



# The Obligate

Maine Association of  
Wetland Scientists

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Topsham, Maine 04086

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## President's Message

by Jim Boyle, President 2001-2003

Well, we didn't get *The Obligate* done in time to mail it before the Annual Meeting. As a long-time MAWS member, I know many people look forward to reading the newsletter. So, as a member and as President, I'm sorry for the delay this year. We're in a time of transition for *The Obligate*. I recommend we establish a newsletter committee, with the Chair of the committee serving on the Executive Committee. It's important to members, and it takes quite a bit of effort for one person. More than anything else, it takes a person or dedicated small group of people with assigned responsibility to make it happen. We have been very fortunate for many years to have Dave Cowan put in that effort. Last year I asked him to do it "one more time", and he did. Thanks again, Dave for many years of dedicated service! OK, any volunteers?

I believe the 2003 Annual Meeting agenda continues a fine MAWS tradition of bringing a variety of topics and speakers of interest to our members. We have tried to include some new items, such as damselfly and dragonfly information, and some continuing topics, such as wetland mitigation and delineation. Our hope is that we will offer something new to our long-standing members, while offering useful information on recurring topics for new and old members alike.

Our goals for the 2002 workshops were along those same lines. The workshop on identification of woody plants in winter condition was a new focus

on a specific topic, and was very well attended. Likewise, our summer workshop on identification of larval amphibians was new and well attended. The third workshop, co-sponsored by the Maine Association of Professional Soil Scientists and MAWS was more traditional, but with a special focus on delineation of more difficult sites. The workshop was intentionally geared toward more experienced wetland delineators, but I'm sure the newer members benefited as well. I'd like to thank Dave Rocque for his work in arranging the MAPSS/MAWS workshop, and special thanks to Jeff Simmons for his hard work arranging the excellent workshops and the Annual Meetings for the past two years.

Let me close by making two final "pitches". First, please volunteer your time to serve on a MAWS committee. Too often we fall into the habit of letting the Committee Chairs do all the work. We could be more effective if we had enough volunteers to actually staff a committee that would share the load. The newsletter is the latest example. Second, I encourage you to visit the MAWS web site ([www.mainewetlands.org](http://www.mainewetlands.org)) where you can read the latest edition of *The Obligate*, as well as past issues, find numerous links to wetlands-related information, and start or join a discussion group.

Finally, thank you to all the members of the Executive Committee for your time and efforts serving the members of MAWS these past two years.

## **Maine**

The following items either became effective in 2002, or are proposed for 2003. Not all of the items listed below are wetlands-related, but most are tied to wetlands or waterbodies in some way, and all are important to be aware of. One item, an Issue Profile regarding Shoreland Zoning Regulations, is not a rule change but contains information regarding setbacks from wetlands and waterbodies.

### 1. Proposed: General Permit for Finfish Aquaculture

The Maine Department of Environmental Protection (DEP) presently requires an individual permit for aquaculture facilities, pursuant to 38 M.R.S.A., Section 413(10) and DEP's rules, Chapter 521(7). The proposed rule would allow general permits to be issued authorizing the discharge of certain pollutants, pursuant to DEP's rules, Chapter 529. The general permit would apply to the area east of Naskeag Point in Brooklin, except those areas north of a line from Schoodic Point in Winter Harbor, to Baker Island in Cranberry Isles, to Naskeag Point in Brooklin. For additional information contact Dave Courtemanche, 287-7789

### 2. Proposed: An Act to Amend the Classification System for Maine's Waters

This act would incorporate into law the protocol that uses numeric biocriteria to refine and interpret the State's existing narrative descriptions. This would apply to rivers and streams, but not to wetlands, lakes, or estuaries. For additional information contact Susan Davies, 287-7778.

### 3. Effective September 1, 2002; Amend Chapter 305 Permit-by-Rule Standards and Chapter 310 Wetlands and Waterbodies Protection

These changes reflect new authority under the Natural Resources Protection Act (NRPA) to regulate essentially all activities, including vegetation removal, in and adjacent to protected

natural resources. For additional information, contact Mike Mullen, 287-4728.

### 4. Workgroup; Statewide Clearing Standards

A work group jointly staffed by DEP and the Land Use Regulation Commission (LURC) is exploring changes to a new point system relating to clearing of trees within 100 feet of the shoreline. The changes will be presented to the Legislature, and may result in NRPA, Shoreland Zoning (SLZ) and LURC rule changes. For additional information contact Mike Mullen, 287-4728 and Fred Todd, 287-4932.

