

April 30, 2008

**Virginia Coastal Zone Management Program
Semiannual Section B Report on Core Agency Implementation Activities
For the Period from October 1, 2007 – March 31, 2008**

	Page
A. STATE AGENCY MONITORING - The core agencies within the Virginia Coastal Resources Management Program are:	
1) Department of Environmental Quality (DEQ)	
a) Virginia Coastal Zone Management Program Office	2
b) Water Permitting Program (Wetlands, NPDES, Pollution Abatement)	2
c) Water Program Enforcement and Compliance	2
d) Air Permitting Program	3
e) Air Program Enforcement and Compliance	4
2) Virginia Marine Resources Commission (VMRC)	
a) Habitat Management Division	5
b) Fisheries Management Division	6
c) Law Enforcement Division	7
3) Virginia Department of Health (VDH) – Division of Shoreline Sanitation	8
4) Department of Conservation and Recreation (DCR)	
a) Division of Soil and Water Conservation	8
b) Division of Natural Heritage	10
c) Division of Planning and Recreation Resources	15
d) Division of Chesapeake Bay Local Assistance	15
5) Department of Game and Inland Fisheries (DGIF)	19
B. FEDERAL CONSISTENCY	25
C. PROGRAM CHANGES	36

A. STATE AGENCY MONITORING

1) DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ)

a) DEQ – Virginia Coastal Program

Virginia CZM Program staff continued to work with our partner agencies to implement the Program over the last 6 months. For a full description of staff activities, please refer to the Section A report for Task 1. A GIS Coordinator was hired during this period. A Grants Coordinator was hired and began work on January 10, 2008 but resigned on March 6, 2008. This position is currently vacant and the Commonwealth has instituted a hiring freeze until further notice due to state budget shortfalls.

b) DEQ – Water Permitting Program

The Virginia Pollution Abatement permit (VPA) is required for facilities that handle wastewater, animal waste or biosolids, and do not have a discharge from the site. For example, an agricultural facility that temporarily stores wastewater to be land applied as part of an irrigation/fertilization program. The Biosolids Use Regulation was transferred to DEQ, incorporated into the VPA Regulation effective January 1, 2008. As of March 31, no applications have been submitted to lands apply biosolids under the VPA Regulation. The Virginia Pollution Discharge Elimination System (VPDES) permit is required for all point sources of water discharge. The Virginia Water Protection Permit (VWPP) is required for water withdrawals and activities in wetlands and surface waters that may or may not require Clean Water Act section 401 water quality certifications. The following table describes the activity for each of these permits:

VPDES/VPA/VWP - October 1, 2007 – March 31, 2008										
	Permits Issued / Avg Proc. Days		Permits Reissued / Avg Proc. Days		Permits Modified / Avg Proc. Days		Denied / Avg Proc. Days		Permits Reissue Pending / Avg Proc. Days	
VPDES	3	153	25	484	4	92	0	NA	NA	NA
VPA	0	NA	1	174	0	NA	0	NA	N/A	N/A
VWP IPs	26	307*	3	337	3	291	0	0	0	0
VWP GPs	264	92	N/A	N/A	4	27	0	0	0	0

*The average processing days for VWP IPs issued included one permit taking 1039 days to process. Without including this permit, the average was 278 days.

c) DEQ – Water Program Enforcement and Compliance

DEQ continues to apply both informal and formal enforcement measures in the WATER enforcement program. Reference Table 1, below.

Informal measures, such as Warning Letters and Letters of Agreement, are used in those cases where non-compliance is not significant in nature and where compliance can be achieved in a short period of time. For the period October 1, 2007, through March 31, 2008, DEQ issued 161 Warning Letters and two Letters of Agreement for violations of VPDES, VPA and VWPP program requirements.

Formal enforcement actions are used in those cases where non-compliance is more serious or may take a significant amount of time to correct. Formal measures generally involve the issuance of a Notice of Violation followed by a Consent Order, or an Executive Compliance Agreement in the case of a state agency.

In some cases, Unilateral Administrative Orders or court orders may be sought. Between October 1, 2007 and March 31, 2008, DEQ issued 65 Notices of Violation for violations of VPDES, VPA and VWPP program requirements. During the same period, the agency concluded enforcement cases with the issuance of three Consent Orders, assessing a total of \$113,000 in civil charges. One Consent Order includes a Supplemental Environmental Project (SEP) as part of the administrative settlement; the SEP specifies a donation of \$90,000 to the Tri-County/City Soil and Water conservation District for non-point source pollution control projects or riparian lands.

Table 1

Measure	Action Type	Count	Total Civil Charges Assessed
Informal	Warning Letters	161	n/a
Informal	Letters of Agreement	2	n/a
Formal	Notices of Violation	65	n/a
Formal	Consent Order	3	\$113,000
Total		231	\$113,000

d) DEQ – Air Permitting Program

Period: **October 1, 2007 – March 31, 2008**

PERMIT TYPE	NUMBER OF PERMITS ISSUED	AVERAGE PROCESSING TIME (Days)
PSD & NA	1	210
Major	1	NA
Minor	48	33
Administrative Amendment	4	30
Exemptions	74	12
State Operating	18	81
Federal Operating (Title V)	0	NA
Acid Rain (Title IV)	0	NA
Total Number Permits Issued	146	

The average processing time is determined by computing the difference between when the application was deemed administratively complete and when the permit was issued. Please note that the information provided for this report includes data from the Fredericksburg Satellite Office, Northern Virginia Regional Office, Piedmont Regional Office and Tidewater Regional Office only.

Definitions:

Prevention of Significant Deterioration (PSD) = A source which emits **250 tons or more** per year of any regulated pollutant or combination of regulated pollutants, or who is one of 28 specific industries listed in the state regulations and will emit 100 tons per year of a regulated pollutant.

Major = A source which emits, or has the potential to emit, **100 tons or more** per year of any air pollutant.

Minor = A source which emits, or has the potential to emit, **less than 100 tons** per year of any air pollutant.

State Operating = Application for permit written pursuant to 9 VAC 5-80-800.

Administrative Consent Agreement = An agreement that the owner or any other person will perform specific actions to diminish or abate the causes of air pollution for the purpose of coming into compliance with regulations, by mutual agreement of the owner or any other person and the Board.

Administrative Amendment = Changes made to the permit to clarify or correct an issued permit. For example, equipment references, improved control equipment, reductions of allowed emissions below the exemption levels, etc.

Exemption = Facilities meeting are exempted from permitting requirements by exemption levels defined in 9 VAC 5-80-11.

Federal Operating (Title V) = a source that emits **10 tons or more** per year of any hazardous air pollutant, **or 25 tons** per year of any combination of hazardous air pollutants or emits criteria pollutants above major source levels.

Acid Rain (Title IV) = tightens the annual emissions limits for SO₂ and NO_x which are imposed on large higher emitting electric utility plants and sets restrictions on smaller, cleaner plants fired by coal, oil, and gas.

Permits pending as of **March 31, 2008**

PERMIT TYPE	NUMBER OF PERMITS PENDING
PSD & NA	1
Major	0
Minor	31
Administrative Amendment	7
Exemptions	7
State Operating	15
Federal Operating (Title V)	9
Acid Rain (Title IV)	1
Total Permits Pending	71

Note: The information provided for this report includes data from the Fredericksburg Satellite Office, Northern Virginia Regional Office, Piedmont Regional Office and Tidewater Regional Office only.

Period: **October 1, 2007 – March 31, 2008**

PERMIT TYPE	NUMBER OF PERMITS WITHDRAWN	NUMBER OF APPLICATIONS DENIED
PSD	1	0
Major	0	0
Minor	11	0
Administrative Amendment	2	0
Exemptions	1	0
State Operating	0	0
Federal Operating (Title V)	0	0
Acid Rain (Title IV)	0	0
Total Permits Rescinded	15	0

Note: The information provided for this report includes data from the Fredericksburg Satellite Office, Northern Virginia Regional Office, Piedmont Regional Office and Tidewater Regional Office only.

e) DEQ – Air Program Enforcement and Compliance

DEQ continues to apply both informal and formal enforcement measures in its AIR enforcement program. Reference Table 2, below.

Informal measures include Requests for Corrective Action, Informal Correction Letters, Warning Letters, and Letters of Agreement. These actions are used in those cases where non-compliance is not significant in nature and where compliance can be achieved in a short period of time. During the six-month period extending from October 1, 2007 through March 31, 2008, DEQ issued 74 Requests for Corrective Action, three Informal Correction Letters, and 25 Warning Letters, and one measure described as “other.”

Formal enforcement actions are used in those cases where non-compliance is more serious or may take a significant amount of time to correct. Formal measures generally involve the issuance of a Notice of Violation and negotiation of a Consent Order, or an Executive Compliance Agreement in the case of a state agency. In some cases, Unilateral Orders or court orders may be pursued. Between October 1, 2007 and March 31, 2008, DEQ initiated 21 new formal enforcement actions via issuance of Notices of Violation. The agency issued five Consent Orders; these orders assessed a total of \$90,672 in civil charges. In addition, on November 6, 2007, a consent decree assessed a civil penalty of \$550,000 to a facility near Richmond, Virginia as part of a multi-state federal case.

Table 2

Measure	Action Type	Count	Total Civil Charges Assessed
Informal	Request for Corrective Action	74	n/a
Informal	Informal Correction Letter	3	n/a
Informal	Warning Letter	25	n/a
Formal	Notice of Violation	1	n/a
Formal	Consent Order	21	n/a
Formal	Federal Consent Decree	5	\$90,672
Total		1	\$ 550,000

2) VIRGINIA MARINE RESOURCES COMMISSION (VMRC)

a) VMRC – Habitat Management Division

During the period October 1, 2007 through March 31, 2008 the Habitat Management Division received 1127 applications for projects involving State-owned submerged lands, wetlands or dunes. These applications were for projects such as piers, boathouses, boat ramps, marinas, dredging and shoreline stabilization. As the clearinghouse for the Joint Permit Application all applications were assigned a processing number by the Division and forwarded to the appropriate agencies, including, local wetlands boards, the Norfolk District of the U.S. Army Corps of Engineers, the Department of Environmental Quality, VIMS and others as necessary.

A public interest review was initiated and site inspections were conducted for those projects requiring a permit from the Marine Resources Commission. Likewise, Habitat Management staff also conducted site inspections for all projects requiring a local wetlands board permit and evaluated each local board decision for Commissioner review. Habitat Management staff also conducted compliance inspections on permits issued by VMRC and local wetlands boards. Seven sworn complaints were issued during the period.

The Habitat Management Staff completed actions on 1124 applications received during the period. Action on most applications was completed within 90 days after they were received. As such, a number of the actions taken during the period were for applications received prior to October 2007. Similarly, those applications received near the end of the current reporting period are still under review. Habitat Management Staff also issued 51 general permits for Virginia Department of Transportation projects.

In addition to staff actions, the Full Commission considered 92 projects. During the reporting period the Commission considered 42 protested projects or projects requiring a staff briefing, including six appeals of a local wetlands board decision. The Commission also approved 50 projects over \$50,000.00 in value for which staff had completed the public interest review and for which there was no objection.

b) VMRC – Fisheries Management Division

At the October 23, 2007 Commission meeting there was a public hearing on proposed amendments to Regulation 4 VAC 20-910, “Pertaining to Scup”, to establish the commercial fishery possession limit as 3,500 pounds for the Winter II period. The Commission moved to change the limit to 3,500 pounds.

At the October 23, 2007 Commission meeting there was a request for a public hearing on amendments to Regulation 4 VAC 20-960, “Pertaining to Tautog” to establish ASMFC-mandated harvest reduction measures, for the commercial and recreational tautog fisheries. The Commission moved to advertise for public hearing in November 2007.

At the November 27, 2007 Commission meeting there was a public hearing on proposed amendments to Regulation 4 VAC 20-960, “Pertaining to Tautog”, to reduce harvest during the 2008 fishing season by 25.6 percent. The Commission moved to close the commercial fishery from April 16th through October 2nd and December 1st through December 15th.

At the November 27, 2007 Commission meeting there was a request for a public hearing to consider amendments to Regulation 4 VAC 20-320-10 et seq. “Pertaining to the Taking of Black Drum” to allow for the use of small mesh gill nets in the Special Management Area. The Commission moved to advertise for public hearing in January 2008.

At the November 27, 2007 Commission meeting there was a request for a public hearing to consider amendments to Regulation 4 VAC 20-252-10 et seq. “Pertaining to the Taking of Striped Bass” to establish the 2008 harvest quotas; and adjust requirements and penalties for the possession and tagging of commercially harvested striped. The Commission moved to advertise for public hearing in December 2007.

At the November 27, 2007 Commission meeting there was a request for a public hearing to consider amendments to Regulation 4 VAC 20-620-10 et seq. “Pertaining to Summer Flounder” to eliminate the directed offshore commercial fishery during the second quarter and add the second quarter quota to the first quarter. There was also a request to open the summer flounder by-catch season. Staff recommended an emergency regulation effective November 28, 2007 and a public hearing set for December 18, 2007. The Commission moved to advertise for public hearing in December 2007.

