



Virginia Coastal Zone
MANAGEMENT PROGRAM



Draft of Virginia's Narrative Enforceable Coastal Policies Final Report



WILLIAM & MARY
LAW SCHOOL

VIRGINIA COASTAL
POLICY CENTER

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Executive Summary

Pursuant to the Virginia Coastal Zone Management Program's (CZM) timeline, the Virginia Coastal Policy Center (VCPC) has drafted narrative enforceable policies based on substantive provisions in the Code of Virginia and Virginia Administrative Code regarding the Virginia Marine Resources Commission's (VMRC) Fisheries Management, Wetlands Management and Dunes Management and Subaqueous Lands Management programs, and the Virginia Department of Environmental Quality's (DEQ) Wetlands Management Program.

VCPC and CZM staff organized an Advisory Committee for the project comprised of representatives from VCPC, DEQ, the National Oceanic and Atmospheric Administration (NOAA), Virginia Department of Game and Inland Fisheries (DGIF), Virginia Department of Conservation and Recreation (DCR), Virginia Department of Transportation (VDOT), Virginia Department of Agriculture and Consumer Services (VDACS), VMRC, the Department of Defense (DoD), the Virginia Attorney General's Office, and the Hampton Roads Planning District Commission.

Based on recommendations from NOAA representatives John Kuriawa and Kerry Kehoe, VCPC strove for simplicity and clarity in drafting the narrative enforceable policies. After VCPC met with VMRC staff multiple times over the summer and drafted policies based on VMRC's and DEQ's respective substantive provisions, the Advisory Committee met for comment on, and discussion of, each draft to ensure that the policies met NOAA's criteria for

approval and were faithful representations of the statutory and regulatory provisions upon which they were based. Comment and discussion of the enforceable policies resulted in multiple alterations to each draft, including changes in cited authorities, modified language that more accurately reflected the cited authorities, and removal of policies that did not meet NOAA criteria. After each meeting, VCPC drafted minutes of the meeting and incorporated suggested edits to the enforceable policies into a new draft, both of which were then sent to the Advisory Committee for approval. As in prior phases of the project, the question arose at Advisory Committee meetings of how to avoid incorporating by reference other policies or requirements into an enforceable policy. Mr. Kuriawa noted that Maryland faced a similar issue in developing its own narrative enforceable policies, one that it did not resolve. As the Committee was still unsure of how to resolve the issue, it decided to just avoid reference by incorporation in future drafts as much as possible and to defer further discussion of the issue until a later date. Another topic that the Committee deferred was the possibility of creating a process for review of *de minimis* projects.

Meeting Agendas & Minutes

The agenda of each meeting in the grant period is followed by its minutes.

Coastal Zone Management Narrative “Enforceable Policies” Advisory Committee Meeting

1:00 PM, Wednesday, May 31, 2017

William & Mary Law School, 613 South Henry Street, Williamsburg, VA 23185

The meeting will be held in William & Mary Law School’s Faculty Room. Participants may proceed there directly from the main entrance. If you plan to join via conference call, please use the following numbers:

Dial: 319-527-2725

Access Code: 903473

1:00 Opening Comments & Minutes Approval

Elizabeth Andrews, Director (VCPC)

1:15 Review of Draft VMRC Narrative Policies

2:30 Closing Comments & Next Meetings

Elizabeth Andrews, Director (VCPC)

Please Direct All Questions & Comments Regarding the Meeting and Process to
Elizabeth Andrews, VCPC: eaandrews@wm.edu.

