



NORTH CAROLINA
Environmental Quality

ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

MEMORANDUM

TO: Coastal Resources Commission
Environmental Management Commission
Marine Fisheries Commission
Coastal Habitat Protection Plan Steering Committee

FROM: Jimmy Johnson
Albemarle-Pamlico National Estuary Partnership
Anne Deaton
Division of Marine Fisheries

DATE: January 30, 2023

SUBJECT: Coastal Habitat Protection Plan Steering Committee Meeting

The Coastal Habitat Protection Plan (CHPP) Steering Committee met in person in New Bern and via webinar at 9:30 a.m. Tuesday, December 6, 2022. The following attended in person:

Commissioners: Bob Emory, Larry Baldwin, Kevin Tweedy, Yvonne Bailey, Donald Huggins, Doug Rader
DMF Staff: Anne Deaton, Jimmy Harrison, Charlie Deaton, Kim Harding, Chris Stewart, Casey Knight, Jacob Boyd, Jason Parker, Kelly Brannigan
APNEP Staff: Jimmy Johnson, Tim Ellis
DCM Staff: Braxton Davis, Daniel Govoni, Rebecca Ellin, Mackenzie Todd
DEMLR Staff: Samir Dumpor
DMS Staff: Anjie Ackerman
DWR Staff: David May, Holley Snider, Michelle Raquet, Karen Higgins, Sue Homewood, Elizabeth Liebig, Paul Wojoski, Michael Pjetraj, Tammy Hill, Forest Shepherd
DWI Staff: Victor Damato
DEQ Admin: Aaron Ramus
NC Sea Grant: Frank Lopez
USACE: Andy Williams; Tyler Crumbley
Public: Anne Coan (NC Farm Bureau), Julie Youngman (SELC), Hans Paerl (UNC IMS), Lisa Rider (Coastal Carolina Riverwatch), Riley Lewis (White Oak Waterkeeper), Lj Palmer-Moloney (VTT), Holly White (NCORR)



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Doug Rader called the meeting to order at 10:00 am. The agenda for the January 12, 2024 meeting and the minutes from the May 31, 2023 meeting were approved by consensus. It was noted that Donald Huggins name was recorded as Doug Huggins. That correction was made.

Implementation Progress

Anne Deaton, Charlie Deaton, Paul Wojoski, and Jimmy Johnson reviewed the progress made to date towards implementing the recommended actions found in the 2021 Amendment to the 2016 CHPP.

Anne reviewed progress on the Priority Issue - Protection and Restoration of SAV.

Recommended Action 4.1 calls for obtaining recurring funding to allow regular evaluation of SAV. Deaton said that DMF staff is looking into some funding options to hire temporary field staff for SAV and Strategic Habitat Area sampling. A recently completed CRFL grant by UNC-W (PI Dr. Jarvis) includes a draft monitoring plan for SAV sentinel sites. Staff will be collaborating on how to implement this additional sampling.

Chris Stewart gave a brief update on Recommended Action 4.2. On January 17th, DMF is going to present an SAV Issue Paper using updated imagery provided by APNEP with options to modify shrimp trawl boundaries to avoid areas with documented SAV (using the maximum extent layer). Based on this spatial analysis, DMF is proposing additional area closures to protect all the unprotected SAV throughout the coast from bottom trawling disturbance. This issue will go to the standing advisories committees and then to the MFC in February.

Regarding Recommended Action 4.5, Tim Ellis with APNEP reported that sampling was done in the spring and fall of 2023 from Ocracoke Inlet north to Avon, and APNEP collaborated with DMF and UNCW to get that field sampling done. APNEP also worked with NCDOT to do the aerial surveys during that time. The imagery was acquired in June and October of 2023. For 2024, the plan is to move to the last region, which is the area north of Avon up to the Highway 64 bridge in Manteo. There has been no change in receiving reoccurring funding for an SAV monitoring program, so it continues to be done by staff from multiple agencies adding this into their regular duties.

Paul Wojoski reviewed progress on Recommended Actions 4.7 – 4.9, which involve establishing water clarity and nutrient standards for SAV, and considering if changes are needed for the chlorophyll a standard. This work is being done with input from the Nutrient Criteria Development Plan (NCDP) Scientific Advisory Council (SAC). DWR staff serve as leads to the SAC. They have agreed on a draft water clarity standard necessary for the protection of SAV and produced a scientific support document to detail the scientific basis for the standard. The SAC has begun looking at the relationship between nutrients and harmful algal blooms and how to protect and recreational uses of our coastal waters. With the Chowan River and Albemarle Sound as the focus, they have been looking at different data and tools available, including remote sensing data and looking at chlorophyll *a* relationship to harmful algal blooms. The next SAC meeting is on January 26th. Wojoski added that DWR plans to bring the proposed water clarity standard to the EMC, tentatively at the end of 2024.