At the November 27, 2007 Commission meeting there was a request for a public hearing to consider amendments to Regulation 4 VAC 20-150-10 et seq. “Pertaining to the Dredging of Conch (known also as Whelk)” to update the description of certain boundary lines. The Commission moved to advertise for public hearing in December 2007.

At the December 18, 2007 Commission meeting there was a public hearing to consider amendments to Regulation 4 VAC 20-252-10 et seq. “Pertaining to the Taking of Striped Bass”, to establish new requirements and penalties for the tagging of striped bass; and, the 2008 harvest quotas (3,284,284 pounds split evenly between each fishery) for commercial and recreational fisheries. The Commission moved to approve staff recommendations.

At the December 18, 2007 Commission meeting there was a public hearing to consider amendments to Regulation 4 VAC 20-620-10 et seq. “Pertaining to Summer Flounder” to establish provisions for a by catch fishery during the fourth quarter, to move the second quarter quota to the first quarter, and to set the opening date of the fishery in the first quarter. The Commission moved to approve staff recommendations.

At the December 18, 2007 Commission meeting there was a request for a public hearing to repeal Regulation 4VAC20-530-32, "Spawning Reaches By catch Area Fishery", as required by the Interstate Fishery

Management Plan for American Shad. The Commission moved to advertise for public hearing on January 22, 2008, to amend Regulation 4 VAC 20 530-10, Et seq., "Pertaining to American Shad".

At the January 22, 2008 Commission meeting there was a request for a public hearing to consider amendments to Regulation 4 VAC 20-950-10 et seq. "Pertaining to Black Sea Bass" to establish management measures for the 2008 Black Sea Bass commercial fishery. The Commission moved to advertise for public hearing in February 2008.

At the January 22, 2008 Commission meeting there was a public hearing to consider amendments to Regulation 4 VAC 20-320-10 et seq. "Pertaining to the Taking of Black Drum" to allow for the use of small (less than 5") mesh gill nets in the Special Management Area. The Commission moved to adopt the staff recommendation.

At the January 22, 2008 Commission meeting there was a request for a public hearing to consider amending Regulation 4 VAC 20-620-10, Et seq., "Pertaining to Summer Flounder" to establish minimum sizes, possession limits and closed seasons for the 2008 Summer Flounder Recreational Fishery. The Commission moved to advertise for public hearing in February 2008.

At the January 22, 2008 Commission meeting there was a public hearing to consider amendments to Regulation 4 VAC 20-530-10, Et seq., "Pertaining to American Shad," to eliminate the by-catch fishery for American Shad in the spawning areas, to comply with the provisions of the Interstate Fishery Management Plan. The Commission moved to adopt staff recommendations.

At the February 26, 2008 Commission meeting there was a public hearing to consider proposed amendments to Regulation 4VAC20-620, "Pertaining to Summer Flounder", to establish the 2008 recreational fishery measures. The Commission moved to adopt the staff recommendation of a minimum size limit of 19 inches, possession limit of 5 fish with a closure July 21 through July 30.

At the February 26, 2008 Commission meeting there was a public hearing on proposed amendments to Regulation 4VAC20-950, "Pertaining to Black Sea Bass", to establish the 2008 commercial fishery measures. The Commission moved to adopt staff recommendations.

At the March 25, 2008 Commission meeting there was a request for a public hearing to consider an amendment to Regulation 4VAC20-450-10 et seq., "Pertaining to the Taking of Bluefish", to lower the 2008 commercial quota, from its 2007 amount of 1,018,660 pounds, to either 913,716 pounds (federal limits) or 1,048,366 pounds (interstate proposal).

c) VMRC – Law Enforcement Division

Enforcement under "Other Agencies" refers to summons issued for other agencies' laws, code or regulation sections. The majority of the summons in this category is for DGIF regulations on boating safety laws, expired boat registration, no life jackets, flares, etc.

Summons under "Police Powers" are all criminal violations versus fisheries violations. These are the reckless driving, drunk driving, driving without a license/ suspended license, possession of cocaine, marijuana, etc. We also have an officer assigned to the Drug Enforcement Agency's local Task Force in an effort to interdict drug trafficking on Virginia's tidal waterways.

Virginia Marine Patrol

ARRESTS / CONVICTIONS SUMMARY BY CATEGORY

Report Date:	April 14, 2008
Report Time:	14:39
Period Begin:	10/1/2003
Period End:	9/30/2008

Category	2003/2004		2004/2005		2005/2006		2006/2007		2007/2008	
	Arrests	Con- victions								
Buyers	35	25	5	3	2	2	0	0	0	0
Casting Garbage/Trash	0	0	1	0	3	2	1	1	0	0
Clams	4	4	2	2	5	4	4	4	0	0
Commercial Fishing License	11	10	4	3	5	4	6	5	1	1
Conchs	4	4	1	1	4	4	0	0	0	0
Crabs	145	133	163	147	88	80	68	60	8	7
Fish	192	170	251	218	304	284	378	318	72	63
Fishing without a license/revoked license	6	5	121	117	59	59	24	22	4	4
License Tags	3	1	9	6	9	4	7	6	0	0
Mandatory Reporting	0	0	0	0	1	1	3	3	0	0
Misc	0	0	0	0	1	1	0	0	1	0
Non-residents	0	0	1	1	0	0	0	0	0	0
Other Agencies	358	339	769	714	727	669	750	698	122	109
Oysters	17	16	100	87	82	80	67	54	30	30
Police Powers	299	251	137	112	68	60	98	86	14	14
Removal of Obstructions	0	0	2	2	6	5	1	0	0	0
Resisting officer	0	0	0	0	1	0	0	0	0	0
Shellfish	5	3	3	3	2	0	0	0	0	0
SW Recreational Licenses	516	481	322	305	414	398	492	476	33	31
TOTALS:	1595	1442	1891	1721	1781	1657	1899	1733	285	259
PERCENT OF CONVICTIONS:	90.41%		91.01%		93.04%		91.26%		90.88%	

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3) VIRGINIA DEPARTMENT OF HEALTH (VDH) – DIVISION OF SHORELINE SANITATION

The Department received and reviewed a total of 39 VMRC Permit Applications, and processed as follows:

Seventeen (17) of the Permit Applications needed action in the Marina Program.

Sixteen (16) applications were approved based on meeting the requirements of providing adequate facilities.

Six (6) applications were denied because of inadequate facilities.

The shellfish program had 494 acres of shellfish grounds closed to harvesting. There were 4749 acres of shellfish grounds reopened.

4) Department of Conservation and Recreation (DCR)

a) DCR - Division of Soil and Water Conservation

The Department of Conservation and Recreation (DCR), Division of Soil and Water Conservation (DSWC) administers numerous enforceable and non-enforceable programs that help the Commonwealth of Virginia manage its coastal resources. The following is a summary of key program activities conducted by DCR staff during the period of October 1, 2007 through March 31, 2007.

Regulatory Programs:

Stormwater Management Program

No report is available at this time.

Nutrient Management Regulations

No report is available at this time.

Non-Regulatory Programs:

Coastal Nonpoint Source Program

The responsibility of the Coastal NPS Program Manager is to coordinate the Coastal Nonpoint Source Program implementation and administration of grants and grant budgets and provide technical support to Division of Soil and Water, VDCR relating to coastal zone ecology, management, and restoration. The position also serves as a liaison between DCR the Center for Environmental Studies at VCU and the VA Coastal Management Program to promote joint, applied research and outreach projects, coastal nonpoint source pollution, coastal zone ecology, management, and restoration.

For the grant reporting period, the Coastal NPS Program Manager continued to implement the VA Coastal NPS Program and build new partners. The CNP Program Manager has been participating in the development of the Healthy Waters and Healthy Lands Initiative including the development of policy and Championing positions for the Governor. The DCR CNP Program Manager has been participating in the University of Virginia, Institute for Environmental Negotiation, Virginia Natural Resources Leadership Institute (VNRLI) which began in September. The CNP Program Manager participated in various meetings including the Coastal Policy Team, Coastal PDC meetings, Virginia Stream Alliance, NPSAC, and Healthy Waters. In addition, the CNP Program Manager worked with local partners in developing National Fish and Wildlife Foundation Grant applications, including an application for Low Impact Development implementation, demonstration and education at the Science Museum of Virginia.

The CNP Program Manager continued to undertake the development of the VA Networked Education for Municipal Officials (NEMO) Program through a coordinated effort between the NOAA/EPA/NPS Chesapeake Bay Office (Chesapeake NEMO), Virginia Cooperative Extension and Virginia partners. VA NEMO have firm relations with the Virginia Cooperative Extension Community Viability Program as an active coordinating partner in the VNEMO Program. This partnership will greatly benefit the outreach capacity of the Program.

The VNEMO pilot site of Mathews County underwent a scoping process to develop an evening educational series was titled, "Talking About the Future – Second Tuesdays in Mathews." The series was scheduled for 7:00 pm to 9:00 pm on the second Tuesday of each month from October through February, in the Mathews County Library and was designed to help prepare stakeholders for revising the county's comprehensive plan. Nearly 350 attendees participated in the presentations.

Each session included a presentation on a different topic, followed by time for an open, facilitated conversation. Planned second Tuesday conversation topics included Land Use, Water Quality. Natural Area Protection, Economic Development and Historic Preservation. Presenters were from a range of different organizations, depending upon the topic. For this series, partners included Middle Peninsula Planning District Commission, Virginia Cooperative Extension, Tidewater RC&D, VA Department of Forestry, VA DCR Natural Heritage Division, Mathews Maritime Foundation, and Mathews Historical Society.

The VDCR entered into a contractual agreement with the Middle Peninsula Planning District Commission to provide assistance, presentations and for the purchase of photos of the Middle Peninsula for use in the Mathews County VNEMO Pilot.

The Virginia Clean Marina Program met during the reporting period to continue the re-invigoration of the Program including revealing the strategic planning efforts to develop a sustainable program and discuss the updates to the Clean Marina materials.

The VA DCR entered into a contract with the A-NPDC to develop the final stages of a shellfish TMDL Implementation Plan (IP) for the Occohannock River. The VA DCR Coastal NPS Program Manager, through consultation with the Accomac Northampton Planning District Commission (ANPDC) and the DEQ Total Maximum Daily Load (TMDL) Program, select the Occohannock River as the site for the TMDL Implementation Plan due to its location as a border between the two Eastern Shore Counties of Accomack and Northampton; historic shellfish resources and likelihood for success due to the active local groups in the area.

b) DCR – Division of Natural Heritage

This report lists projects and activities conducted by the Department of Conservation and Recreation, Division of Natural Heritage (DCR-NH) during this period that were not funded by or otherwise reported to the Virginia CZM Program.

Inventory:

Systematic Pre-Assessment for Candidate Species Selection 12/07:

A report entitled 'A Systematic Pre-assessment for Candidate Species Selection, Task 1: G1 through G2 Species List' was sent to the US Fish and Wildlife Service. This marks the completion of the first task of a three step project. Task 1 specifically developed a list of the G1 and G2 animal and plant species by reviewing the total number of occurrences range-wide. A total of 298 species were 'kept' out of the 1,547 species tracked, and these will undergo further processing in future tasks. The final result of this project will be DCR-DNH's recommendation to the USFWS of the 'top 10' species in VA in need of further conservation actions (e.g., federal listing, further taxonomic studies, or further inventory).

Marine Corps Base Quantico Small Whorled Pogonia Survey 12/07:

A final report detailing the findings of a 2007 inventory for small whorled pogonia (*Isotria medeoloides*) within three timber compartments on Marine Corps Base Quantico has been submitted to the base. Four new colonies of the rare orchid, listed as threatened under both the federal and Virginia endangered species acts, were located during the surveys. This includes the first known colony of small whorled pogonia in Virginia to be located in a forest dominated by eastern hemlock. The report makes recommendations for the management and protection of the four new colonies.

Region 1 State Parks Inventories 01/08:

A letter summarizing Natural Heritage inventory work conducted for Region 1 State Parks was completed and sent to the State Park Region 1 Resource Specialist. The surveys were conducted to update known rare species and ecological communities and to locate new occurrences. In brief, zoologists updated one globally rare (G1 - G3) element occurrence (EO) and six state rare EOs. Botanists updated one global and 14 state rare plant EOs. In addition, one global and one state rare plant species were newly documented for False Cape State Park, and one new globally rare plant was documented at Kiptopeke State Park. Ecologists updated eight community EOs at First Landing State Park, including at least five globally rare types.

Natural Areas Protection:

Protecting Savage Neck Dunes Natural Area Preserve 02/08:

DCR's Natural Heritage staff addressed the Northampton County Wetlands Board in response to a proposed shoreline hardening project on the immediate northern border of Savage Neck Dunes (SND) Natural Area Preserve. SND Natural Area is a Tier I DCR preserve, with Federally Threatened Northeastern Beach Tiger Beetles. DCR's Natural Heritage staff have been working with DCR's Division of Soil and Water, the Virginia Institute of Marine Sciences, and the U.S. Fish and Wildlife Service to minimize impacts to the Natural Area Preserve and to limit the take (i.e. killing) of a protected species. DCR made four recommendations as well as asked for additional time for appropriate consultation with federal agencies and for the projects' applicants to address our concerns. The applicants have thus far fully agreed to one major recommendation and will address the other three recommendations on a subsequent revision of the project's plans.