### 5. Proposed; Scenic and Aesthetic impacts

DEP has drafted a rule on Assessing and Mitigating Impacts to Existing Scenic and Aesthetic Uses under the NRPA, which will be taken through rule-making this winter. For additional information, contact Judy Gates, 287-7691.

### 6. Proposed; Sand Dune Rule change

Reformatting of the DEP's Chapter 355 rules to increase comprehension, remove or clarify a number of exemptions, and amend definitions to improve clarity. The rule change would include provisions requiring new and reconstructed buildings to be elevated on posts or piles, and would allow for new construction with certain limitations. For additional information, contact Jeff Madore, 287-7191.

### 7. Proposed; Shoreland Zoning Trail Regulations

The rule change would create a regulatory system where trails to be used by motorized vehicles would be regulated like roads and driveways, and trails for non-motorized use (bike/pedestrian) would be subject to different standards and would require a permit from the municipality. A third section would describe standards for primitive trails, which would require a permit from the town Code Enforcement Officer. Snowmobile trails would not be regulated under this rule. For additional information, contact Rich Baker, 287-7730.

**8. Shoreland Zoning Wetland Setbacks Issue Profile**

This draft Issue Profile provides guidance on measuring setbacks from coastal waters, great ponds, rivers, and streams, and wetlands in respect to the Shoreland Zoning rules. Review comments are currently being incorporated into the final draft. For additional information, contact Rich Baker, 287- 7730.

**9. Stormwater Rules: (taken directly from DEP's website):**

“Maine DEP is currently developing general permits and materials to implement Phase I and II of the MEPDES program.

New federal requirements for regulating stormwater will go into effect on March 10, 2003. Known as Stormwater Phase II under the NPDES permit program, the requirements will affect new development that disturbs between 1 and 5 acres of land ("small construction activities"), and urban areas within 28 municipalities in Maine that are designated under federal regulations as having regulated small Municipal Separate Storm Sewer Systems (MS4s).

Phase I, which was previously implemented by the federal Environmental Protection Agency (EPA), regulated new development that disturbed 5 or more acres of land ("stormwater discharges associated with industrial activity"). Maine has been delegated by EPA to administer the NPDES program, and Maine DEP is developing general permits to apply to construction activities disturbing one or more acres of land (both large and small construction activities) and to the regulated small MS4s. In the future, Maine DEP will also develop a general permit to replace the federal Multisector General Permit.”

For additional information go to:

<http://www.state.me.us/dep/blwq/docstand/stormwater/index.htm>

or, contact David Ladd at 287-5404, Judy Gates at 287-7691, or Stacie Beyer at 941-4570.

**10. Several bills relating to the Department of Inland Fisheries and Wildlife (IFW) are before legislature this session, including:**

LD 106: IFW and the Department of Marine Resources to issue permits for alewives fisheries using pumps.

LD 109: Mandated fish passage facilities would be exempted from being taxed.

LD 4: The use of Personal Watercraft below Skelton Dam on the Saco River would be prohibited.

LD 25: Boats with motors greater than 10 horsepower would be prohibited on Pickerel Pond, T32 MD, Hancock County.

LD 98: Personal Watercraft would be prohibited on Rocky Pond in Orland.

LD 26: A Youth Conservation Wildlife Management area would be established in T32 MD.

LD 173: A fishway would be established on the Little River in Scarborough.

**11. LD 242, Act to Require the Consideration of the Cumulative Effect on Protected Natural Resources when Permitting Activities**

“This bill would add a cumulative impact standard to the Natural Resources Protection Act (NRPA).” If passed, an applicant would have to show that past and future activities would not unreasonably harm the protected annual resource. At present, NRPA finds “that the cumulative effect of frequent minor alterations and occasional major alterations of these resources poses a substantial threat to the environment and economy of the State and its quality of life.”

**Federal**

**1. SWANCC vs CWA**

The US Army Corps of Engineers and the US Environmental Protection Agency (EPA) have issued an Advanced Notice of Proposed Rule-Making (ANPRM) soliciting public comment on issues associated with the Clean Water Act's

(CWA) definition of “waters of the United States” resulting from the interpretation of the Solid Waste Agency of Northern Cook County (SWANCC) decision. The requested public comment is in preparation for rule-making that would clarify the scope of waters that are subject to the CWA. As a result of SWANCC, the use of the Migratory Bird Rule as the sole criteria for establishing jurisdiction over an isolated wetland would be eliminated. The change in the definition of “waters of the United States” would not only apply to Section 404, but also to Section 401 and several other sections of the CWA.