Coastal Zone Management Narrative “Enforceable Policies” Advisory Committee Minutes

The Coastal Zone Management Advisory Committee met at 1:00 pm on May 31, 2017 at William & Mary Law School to continue discussion of a narrative rewrite of Virginia’s enforceable policies, specifically the statutes and regulations under the authority of VMRC. Present at the meeting were Elizabeth Andrews (VCPC), Angela King (VCPC), Kevin Rivera (VCPC), Bettina Sullivan (DEQ), Dave Davis (DEQ), John Fisher (DEQ), Shep Moon (DEQ), Matt Hull (VMRC), Chip Neikirk (VMRC), Tony Watkinson (VMRC), Lewis Gillingham (VMRC), Kelci Block (OAG), Steve Begg (VDOT), and Ben McFarlane (HRPDC). Participating via telephone were Sharon Baxter (DEQ), Laura McKay (DEQ), John Kuriawa (NOAA), Kerry Kehoe (NOAA), Greg Fleming (DoD), and Shannon Alexander (ANPDC).

- Elizabeth opened the meeting by confirming the March 3, 2017 minutes. The March minutes were approved subject to John Kuriawa’s edits which were sent via email.
- Elizabeth motioned to edit the February 10, 2017 minutes based on suggestions from John Kuriawa and Kerry Kehoe. The group agreed.
- The Committee then discussed a NOAA FAQ sheet regarding NEPs. Two questions have been included so far, and more will be added to the FAQ sheet as they arise.
- The group then discussed changing the document from marine life and marine organisms to more fully encompassing terms.
- Elizabeth discussed the issue of incorporation by reference as a recurring problem and inquired as to whether VMRC and NOAA would find particular examples within the document to be acceptable.
 - o Kerry said the potential incorporation by reference in policy A(4)(e) regarding records was not an issue.
 - o Lewis explained there would be differences in opinion regarding how much detail should be included in policies based on each person’s propensities of either lumping or splitting terms.
 - o Shep said that looking at the statutes through a federal lens would help to narrow down the number of policies to be included in NEPs.
 - o Elizabeth explained that a discussion of each individual exception or detail would make the NEP voluminous. NOAA staff agreed saying discussing every single exception would defeat the purpose of developing NEPs.
 - o Shep explained that if possible, the clearest and most succinct version of NEPs would be best.
- Tony highlighted the need for an overarching statement regarding the purpose of these NEPs to prevent confusion: since they exclude statutes

- and regulations that do not pertain to federal activities, non-federal agencies might be misled by the policies without such a statement.
- The group discussed what activities may or may not arise in the federal context, especially the ones from Chapters 4-7, and how to succinctly incorporate them into NEPs.
 - o “Sustainable harvesting” was offered as a potential substitute of a more detailed list in the fisheries section. Tony suggested “sustainably managed” may be a more appropriate substitute.
 - o Kerry explained the effectiveness of articulating and using the objective purpose of the statute in the NEPs which would more succinctly encompass all of the statutes while incorporating the essential discretionary standards used in the permitting process.
 - o Elizabeth offered to have the VCPC work directly with MRC staff to further develop the first section regarding fisheries in a way that accurately reflected these underlying purposes.
 - The Committee began a discussion involving the general use of these NEPs. Kerry, Kelci, Shep, and Elizabeth stressed that these policies must be tied to statutory authority. While they will be used to guide project analysis, all of these policies will need to be derived from statutory authority.
 - There was further discussion on what federal activities may fall within the statutes of Title 28.2.
 - o John Fisher pointed to seismic testing projects which may be more common under the new administration as a potential way a federal project may fall within these statutes.
 - o Bettina mentioned a horseshoe crab project that was a federal activity.
 - o Ben pointed to Navy and Coast Guard activities involving fireworks.
 - o Matt Hull indicated § 28.2-618 would also involve federal activities.
 - The Committee began a discussion regarding the federal government’s responsibility to acquire permits.
 - o Bettina mentioned that the federal government does acquire permits.
 - o Kerry said that it might be as a matter of comity that they do, even though they aren’t required to.
 - o The Committee discussed the possibility of changing the language in the NEPs indicating illegality to language indicating authorization.
 - o Matt inquired into the standards underlying the permitting process.
 - o Kerry stressed that permits are discretionary but there are standards that are required. He stressed again that in statutes requiring permits, it may be best to articulate the underlying purpose for requiring the permits. Licenses however may be trickier to incorporate into NEPs because they might not hinge on some substantive standard. Other members of The Committee agreed.
 - o Chip suggested the language, “No fish, shellfish, or marine organism shall be taken unless VMRC issues a permit when required, or when a permit is not required the taking is in a sustainable manner.” He