Natural Area Preserves Stewardship:

Vision 2010 Goals Spur Monitoring 12/07:

Vision 2010 goals have spurred unprecedented monitoring and highlight challenges. Virginia's rarest species and most unique ecological communities, affectionately referred to as Element Occurrences or EOs, are the basis for DCR's Natural Heritage program and for its burgeoning Natural Area Preserve system. Monitoring the status of the more than 600 EOs on the state's preserves has historically meant monitoring 20-40 high-priority EOs in any given year; a pace far from keeping up with management needs. Spurred by DCR's Vision 2010 goals, Heritage's stewardship section conducted a comprehensive assessment and established a monitoring process that was implemented in 2007. First year efforts resulted in unprecedented work by region stewards with over 120 EOs monitored.

North Landing River Natural Area Preserve Cleanup 03/08:

Natural Heritage Stewards continue cleanup efforts at the closed public access area to the North Landing River Natural Area Preserve. All trash, debris, trailers and cars along the entrance road are now gone. The final pickup of trash included an additional 300 square feet of old carpet, 55-gallon drum, i.e., a burn barrel full of trash, a 55-gallon trash can of glass, an automotive fuel tank and miscellaneous car parts, one trash bag of new litter. On Monday evening, March 3rd, two dirt bikes and an ATV were observed on the preserve. A Natural Heritage Steward decided to park off the preserve and observe. Around 5:30 p.m., two juvenile riders showed up and were warned that motorized vehicles were not permitted. Guardrail is being installed to limit access and future trash dumping. Additional work is underway to continue cleanup of this preserve.

New Point Comfort Natural Area Preserve Options 04/08:

New Point Comfort Natural Area Preserve, located on the Chesapeake Bay in low-lying Mathews County, has a natural pond on the northern boundary of the preserve. This pond has been managed, early on by farmers with an irrigation ditch, and then later by a drainpipe installed by the military in the 1940's. However, with ongoing pipe maintenance and periodic flooding into the neighboring community, residents are seeking a more effective solution to managing storm water. The pond is associated with beach dunes that support federal and state protected Northeastern Beach Tiger Beetles. To identify and implement a feasible solution, DCR's Natural Heritage staff continues to work with the community's residents, the Mathews County administrator, U.S. Fish and Wildlife Service, and The Nature Conservancy, who own and manage the preserve. Currently, options being studied include reducing the amount of runoff into the pond from the community via repair of older drainage ditches, re-opening non-maintained irrigation ditches, improving/replacing the existing drain pipe, and/or installing a mechanical pump. Viable options are scheduled to be decided upon by the end of April with implementation to occur as soon as possible.

Prescribed Burning:

Prescribed Fire Managers Certification Course 01/08:

DCR Natural Heritage Stewardship staff members served as instructors at the 2008 Prescribed Fire Managers Certification Course provided by the Department of Forestry. This year's class was on January 29-31 and had 55 participants from more than ten agencies and organizations. Rick Myers instructed the course segments on Fire Ecology and Fire Effects on Vegetation, while Claiborne Woodall covered a two-hour segment on Fire Behavior.

Invasive Species:

Phragmites Control 11/07:

DCR Natural Heritage Program stewardship staff had a record year for controlling the invasive wetland grass, Phragmites, in 2007. During September 300 acres of Phragmites were treated on the Eastern Shore using contracted aerial applications of approved herbicides. Over \$80,000 in outside funding supported these control efforts, which were made on both public and private lands. An additional 28 acres of Phragmites was treated by DCR staff on state natural area preserves in the Chesapeake Bay, Eastern Shore, and Southeast Regions.

Invasive Species Work Group Advisory Committee 02/08:

Invasive Species Work Group Advisory Committee subcommittees have been busy during fall and winter. The Invasive Species List subcommittee is close to completing a list of 12 high priority species to be targeted by educational, early detection, and control projects. The Judicial Review subcommittee received two reports from University of Richmond Environmental Law Institute. One report discusses the results of research into state agency jurisdictions and authorities regarding invasive species. The second report compares the highly developed state invasive species programs in New York and Washington. The Early Detection will soon receive a report, from University of Richmond's Peter Smallwood, that surveys state early detection networks and investigates early detection networks in Virginia. All these products will help the Work Group to effectively and efficiently coordinate invasive species management actions in Virginia. Last but not least, a proposal was submitted to the US Fish and Wildlife Service for block grant funds that go to states with an invasive species management plan

Information Management:

Natural Heritage Program at 2007 NatureServe Conservation Conference 10/07:

DCR-Division of Natural Heritage attended the 2007 NatureServe Conservation Conference on October 1 -3. Conference attendees included representatives from Natural Heritage Programs throughout the western hemisphere; a variety of federal and state agency representatives and non-profit Conservation organizations (e.g. The Nature Conservancy, the Land Trust Alliance, and the Trust for Public Lands); the National Geographic Society and ESRI, Inc. Tom Smith and Jason Bulluck presented topics regarding DCR-DNH's advancements in web-based mapping tools (e.g. Natural Heritage Data Explorer and Land Conservation Data Explorer); the utility of the VCLNA for prioritizing conservation efforts in Virginia and as a model for other states with Conservation Planning needs; and DCR-DNH's collaboration with NatureServe and the National Geographic Society in the development of LandScope, The Conservation Guide to America's Natural Places. Virginia Natural Heritage was recognized by all in attendance as a leader in state Natural Heritage Programs that continues to foster the sharing of high quality Heritage data with a variety of partners throughout Virginia.

The Conservation Guide to America's Natural Places Preview Launched 10/07:

The Conservation Guide to America's Natural Places (www.landscape.org) was launched, in preview mode, on October 1, 2007, by NatureServe and the National Geographic Society. Landscape will provide a tool for land conservation throughout the United States that may be used by federal, state and local governments and non-profit organizations such as land trusts. LandScope will also provide a comprehensive educational resource

for many ages interested in locating and learning about America's natural, conservation-worthy, treasures. The Virginia Natural Heritage Program was selected by NatureServe and the National Geographic Society as one of five Heritage Programs to be featured on the initial launch of the site. Under this partnership, Virginia DCR-Natural Heritage contributed to website conceptual development, technical content, editorial content and will be featured with a specific website (LandScope Virginia) upon the official launch in October 2008. Virginia Natural Heritage will continue to collaborate with NatureServe and the National Geographic Society to assure that this site adequately features DCR's commitment to land conservation. DCR's involvement in this endeavor reinforces that Virginia is a leading state in land conservation efforts. Check out our involvement and the development of this multimedia tool at www.landscape.org.

Blue-Green Infrastructure Integration 11/07:

DCR DNH has begun the initial blue(freshwater)-green infrastructure integration piece of the ongoing VCLNA with the development of an analysis of which healthy streams are vulnerable to predicted growth. This is the first piece of the blue-green integration and serves as an initial assessment of potential relationships between healthy streams and growth threat. The Healthy Streams are derived from VCU Center for Environmental Studies INSTAR sites (<http://instar.vcu.edu/>) and an ecological stream health score. The blue-green infrastructure integration will continue with additional analyses of the VCLNA Watershed Integrity Model and the VCU CES INSTAR database.

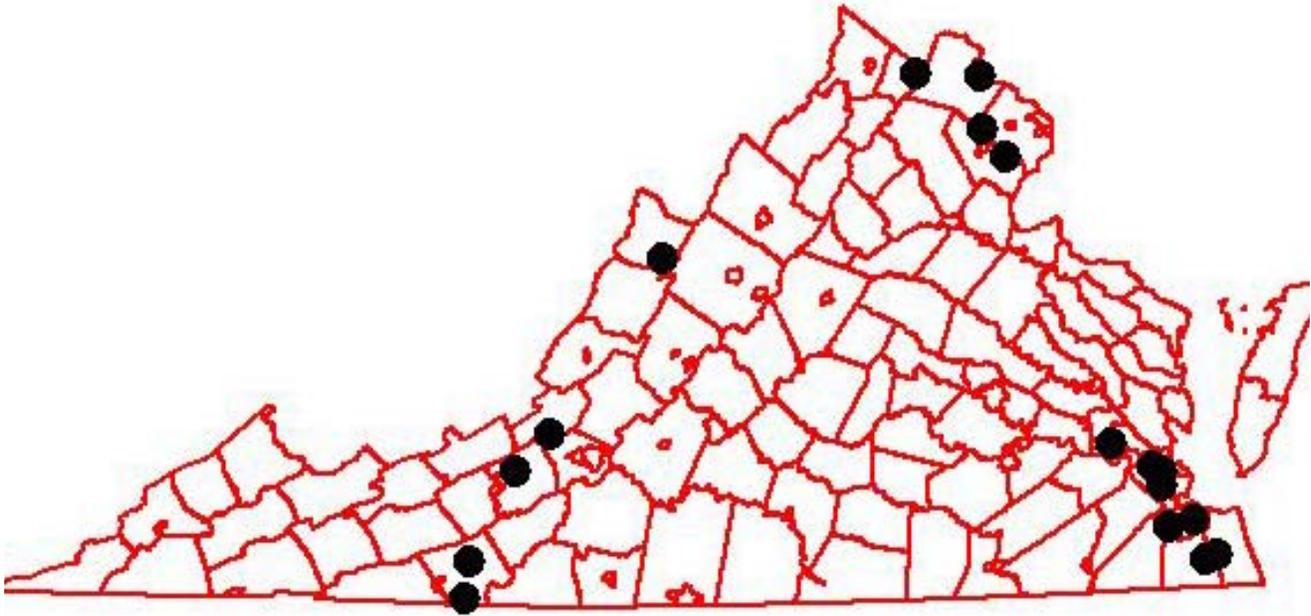
Collaboration with DGIF – Biodiversity Concentration 01/08:

In collaboration with DGIF, DCR-DNH has begun a two-part project to identify the most vulnerable and biologically diverse areas of Virginia. The first part of this project will entail combining six disparate, rare-species databases from DGIF and DCR-DNH, a change analysis to determine viable habitats, and an assessment of current protection using the Legal Protection Status and Biodiversity Management Intent attributes of the Conservation Lands Database. The results of this index will be summarized in a GIS layer for use by other state agencies and conservation partners. Since this product will contain sensitive data that could be used to locate rare species and natural communities, it will not be made available to the public. However, part two of the project will combine the index from part one with features of the Virginia Natural Landscape Assessment and DGIF's Wildlife Action Plan to develop a layer that prioritizes lands for conservation and that will be available publicly. This work is related to CZM funded projects (FY 06 Task 93.03 and FY 07 93.03). Both products will be available by October 2008.

Loss of Conservation Sites due to Development 02/08:

Recently, Natural Heritage scientists analyzed land-use changes at heavily-developed sites containing Natural Heritage Resources. These sites are known as Conservation Sites. A total of 82 sites were examined using 2002 aerial photographs. Staff estimated that 20 of the Natural Heritage Resource occurrences within these sites had been eliminated. With a few exceptions, these 20 occurrences were lost because their habitat had been grossly altered between when the occurrences were last observed (generally between 1980 and 1995) and 2002 when the VGN aerial photographs were taken. During this period (about 15 years on average), many of these occurrences were lost to housing or commercial development of their habitat.

As a result of this, 18 of the 82 (22%) conservation sites were lost. It's been 6 years since the VGIN aeriels were flown. Growth has exploded during this period and its unknown what has been lost since 2002. The map on the following page shows where the sites have been eliminated.



Natural Heritage Data Management Totals for FY2008:

Activity 10/01/07-03/31/08

Total Number in Database 03/31/08:

New Mapped Locations (EO) - 3
 Updated Mapped Locations (EOs) - 113
 New Conservation Sites - 6
 Updated Conservation Sites - 19

Animal Mapped Locations (EOs) – 1,099
 Plant Mapped Locations (EOs) – 1,127
 Community Mapped Locations - 335
 Conservation Sites - 771

Managed Areas – 199 newly mapped
 VOF Easements – 312 added, 1890 updated (2202 total)
 Mapped Tracts - 2421 added and updated

Miscellaneous:

15th Annual Eastern Shore Birding Festival 10/07:

Natural Heritage zoologists Steve Roble and Chris Hobson were asked to conduct a workshop on dragonflies and damselflies for the 15th Annual Eastern Shore Birding Festival. The workshop consisted of a lecture followed by field trips to Eyre Hall and the Cape Charles Natural Area Preserve on 6 October, and another field trip to Savage Neck Natural Area Preserve on 7 October. The workshop was well attended, with 24 participants on the first day, and 7 on the second day. Topics included identification, habitat associations, ecology, and life history. This was the first dragonfly and damselfly workshop to be conducted at the festival.

Virginia Master Naturalist Program 11/07:

DCR Natural Heritage Program staff has been heavily involved with the new Virginia Master Naturalist Program that began in 2007. Collectively during the first ten months of this year, nearly 800 hours of NH staff time was devoted to this new effort to train citizens in a broad area of subjects within the natural sciences. DCR’s three Eastern District Natural Areas Stewards serve as chapter coordinators and have been heavily involved in starting up programs in their respective regions, and other staff is serving as course instructors. Newly certified Master Naturalists are required to provide 40 hours of community service each year in order to retain their certification. It is anticipated that certified Master Naturalists will provide DCR natural area

management staff with an on-going volunteer work force to assist with various aspects of natural areas monitoring and management in Virginia.

