional resource areas that have the potential for significant wetland impacts (pursuant to Rule 7.01 B). In addition, more specific examples of qualifying projects should be developed (e.g. moderate to high yield wells, landfill caps/liners, golf courses, creation of large impermeable surfaces).	1	
WW-6b	Best management practices (& performance standards) should be articulated for different types of projects and project features as they relate to wetland protection. (Consider matrix approach: project type/feature by wetland type/function).		
Administrative Recommendations			
S-O1	Copies of deficiency notices should be directed to the applicant and the consultant and/or attorney		
S-O2	DEM should reach out to the Board of Professional Engineers and the Association of Wetlands Scientists to discuss educational programs and other methods of improving the completeness and accuracy of information provided.	1	
A-1e	Accelerate the review of Applications for Renewal where it has been established that work has not yet commenced.		
A-1f	Accelerate the review of applications for projects that have been previously approved and need to be minimally modified, but for whatever reason do not qualify for review under an Application for Permit Modification (e.g. involve additional alteration or impacts to freshwater wetlands).		
CRMC-1a	DEM and CRMC staff should continue to evaluate the fact sheet on program differences to minimize the program differences / overlaps.	2	1
CRMC-1c	CRMC and RIDEM should evaluate performing concurrent reviews and the utilization of a combined public notice period in projects that are located in CRMC Special Area Management Plans.		
C-2	Change the ISDS process to allow wetlands biologists or designers to certify that construction activities depicted on the ISDS plan will take place outside the area of jurisdiction for wetlands. The applicant would have to assume all risks for work not properly done. This may reduce pressure to have a joint application process for all ISDS/wetlands applications. An ISDS rule change may be necessary to implement this recommendation.		
C-4	Encourage joint training for private and public wetlands biologists. Training should include both field training on technical issues such as delineation, and classroom training regarding rule interpretation and procedures.	1	
O&E-1& 5-f	Possibly fast-track small projects.		
O&E-1&5-g	Provide realistic examples of good and bad permit applications, perhaps as an attachment to the application form. Include wetland information resources and locations on the application packet.		
O&E-2b	Partner with existing efforts by other organizations (URI. Cooperative Extension Service, RI Resource Conservation & Development Council, RI Chapter of American Planning Association, RI Association of Wetland Scientists, RI Conservation Districts, Society of Environmental Professionals, Grow Smart, and science fairs, etc.) to implement the strategic wetlands outreach plan developed by the Education Advisory Committee.	2	
O&E-2d	Provide adequate resources in DEM budget for education and outreach plan development and implementation.	1	

Appendix T – Combined Working Group Regulatory Prioritization

Issue #	Issue Description	Group Priority	
		Yes	No
S-3	A variance procedure is not required if the program continues with its current approach to evaluating the impact on wetlands on essentially an ad hoc basis. If the Wetlands Task Force considers adopting specific minimum standards (e.g. prohibitions, buffers setback minimums) then the addition of a variance process may be necessary, but it could be created by regulation.		
BPE-4	Environmentally beneficial projects which involve a high degree of impact would benefit by the encouragement of pre-application meetings, a significantly reduced fee and the development by DEM of fact sheets targeted for commonly proposed projects, providing a suggested best design approach, BMPs, etc.	4	
BPE-8	Clarify the exemption on replacement of shoreline structures as to limitations related to “in-kind” materials.	1	
BPE-9	Consider allowing other groups beside DEM and Fish and Wildlife to undertake conservation projects similar to those allowed under Rule 6.13, as an exempt activity or under another a FONSI type process.		
O&E-6a	Remove those rules that address internal administrative operating procedures and create a new management procedures document. The Rules and Regulations should address the wetlands application requirements, technical review criteria, etc. but not the internal operating procedures.	2	
O&E-6b	<ul style="list-style-type: none"> ◆ Improve the Table of Contents, and create an index. ◆ Improve the application requirements and process descriptions within the Rules. 		
WW-3b	DEM wetland policies, review criteria, and/or guidelines should address cumulative impacts of alterations to small wetlands and the significance of individual wetland alterations in light of a watershed’s specific wetland functions and values.	1	1
WW-3c	Existing and potential future Exempt Activities (Rule 6.00) should be evaluated with respect to their cumulative effect on wetlands.		
WW-5f	Include consideration of wetlands in water quality standards (& decisions) per EPA “Draft Core Essential Elements of Comprehensive State & Tribal Wetlands Program” Specifically, DEM should assign designated uses to wetlands, improve water quality standards, establish biological assessment methods and biological standards, and incorporate wetlands into anti-degradation policy.		
WWO-2aiv	Possible use of local conservation commissions / agents for DEM wetland compliance inspections (follow-up on permits and restorations) – training would be required.	2	2