MAWS is preparing a statement in response to the ANPRM that will be discussed at the annual meeting representing its position on the information being solicited. More detail on this issue and a vote on the statement, as well as the opportunity to adjust wording, will be presented at the annual meeting. Additional information on the ANPRM can be found at:

[http://www.epa.gov/epahome/headline2\\_011003.htm](http://www.epa.gov/epahome/headline2_011003.htm)  
or <http://www.epa.gov/fedrgstr/>

The public docket is under Docket ID No. OW-2002-0050.

## 2. Mitigation

In December 2002 the U.S. Environmental Protection Agency (EPA) released a National Wetlands Mitigation Action Plan and the U.S. Corps of Engineers (Corps) issued a Regulatory Guidance letter (RGL 02-2) on wetland mitigation. The Corps’ first Regulatory Guidance Letter (RGL 01-1) on mitigation was introduced to MAWS at the 2002 annual meeting by EPA’s Ruth Ladd. The federal government had been criticized that it was not meeting its wetland conservation goals. In response, the Bush administration revised its guidelines to emphasize a watershed-based approach, replacing a development site-based approach. The change has been criticized, fearing that the change in approach would inadvertently result in overall losses. The Agriculture, Transportation, Interior, and Commerce

Departments also reworked their guidance. The new guidance did not include recommendations from the National Academy of Sciences the General Accounting Office.

The guidance letter and the EPA’s plan can be found at:

<http://www.usace.army.mil/inet/functions/cw/cecwo/reg/RGL2-02.pdf> -or-

<http://www.epa.gov/owow/wetlands>

Questions about the mitigation guidance letter should be directed to Ruth Ladd at [Ruth.M.Ladd@usace.army.mil](mailto:Ruth.M.Ladd@usace.army.mil). Her phone number is 978-318-8818.

## 3. Definition of Fill Material

The Corps has adopted a new definition of “fill material” that will make the Corps’ definition and the EPA definition the same, as follows: “material placed in waters of the U.S. where the material has the effect of either replacing any portion of a water of the United States with dry land or changing the bottom elevation of any portion of a water.” Additional information can be found in the Federal Register, vol. 67, no. 90, Thursday, May 9, 2002.



**ELECTIONS TO BE HELD FOR THE  
FOLLOWING EXECUTIVE COMMITTEE  
CHAIR SEATS AT THE 2003 ANNUAL  
MEETING:**

<u>Position</u>	<u>Current Nominees</u>
President-Elect	Kathleen Miller
Program Chair	Chris Dorion
Secretary	Stephenie Swiezynski
Legislative Chair	Jeff Simmons

**Nominations will also be accepted from the  
floor at the Annual Meeting.**

**Message From The Ethics Chair**

- Brett M. Battaglia

As most of you are probably aware, the Maine Association of Wetland Scientists (MAWS) typically offers a wetland research stipend to actively enrolled students for use on a research project(s) relating to Maine wetlands for up to \$1,000. An announcement describing the process was circulated to colleges and universities in Maine with departments known to be involved in wetland related studies. After completed application forms were received by MAWS from interested candidates, the MAWS Executive Committee reviews applicants' proposals/abstracts and awards the stipend(s) to the selected candidate(s). As part of receiving the stipend, the selected student(s) are required to give a presentation on the outcome or progress of their research at the MAWS annual membership meeting.

The winner of this year's stipend was Amanda P. Devine, a junior at Bates College. The title of her research project is: *Effect of Soil Anoxia and Nitrogen Deficiency on Community Structure of Forb Dominated Pans, Sprague River Marsh*. Amanda's research objectives are to examine the respective and combined effects of soil anoxia and nitrogen deficiency on species diversity and productivity of annual salt marsh forbs in the

(Message from the Ethics Chair cont.) Sprague River Marsh in Phippsburg, Maine.

To learn more about Amanda's research, methods of research, and results of her research up to this point, you can see her at the MAWS annual meeting.