Natural Heritage Program Core Training 02/08:

Chris Hobson and Jason Bulluck, DCR-Natural Heritage staff, were invited to present at the annual Natural Heritage Program Core Training class, which took place the week of February 25 in Arlington, Virginia. At this event, Natural Heritage staff from throughout the U.S., Canada, and Central and South America came together to learn more about the innovative ways in which the featured Natural Heritage programs are using their data to meet the challenges of protecting rare species and natural communities, as well as how to integrate this information into local and statewide Conservation Planning efforts. The Virginia DCR Natural Heritage (VA DCR/DNH) program has gained a reputation throughout the western hemisphere-wide Heritage network for the unmatched quality *and* quantity of rare species and habitat data that they collect, maintain, and disseminate into information for a variety of conservation partners. Likewise, high-accuracy Conservation Lands tracking and Green Infrastructure tools (the Virginia Conservation Lands Needs Assessment) developed at VA DCR/DNH provide clear guidance for other state programs embarking on similar efforts. Thus, others may rely on us for support in advancing their conservation efforts and VA DCR/DNH will continue to take the next steps forward in fulfilling the Natural Heritage and DCR missions.

c) DCR – Division of Planning and Recreation Resources

The Department of conservation and Recreation, division of Planning and Recreation Resources has two items that are appropriate for the next Coastal Zone 309-B Report. The Department of Conservation and Recreation, in cooperation with Stafford County and other partners has just acquired "The Crows Nest" property in Stafford County. The site which consists of about 1,600 acres, fronts on the Potomac River and Potomac Creek and will be operated primarily as a State Natural Area Preserve, but will have some areas available for recreational use, including trails and public access. Management and resource protection planning will probably be initiated later this year.

The 2007 Virginia Outdoors Plan was completed earlier this year and is being distributed to localities, regional planning agencies and state agencies during the month of April, 2008. "The Plan" is produced every 5 years and contains sections dealing with the Coastal Zone & natural resource protection, outdoor recreation-including public access, green infrastructure, and land conservation. The DCR staff has conducted more than 80 public meetings throughout the Commonwealth to obtain public input. During these meetings in 2005 and 2006, citizens expressed overwhelming support for and concern about protecting our natural resources and open space. Gov Kaine, in a speech at the Environment Virginia Conference, April 20, 2006 said- "Virginia's identity is its land. From the shores of Chincoteague to the hills and valleys of Cumberland Gap, Virginia's beauty is unmatched. But as quickly as our population is growing, our rate of development is growing even faster. If we continue as we have, Virginia will develop more land in the next 40 years than we have in the last 400 years. Without foresight, without a plan to focus and manage that growth in a balanced way, we will be failing ourselves and future generations." The vision for the 2007 VOP is that it will contribute to today's land use and land conservation decisions so that future generations will be able to reflect with pride on the work that this generation has done for the outdoors.

d) DCR- Division of Chesapeake Bay Local Assistance (includes previous period's report)

April 1, 2007 – September 30, 2007

During the reporting period, the Division of Chesapeake Bay Local Assistance continued to make significant progress in overseeing local government progress in implementing the Chesapeake Bay Preservation Act. The Division has also enhanced its education and training for both local government staff and consultants involved with administering the Act through local codes and development review processes. The following is a summary of activities for this period.

Program Description:

The Bay Act requirements fall into three categories. Phase I consists of local governments designating and mapping Chesapeake Bay reservation Areas (CBPAs) and adopting land use and development performance criteria to protect those features. CBPAs include tidal wetlands, tidal shores, nontidal wetlands connected and contiguous to tidal wetlands and perennial streams and a 100-foot fully vegetated buffer. Phase II consists of the review and revision of local comprehensive plans to incorporate water quality protection measures. Phase III involves the review and revision of local land use codes to include specific standards that implement water quality performance criteria.

In its review of local Bay Act programs, the Chesapeake Bay Local Assistance Board adopts two kinds of determinations. When a locality is deemed consistent, it means the local ordinances are in place to designate CBPA's and to require that the performance criteria are met. When the Board deems a local program compliant, it means that the locality is properly implementing the required code or comprehensive plan provisions.

Consistency Reviews

For the period April 1 – September 30, 2007, CBLAB determined 4 local amended Phase I and one Phase II programs to be consistent with the Bay Act regulations. The localities were the Towns of Surry and Warsaw, the City of Hampton and Fairfax County. The approved Phase II program was the City of Petersburg.

It is important to point out that all of the 84 Bay Act localities had adopted Chesapeake Bay Preservation Area maps and local ordinances to protect those areas in place by 1996. CBLAB adopted revisions to the Bay Act regulations, however, in 2001. This action necessitated all 84 localities to revise their local ordinances to be consistent with the amended regulations. As of September 30, 2007 all but 2 of the 84 localities had adopted ordinance amendments consistent with the revised regulations.

Compliance Evaluations:

For the period April 1 – September 30, 2007, 11 localities were deemed by CBLAB to be fully compliant with Phase I of the Bay Act. During the same period, an additional 22 localities had been deemed not fully compliant but were addressing conditions to achieve full compliance. Finally, 18 local compliance evaluations were in progress for the period.

Site Plan Reviews:

For the reporting period 128 site plans for state and federal projects were reviewed and commented upon for consistency with the Chesapeake Bay Preservation Act requirements. In additional 64 site plans were reviewed at the request of local governments.

Technical Assistance & Outreach:

DCBLA has attempted during this reporting period to enhance its technical assistance, education and outreach efforts. The table below reflects the specific education and outreach efforts for the 4th quarter (April, May, June) of FY '07

CBLA Education & Outreach Events – 4th Quarter – ‘07			
Topic	Audience	Staff	Date
Land Use Codes & Water Quality Protection	Environment Virginia	Joan Salvati, Division Director	4/12/07
Better Site Design techniques	Environment Virginia	Alli Baird, Riparian Buffer Specialist	4/10/07
Shoreline Erosion Projects & Resource Protection Areas	Hampton Roads PDC Living Shoreline Workshop	Joan Salvati, Division Director	5/30/07
Nontidal Wetlands & Resource Protection Areas	Hampton Roads PDC Meeting	Nate Hughes, Watershed Specialist; David Sacks, Asst. Div. Director	6/7/07
RPA Exception Process Training	Stafford County Board of Zoning Appeals	Adrienne Kotula; Shawn Smith, Principal Planners	6/26/07
Phase III – Incorporation of water quality protection into local land use codes	Soil & Water Conservation Society	Joan Salvati	06/26/07
Nontidal Guidance Training	HRPDC Stormwater and Chesapeake Bay Committees	David Sacks, Nate Hughes	06/07/07

In addition to the above education, training and technical assistance events, DCBLA staff gave presentations on the incorporation of Better Site Design practices into local codes to the Soil & Water Conservation Society on June 26, 2007. On September 19 and 29, 2007, staff gave presentations on riparian buffer management to a citizens group in Chesterfield County and to citizens and master gardeners in at the “Growing Solutions for a Healthy Chesapeake Bay” workshop held in James City County.

For the reporting period, DCBLA staff conducted a total of 24 technical assistance site visits, 9 education and outreach events and 19 training events. Of the 19 training events, 12 involved training on perennial flow determinations. The requirement for such determinations reflects one of the key changes to the Bay Act regulations that were adopted by the Chesapeake Bay Local Assistance Board in 2001.

October 1, 2007 – March 31, 2008

During the reporting period, the Division of Chesapeake Bay Local Assistance continued to make significant progress in overseeing local government progress in implementing the Chesapeake Bay Preservation Act. The Division has also enhanced its education and training for both local government staff and consultants involved with administering the Act through local codes and development review processes. The following is a summary of activities for this period.

Program Description:

The Bay Act requirements fall into three categories. Phase I consists of local governments designating and mapping Chesapeake Bay Preservation Areas (CBPAs) and adopting land use and development performance criteria to protect those features. CBPAs include tidal wetlands, tidal shores, nontidal wetlands connected and contiguous to tidal wetlands and perennial streams and a 100-foot fully vegetated buffer. Phase II consists of the review and revision of local comprehensive plans to incorporate water quality protection measures. Phase III involves the review and revision of local land use codes to include specific standards that implement water quality performance criteria.

In its review of local Bay Act programs, the Chesapeake Bay Local Assistance Board adopts two kinds of determinations. When a locality is deemed consistent, it means the local ordinances are in place to designate CBPA’s and to require that the performance criteria be met. When the Board deems a local program compliant, it means that the locality is properly implementing the required code or comprehensive plan provisions.

Consistency Reviews:

For the period October 1, 2007 through March 31, 2008, CBLAB determined 1 local amended Phase I to be consistent with the Bay Act regulations. The locality was the Town of Tangier. As of March 31, 2008, 83 of the 84 Bay Act localities have been deemed Phase I consistent and all 84 local programs have been deemed Phase II consistent by the Chesapeake Bay Local Assistance Board.

It is important to point out that all cities and counties required to comply with the Bay Act had adopted Chesapeake Bay Preservation Area maps and local ordinances to protect those areas in place by the 1992. CBLAB adopted revisions to the Bay Act regulations, however, in 2001. This action necessitated all 84 localities to revise their local ordinances to be consistent with the amended regulations. As of March 31, 2008 all but 1 of the 84 localities had adopted ordinance amendments consistent with the revised regulations.

Compliance Evaluations:

For the period October 1, 2007 through March 31, 2008, 11 localities were deemed by CBLAB to be fully compliant with Phase I of the Bay Act. As of March 31, 2008, an additional 22 localities had been deemed not fully compliant but were addressing conditions to achieve full compliance. Finally, 10 local compliance evaluations are currently in progress.

Site Plan Reviews:

For the reporting period 162 site plans for state and federal projects were reviewed and commented upon for consistency with the Chesapeake Bay Preservation Act requirements. In additional 34 site plans were reviewed at the request of local governments.

Technical Assistance & Outreach:

DCBLA has attempted since June of 2005 to enhance its technical assistance, education and outreach efforts. For the reporting period, DCBLA staff conducted a total of 36 technical assistance site visits, 18 education and outreach events and 15 training events. Most of the training events provided involved training on perennial flow and nontidal wetland determinations. The requirement for such determinations reflects one of the key changes to the Bay Act regulations that were adopted by the Chesapeake Bay Local Assistance Board in 2001.

Phase III of Bay Act Implementation:

In September of 2007, DCBLA began developing policies and procedures for the implementation of Phase III of the Bay Act. As discussed above, Phase III requires the 84 Tidewater local governments to review local land development ordinances, and revise if necessary, in order to ensure these ordinances adequately address the protection of the quality of state waters. To assist local governments in reviewing local ordinances, the Board will provide a checklist to determine if there are adequate provisions to address water quality protection.

A draft Checklist for Evaluation of Local Phase III Programs was developed during the reporting period and contains two sections. Section 1 includes six provisions that must be contained within local ordinances, as they are specifically required in the Regulations. Section 2 contains numerous measures that provide examples of requirements that may be contained within a locality's land development ordinances to address water quality protection. For Section 2, a threshold will be established identifying a minimum number of provisions in each of the three sections that must exist in local ordinances. CBLA staff has asked the Center for Watershed Protection to review the draft checklist and to offer recommendations on the threshold for a minimum score. It is expected that a draft checklist and threshold will be presented to the Chesapeake Bay Local Assistance Board in June of 2008.

5) Department of Game and Inland Fisheries (DGIF)

Recreational Fishing:

Region 1 Fisheries Stream Sampling Summary

During this reporting period, VDGIF was scheduled to conduct survey work, using boat electrofishing techniques primarily, on sections of 31 streams which drain into the geographic area covered by the CZMP. In addition to relative abundance indices, additional parameters were examined for recreationally important species, including analyses of age structure and growth rates based on examination of otoliths. This work has been completed, and a report detailing results is being prepared under Sportfish Restoration Grant F-111-R.

Tidal Chickahominy River F₁ Hybrid Largemouth Stocking Study

In 2007, VDGIF biologists entered into year-3 of a multiyear project to assess the feasibility of using supplemental stocking to offset recruitment variability in this largemouth population. Activities included: the third, and last, year of stocking; an initial assessment of this stocking; and continued assessment of the 2005 and 2006 stockings. Although initial mortality rates were apparently quite high for the 2005 cohort of stocked fish, at two-plus years post-stocking, these fish have persisted in the system at low relative abundance levels, with consistent contribution of stocked fish to the year-class. The 2006 cohort has also persisted, and as opposed to the 2005 cohort, returns of the 2006 cohort of stocked fish have been outstanding – with consistent contribution of stocked fish to the year-class and robust catch rates. As a result, rather than a fair-to-average year-class, the combined (stocked and natural-spawn) year-class was unusually strong – these fish have recruited to the adult population, and the fishery. Initial returns of the 2007 cohort of stocked fish were excellent.