- indicated that it would be necessary to check the statutory authority for that statement though.
- The Committee then began a discussion regarding the level of detail within draft enforceable policy A(3). Kerry said he did not see a problem with including that level of detail within the section.
 - During a discussion of draft enforceable policy A(4), the Committee questioned the applicability to federal activities.
 - o Bettina did not think any federal activities would apply.
 - o Elizabeth stated that § 28.2-804 does not contain an enforceable policy being that the statute just lists the responsibilities of the state health commissioner. She also agreed to discuss policy A(4) further with VMRC.
 - As the Committee moved on to policy A(5) regarding tributyltin, Chip said he believed the Navy was exempt from this requirement. Tony inquired as to whether the CZMA might have subjected certain federal dredging projects to review. Ben questioned further whether all federal vessels were exempt, even outside of the Navy. John Kuriawa suggested that this policy may not be necessary as a NEP. Shep suggested a further analysis before excluding these statutes from NEPs. Kelci agreed to look at the exemption to determine relevance and forward it to the group.
 - The Committee then began a discussion of policy A(6). Elizabeth explained that the situation prompting this statute may have passed, but asked if it might still involve federal activity.
 - o Chip suggested retaining this section in NEPs.
 - o Ben suggested a rewording of section 6 that would not include reference to the International Council for the Exploration of the Sea because it is implied.
 - o Bettina explained that much of this section doesn't involve the permit itself, but rather the process and requirements of the permit.
 - o Chip concluded that this section should be limited to the first sentence
 - The group began a discussion of section policy B(1) and highlighted the recurring permitting issue.
 - o Chip pointed to § 28.2-1205 and advocated for inclusions of its factors into the NEPs. Ben refocused the primary issue to the statute's purpose and suggested further rewording of the exceptions.
 - o Group agreed that the VCPC will work on rewording.
 - In a discussion of policy B(2), Ben suggested a potential rewording such as "The sand resources of the Chesapeake Bay should be sustainably managed."
 - o Ben further inquired into whether there are any dredging projects that require a permit. If there are not, he suggested an omission of the reference to the permit requirement completely.
 - o Bettina argued this was not an enforceable policy, and that it's not requiring a person to do something, just requiring a person to report it.

- Tony pointed out that this was just about expediting a process. Kelci agreed, saying that this section is just discussing how long you have to review, not the criteria for review.
 - Group agreed that policy B(2) should be excluded.
- Ben claimed that the second sentence of policy B(3) might not apply to federal consistency, and the NEP should be cut off after the first sentence. The group agreed.
- NOAA said that they had no preference as to whether the NEPs contained the phrase “it is illegal” or “No one shall”.
- The Committee recapped what should be done for the first section. MRC will work with VCPC to develop a shortened version of the NEPs. There was potential for consolidation of policies, especially policies 1 and 2, but Ben suggested even further consolidation. Policy (4) can likely be removed. Policy (5) can stay, but its application needs to be checked. Policy (6) needs to be reworded to encompass the purpose of the policy.
- Elizabeth suggested giving VMRC and VCPC time to go through changes that were discussed before the next meeting. The Committee could then move on to sand dunes and wetlands sections following that. Bettina asked to include streams in the discussion of wetlands. A Doodle poll will be sent out for the week of July 17th to assess everybody’s availability.
- Finally, Shep suggested additional homework for the group including a review of the CZMA federal consistency overview about narrative policies and MD’s finalized narrative policies to use as a comparison. VCPC will send these documents out with the doodle poll.

