



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Silver Spring, Maryland 20910

JUN 23 2010

Laura McKay
Virginia CZM Program Manager
Virginia Department of Environmental Quality
629 East Main Street
Richmond, VA 23219

Dear Ms.McKay:

Thank you for the Virginia Department of Environmental Quality's February 16, 2010, request that changes to a subset of the enforceable policies related to fisheries and habitat, sand dunes and beaches, wetlands, and the state implementing regulations of the Clean Air and Clean Water Acts be incorporated into the Virginia Coastal Management Program (CMP). You requested that changes to the statutes and regulations described below be incorporated as routine program changes (RPCs), pursuant to Coastal Zone Management Act (CZMA) regulations at 15 C.F.R. part 923, subpart H, and Office of Ocean and Coastal Resource Management (OCRM) Program Change Guidance (July 1996). OCRM received the request on February 20, 2010, and OCRM's decision deadline was extended until June 23, 2010.

Based on our review of your submission, we concur, that the changes to the statutes and regulations noted below are RPCs and we approve the incorporation of the specific changes noted in the approval table attached as enforceable policies of the Virginia CMP. The remaining program changes are also incorporated into the Virginia CMP, but do not contain enforceable policies that can be used for Federal Consistency. Federal Consistency will apply to the approved enforceable changes only after you publish notice of this approval pursuant to 15 C.F.R. § 923.84(b)(4). Please include in the public notice the list of changes to enforceable policies provided in this letter, and please send a copy of the notice to OCRM.

CHANGES APPROVED

See enclosed list of the changes incorporated into the Virginia CMP.

QUALIFICATIONS

All changes submitted are approved, however, some changes indicated as enforceable policies by the State are incorporated as non-enforceable components of the Virginia CMP. Both enforceable and non-enforceable policies changes are noted in the approval table attached.



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WITHDRAWN SECTIONS

OCRM acknowledges State's request to withdraw the Administration of Game, Inland Fisheries, and Boating (Code of Virginia, Title 29.1, Chapters 1, 3, 4, and 5) as noted in a March 23, 2010, letter from the State. These sections were withdrawn to allow for further discussion with the Virginia Department of Transportation, which raised concerns regarding specific aspects of the Game, Inland Fisheries and Boating statute and regulations. The Virginia CMP and VDOT have initiated discussions regarding the concerns raised and will continue these discussions to clarify the intent of the RPCs originally submitted. It is anticipated that, in addition to other possible program changes, changes to the Administration of Game, Inland Fisheries, and Boating (Code of Virginia, Title 29.1, Chapters 1, 3, 4, and 5) will be re-submitted to NOAA at a later date.

PUBLIC AND FEDERAL AGENCY COMMENTS

OCRM received one public comment from the Virginia Department of Transportation (VDOT) dated February 12, 2010.

VDOT expressed concern that some of the updates to the Administration of Game, Inland Fisheries, and Boating (Code of Virginia, Title 29.1, Chapters 1, 3, 4, and 5) submitted as RPCs may in fact meet the definition of program amendments. NOAA OCRM helped to facilitate a dialogue between the Virginia CMP and VDOT such that both parties understand the concerns raised and begin a process to resolve differences of opinion over the effects of program changes. NOAA will continue to monitor and participate as necessary in these discussions.

Thank you for your cooperation in this review. Please contact John Kuriawa at (410) 267-5668 if you have any questions.

Sincerely,


for John King, Chief
Coastal Programs Division

Enclosure(s): Policies Approved and Incorporated into the Virginia CMP

[ENCLOSURE]

Enclosure to OCRM's JUNE 23, 2010, Approval of the Incorporation of Changes to the VIRGINIA COASTAL MANAGEMENT PROGRAM			
Changes marked with an asterisk (*) are incorporated into the VIRGINIA COASTAL MANAGEMENT PROGRAM, but do not contain enforceable policies that can be used for Federal Consistency.			
Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Adopted by State	Date Effective in State
ADDED:			
*Fisheries and Habitat of the Tidal Waters – General – Blue crab fishery management plan	Title 28, Chapter 2, Section 203.1	1995	1995
*Fisheries and Habitat of the Tidal Waters – General – Limited sale of gear licenses and permits; regulations	Title 28, Chapter 2, Section 204.1	1992	1992
*Fisheries and Habitat of the Tidal Waters – General – Recreational gear license required	Title 28, Chapter 2, Section 226.1	1993	1993
*Fisheries and Habitat of the Tidal Waters – General – Commission to establish requirements for commercial gear licenses used for recreational purposes	Title 28, Chapter 2, Section 226.2	1993	1993
*Fisheries and Habitat of the Tidal Waters – General – Seafood landing licenses	Title 28, Chapter 2, Section 228.1	1996	1996
*Fisheries and Habitat of the Tidal Waters – General – Registration of commercial fishermen required; exemption; penalty	Title 28, Chapter 2, Section 241	1992	1992
*Fisheries and Habitat of the Tidal Waters – General – Commission to promulgate regulations	Title 28, Chapter 2, Section 243	1992	1992
*Fisheries and Habitat of the Tidal Waters – Wetlands – Expedited permits; administrative procedures	Title 28, Chapter 13, Section 1307	1982 and 1992	1982 and 1992
Wetlands Mitigation-Compensation Policy	4 VAC 20-390	1989 and 2005	1989 and 2005
Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulations	9 VAC 25-31-10 through 9 VAC 25-31-940		
Air Pollution Control Board	Title 10, Chapter 13, Sections 1300 – 1328		
MODIFIED:			
*Fisheries and Habitat of the Tidal Waters - Administration	Title 28, Chapter 2, Sections 103 and 104	1992 and 1997	1992 and 1997
*Fisheries and Habitat of the Tidal Waters – General Provisions	Title 28, Chapter 2, Sections 201, 202, 204, 210, 225, 227, 228, 229, 230, and 232	1988 – 2006	1988 – 2006
Fisheries and Habitat of the Tidal Waters – General Provisions – Commission to prepare fishery management plans; standards	Title 28, Chapter 2, Section 203	1992	1992

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Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Adopted by State	Date Effective in State
Fisheries and Habitat of the Tidal Waters – Wetlands - Definitions	Title 28, Chapter 13, Section 1300	1986 – 2005	1986 – 2005
Fisheries and Habitat of the Tidal Waters – Wetlands - Adoption of wetlands zoning ordinance; terms of ordinance	Title 28, Chapter 13, Sections 1302	1986 – 2005	1986 – 2005
Fisheries and Habitat of the Tidal Waters – Wetlands - Standards for use and development of wetlands; utilization of guidelines	Title 28, Chapter 13, Sections 1308	1986 – 2005	1986 – 2005
*Fisheries and Habitat of the Tidal Waters – Wetlands	Title 28, Chapter 13, Sections 1301, 1303-1306, and 1310-1320	1986 – 2005	1986 – 2005
Fisheries and Habitat of the Tidal Waters – Coastal Primary Sand Dunes and Beaches - Definitions	Title 28, Chapter 14, Section 1400	1992 – 2008	1992 – 2008
Fisheries and Habitat of the Tidal Waters – Coastal Primary Sand Dunes and Beaches – Standards for use of coastal primary sand dunes	Title 28, Chapter 14, Section 1408	1992	1992 – 2008
*Fisheries and Habitat of the Tidal Waters – Coastal Primary Sand Dunes and Beaches	Title 28, Chapter 14, Sections 1401, 1403-1407, and 1410-1420	1992 – 2008	1992 – 2008