American Shad Restoration Program

Otoliths collected while monitoring adult American shad populations in the James and Pamunkey rivers during the spring, 2007 spawning run were processed. For the fifth consecutive year, there was a shift in both rivers toward older fish; fish up to age ten were collected in the James and fish up to age eleven were collected in the Pamunkey. These shifts toward older spawning stocks was likely due to relatively poor year class recruitment from 1999-2002, generally a period of extreme drought in Virginia. The proportion of hatchery-origin fish in samples from the James River was 81%. This is somewhat higher than that observed during 2005 and 2006, but similar to values observed during the early 2000's. The prevalence of hatchery-origin fish was similar across cohorts. Hatchery fish represented 4.0% of the brood fish collected in the Pamunkey River during 2007. This was up slightly from that reported for 2006.

Stream Monitoring, Juvenile Alosines

Juvenile alosine sampling using a bow-mounted push net was conducted from June through October 2007 on the James and Rappahannock rivers. Boat electrofishing was also conducted in the upper James and tidal Rappahannock in the fall to collect shad and herring juveniles. Electrofishing is more effective for larger alosine juveniles later in the year when the fish are better at avoiding the push net. Sampling resulted in the collection of target species from both rivers. A Virginia Institute of Marine Sciences (VIMS) PhD candidate analyzed the otoliths (ear bones) from the juvenile alosines to determine the origin of the fish (hatchery or wild). The VDGIF is awaiting the results of the otolith analysis.

Stream Monitoring, Adult Anadromous Fishes

Weekly boat electrofishing for adult anadromous fish was begun in February 2007 on the James and Rappahannock rivers in the fall zones. Less frequent sampling is also being conducted on other streams such as the Chickahominy and Mattaponi rivers. One early highlight of 2008 monitoring is that an adult American shad was found 28 river miles upstream of the former Embrey Dam site on the Rappahannock River near Kelly's Ford where fry stocking began in 2003. Additional information will be available following the spring monitoring season.

Boshers Dam Fishway:

Fish passage data collection from 2007 digital video review is near completion (95%). The number of American shad passed in 2007 (~40) is down from 2006 (84). Since the fishway opened in 1999 the peak year for American shad passage was in 2002 (750). The relative trend of passage at Boshers is similar to other east coast fishway operations. At least 23 species of fish have used the fishway including striped bass (one seen in 2007) and sea lamprey, a native anadromous fish, commonly seen using the fishway. Through 2006, over 750,000 fish have been counted at the fishway with the vast majority being gizzard shad. The fishway was recently reopened in March for the 2008 migration season.

Fish Passage Projects:

Two small dams were recently removed from Wilson's Creek, an upper James River tributary. Douthat State Park came into ownership of these dams and removed them to provide resident fish passage and stream restoration, and to improve safety. The dams were downstream of Douthat State Park Lake and removing the dams reopened three miles of Wilson's Creek.

Charles Lake Dam (Kimages Creek, a tidal James tributary), was breached during a heavy rain event in 2006. A comprehensive restoration project is being planned that includes removing most of the remaining dam. This will provide additional river herring spawning habitat.

Law Enforcement:

During this reporting period, Region 1 Law Enforcement personnel spent an increased amount of their enforcement time dealing with tidal water-related issues, especially on the Rappahannock River. One significant arrest of illegal striper fishing (closed season) netted fines in excess of \$500.00 for four individuals. A VIMS permitted contract net fisherman had his permit revoked when he was charged with unlawful taking of Stripers. Other routine patrols resulted in approximately ten additional arrests for illegal stripers. Conservation Officers have worked and continue to work on illegal fishing in conjunction with their regular boat patrols. Generally, region boat ramps are in good repair. One exception might be in the Gloucester County area where fishermen and other public offenders have left significant litter and done minor damage to parking areas. Targeted patrols have not been successful to date.

Wetlands:*Mitigation Banking*

VDGIF continues to participate on the Wetland Mitigation Banking Review Team and provide input on new banks all over Virginia, including the coastal zone. Numerous proposals have been made for new banks and/or additions to existing banks within the coastal region of Virginia.

Geographic Information Systems/Data Management:

DGIF continued to maintain spatial datasets of wildlife locations and resources in the coastal zone. DGIF has implemented a unified species observation database to maintain over 12 different wildlife location datasets in a single enterprise structure. Environmental review data derived from this system, is now being served through an Internet feature map service. This map service, funded through a partnership with VDOT, allows conservation partners to view and obtain the most current information on critical wildlife resources. DGIF continues to develop spatial datasets and tools to communicate the results of the Virginia Wildlife Action Plan. An Internet mapping application called Map Wild! has been developed and is undergoing beta testing. This interactive mapping and reporting system will allow users to view and query species, habitats, threats, and conservations actions. Habitat mapping of Tier II species of greatest conservation need, as defined by the Wildlife Action Plan, is ongoing. Of the 246 Tier II species, 46 are listed as federal or state threatened and/or endangered and have been given priority. Draft maps were created for approximately 42 species during this period. DGIF is also developing spatial information for recreational opportunities, including developing a comprehensive boating access database and mapping waterfowl hunting blinds.

Wildlife Mapping:

To date, the WildlifeMapping program has trained over 1,450 volunteers and has generated over 55,000 observations of wildlife and their habitats. The coastal region is the most represented region, both in terms of volunteers and observations, providing approximately 40% of the incoming data. For 2008, most all WildlifeMapping workshops are being conducted in conjunction with chapters of the Virginia Master Naturalist Program. The Virginia Master Naturalist program currently has 21 active chapters. With seven of the 21 chapters in the Coastal Zone, it is anticipated that the ranks of new WildlifeMappers turning in data for this region will swell this year. WildlifeMapping Workshops were delivered to two chapters, the Historic Rivers Chapter in Williamsburg, and the Eastern Shore Chapter in the past three months. These Master Naturalists can also be expected to provide many hours of volunteer service to the Coastal Zone natural resource community in the coming months and years. To better serve these additional volunteers, the Internet-based data entry program is being revised to allow volunteers to map data. Additional improvements are planned, including the use of palm pilots and GPS units to collect data remotely.

Virginia Birding and Wildlife Trail (VBWT):

The VBWT is designed to support wildlife conservation efforts in Virginia by providing Virginians and visitors with increased access and opportunities to view wildlife throughout the state. Staff is continuing to visit trail sites and arrange meetings with site managers and tourism officials across Virginia. These meetings allow for full cooperation and coordination for the VBWT. In addition, two Master Naturalist volunteers are calling over 450 VBWT site owners/managers to update contact information and inquire about site signage needs. Once calls have been completed, the web site will be updated and signage ordered. A contractor completed all road signage in April 2007. This road signage enhances the ease of use for trail users and has produced an increased interest in the Trail statewide. Staff presented to the Virginia Association of Planning District Commissions in January 2008 to begin discussions to have the PDC's track when road signage needs to be replaced.

VDGIF has contracted with the Conservation Management Institute at Virginia Tech in 2007 to design and implement a user survey of the VBWT. This will provide valuable data as to the effectiveness and usage of the trail. Such information will enhance VDGIF's management and development efforts for the VBWT. Site surveys have been completed and surveys of "key informants" have been completed. The final report is due in April 2008 and will be shared with all partners as soon as it is available.

Site enhancements have been completed at Willis Wharf Marina a site on the Eastern Shore Loop of the Virginia Birding & Wildlife Trail through a grant from the Virginia Coastal Zone Management Program as an ecotourism component of the Virginia Seaside Heritage Program. This project developed an observation platform overlooking the tidal wetlands adjacent to the Willis Wharf Marina. Construction occurred on county-owned property at the marina. The viewing platform is a 4 foot high platform with a handicap accessible ramp. The surface is 24 feet wide by 64 feet long with railings. The decking surface was constructed with recycled plastic lumber to increase the durability of the platform and reduce maintenance. The property is owned by the County of Northampton and the platform will be open to the public. This will provide opportunities to view a variety of shorebirds and improve the ecotourism infrastructure of the area.

In consultation with a variety of partners (Northampton County, Willis Wharf Village Committee, Virginia VA CZM and Northampton-Accomack PDC), initial design parameters were defined. These included accessibility, and synthesizing the structure with the surrounding working waterfront.

With guidance from DGIF Watchable Wildlife Staff, DGIF Capital Programs staff created detailed plans for the platform. These plans were forwarded to all partners for review and comment. The plans were found to be satisfactory and were approved by the Northampton County Board of Supervisors. The construction contract was awarded to Eastern Shore Homecrafters. DGIF entered into a cooperative agreement that delineates the responsibilities of the primary partners (DGIF and Northampton County) regarding construction and maintenance of the viewing platform. These documents were approved by the Northampton County Board of

Supervisors at their October meeting. Signage acknowledging the contributions of NOAA, CZM and all other partners has been installed on site. In addition, stationary binoculars have been installed for visitors to better view shorebirds from the platform. A site visit by DGIF staff has confirmed that all construction is satisfactory and consistent with the plans provided.

Following construction interpretive signage highlighting the natural history of the area, as well as the ongoing efforts of project partners will be designed and installed.

NonGame Species Monitoring and Research:

Delmarva Fox Squirrels

One of the recovery objectives for the federally endangered Delmarva fox squirrel (*Sciurus niger cinereus*; DFS) is to restore populations throughout its historic range, which includes Virginia's Eastern Shore. At present, Chincoteague National Wildlife Refuge harbors the only known self-sustaining DFS population in the state of Virginia. The translocation of DFSs on lands that currently do not support squirrels have proven to be a successful means of expanding and increasing DFS populations within the species' historic range. Many of the forests that may serve as suitable translocation sites Virginia's Eastern Shore are privately owned. Several years ago, DGIF was awarded federal funding under the Private Landowner Incentive Program to develop and implement a Safe Harbor Program that would provide private landowners with legal assurances that they will not be held accountable if translocation efforts fail, and funding to conduct habitat management activities on their lands that would benefit future introductions of DFS. Below is a summary of actions taken towards the establishment of a DFS safe harbor program on Virginia's Eastern Shore during this reporting period.

During the last reporting DGIF entered into a contractual agreement with a locally owned environmental consulting firm (hereafter referred to as contractor) to fulfill the following project objectives:

- (1) Provide assistance with the identification of at least two private property owners with suitable squirrel habitat who are willing to have DFS translocated onto their property and agree to engage in land management and restoration activities designed to benefit DFS and other at-risk wildlife species and habitats;
- (2) Serve as liaison to inform and advise potential and participating landowners regarding the benefits, responsibilities, and commitments entailed in participating in this DFS Safe Harbor Program; and to inform landowners adjacent to translocation tracts of Program activities and encourage them to enter into a cooperative land management plan;
- (3) Conduct baseline habitat and wildlife surveys on the privately owned release sites and adjacent lands;
- (4) Develop individualized land management plans for participating landowners willing to have squirrels translocated onto their property, and developing area-wide land management plans that would include adjacent lands;
- (5) Provide cooperating landowners with technical guidance on implementing management and restoration activities outlined in land management plans and Safe Harbor agreements.
- (6) Develop a long term DFS management plan for the privately owned release sites.

Since then, the contractor has carefully reviewed both Eastern Shore counties' Comprehensive Plans to make sure that the DFS Safe Harbor project does not conflict with both county's mission or goals. The contractor also introduced the project to a select group of locally appointed/elected officials and government staff by way of informal discussions. These discussions encouraged local officials to openly express their views and reservations about the Project and sought ways to minimize or eliminate these concerns prior to its implementation. Afterwards, the contractor prepared a Project Prospectus, which included an explanation of

Project needs, goals and objectives, a detailed description of the methods that will be used to achieve the objectives and a timeline of when each objective will be accomplished. The Prospectus also described the project's concurrence with both Eastern Shore Counties' Comprehensive Plans and listed the few minor questions/concerns raised by elected officials and government staff.

During this reporting period, the contractor began an intensive landscape analysis using GIS technology in conjunction with the most current tax parcel maps to identify potential areas on the Eastern Shore that are privately owned, likely contain suitable DFS habitat, and have predicted land uses conducive to supporting DFS populations. Thus far, the search has revealed that only six parcels in Accomack County and one in Northampton County were large enough (≥ 435 acres) to support viable DFS populations (Hilderbrand *et al.* 2004). Smaller parcels (250 - 400 acres) were more numerous and could serve as potential translocation sites if adjacent landowners are willing to participate in the Safe Harbor Program.

Of the six parcels in Accomack County, one site (hereafter referred to as Site #1) immediately stood out because of its large acreage (~1,600 acres) and its close proximity to a viable DFS population located just north of the VA/MD border. This land has been actively managed for silviculture for three generations. Initial discussions with the landowner indicate that he wishes to maintain the land in active forestry and not "encumber it for future heirs". It also appears that he wants his land to remain largely undeveloped.

The Contractor approached two owners of properties adjacent to Site #1. The first landowner, whose estate is comprised of forest and agricultural lands, responded very positively to the Project. The second adjacent landowner is Sustainable Conservation Inc. (SCI), a subsidiary of The Conservation Fund, and is the same company that worked with Maryland Department of Natural Resources to develop a DFS management plan for state-owned lands. Most of this land has been recently cut over; therefore it will take at least 10 years before the land becomes suitable for DFS. However, SCI plans to keep it in active management until it can sell the property to a conservation agency such as the VA Department of Forestry as soon as state funding becomes available. As such, should Site #1 become a viable DFS translocation site, the SCI land could be instrumental in supporting an expanding population in the long term.