Appendix U – Combined Working Group Policy Prioritization

Issue #	Issue Description	Group Priority	
		Yes	No
O&E-1&5-b	DEM should publicize its wetlands review process and the general time frames for each step.		
O&E-1&5-d	Improve communication and coordination between DEM and local community officials in the application process. This may include holding a joint pre-application meeting.	3	
O&E-3b	Determine with other agencies and entities, what the wetland mapping needs are for the state and if the present photographic and mapping databases are adequate for meeting those needs. Assess the alternatives and develop and implement a plan to provide mapping which meets proscribed standards for end-users and customers.	1	1
WW-1a	The level of wetland protection afforded by DEM should consider the wetland's importance in the context of its watershed (with regard to water - related functions). The context for evaluating certain wetland functions such as wildlife habitat may include other types of evaluation areas (e.g. contiguous tracts of forest that might span watershed divides).	1	
WW-1b	The level of wetland protection should relate to the type, functions, and values of a wetland and its sensitivity to certain land uses / site development activities. Table 1(Appendix L) provides an example approach where buffer zone width is tiered by type of wetland (tiered buffer zone approach). Such a table helps to articulate the rationale for wetland permit decisions. It also can provide communities guidance regarding its own resource protection initiatives.	1	2
WW-3b	DEM wetland policies, review criteria, and/or guidelines should address cumulative impacts of alterations to small wetlands and the significance of individual wetland alterations in light of a watershed's specific wetland functions and values.	1	1
WW-5c	DEM should develop guidelines for use by staff and consultants on the application of the watershed approach to the assessment of wetland functions, project impacts, and mitigation. For example, DEM should provide guidelines regarding watershed scales to be used for project evaluations.	2	
WW-5d	DEM should provide guidance & incentives for individual watershed groups to focus on wetlands and develop an action agenda and management plan to address needs/problems. Specifically, DEM outreach to communities should incorporate information/guidance on watershed approach (education, funding, model ordinances, etc.), and provide guidance on development of special area management plans.	1	
WW-5e	The wetland component to the watershed approach should be integrated into land acquisition planning by DEM itself and through DEM technical assistance and grants to others.		
WWO-2a	DEM should promote/support improved wetland protection through local initiatives tailored to the needs and capabilities of individual communities and watersheds.		
WWO-2ai	DEM outreach to communities should incorporate information/guidance on watershed approach (education, funding, model ordinances, etc.).		
WWO-2aiii	Work with RIDOA Statewide Planning regarding State Guide Plans and local Comprehensive Plans. (E.g. through development of issue oriented Guide Plans such as the RI Nonpoint Source Pollution Management Plan, and watershed oriented Guide Plans such as the Scituate Reservoir Watershed Management Plan).		
WWO-2avii	Provide guidance on development of watershed protection regulations, more stringent ISDS regulations (e.g. wastewater management districts), and extended buffer zones and setbacks.		2