**Treasurer's Report, 2002-2003**

<b>MAWS Financial Statements -- F.Y. 2002-2003</b>			
(Jan. 15, 2002 to Jan. 29, 2003)			
<b>Balance</b>	Balance 1/15/2002	<b>\$2,637.77</b>	
	Balance 1/29/2003		<b>\$2,341.69</b>
<b>Income</b>		<b>Projected</b>	<b>Actual</b>
	Membership Annual Meeting Attendance	\$1,295.00	\$1,115.00
	Workshop Fees	\$790.00	\$915.00
	Other Income	\$750.00	\$1,900.00
			43.72
	<b>Total Income</b>	<b>\$2,835.00</b>	<b>\$3,973.72</b>
<b>Expenditures</b>		<b>Projected</b>	<b>Actual</b>
	2002/03 Annual Meeting Expenses	-\$750.00	-\$250.00
	Postage and Copies	-\$375.00	
	P.O. Box Rental	-\$60.00	-\$60.00
	Workshops	-\$500.00	-\$2,536.43
	Non-Profit Registration, etc.	-\$35.00	-\$35.00
	Student Research Grant	-\$1,000.00	-\$820.00
	Web Hosting	-\$300.00	-\$95.70
	Bank Fees	-\$75.00	-\$5.53
	Other Expenses	\$0.00	-\$467.14
	<b>Total Expenditures</b>	<b>-\$3,095.00</b>	<b>-\$4,269.80</b>
<b>Total Income (2002-2003)</b>		<b>Projected</b>	<b>Actual</b>
		<b>-\$260.00</b>	
			<b>-\$296.08</b>
<b>Balance (as of 01/29/2003)</b>		<b>Projected</b>	<b>Actual</b>
		<b>\$2,377.77</b>	<b>\$2,341.69</b>
<b>Treasurer's Comments:</b>			
1. Some income and expenditure amounts are estimated, as some deposits were made in lump sums and bank balancing at the transition of Officers highlighted slight discrepancies.			
2. MAWS saved money on the website this year by switching to a host that gives a 50% discount to non-profits and by managing the website on a volunteer basis.			

## Treasurer's Report (Cont.)

Projected Budget for 2003-2004	
<b>Projected Income</b>	
Membership	\$1,115.00
Annual Meeting Attendance	\$1,900.00
Workshops	\$1,900.00
Other	\$40.00
<b>Projected Total Income</b>	<b>\$4,555.00</b>
<b>Projected Expenditures</b>	
2003 Annual Meeting	-\$1,600.00
Postage and Copying	-\$400.00
P.O. Box Rental	-\$60.00
2003 Workshops	-\$1,000.00
Non-Profit Registration	-\$35.00
Student Research Grant	-\$1,000.00
Web Hosting	-\$100.00
Bank Fees	-\$5.00
Other Expenses	-\$400.00
<b>Projected Total Expenditures</b>	<b>-\$4,300.00</b>
Projected Annual Income	+\$555.00
<b>Projected Balance, February 2004</b>	<b>\$ 2,896.69</b>
<b>(Projections estimates based on 2002-03 data - Annual Meeting income may be higher, but so may expenses to Workshop Costs, Stipend Award and Postage)</b>	
<b>Financial statements respectfully submitted to the membership, February 27th, 2003 - Richard E. Jordan, MAWS Treasurer 2002-2004</b>	

The following represents a **draft of MAWS' response to the EPA's ANPRM on redefining "Waters of the United States."** Comments from membership should be sent to MAWS President Gary Emond by March 14th:

"This letter represents the collective position of the Maine Association of Wetland Scientists (MAWS) in regard to the Environmental Protection Agency's (EPA) request for public comment on two (2) issues in its Advanced Notice of Proposed Rulemaking on the Clean Water Act Regulatory

Definition of "Waters of the United States", Federal Register/Vol. 68, No. 10/Wednesday, January 15, 2003.

1. Should "factors listed in 33 CFR 328.3(a)(3)(i)-(iii), or any other factors, provide a basis for determining CWA jurisdiction over isolated, intrastate, non-navigable waters?" (i.e. use of the water by interstate or foreign travelers for recreation or other purposes; the presence of fish or shellfish that could be taken and sold in interstate commerce; the use of the water for industrial purposes by industries in interstate commerce)

MAWS believes that these and other factors should continue to be used to establish jurisdiction over isolated waters. The three factors in 33 CFR 328.3 are limited to social values that would occur in systems with open water. Other factors used to assess the ecological functions and social values of wetlands should be taken into consideration when establishing jurisdiction. Such factors would include, but not be limited to, wildlife use, ground water recharge/discharge, or nutrient retention and transformation.