Three additional potential sites are located on the bayside of north Accomack County and in close proximity to other SCI-owned lands. Contact has not been made with the landowners of these properties pending the progress of Site #1. However, preliminary inquiries with adjacent landowners revealed that two have conservation easements with the Eastern Shore Land Trust and would likely be willing to participate in the DFS Safe Harbor Project.

DGIF staff is currently working on a draft Safe Harbor Agreement application to be submitted to the US Fish and Wildlife Service some time in the next reporting period.

Literature Cited

Hilderbrand, R. H., R.H. Gardner, M.J. Ratnaswamy, and C. E. Keller.

2004. Demographic analysis and estimates of extinction risk for the Delmarva fox squirrel. Report in fulfillment of 29 National Fish and Wildlife Foundation project # 1999-0368-013 and U.S. Fish and Wildlife Service, Chesapeake Bay Field Office, Annapolis, MD. 41pp.

American Oystercatcher Resighting Surveys

The U.S. Shorebird Plan (Brown *et al.* 2001) classified the Atlantic coast American Oystercatcher (*Haematopus palliatus palliatus*) to be a high priority, at-risk species. The American Oystercatcher Working Group (AOWG), a group of shorebird biologists, researchers, graduate students and managers from Massachusetts to Florida, came together several years ago to address the apparent decline in the oystercatcher population. AOWG developed a list of research and monitoring objectives to determine seasonal movement patterns, distribution and survivorship. One of those objectives included marking adults and young with field-

readable color bands throughout the species' Atlantic coast range and conducting post-breeding resighting surveys on high tide roosts from Virginia to Florida.

In 2003, The Nature Conservancy's – Virginia Coast Reserve (VCR) initiated an oystercatcher banding project in Virginia, which targeted primarily unfledged young (< 35 days old) that were captured by hand on breeding territories during the day. In the first year, VCR staff applied unique combinations of multiple, UV resistant single layer darvic plastic wrap around color bands on the right and left metatarsus and tibiotarsus along with a size 5 or size 6 BBL band on the right metatarsus. Soon afterwards, researchers throughout the species range discovered that oystercatchers were able to remove the single layer wrap around bands which made it impossible to identify individuals with lost color bands in the field. In 2004, the wrap around color bands were replaced with 15 mm high, color bands made of a triple-layer, UV-resistant darvic plastic. Each band is engraved twice with field-readable two-digit alpha-numeric codes and duplicated to form a set two of identically coded bands. An engraved 'dot' is placed between the two digit codes on each band to help observers determine the correct order of the code. Each bird receives two identical color bands, one on each tibiotarsus, and a BBL band on the right or left metatarsus. States were assigned a different color to help identify banding locations. Virginia's band color scheme is black with white engraved codes and the BBL band is applied on the right metatarsus. Since 2004, a total of 302 American Oystercatchers (286 hatch year birds and 16 adults) were banded in Virginia by VCR, USFWS and DGIF staff.

In the fall of 2005, DGIF and VCR staff began conducting post-breeding re-sighting surveys of banded American Oystercatchers at all known high tide roost sites in the seaside lagoon system from Chincoteague Bay to Magothy Bay. Five water-based routes were established to ensure all sites were visited in a systematic fashion. We attempted to run each route every 12 – 14 days when high tide occurred between 0700 and 1100 hours. We used regular and image-stabilized binoculars and spotting scopes to view birds from the boat or when safe anchorage was possible, from land. After recording flock size, we carefully scanned the flock for banded birds. On most occasions, band readings were verified by two observers.

To date, a total of 147 (49%) individuals banded in Virginia have been re-sighted at least once. We also re-sighted 59 individuals that were banded out-of-state. Since 2005, we observed between 9% and 22% of Virginia's banded population after Oct. 31, suggesting these individuals were year round residents. Moreover, the majority of banded birds were re-sighted on roost sites that were within 12 km of their breeding/natal territories, indicating that resident oystercatchers in Virginia may exhibit year round breeding natal/breeding site fidelity. During this reporting period, we re-sighted 42% of the birds banded as chicks in 2004, indicating a high level of survivorship among fledged young.

We plan to continue these post-breeding survey efforts until we have a sample size large enough that will allow us to calculate survivorship, establish age at first breeding, and obtain a better understanding of local movement patterns.

Literature Cited

Brown, S., C. Hickey, B. Harrington, and R. Gill, eds. 2001. The U.S. Shorebird Conservation Plan, 2nd ed. Manomet Center for Conservation Sciences, Manomet, MA.

Sea Turtles and Marine Mammals

During this reporting period, DGIF staff continued to work on establishing a Section 6 Cooperative Agreement with National Marine Fisheries Service to obtain federal funding for the conservation and management of threatened and endangered sea turtles and marine mammals in Virginia. The application is nearly complete and will undergo review by the state's attorney general sometime during the next reporting period.

B. FEDERAL CONSISTENCY

During the first half of FY 2007, the Office of Environmental Impact Review/Federal Consistency (OEIR) reviewed 114 development projects and management plans for consistency with the VCP. This represents 72% of the total amount of projects (157) reviewed during this period. Major state projects accounted for 27 projects, 49 were federal actions, and 38 were federally funded projects (predominantly local government projects). The 49 federal projects included 45 direct federal actions and 4 federal licenses and approvals.

The OEIR continues to maintain a webpage for Federal Consistency for the Commonwealth. This can be accessed through DEQ's main website or found at <http://www.deq.virginia.gov/eir>. The webpage includes the Commonwealth's Federal Consistency information package, a project list with project descriptions and public notices of Federal consistency reviews. The webpage is updated weekly.

Table 1 depicting federal projects in Tidewater, Virginia reviewed from October 1, 2007 through March 31, 2008.

TYPE OF FEDERAL PROJECTS REVIEWED*	NUMBER OF PROJECTS COMPLETED	REVIEW PERIOD
Direct Federal Actions	45	30-60 Days
*Indirect Federal Actions (approvals & permits)	4	90 Days
Federally Funded Projects	38	30 Days
Outer Continental Shelf	0	45-60 Days
TOTAL	87	30-90 DAYS

**These projects do not include permits issued pursuant to Section 404 of the Clean Water Act administered by the U.S. Army Corps of Engineers. Such permits are reviewed by the regulatory agencies under a separate interagency coordinated review process (coordinated by the Norfolk District U.S. Army Corps of Engineers).*

Significant Projects reviewed for Consistency with the VCP 10/1/2007 to 3/31/08

A. Federal Consistency Determination (FCD) for the Humpback Bridge

Replacement on George Washington Memorial Parkway, Arlington County, DEQ 08-027F.

Project Description

The Federal Highway Administration proposes the replacement of Humpback Bridge on the George Washington Memorial Parkway (GWMP) in Arlington County. Project activities would consist of the demolition of the Humpback Bridge and construction of a new bridge structure; including a widened Mount Vernon Trail crossing, a northbound acceleration lane for the ramp from southbound I-395 to northbound GWMP, two northbound travel lanes, and two southbound travel lanes.

Consistency Finding

Based on our review of the FHWA's FCD and the comments submitted by agencies administering the enforceable policies of the VCP, DEQ concurs that the proposal is consistent to the maximum extent practicable with the VCP provided all applicable permits and approvals are obtained. According to information in the FCD, the proposed activity would have no effect on the following enforceable policies: fisheries management;

subaqueous lands management; dunes management; point source pollution control; shoreline sanitation; air pollution control; and coastal lands management. Project reviewing agencies that are responsible for the administration of the enforceable policies agree with some of the findings in FHWA's determination. However, reviewing agencies identified project impacts to the fisheries management, subaqueous lands management, air pollution control, and coastal lands management enforceable policies of the VCP and made several recommendations.

Comments/Recommendations on Applicable Enforceable Policies

1. Fisheries Management

1(a) Jurisdiction

The Department of Game and Inland Fisheries (DGIF), as the Commonwealth's wildlife and freshwater fish management agency, exercises enforcement and regulatory jurisdiction over wildlife and freshwater fish, including state or federally listed endangered or threatened species, but excluding listed insects (*Virginia Code* Title 29.1). The DGIF is a consulting agency under the U.S. Fish and Wildlife Coordination Act (16 U.S.C. sections 661 *et seq.*), and provides environmental analysis of projects or permit applications coordinated through DEQ and several other state and federal agencies. DGIF determines likely impacts upon fish and wildlife resources and habitat, and recommends appropriate measures to avoid, reduce, or compensate for those impacts. Furthermore, DGIF and the Virginia Marine Resources Commission administer the fisheries management enforceable policy of the VCP.

1(b) Finding

DGIF finds that the Potomac River has been designated an Anadromous Fish Use Area.

1(c) Recommendations

DGIF provides the following recommendations for the mitigation of project impacts on Potomac River Anadromous Fish Use Area:

- Observe time-of-year restrictions on all instream work in the Potomac and/or its tributaries from February 15 through June 30 of any year.
- Conduct instream activities during low or no-flow conditions, use non-erodible cofferdams to isolate the construction area, and block no more than 50% of the streamflow at any given time.
- Stockpile excavated material in a manner that prevents reentry into the stream.
- Restore original streambed and streambank contours.
- Revegetate barren areas with native vegetation.
- Implement strict erosion and sediment control measures.

1(d) Conclusion

DGIF finds the proposal consistent with the fisheries management enforceable policy of the VCP under its administration, provided FHWA adheres to the above recommendations.

2. Subaqueous Lands Management

According to the FCD, construction would require filling approximately 1,400 square feet in the Boundary Channel wetland for bridge foundations and additional work on and over the waters of the Boundary Channel.

2(a) Agency Jurisdiction

The Virginia Marine Resources Commission (VMRC), pursuant to Section 28.2-1204 of the Code of Virginia, has jurisdiction over any encroachments in, on, or over any State-owned rivers, streams, or creeks in the Commonwealth. For any development that involves encroachments channel ward of ordinary high water

along natural rivers and streams, a Joint Permit Application (JPA) must be submitted to VMRC for review and approval.

2(b) Finding

VMRC indicated that it appears that a permit may be required for subaqueous lands impacts based on the information provided.

2(c) Conclusion

The FHWA must submit a JPA to VMRC for any project impacts to subaqueous lands.

3. Wetlands Management

The FCD anticipates that there would be temporary impacts to wetlands within the Boundary Channel due to bridge construction. A July 23, 2007 letter from the U.S. Army Corps of Engineers (Corps) is included in the FCD (Appendix II) granting Clean Water Act § 404 authorization under Nationwide Permits #3 Maintenance and #18 Minor Discharges.

3(a) Agency Jurisdiction

The State Water Control Board (SWCB) promulgates Virginia's water regulations, covering a variety of permits to include Virginia Pollutant Discharge Elimination System Permit, Virginia Pollution Abatement Permit, Surface and Groundwater Withdrawal Permit, and the Virginia Water Protection Permit (VWPP). The VWPP is a State permit which governs Wetlands, Surface Water, and Surface Water Withdrawals/Impoundments. It also serves as § 401 certification of the federal Clean Water Act § 404 permits for dredge and fill activities in waters of the U.S. The VWPP Program is under the Office of Wetlands and Water Protection/Compliance, within the
Page 4, Task 3

DEQ Division of Water Quality Programs. In addition to Central Office staff that review and issue VWP permits for transportation and water withdrawal projects, the seven DEQ regional offices perform permit application reviews and issue permits for the covered activities.

3(b) Findings

DEQ-Northern Regional Office issued a letter dated February 7, 2008, noting the project, as presented, qualified for Corps Nationwide Permits #3 Maintenance and #18 Minor Discharges and therefore, met all of the § 401 Certification Conditions.

3(c) Recommendations

In general, DEQ recommends that stream and wetland impacts be avoided to the maximum extent practicable. To minimize unavoidable impacts to wetlands and waterways, DEQ recommends the following practices:

- Use directional drilling from upland locations for stream crossings, to the extent practicable. If directional drilling is not feasible, stockpile the material excavated from the trench for replacement.
- Operate machinery and construction vehicles outside of stream-beds and wetlands; use synthetic mats when in-stream work is unavoidable.
- Construct trenches for the utility line in a manner that does not drain the wetlands (for example, backfilling with extensive gravel layers thereby creating a French drain effect).
- Preserve the top 12 inches of trench material removed from wetlands for use as wetland seed and root-stock in the excavated area.
- Erosion and sedimentation controls should be designed in accordance with the most current edition of the Virginia Erosion and Sediment Control Handbook. These controls should be in place prior to clearing and grading, and maintained in good working order to minimize impacts to State waters. The

controls should remain in place until the area is stabilized.