**Coastal Zone Management Narrative “Enforceable Policies”
Advisory Committee Meeting
1:00 PM, Tuesday, July 18, 2017
DEQ Headquarters, 629 E Main St., Richmond, VA 23219**

The meeting will be held in Conference Room A of the DEQ Headquarters. If you plan to join via conference call, please use the following numbers:

Dial: 319-527-2725
Access Code: 903473

- 1:00 Opening Comments & Minutes Approval**
Elizabeth Andrews, Director (VCPC)

- 1:15 Overview of Enforceable Policies and Training Module**
Kerry Kehoe (NOAA)

- 1:45 Review of Draft VMRC Narrative Policies**

- 3:00 Closing Comments & Next Meetings**
Elizabeth Andrews, Director (VCPC)

Please Direct All Questions & Comments Regarding the Meeting and Process to Elizabeth Andrews, VCPC: eaandrews@wm.edu.

Coastal Zone Management Narrative “Enforceable Policies” Advisory Committee Minutes

The Coastal Zone Management Advisory Committee met at 1:00 pm on July 18, 2017 at the Department of Environmental Quality Headquarters to continue discussion of a narrative rewrite of Virginia’s enforceable policies, specifically the statutes and regulations under the authority of VMRC. Present at the meeting were Daniel Piefer (CBF), Lauren Pudvah (CBF), Dave Davis (DEQ), John Fisher (DEQ), Shep Moon (DEQ), Kerry Kehoe (NOAA), Elizabeth Andrews (VCPC), Kevin Rivera (VCPC), Matt Hull (VMRC), and Tony Watkinson (VMRC). Participating via telephone were Bettina Sullivan (DEQ), Ben McFarlane (HRPDC), Kelci Block (OAG), Lewis Gillingham (VMRC), and Chip Niekirk (VMRC).

- Elizabeth opened the meeting by asking the group to approve the May 31, 2017 minutes. They were approved.
- Kerry Kehoe gave an overview of Enforceable Policies. He guided the group through a NOAA training module to teach the group how to identify enforceable policies.
 - o The module highlighted seven guidelines for identifying potential problems in enforceable policies:
 - 1) Policy must include mandatory language
 - 2) Policy must contain a clear standard
 - 3) Policy cannot be preempted by federal law
 - 4) Policy must regulate federal agencies, lands, or waters
 - 5) Policy cannot discriminate against a particular coastal user or federal agency
 - 6) Policy cannot hinder the national interest objectives of the Coastal Zone Management Act
 - 7) The policy cannot incorporate other policies or requirements by reference
 - o Elizabeth inquired as to the specificity required for a standard to be deemed a clear standard
 - Kerry explained that a clear standard can be open and ambiguous enough to capture a range of circumstances, but should not be so muddled that there is no enforceable standard. He explained that the policy in the module (“Dredged material shall be put to beneficial use to the extent it is practicable to do so”) would be a sufficiently clear standard, even though it contains imprecise terms such as “beneficial use” and “practicable”.
 - Elizabeth asked if it is relevant whether or not a policy is written in terms of what people must do or if it is written in

- terms of what the government agency must do. Kerry responded that it is not an issue when it is still giving guidance for the ultimate decision. When drafting these policies, however, you should be wary of statements that are only directives for policy making though.
- The group then began a discussion of federal preemption.
 - Kerry explained that there are different types and degrees of federal preemption. Sometimes the state may have some review authority over federal projects.
 - Kerry further explained that just because something is preempted, it doesn't mean that there aren't other policy areas that can be considered – e.g., a state is preempted from prohibiting an energy project but may be able to review ancillary wetlands impacts of the project.
 - Tony inquired as to whether the federal government is required to comply with a state's wetlands statutes. Matt Hull explained that often times when the federal government complies with state statutes it is because there is an express waiver of sovereignty.
 - The group then began a discussion of when something is regulating federal agencies, lands, and waters which is not allowed in an enforceable policy.
 - Kerry explained that it should not be assumed that a statute is calling out a federal agency simply because it refers to the public and that the statute should explicitly mention the federal government in order to meet this requirement.
 - The group recognized the wide range of possible situations where something could apply to federal agencies, lands, and waters. Shep suggested trying to run specific cases through the draft policies at the end of the process to make sure that the NEPs are helpful.
 - The group then began a general discussion of federal consistency. Tony asked if a permit is the ultimate test of consistency, or if the CZMA could require more after a permit has been granted.
 - Kerry explained that being that permitting statutes and the CZMA are independent authorities they could have different requirements.
 - Tony questioned when federal consistency review should occur during the project approval process.