2. Should the EPA's regulations define "isolated waters"?

MAWS believes that all waters and wetlands should be protected, and that "isolation" should not be used to eliminate some waters and wetlands from CWA jurisdiction. Wetlands that are not hydrologically connected to, or adjacent to, navigable waters are no less valuable to the health and welfare of the country than waters that are navigable or wetlands adjacent to navigable waters. Furthermore, many so-called isolated wetlands have some degree of subsurface hydrologic connection with other waterbodies and wetlands, a factor that should not be discounted as unimportant. Finally, wetlands that are truly isolated from other wetlands, waterbodies and groundwater serve important ecological functions and have social values similar to those that are not isolated. Therefore, MAWS believes there is no legitimate reason to create a separate definition for "isolated waters".

**Maine Association of Wetland Scientists  
Business Meeting Agenda  
28 February 2003  
2:00-3:30**



Secretary's Report – Sandy Lare  
Reading and acceptance of the Minutes of the 2001 Annual Meeting

Treasurer's Report – Richard Jordan

Executive Committee Reports

- Ethics – Brett Battaglia
- Legislative – Marcia Spencer-Famous
- Membership – David Ladd
- Program – Jeff Simmons
  - MAP co-sponsored workshop on Municipal Wetland Ordinances, etc.
  - Volunteers for Program Committee

Floor Discussions

- 2003 Stipend
- Suggested topics for 2003 workshops
- “The Obligate”

Election of Officers

- President-Elect
- Secretary
- Legislative
- Program

**Preliminary Agenda for MAWS Workshop with the Maine Association of Planners (to be held in June, stay tuned to [www.mainewetlands.org](http://www.mainewetlands.org) for more information):**

8-9 am	Business Meeting (Jim Fisher)
9-9:15	Intro and Questions (Theresa Oleksiw)
9:15-10	Primer (Steve Pelletier) <ol style="list-style-type: none"> <li>1) what are wetlands</li> <li>2) functional value</li> <li>3) community types</li> </ol>
10-10:30	Break/posters/scavenger hunt
10:30-12:30	Landscape Planning <ol style="list-style-type: none"> <li>4) characterization (Elizabeth Hertz)</li> <li>5) vernal pools (Aram Calhoun)</li> <li>6) Beg. w/Habitat (Molly Docherty)</li> </ol>
12:30-1:30	Lunch and Awards
1:30-3:30	TOOLS <ol style="list-style-type: none"> <li>7) State Wetlands Model Ordinance (Jackie Sartoris)</li> <li>8) York Wetlands ordinance (Steve Burns)</li> <li>9) Non regulatory incentives (Sally Stockholm/Ron Deroucher)</li> <li>10)(NRPA, Army Corps, LIP, Farm Bill)</li> </ol>

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[WWW.MAINEWETLANDS.ORG](http://WWW.MAINEWETLANDS.ORG) AND SIGN  
UP FOR THE MAWS EMAIL LIST:**

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# Maine Association of Wetland Scientists Annual Meeting

Friday, February 28, 2003

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## **Agenda**

7:45 – 8:15 *Registration*

8:15 – 8:30 *Welcome and Introduction of Speakers*

8:30 – 9:15 *Scarborough Marsh Restoration* – Lois Winter, USFWS

9:15 – 10:00 *Keeping Track of Winged Jewels: The Maine Damselfly and Dragonfly Survey* – Phillip de Maynadier, MeDIFW

10:00 – 10:15 *Break*

10:15 – 11:00 *Success of Corps-Required Wetland Mitigation in New England* – Paul Minkin, USACE

11:00 – 12:00 *Panel Discussion – Wetland Delineation in Maine; Issues and Solutions*

*- Recent problems, potential solutions, and next steps?*

**Moderator** – Jim Boyle, MAWS President; **Panelists** – Mark West, NH Joint Board; Paul Minkin, US Army Corps of Engineers; Judy Gates, MeDEP; Marcia Spencer-Famous, MeLURC

12:00 – 1:00 *Lunch*

1:00 – 1:45 *Effects of inorganic nitrogen addition on species evenness and productivity of salt marsh forb pannes in waterlogged and dry soils*– Amanda Devine, Bates College, MAWS 2002 Stipend Winner

1:45 – 2:00 *Break*

2:00 – 3:30 *Business Meeting*