- Place heavy equipment, located in temporarily impacted wetland areas, on mats, geotextile fabric, or use other suitable measures to minimize soil disturbance, to the maximum extent practicable.
- Restore all temporarily disturbed wetland areas to pre-construction conditions and plant or seed with appropriate wetlands vegetation in accordance with the cover type (emergent, scrub-shrub, or forested). The applicant should take all appropriate measures to promote re-vegetation of these areas. Stabilization and restoration efforts should occur immediately after the temporary disturbance of each wetland area instead of waiting until the entire project has been completed.
- Place all materials which are temporarily stockpiled in wetlands, designated for use for the immediate stabilization of wetlands, on mats, geotextile fabric in order to prevent entry in State waters. These materials should be managed in a manner that prevents leachates from entering state waters and must be entirely removed within thirty days following completion of that construction activity. The disturbed areas should be returned to their original contours, stabilized within thirty days following removal of the stockpile, and restored to the original vegetated state.
- All non-impacted surface waters within the project or right-of-way limits that are within 50 feet of any clearing, grading, or filling activities should be clearly flagged or marked for the life of the construction activity within that area. The project proponent should notify all contractors that these marked areas are surface waters where no activities are to occur.
- Measures should be employed to prevent spills of fuels or lubricants into state waters.

3(d) Conclusion

A VWPP general or individual permit is not required for the project. Should the size and scope of the project change, a VWPP may be required.

4. Nonpoint Source Pollution Control

According to the FCD, a total of 14.1 acres of land-disturbance is anticipated for the proposed construction. The document states that demolition and construction activities would incorporate erosion control measures and best management practices (BMPs) to minimize soil loss. A July 1, 2004 (expires June 30, 2009) Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Stormwater Discharges from Construction Activities issued by DEQ-NRO is included in the document (Appendix II).

4(a) Agency Jurisdiction

DCR's Division of Soil and Water Conservation administers the Virginia Erosion and Sediment Control Law and Regulations (VESCL&R), Virginia Stormwater Management Law and Regulations (VSWML&R).

4(b) Erosion and Sediment Control and Stormwater Management Plans

Federal agencies and their authorized agents conducting regulated land-disturbing activities on private and public lands in the State should undertake these activities in a manner consistent with the Virginia Erosion and Sediment Control Law and Regulations (VESCL&R), Virginia Stormwater Management Law and Regulations (VSWML&R), and other applicable Federal nonpoint source pollution mandates (e.g. Clean Water Act-Section 313, Federal Consistency under the Coastal Zone Management Act). Clearing and grading activities, installation of staging areas, parking lots, roads, buildings, utilities, or other structures, soil/dredge spoil areas, or related land conversion activities that disturb 2,500 square feet or more in a Chesapeake Bay Preservation Area (CBPA) would be regulated by VESCL&R and those that disturb 2,500 square feet or greater would be covered by VSWML&R. Accordingly, the sponsoring Federal agency should prepare and implement erosion and sediment control (ESC) and stormwater management (SWM) plans to ensure compliance with State law. FHWA is ultimately responsible for achieving project compliance through oversight of on site contractors, regular field inspection, prompt action against non-compliant sites, and/or other mechanisms consistent with agency policy. The agency is encouraged to contact the appropriate Regional Office and/or the local ESC and

SWM authorities to obtain plan development, implementation assistance and to ensure project conformance during and after active construction. [Reference: VESCL §10.1-567; VSWML §10.1-603.15]

4(c) Virginia Stormwater Management Program General Permit for Stormwater Discharges from Construction Activities

DCR is responsible for the issuance, denial, revocation, termination and enforcement of the Virginia Stormwater Management Program (VSMP) General Permit for Stormwater Discharges from Construction Activities (4 VAC 50-60-1100 through 4 VAC 50-60-1170) (previously administered by DEQ and known as the VPDES General Permit for Stormwater Discharges from Construction Activities) related to municipal separate storm sewer systems (MS4s) and construction activities for the control of stormwater discharges from MS4s and land disturbing activities under the Virginia Stormwater Management Program. The water quality and quantity requirements at 4 VAC 50-60-40 through 4 VAC 50-60-80 must also be met.

5. Air Pollution Control

The FCD indicates that no changes in long-term impacts to air quality are anticipated from the bridge replacement. Minor, temporary increases in dust and other air emissions would result from construction activities.

5(a) Agency Jurisdiction

DEQ's Air Quality Division, on behalf of the State Air Pollution Control Board, is responsible to develop regulations that become Virginia's Air Pollution Control Law. DEQ is charged to carry out mandates of the state law and related regulations as well as Virginia's federal obligations under the Clean Air Act as amended in 1990. The objective is to protect and enhance public health and quality of life through control and mitigation of air pollution. The division ensures the safety and quality of air in Virginia by monitoring and analyzing air quality data, regulating sources of air pollution, and working with local, state and federal agencies to plan and implement strategies to protect Virginia's air quality. The appropriate regional office is directly responsible for the issue of necessary permits to construct and operate all stationary sources in the region as well as to monitor emissions from these sources for compliance. As a part of this mandate, the environmental documents of new projects to be undertaken in the State are also reviewed. In the case of certain projects, additional evaluation and demonstration must be made under the general conformity provisions of state and federal law.

5(b) Ozone Nonattainment Area

According to the DEQ Air Division, the project site is located in the Northern Virginia ozone (O₃) nonattainment area and an emission control area for the contributors to ozone pollution, which are volatile organic compounds (VOCs) and oxides of nitrogen (NO_x). This has two practical consequences for project development. One is that the FHWA should take all reasonable precautions to limit emissions of VOCs and NO_x, principally by controlling or limiting the burning of fossil fuels. A second precaution, stemming from 9 VAC 5-40-5490 in the Regulations for the Control and Abatement of Air Pollution, is that there are some limitations on the use of "cut-back" (liquefied asphalt cement, blended with petroleum solvents) that may apply in paving activities associated with the project. Moreover, there are time-of-year restrictions on its use during the months of April through October in VOC emission control areas.

5(c) Fugitive Dust

During construction, fugitive dust must be kept to a minimum by using control methods outlined in 9 VAC 5-50-60 et seq. of the Regulations for the Control and Abatement of Air Pollution. These precautions include, but are not limited to, the following:

- Use, where possible, of water or chemicals for dust control;
- Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials;

- Covering of open equipment for conveying materials; and
- Prompt removal of spilled or tracked dirt or other materials from paved streets and removal of dried sediments resulting from soil erosion.

5(d) Open Burning

If project activities include the burning of construction or demolition material, this activity must meet the requirements under 9 VAC 5-40-5600 et seq. of the Regulations for open burning, and it may require a permit. The Regulations provide for, but do not require, the local adoption of a model ordinance concerning open burning. FHWA should contact Arlington County officials to determine what local requirements, if any, exist.

6. Coastal Lands Management

The document (page 6) asserts that the project site is partly located on government-owned property that is exempt from Arlington County Chesapeake Bay Preservation Act regulations, and partly located in the District of Columbia. However, the FCD further states that construction would comply with local erosion and sediment control, stormwater management, and other water quality protection regulations.

6(a) Agency Jurisdiction

DCR's Division of Chesapeake Bay Local Assistance administers the coastal lands management enforceable policy of the VCP which is governed by the Chesapeake Bay Preservation Act (Virginia Code §10.1-2100-10.1-2114) and Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20 et seq.).

6(b) Findings

Regardless of whether Chesapeake Bay Preservation Areas (CBPAs) are locally designated on Federal lands, FHWA must ensure that its actions are consistent with the provisions of the Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations), as one of the enforceable programs of the Virginia Coastal Resources Management Program. Therefore, Federal actions on government-owned property located within the Virginia coastal zone must be consistent with the performance criteria of the Regulations on lands analogous to locally designated CBPAs such as Resource Protection Areas (RPAs) and Resource Management Areas (RMAs).

Furthermore, all proposed land-disturbance, clearing, or grading, related to activity proposed in the Joint Permit Application must comply with the Regulations as enforced through locally adopted CBPA ordinances.

The construction, installation, operation and maintenance of public roads and their appurtenant structures are exempt from the Regulations provided they are constructed in accordance with:

- regulations promulgated pursuant to the Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and the Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia);
- an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Conservation and Recreation; and
- local water quality protection criteria at least as stringent as the above State requirements.

The exemption of public roads is further conditioned on the following:

- optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize
 - encroachment in the Resource Protection Areas and
 - adverse effects on water quality; and,

- ii. local governments may choose to exempt
 - a. all public roads as defined in 9 VAC 10-20-40 or
 - b. only those public roads constructed by the Virginia Department of Transportation.

6(c) Conclusion

Provided this proposal adheres to the above requirements, the project would be consistent with the coastal lands management enforceable policy of the VCP.

B. Consistency Negative Determination for the Homeporting of Zumwalt Class Ships

The U.S. Navy, U.S. Fleet Forces command proposes to homeport three DDG-1000 Zumwalt class destroyers at Naval Station (NAVSTA) Norfolk. The action includes the permanent assignment of the ships and personnel to NAVSTA. NAVSTA would receive the first two ships in 2012 and the third ship in 2016. The ships would be berthed at Pier 9, which would be upgraded by adding 4,160 V of electrical power required for the DDG-1000s. Two skid-mounted substations would be placed next to existing 480 V skid-mounted substations. Shore power cables would lie on the pier deck surface and connect the ships to the skid-mounted substations. New seven-foot by fourteen-foot fenders would be attached to Pier 9 and chain anchored to existing piles without disturbing the marine bottom sediments. The Navy submitted a Negative Determination for the proposal under Section 307 (c)(1) of the Federal Coastal Zone Management Act (CZMA) of 1972, as amended, which finds that the action would have no coastal effects.

Federal Consistency Analysis

In accordance with 930 CFR § 930.35, *Negative determinations for proposed activities*, if a Federal agency determines that a proposed action will not have coastal effects, then the Federal agency shall provide the Commonwealth with a Negative Determination. A Negative Determination may be submitted to State agencies in any written form so long as it contains a brief description of the activity, the activity's location and the basis for the Federal agency's determination that the activity will not affect any coastal use or resource. In determining effects, Federal agencies shall consider reasonably foreseeable direct and indirect effects on any coastal use or resource, including an evaluation of the relevant enforceable policies of a management program and include the evaluation in the Negative Determination (§ 930.35(b)).

According to information in the Negative Determination, the proposed activity would have no effect on any of the VCP enforceable policies. The State agencies that are responsible for the administration of specific enforceable policies generally agree with the Navy's determination. However, the Virginia Marine Resources Commission determined that the proposed action would have an effect with respect to the subaqueous lands management enforceable policy of the VCP. The analysis which follows responds to the Navy's Negative Determination and review comments submitted by agencies that administer the enforceable policies.

1. Subaqueous Lands Enforceable Policy

According to the Negative Determination (page 3), there are no sensitive receptors, such as stands of submerged aquatic vegetation, which would be impacted by these activities.

1(a) Finding

Based on the information provided in the document, VMRC finds that the attachment of the new 7-foot by 14-foot fenders to the existing piles would result in further encroachment over State-owned submerged land. Therefore, further review from VMRC would be required for this proposal.

1(b) Conclusion

Based on our review of the Navy's Negative Determination and the comments submitted by agencies administering the enforceable policies of the VCP, DEQ finds that the proposal would impact the subaqueous lands enforceable policy of the VCP. However, because of the limited scope of the project, DEQ does not require the preparation of a consistency determination. Based on the information provided in the Negative

Determination, DEQ concurs that the proposal is consistent with the VCP provided that VMRC finds it consistent with the subaqueous lands enforceable policy. To ensure consistency with the subaqueous lands management enforceable policy of the VCP, the Navy should submit a JPA to VMRC to initiate the review process.

Federal Consistency Determination the Special Operations Force Operations Facility at Naval Air Station Oceana, Dam Neck Annex, Virginia Beach DEQ 08-012F

Project Description

The U.S. Navy proposes to construct and operate a Special Operations Force Operations Facility for Naval Special Warfare Development Group at Naval Air Station Oceana, Dam Neck Annex in Virginia Beach. The two alternative sites considered are:

- Alternative Site 1 (preferred)-a 132-acre parcel south of Redwing Lake and north of Dam Neck Road; and
- Alternative Site 2- a 27.6-acre site adjacent to the primary sand dune along the Atlantic Ocean beach.

The facility would include a two-story, 322,518 square foot building, main and emergency access roads, parking lots, a sports field/parade ground, and a bridge across Redwing Lake (Alternative Site 1 only). Land disturbance at Alternative Site 1 is anticipated to be approximately 26 acres, and land disturbance at Alternative Site 2 is anticipated to be 20 to 23 acres.

Federal Consistency Analysis

According to information in the consistency determination, the proposed activity would have no effect on the following enforceable policies:

- Alternative Site 1 (preferred)
 - subaqueous lands management;
 - dunes management;
 - point source pollution control;
 - shoreline sanitation; and
 - coastal lands management.
- Alternative Site 2
 - subaqueous lands management;
 - point source pollution control;
 - shoreline sanitation; and
 - coastal lands management.

The agencies that are responsible for the administration of specific enforceable policies generally agree with the Navy's determination.

Recommendation and Conclusion

Based on our review of the Navy's consistency determination and the comments submitted by agencies administering the enforceable policies of the VCP, DEQ concurs that the proposal is consistent with the VCP provided all applicable permits and approvals are obtained as described below. The Commonwealth finds that the redevelopment of Alternative Site 2 for the facility would result in significantly fewer impacts to natural resources. DEQ, the Department Conservation and Recreation, the City of Virginia Beach and the Hampton Roads Planning District Commission found that the redevelopment of Alternative Site 2 would significantly reduce or eliminate impacts on wetlands, natural heritage resources, state-listed threatened species, habitat

fragmentation and associated adverse effects on the ecosystem. Therefore, if practicable, the Commonwealth recommends Alternative Site 2 as the site for the Operations Facility.