Appendix V – Combined Working Group Administrative Prioritization

Issue #	Issue Description	Group Priority	
		Yes	No
S-O1	Copies of any deficiency notices directed to the applicant and the applicant's attorney.	1	
FE-2	Inspect construction activities concerning permit applications in sensitive environmental areas that have the potential for significant harm.	1	
FE-3	DEM should notify the public, if requested, regarding the findings of a wetland complaint upon completion of the complaint investigation.		
BPE-2	Publicize on the DEM website, project descriptions of activities that were approved by DEM or may be reviewed under a Tier 1 process.		
BPE-3	Provide the public with fact sheets on BMP's, and proposed FONSI' application decisions		
BPE-4	Environmentally beneficial projects which involve a high degree of impact would benefit by the encouragement of pre-application meetings, a significantly reduced fee and the development by DEM of fact sheets targeted for commonly proposed projects, providing a suggested best design approach, BMPs, etc	2	
BPE-6	Expand education and outreach for exempt activities that involve little or no review by DEM.		
CRMC-1a	CRMC developed a fact sheet that details the major differences between the DEM and CRMC programs. Program staff will evaluate this fact sheet and will discuss ways to minimize the differences in the two agency rules.		
CRMC-1c	CRMC and DEM will perform concurrent reviews and use a combined public notice period for projects that require dual reviews and are located in CRMC's SAM Plans.		
CRMC-3	The State of Rhode Island Stormwater Design and Installation Standards Manual was developed jointly by RIDEM and CRMC. CRMC currently utilizes the design criteria in this manual as "standards" whereas RIDEM utilizes the manual as guidance.	3	
O&E-1&5-a	Use the best available technology to provide mapping resources with the appropriate warning and disclaimer to the public using the Internet.		
BPE-2	DEM should post information concerning the description of activities that were actually approved under the FONSI process.		
O&E-1&5-c	Post a daily listing of project review status on the web. Allow public access to this information with the appropriate level of security and confidentiality.	1	
O&E-1&5-e	Provide consistent internal guidance to all personnel on screening criteria and how to assess if the proposed project is one, which may present significant alterations or impacts. Essentially, that more experienced personnel be involved in training newer personnel, and that there be internal agreement and consistency with this training which is science-based.		
O&E-1&5-h	The DEM should make a major commitment to staff training and education and provide the resources to support the goal of excellence by all employees in technical and customer service subjects.	2	
O&E-2c	Create short education spots on TV with strong visual content.		
O&E-2d	DEM should budget adequate resources for education and outreach plan development and implementation.	2	
O&E-2e	DEM should expand the definition of "public," to include municipalities, other government entities, developers, and private sector end-users and customers.		
O&E-2f	Support staff providing training to the public on weekends and in evenings and ensure they are compensated for such work.		
O&E-3a	Determine the available wetland mapping resources, and which ones most effectively meet customer needs and make available on the internet for informational purposes and a general planning tool with the appropriate disclaimers re: sight specific determinations. Widely publicize the availability of this current information and make it user friendly.		
O&E-3c	Provide an interface on the Internet which municipalities and the public can use to access general and specific wetlands data and information including permit application status and educational virtual tours and guidance.		
O&E-3d	Cross reference links and information on the Internet.		
O&E-6c	Have this same format with indices on the Internet.		

Appendix V (Continued)
Combined Working Group Administrative Prioritization

Issue #	Issue Description	Group Priority	
		Yes	No
WW-3a	In absence of a protocol for cumulative impact assessment, DEM should deal with potential cumulative impacts by promoting avoidance and minimization of project impacts to wetlands as required by current regulation.		
WW-4	DEM should provide information and allow input from citizens, watershed stakeholders, and local government in DEM's determinations of project significance. Input could be active where DEM notifies groups of preliminary meetings or can be passive by posting information on the DEM homepage.		
WW-5a	The DEM wetland application form (and all applications) should be amended to add a space to enter the watershed within which the proposed project occurs.		
WW-5b	Wetland alteration data should be maintained by watershed and made available on the Internet. Information should include: formal actions of the department, wetland gains and losses, alterations outside of biological wetlands (especially alterations to Perimeter Wetland and Riverbank Wetland).		
WW-5d	DEM should provide guidance & incentives for individual watershed groups to focus on wetlands and develop an action agenda and management plan to address needs/problems. Specifically, DEM outreach to communities should incorporate information/guidance on watershed approach (education, funding, model ordinances, etc.), and provide guidance on development of special area management plans.	1	1
WW-5e	The wetland component to the watershed approach should be integrated into land acquisition planning by DEM itself and through DEM technical assistance and grants to others.		
WW-6b	Best management practices (& performance standards) should be articulated for different types of projects and project features as they relate to wetland protection. (Consider matrix approach: project type/feature by wetland type/function).		
Other WWO-1a	CRMC's regulation of freshwater wetlands in the vicinity of the coast should be consistent with any new policies, regulations and procedures implemented as a result of these recommendations.	1	
WWO-1b	DEM should continue to foster improved interagency coordination amongst federal, state, and local authorities.		
WWO-2a	DEM should promote/support improved wetland protection through local initiatives tailored to the needs and capabilities of individual communities and watersheds e. g.:		
WWO-2ai	<ul style="list-style-type: none"> DEM outreach to communities should incorporate information/guidance on watershed approach (education, funding, model ordinances, etc.). 		
WWO-2aai	<ul style="list-style-type: none"> Provide guidance on development of special area management plans. 		
WWO-2avi	<ul style="list-style-type: none"> Assist local commissions or groups in the identification and protection of vernal pools by providing guidance and training. 		
WWO-2avii	<ul style="list-style-type: none"> Provide guidance on development of watershed protection regulations, more stringent ISDS regulations (e.g. wastewater management districts), and extended buffer zones and setbacks. 	1	