- John Fisher pointed out that a permit may give the feds a way out if it is granted prior to federal consistency review.
 - Kerry explained that federal consistency review is going to involve a much broader group of policies than the permitting process. He also explained that while even though they are technically considered at separate times in the project approval process, in the real world setting they are often considered at the same exact time.
 - Elizabeth pointed out that if you conduct federal consistency review prior to the permitting process, you may be in effect preempting the permitting requirements.
 - Elizabeth inquired as to when other states sequence federal consistency review and permit approval. Kerry explained that often times the feds do not need to get a permit, and getting a permit is a 'check off' for federal consistency.
 - Kerry explained that while federal agencies are the ones who start the consistency review process, they can enter into a written agreement with the state to stay the process.
 - The group then discussed the rule regarding national interest objectives of the CZMA.
 - Kerry explained that NOAA will not approve polices that work in a piecemeal manner to create an absolute prohibition on a project.
 - The group wrapped up the overview of narrative enforceable policies with a discussion of the necessary detail to include in these policies.
 - Shep suggested including enough detail to cover the cases that are likely to occur in the initial drafts rather than trying to cover all conceivable cases.
 - Kerry agreed that you do not need to go too far down the road of hypotheticals.
- The group then began a discussion of Tony Watkinson's draft of NEPs, the policy statements from the 1986 Environmental Impact Statement, Maryland's NEPs, and the Environmental Law Institute's analysis of each category.
 - Kerry explained that even though the statutes that were the basis for the 1986 policy statements may no longer be present in the code, something could still be a good narrative enforceable policy so long as there is sufficient authority listed to support it. The NEP language does not need to be pulled from the code verbatim.

- Elizabeth asked whether or not the policies can incorporate the fishery management plans by reference. Matt expressed concern that the fishery management plans may not be enforceable. Shep suggested pulling a common goal of from the various fishery management plans to create an enforceable policy. Matt said that the common goal of all fishery management plans was likely to prevent overfishing.
- Tony pointed to Maryland's NEPs including time of year restrictions. Kerry explained that from an administrative convenience perspective, it might be convenient to include some time of year restrictions to avoid the need for constant clarification.
- Kelci argued that there is probably no need for TBT to be included in the NEPs because its use is already illegal on the federal and the state level. The federal ban on TBT is set by the EPA, and inclusion of it in our policies would not help to do anything. The group agreed.
- The group agreed to organize a smaller group meeting with VMRC rather than another large advisory meeting. The draft NEPs that the smaller group develops will be sent out to the full group.

Coastal Zone Management Narrative “Enforceable Policies”
Advisory Committee Meeting
3:00 PM, Tuesday, September 19, 2017
Conference Rm. A, 2nd Floor, Virginia DEQ, 629 East Main
St., Richmond, VA 23219

If you plan to join via conference call, please use the following numbers:

Dial: (319) 527-2725
Access Code: 903473

- 3:00** **Opening Comments & Minutes Approval**
Elizabeth Andrews, Director (VCPC)

- 3:15** **Discussion and Approval of Final Edits to MRC Policies**
Group Discussion

- 3:45** **Review of Draft DEQ Wetlands Policies**
Group Discussion

- 5:45** **Closing Comments & Next Meetings**
Elizabeth Andrews, Director (VCPC)

Please Direct All Questions & Comments Regarding the Meeting and Process to
Elizabeth Andrews, VCPC: eaandrews@wm.edu.