Doug Rader stated that he was very interested in the work of the SAC going forward, especially regarding the oligohaline waters to the north and how potential salinity changes associated with barrier island integrity and other changes get factored into nutrient dynamics and other future conditions. Rader questioned how a changing salinity regime might be represented in thinking about standards like this? Wojoski stated he would be glad to follow up with Dr. Rader and address his concerns. Dr. Hans Paerl stated that Nathan Hall is also incorporating Doug's concerns and questions about the changing salinity in the bio-optical models that he is developing.

With regards to Priority Issue - Protection and Restoration of Wetlands, Charlie Deaton highlighted some of the progress being made with those recommended actions. Recommended Action 5.3 was to form an interagency group to discuss wetland mapping across the state. That is something that has been ongoing. As part of Recommended Action 5.1, DEQ has been able to obtain state matching funds for NOAA's Coastal Change Analysis Program, C-CAP, the mapping of wetlands across the coastal plain at 1 meter resolution. In addition to wetland types, a full classification of land use land cover will be done. Funding will be contributed by DMF, APNEP, DEQ, and DCM. DWR is applying for grant funding to be able to do the rest of the state. There was discussion from the Steering Committee about the definition of wetlands and the concerns regarding jurisdictional wetlands and connectivity.

Jimmy Johnson reported on Recommended Action 9.1 and the call for a Public Private Partnership in the CHPP Amendment. This PPP is now called SECCHI which stands for "Stakeholder Engagement for Collaborative Coastal Habitat Initiatives." A virtual workshop was held late last year for the purpose of looking at water quality and low salinity SAV in the Chowan River watershed. A diverse group of over 30 people attended virtually. Sara Winslow, a retired fisheries scientist from DMF, gave a history of the Chowan Basin and she highlighted the improvements that were made in water quality back in the 70s and 80s, and the decline that she has seen since that time period, specifically between the 1990s and the present. Sara talked about the need for best management practices (BMP) to be put into practice and to ensure their compliance. BMPs were a big theme for this workshop.

After Sara spoke, Nathan Hall presented some of his findings from the work that he has been doing with funding from APNEP and he presented what nutrients needed to be managed and where those nutrients were primarily occurring. Dr. Hall mentioned that any BMPs which are utilized should be used with the intent of managing both nitrogen and phosphorus, and not just nitrogen. Dr. Hall also noted that that phytoplankton is a significant contributor to light attenuation. He stated that a phytoplankton reduction of approximately 20% would make a large difference in the clarity of the water and the ability for SAV to grow. He also stated that about 30 to 40% of the total nutrient loading is coming from small, unmonitored streams. He added local communities therefore have more control over nutrient loads that affect water quality and smaller streams. His point was that instead of focusing on the larger picture getting those smaller communities the help they need could possibly have a significant impact on water quality in the Chowan watershed.



Attendees at the workshop mentioned the tremendous need for communication with local governments in northeastern NC, and partnerships to help disseminate information in a way that the public and public officials can understand, especially regarding the work that Dr. Hall has been doing.

At the workshop, it was also mentioned that Chowan River Basin is in the process of becoming a National Water Quality Initiative watershed through the NRCS. This initiative allocates funds to landowners (agriculture producers) within impaired watersheds and these funds can be used to implement best management practices to aid water quality. The North Carolina Coastal Federation applied for this grant and it was approved. They are currently putting together a watershed plan to submit to the NRCS. Once the plan is approved, the landowners will be able to apply for funding directly through the NRCS. There is no limit on the amount of funding needed.

Presentation from Recent Algal Bloom Workshop

Holly White, with North Carolina's Office of Recovery and Resiliency (NCORR), provided an overview of the Algal Bloom Summit which was held in November in Elizabeth City. Ms. White began by explaining what NCORR was and why they were involved in this effort. Through NCORR's RISE (Regions Innovating for Strong Economies and Environment) Program about 55 projects were identified, one being the Harmful Algal Blooms (HAB) in northeastern NC. In November 72 people came together to discuss what could be done regarding HABs.

The session began with reports from impacted communities. This was followed by how the state was responding to the HABs and the research which was being carried out in association with the algal blooms. In the afternoon, the larger group broke up into smaller rotating discussion groups. Topics were: research, state government, local and regional government, and the community. NCORR is currently compiling the proceedings from the workshop and they should be available to the public soon. It was decided that more meetings like this are needed in the future to be able to disseminate any new information that has come to light. Questions that were asked included how safe is the water to recreate in? Is it safe to eat the fish and crabs from the water? How can the sources of nutrients be mitigated? How to reach citizens with any new information? Suggested next steps included developing an algal bloom response template for local governments, developing policy templates for local governments to include in comprehensive land use plans, supporting and maintaining an online portal for data, and creating training programs and standardized protocols for community groups.