D. Draft Environmental Impact Statement/Overseas Environmental Impact Statement for the Shock Trial of the MESA VERDE (DEQ 07-190F).

Federal Consistency

Pursuant to the Coastal Zone Management Act of 1972, as amended, federal activities that can have reasonably foreseeable effects on Virginia's coastal resources or coastal uses must be consistent with the Virginia Coastal Resources Management Program (VCP) (see section 307(c)(1) of the Act and the Federal Consistency Regulations, 15 CFR Part 930, sub-part C). In the event that the Virginia location is selected, the Navy must provide a consistency determination which involves an analysis of the activities in light of the Enforceable Policies of the VCP (attached), and a commitment to comply with the Enforceable Policies. In addition, we invite your attention to the Advisory Policies of the VCP (attached). The federal consistency determination may be provided as part of the NEPA documentation or independently, depending on your agency's preference; we recommend, in the interests of efficiency for all concerned, that it be provided together with the NEPA document and that 60 days be allowed for review in keeping with the Federal Consistency Regulations (see section 930.41(a)).

Conclusions

In general, the Commonwealth prefers the Navy's preferred alternative of basing the shock trial of the MESA VERDE offshore off Naval Station Mayport in Florida. However, if the result of the Draft EIS is that Naval Station Norfolk is chosen as the preferred location for the shock trial, we request that the Navy coordinate closely with the Commonwealth's natural resource agencies in order to minimize impacts to environmental resources of the Commonwealth. Also, projects proposed in Virginia must be implemented in accordance with all applicable laws and regulations, including applicable state laws.

Federal Consistency. Pursuant to the Coastal Zone Management Act of 1972, as amended, federal activities that can have reasonably foreseeable effects on Virginia's coastal resources or coastal uses must be consistent with the Virginia Coastal Resources Management Program (VCP) (see section 307(c)(1) of the Act and the Federal Consistency Regulations, 15 CFR Part 930, sub-part C). In the event that the Virginia location is selected, the Navy must provide a consistency determination which involves an analysis of the activities in light of the Enforceable Policies of the VCP (attached), and a commitment to comply with the Enforceable Policies. In addition, we invite your attention to the Advisory Policies of the VCP (attached). The federal consistency determination may be provided as part of the NEPA documentation or independently, depending on your agency's preference; we recommend, in the interests of efficiency for all concerned, that it be provided together with the NEPA document and that 60 days be allowed for review in keeping with the Federal Consistency Regulations (see section 930.41(a)).

E. Draft Environmental Impact Statement/Overseas Environmental Impact Statement for the Atlantic Fleet Active Sonar Training (DEQ 08-044F).

The Navy has issued a Draft Environmental Impact Statement/Overseas Environmental Impact Statement to evaluate the potential environmental effects associated with sonar training for the Atlantic Fleet. The Navy uses sonar training in order to meet the requirements of the Fleet Readiness Training Plan and to stay proficient in Anti-Submarine Warfare (ASW) and Mine Warfare (MIW) skills. The proposed action is to designate areas where mid- and high-frequency active sonar and Improved Extended Echo Ranging (IEER) system training, maintenance and research, development, test and evaluation (RDT&E) activities will occur within and adjacent to existing operating areas (OPAREAs) and to conduct these activities (DEIS, page ES-6).

An alternatives analysis was performed, which was based on public and regulatory concern regarding the potential effects of sonar on marine mammals (DEIS, page 2-28). The Navy's preferred alternative is the

“No Action Alternative” since it does not require the Navy to change the geographic limits of the areas in which it currently trains. The activities evaluated in the DEIS are not new and do not involve significant changes in systems, tempo or intensity from past activities (DEIS, page ES-1).

General Comments

In general, the DEIS implies that the only alternative that does not limit the Navy’s training ability and subsequently, its ability to respond to future crises, is the “No Action” alternative (preferred). According to the DEIS, Alternatives 1 and 2 would severely limit training in areas similar to where potential threats operate and it would require the relocation of approximately 30 percent of the Navy’s current training. In addition, although Alternative 3 imposes geographical limitations on training, there is no significant difference in the analytical results between Alternative 3 and the No Action Alternative (DEIS, pages ES-7 through ES-8).

While the Commonwealth of Virginia supports the Navy’s training efforts, we disagree with its approach in selecting an alternative based solely on operational needs without adequate consideration given to the protection of the marine environment and associated resources. From an environmental perspective, reviewers indicated that the Navy’s preferred alternative has the greatest potential to adversely impact marine mammals, specifically whales. Based on the information provided in the DEIS, the Navy is cognizant of the potential adverse impacts on marine species associated with sonar training. For example, in conducting the alternatives analysis, the Navy states that “...due to the well-published sensitivities that beaked whales exhibit to mid-frequency sonar, it was determined that their seasonal densities and exposure grids should serve as primary data to seasonally adjust the active sonar training locations (DEIS, page 2-43).” With this understanding, the Navy’s preference to conduct active sonar training exercises within and adjacent to OPAREAs, without restrictions should be reevaluated, since as previously stated, this alternative has the greatest potential to adversely impact the marine environment.

In accordance with Table 3-5 presented in the DEIS (pages 3-31 and 3-32) numerous marine mammals and other species occur in OPAREAs located along the east coast. Reviewers have provided some basic information on marine mammals, sea turtles and bat species that could be adversely affected by active sonar training as follows:

- Marine Mammals: The Atlantic is home to many marine mammal species including the federally *endangered* northern right whale (*Balaena glacialis*) and the federally *endangered* humpback whale (*Megaptera novaeangliae*). Moreover, the coastal form of the bottlenose dolphin (*Tursiops truncatus*) is resident in Virginia’s state waters from May through October with occasional sightings reported during other times of the year (Sue Barco of Virginia Aquarium and Marine Science Center, personal communication).

In addition, numerous published studies (Simmonds and Lopez-Jurado 1991, D’Amico 1998, Frantziz 1998, Evans and England 2001, Evans and Miller 2003, Freitas 2004, Cox *et al.* 2006, Zimmer and Tyack 2007) have reported a correlation in both time and location between naval sonar exercises and the stranding of beaked whales (family Ziphiidae). It is hypothesized that low to mid-frequency active sonar mimics the sound of killer whales, the main predator of beaked whales, resulting in a fleeing response and modification of the beaked whale’s normal diving profile. Repetitive shallow dives may put the beaked whales at risk of gas and fat embolism consistent with decompression sickness (Zimmer and Tyack 2007). In addition, data suggest that active sonar may result in a “mobbing response” from pilot whales, a defensive measure in response to a perceived killer whale threat. Humpback and North Atlantic right whales are also known to demonstrate a defensive group response to the sounds of killer whales. Though additional study is necessary to determine whether active sonar results in additional impacts to these whale species, any additional environmental stress placed on an endangered species such as the North Atlantic right whale is undesirable.

- **Sea Turtles:** The waters off the coast of Virginia's Eastern Shore have relatively high occurrences of federally *threatened* loggerhead sea turtles (*Caretta caretta*) and federally *endangered* Kemp's ridley sea turtles (*Lepidochelys kempii*) from May through October. Federally *threatened* green sea turtles (*Chelonia mydas*) and federally *endangered* leatherback sea turtles (*Dermochelys coriacea*) may also pass through these waters, primarily during spring and fall migration periods.

Specifically, the Loggerhead sea turtle is known to nest occasionally on mainland beaches extending from Fort Story to the North Carolina/Virginia border and on Virginia's Eastern Shore barrier islands. A total of 102 loggerhead nests (as of 2007) have been documented in Virginia since 1970.

Loggerheads are characterized by a large head with blunt jaws. The carapace and flippers are a reddish-brown color; the plastron is yellow. Loggerheads mate from late March to early June. Loggerheads face threats on both nesting beaches and in the marine environment. The greatest cause of decline and the continuing primary threat to loggerhead turtle populations worldwide is incidental capture in fishing gear, primarily in longlines and gillnets, but also in trawls, traps and pots, and dredges (USFWS, 2005).

- **Bats:** Bats are periodically seen aboard sea vessels and in and around coastal areas. There is very little information about how or if these species use areas off the coast for migration or foraging.

Recommendations

Since several reviewers indicated that the Navy's preferred alternative, the No Action Alternative, is the least protective of the four alternatives analyzed in the DEIS, the Commonwealth recommends that the Navy take adequate steps to protect marine species. In order to achieve this, the Navy should:

- Restrict active sonar training exercises by designating areas of seasonal operation (Alternative 2) or areas of increased awareness (Alternative 3), or a combination of these, to reduce the potential adverse impact to whales.
- Investigate the potential of other areas within the study area (as depicted in Figure ES-1) which may be suitable for sonar training using Alternatives 1 and 2 since it is not clear in the DEIS why these alternatives are not viable options.
- Conduct further research into particularly sensitive areas and seasonal shifts in species aggregations to determine which of the three alternatives (1, 2 or 3) is the most protective of marine life. This recommendation includes additional research on marine mammals, sea turtles, bat and avian species that might be threatened by the proposed activities of the Navy addressed in the DEIS.

If the Navy pursues the preferred alternative, we request that the Navy coordinate closely with the Commonwealth's natural resource agencies in order to minimize impacts to marine resources of the Commonwealth. Also, projects proposed in Virginia must be implemented in accordance with all applicable laws and regulations, including applicable state laws.

F. Draft Supplemental Watershed Plan-Environmental Assessment for the Rehabilitation of Pohick Creek Watershed Dam No. 3, Woodglen Lake, Fairfax County, Virginia (DEQ 08-022F).

The U.S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) has submitted a Draft Supplemental Watershed Plan-Environmental Assessment (EA) for the Pohick Creek Watershed. Project sponsors are the Fairfax County Board of Supervisors and the Northern Virginia Soil and Water Conservation District. The recommended plan is to rehabilitate the Woodglen Lake dam to meet current federal and state safety and performance standards. The plan provides for building earthen training dikes and armoring the auxiliary spillway and interior slope of the training dikes with articulated concrete blocks. There

would be no change in the permanent pool elevation and no change in the current levels of flood protection downstream.

Findings

According to the EA (page 45), Woodglen Lake is located within Fairfax County's Chesapeake Bay Preservation Areas. The proposed project is within areas designated as Resource Protection Areas (RPA) and Resource Management Areas (RMA). The routine maintenance of dams are allowed in RPA areas; however, the project must adhere to the Performance Criteria found in Sections 118-3-2 and 118-3-3 of Fairfax County's Chesapeake Bay Preservation Ordinance. Developed pursuant to the Chesapeake Bay Preservation Act.

Federal Consistency

According to the EA (page 45), prior to beginning any construction activities, the project sponsor, Fairfax County, must determine to extent of the construction activities on the coastal uses and resources and must submit a consistency certification to the DEQ.

Pursuant to the Coastal Zone Management Act of 1972, as amended, prior to initiating activities, the project sponsors are required to determine the consistency of its activities affecting Virginia's coastal resources or coastal uses with the Virginia Coastal Resources Management Program (see section 307(c)(3)(A) of the Act and 15 CFR Part 930, sub-part D, section 930.57). This involves an analysis of the activities in light of the Enforceable Policies of the VCP (see attached), and submission of a consistency certification reflecting that analysis and committing the project sponsors actions to be consistent with the Enforceable Policies. We encourage the project sponsors to consider the Advisory Policies of the VCP as well (Attachment 2).

The Draft EA does not contain a consistency certification for the project. This certification may be provided as part of the final EA concluding the NEPA process, or independently, depending on your agency's preference. A consistency certification must be submitted to DEQ for coordinated review prior to construction.

C. PROGRAM CHANGES

Additional draft program change reports have been completed by the Environmental Law Institute (ELI) and are ready for state review prior to submission to NOAA. The reports cover fisheries statutes under the Department of Game and Inland Fisheries and the Virginia Marine Resources Commission. ELI also developed a notice of auto-incorporation for the Virginia Pollutant Discharge Elimination System (VPDES) permit regulation. Current contracts with ELI will result in a draft notice of incorporation of Air Pollution Control Board Statutes and Regulations and a draft program change package for the Coastal Primary Sand Dunes and Beaches Act, which was significantly expanded by the 2008 Virginia General Assembly.

At the October 10, 2007 Coastal Policy Team meeting, it was suggested that impacts to coastal resources from potential off-shore energy exploration and development be evaluated. It was also suggested that Virginia's core coastal zone management policies be assessed as to whether they provided adequate authority to manage potential impacts from these sources. On January 25, 2008, a meeting was held with participants from the Virginia CZM Program, NOAA, ELI, DEQ-Environmental Impact Review Program, and the Office of the Secretary of Natural Resources to discuss these issues. As a result, contracts have been signed with ELI to evaluate opportunities for changes in implementation of existing Virginia CZM Program policies as well as identification of potential additional policies where necessary. These reports will be ready in time for consideration during the 2009 session of the Virginia General Assembly.