Coastal Zone Management Narrative “Enforceable Policies” Advisory Committee
Minutes [to be approved at next meeting, date TBD]

The Coastal Zone Management Advisory Committee met at 3:00 pm on September 19, 2017 at the Department of Environmental Quality Headquarters in Richmond to continue discussion of a narrative rewrite of Virginia’s enforceable policies, specifically the statutes and regulations under the authority of DEQ. Present at the meeting were Dave Davis (DEQ), John Fisher (DEQ), Shep Moon (DEQ), Joan Salvati (DEQ), Jamie Huffman (VCPC), and Elizabeth Andrews (VCPC). Participating via telephone were Bettina Sullivan (DEQ), Sharon Baxter (DEQ), Kelci Block (OAG), Lewis Gillingham (VMRC), Tony Watkinson (VMRC), Commander Joan Malik (US Navy), Lt. Commander Jonathan Blazek (US Navy), Kerry Kehoe (NOAA), John Kuriawa (NOAA), Greg Fleming (Ft. Belvoir), and Justine Woodward (DoD). The meeting was facilitated by Elizabeth Andrews.

Elizabeth opened the meeting by asking the group to approve the July 18, 2017 minutes. The minutes were approved, with two requested amendments from Kerry Kehoe concerning federal preemption and the use of older CZM policy language.

WETLANDS

The committee then moved on to discussion of the VMRC and DEQ Wetlands Policies. Tony began by noting that the policies should refer to wetlands as “tidal wetlands” in the VMRC portion since that is all VMRC manages pursuant to the Virginia Code. Tony also noted that VMRC has different sequencing from DEQ in terms of compensation for impacts to wetlands. Shep pointed out that DEQ manages both wetlands and tidal wetlands, so its policies can be left as is because tidal wetlands still fall under the broader category of wetlands.

Dave Davis said DEQ has a kick-out from its regulations for tidal wetlands regulated by VMRC. Tony stated that VMRC is focused on the small projects that DEQ and the Corps do not get involved in. Tony pointed out that they have both “shall require compensation” language and “should sequence” language.

Elizabeth pointed out that the language the committee is recommending for the enforceable policy and the language used by different agencies varies widely (shall v. should). Elizabeth then asked if it would be helpful to make the language less detailed. Shep and Dave Davis suggested going with less detail on this issue for simplicity’s sake. As a result, the committee decided to remove a list of compensation options that were found in the DEQ Wetlands Policies.

Shep then asked if the required sequence of “avoid, minimize, compensate” set forth in the law for wetlands impacts was reflected in the proposal. Dave said mitigation IS “avoid, minimize, compensate”- all three are included in mitigation. Shep said there is a sequence: You avoid first, then minimize, THEN compensate. Tony said he added the language, “...it is the policy of the Commonwealth to avoid,

minimize, or compensate...Compensation is required for impacts to wetlands in order to achieve no net loss in wetlands..." to the VMRC section of the Wetlands Policies.

Dave wanted to place wetlands under a single section in the policies, rather than separate DEQ and VMRC Wetlands Policies. He wants a Commonwealth policy that is split internally with all the relevant Code sections listed, but he also noted that some of the wetlands language of the VMRC policies do not have the same language that DEQ follows. Dave stated that the DEQ section deals with wetlands "protection" and Tony's language only includes "preservation". He notes that protection is broader than preservation (preservation is part of protection).

Dave stated that the committee did not need to incorporate VA Code § 62.1-44.15:21(G) (exempting normal agricultural and silvicultural activities, in addition to ordinary gardening lawn and landscape maintenance) into the draft. However, he would not want to lose the permit language concerning beneficial uses so he proposed the addition of some additional language to define beneficial use, and the committee decided to use the language from the regulations (9 VAC § 25-210-10).