Review of Sacket Decision's Impacts

Next on the agenda, Sue Homewood, DWR, and Andy Williams, the US Army Corps of Engineers (USACE), reported to the steering committee on the Sackett decision and 2023 NC Farm Bill Act and how this will affect NC's wetlands. Mr. Williams explained what had changed because of the US Supreme Court's Sackett decision. The US Supreme Court case, Sackett vs EPA, resulted in a modified interpretation of WOTUS (Waters of the United States; CFR 120.2). WOTUS is the federal EPA definition under the Clean Water Act that frames what surface waters and associated wetlands are considered jurisdictional, and therefore subject to permitting



and some extent of protection. Williams noted that the significant changes resulting from the Sackett ruling was 1) changing the definition of “adjacent wetlands” from those having a *significant nexus to streams and surface waters* to only wetlands with *a continuous surface connection to relatively permanent, standing, or continuously flowing bodies of water* are included. 2) changing the definition of “tributaries”, from *including the significant nexus standard for ephemeral streams and to revising that to relatively permanent, standing or continuously flowing bodies of water*. Williams stated that because of the vague definition language, determining what is a continuous surface connection (adjacent) and therefore what is jurisdictional will be difficult.

Sue Homewood explained that before the Supreme Court’s decision, wetlands were considered waters of the US thus giving way to a robust permitting program. The EMC follows the USACE wetland determinations, but also had rules for isolated wetlands to provide a permitting path for development that affects wetlands that were not covered by WOTUS. Examples include pocosins bogs, and ephemeral streams that may not be directly or continuously connected to surface waters but may have groundwater connection and provide ecosystem services such as flood reduction and water quality improvements. The 2023 NC Farm Bill stated that wetlands classified as waters of the State are restricted to waters of the US defined in federal rule. Therefore, EMC may only manage (have rules) what is considered wetlands by the USACE. The EMC, along with others are looking hard at what wetlands in NC will be impacted by this decision.

Commissioner Bailey said there has been some discussion about going through the rulemaking process, which starts at the EMC’s Water Quality Committee. Currently there are a lot of unknowns. Tyler Crumbley, USACE, reminded everyone that the definition of wetlands had not changed and the USACE was still using the 1987 manual and supplements. The question is whether a site-specific wetland is jurisdictional. USACE districts have jurisdictional determination teams working on criteria and a process template to ensure consistency. EPA is giving districts time to work this out and they would like to avoid litigation. Once the USACE districts have approval from EPA and USACE HQ on some of the district’s jurisdictional determinations, the districts will have better direction and can provide additional information to the state.

There is concern that multiple areas previously considered wetlands could become targets for draining, filling, and developing. Dr. Rader stated that he would like to see policy and science merge. Commissioner Baldwin asked what a continuous water connection is. Williams replied that it is gray and could include a connection from a culvert or swale.

Discussion on Upcoming Commission Actions

Rader began a discussion that he thought it would be beneficial for the steering committee- to share and discuss actions that the respective commissions may be considering which could affect the progress of the current recommended actions in the 2021 CHPP Amendment. Rader led off



the discussion by mentioning the upcoming shrimp trawl boundary modifications as an example of whether they might affect the Oyster/Clam FMP as well as other commissions.

Commissioner Bailey mentioned that the EMC was on a fast track to modify the definition of wetlands, possibly by November of 2024. She also informed the steering committee that the triennial review of all the state's water quality standards is coming up for review. Kevin Tweedy added that the wetland issue would be a big issue and trying to figure out how to track the decisions will also be time consuming.

Bob Emory mentioned that the CRC will be working on wetland migration corridors and that DCM was proposing to amend their CZMA section 309 assessment and strategy. Daniel Govoni explained that DCM has accomplished some of the strategies they said they would do in the 5-year plan and now have some money left over which they want to re-allocate to other areas of their program. One area is the use of thin layer placement of dredge material in various locations to address accelerating sea level rise. They would like to map areas where this might be possible.

Public Comment

Chairman Rader opened the meeting for public comment. A letter had been received from Chris Elkins. Dr. Elkins was concerned that forage fish were not receiving the attention they deserved. He suggested that they be considered a habitat for the sake of protecting them as a food source for other fish. He cited specific examples of here other plans had done that.

Anne Deaton thanked Jacob Boyd and Braxton Davis for the work they had done in contributing to the CHPP. Both will be going to work for the NC Coastal Federation at the end of January.

Larry Baldwin expressed his appreciation in having the CHPP represented at their CRC meetings. He felt like it added a lot to the CHPP to keep it in front of the commissions. Baldwin also added that he would like to hear more about available funding and how the SECCHI could help secure some of that money – especially mitigation credits.

The Steering Committee will plan on meeting again in the late summer or early fall in person. We will try and get it in your calendars sooner rather than later.

The meeting adjourned at 12:00 noon.