Shep then expressed a desire to incorporate the Commonwealth's preference for living shorelines into the proposals (VA Code § 28.3-104.1) even though it is not mandatory to use them under the Code. Tony said he had no objection and suggested coming up with a sentence or two to reflect the preference. Shep said that for now the committee should leave the option to include the preference at a later date under living shorelines (as a subsection under tidal wetlands). Joan noted that she also wanted to add the preference to the CBPA enforceable policies later in the project. Kerry reminded the committee there must be a clear standard and there has to be a way for the state to enforce that standard. Elizabeth pointed out that the Code states that living shorelines are the preferred alternative, so incorporating the preference may be difficult. Joan pointed out that it is not mandated because sometimes it just cannot work at a site. Shep then pointed out that there is language in the Code about dredging that uses the phrase "whenever possible". Shep suggested potential language for the policy could be as follows: "It is the policy of the Commonwealth to support living shorelines as the preferred alternative for stabilizing tidal shorelines whenever practicable/possible."

SAND DUNES AND BEACHES

Next the committee moved on to discussion of the Sand Dunes and Beaches section of the drafted policies. Shep began by asking if there were any other nuances that needed to be added for beaches. Tony said no, but Elizabeth pointed out that beaches are a new concept for the policies, so Shep asked if dunes and beaches needed to be defined. Tony said that the Code defines beaches but the committee's proposal does not define dunes, so it is probably unnecessary to define beaches. Elizabeth then suggested the committee remove

language in the first sentence of the policy saying “whenever reasonably necessary” and also remove a residual citation to Va. Code § 28.2-104.1 because it was unnecessary to the Sand Dunes and Beaches section of the policies.

FISHERIES AND SUBMERGED LANDS

Finally, the committee discussed the policy concerning Fisheries and Submerged Lands. The committee discussed the fact that VCPC’s draft did not mention anything about Tributyltin, but it is addressed in the current policies, so we would be losing something if that provision is omitted. The committee agreed, however, that there was not a problem with that omission and Lewis said it will not be an issue for any VMRC policies, so they agreed to leave it out of the policies.

CONCLUSION

The committee approved the VCPC’s draft with the changes discussed during the meeting. Elizabeth said VCPC would send out the final version to the committee members and asked them to let VCPC know by email that the draft was acceptable, after which VCPC would submit the final draft to DEQ. There were no more comments so Elizabeth ended the meeting at 4:40 PM.

Final Product

CZM MRC and DEQ Wetlands Policies

Fisheries

The Commonwealth of Virginia shall conserve and enhance fish and shellfish resources, and preserve and promote both commercial and recreational fisheries, thereby maximizing food production and recreational opportunities. Fishery management shall be based upon the best scientific, economic, biological, and sociological information available, shall be responsive to the needs of interested and affected citizens, shall promote efficiency in the utilization of the resources, and shall draw upon all available capabilities in carrying out research, administration, management, and enforcement.

- The Commonwealth shall conserve and promote the seafood and marine resources of the Commonwealth and manage the fisheries within its territorial waters, including fish, shellfish and marine organisms.
- Fisheries shall be managed to prevent overfishing while achieving the optimum yield.
- Blue crabs shall be managed to reverse fishing practices, environmental stress and habitat deterioration negatively impacting the short and long term viability of the crab stock in Virginia.
- The protection of spawning stock, nursery areas and habitat shall be of primary consideration.
- The surveys of the natural oyster beds, rocks, and shoals of the Commonwealth, made pursuant to Chapter 511 of the 1892 Acts of Assembly (Baylor survey), shall not be leased, rented, or sold but shall be held in trust for the benefit of the people of the Commonwealth.
- Waterfront that is not already assigned or reserved for the riparian owners, and the beds of the bays, rivers, and creeks and shores of the sea lying outside the limits of navigation projects adopted and authorized by Congress and not required for the disposal of materials dredged incident to the maintenance of such projects, and grounds other than public oyster beds, rocks, or shoals, as defined by law and included in the Baylor survey, may be occupied for the purpose of planting or propagating oysters.
- The Commonwealth shall guarantee the right to continue to lawfully use and occupy leased ground for the term of any lease.

VA Code § 28.2-101, § 28.2-201, § 28.2-203, § 28.2-203.1, §28.2-225, § 28.2-551, § 28.2-618, § 28.2-1103, and the Constitution of Virginia, Article XI, Section 3.

Submerged Lands

All the beds of the bays, rivers, creeks and the shores of the sea within the jurisdiction of the Commonwealth shall remain the property of the Commonwealth and may be used as a common by all the people of the Commonwealth for the purpose of fishing, fowling, hunting, and taking and catching oysters and other shellfish.

When determining whether to grant or deny any use of state-owned bottomlands, including dredging, the taking and use of material, and the placement of wharves, bulkheads, and fill by owners of riparian land in the waters opposite their lands, the decision shall be guided by the provisions of Article XI, Section I of the Constitution of Virginia, the public and private benefits of the use, and the public trust doctrine as defined by the common law of the Commonwealth adopted in order to protect and safeguard the public right to the use and enjoyment of the subaqueous lands of the Commonwealth held in trust by it for the benefit of the people . The effect of the use on the following shall also be considered:

- Other reasonable and permissible uses of state waters and state-owned bottomlands;
- Marine and fisheries resources of the Commonwealth;
- Tidal wetlands;
- Adjacent or nearby properties;
- Water quality; and
- Submerged aquatic vegetation (SAV).

VA Code § 28.2-1200, § 28.2-1203, and § 28.2-1205.

Wetlands

Wetlands in the Commonwealth shall be protected, both in acreage and function, except to allow development in a manner consistent with the protection of wetland acreage and function. Impacts to wetlands shall be avoided or minimized to the maximum extent practicable. Wetland delineation shall be based on the method in the US Army Corps of Engineers' (USCAE) "Wetlands Delineation Manual, Technical Report Y-87-1, January 1987, Final Report" and USCAE approved regional supplements. Further, compensation is required for impacts to wetlands in order to achieve no net loss in wetland acres or function for unavoidable impacts. When assessing potential impacts to wetlands, consideration shall be given to whether the impact will impair a beneficial use of state waters. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, and cultural and aesthetic values is an instream beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic uses (including public water supply), agricultural uses, electric power generation, commercial uses, and industrial uses.

VA Code § 62.1-44.15:20 and § 62.1-44.15:21 and 9 VAC § 25-210-10, -210-45, -260-10, -380, -390.

Tidal Wetlands

It is declared to be the public policy of this Commonwealth to preserve the tidal wetlands and to prevent their despoliation and destruction and to

accommodate necessary economic development in a manner consistent with wetlands preservation.

In deciding to allow a use or development of tidal wetlands, the Commonwealth shall apply the following standards:

- Tidal wetlands of primary ecological significance shall not be altered so that the ecological systems in the tidal wetlands are unreasonably disturbed
- Development in Tidewater Virginia, to the maximum extent practical, shall be concentrated in tidal wetlands of lesser ecological significance, in vegetated tidal wetlands which have been irreversibly disturbed before July 1, 1972, in nonvegetated tidal wetlands which have been irreversibly disturbed prior to January 1, 1983, and in areas of Tidewater Virginia outside of tidal wetlands.

Consideration shall be given to the unique character of the Commonwealth's tidal wetlands which are essential for the production of marine and inland wildlife, waterfowl, finfish, shellfish, and flora; serve as a valuable protective barrier against floods, tidal storms and the erosion of the Commonwealth's shores and soil; are important for the absorption of silt and pollutants; and are important for recreational and aesthetic enjoyment of the people and the promotion of tourism, navigation, and commerce.

It shall be the policy of the Commonwealth to avoid, minimize or compensate for the loss of tidal wetlands and the adverse ecological effects of all permitted activities. Compensation is required for impacts to wetlands in order to achieve no net loss in wetland acres or function.

VA Code § 28.2-1301 and § 28.2-1308; 4 VAC 20-390-20.

Living Shorelines

Living shorelines shall be the preferred alternative for stabilizing tidal shorelines whenever practicable.

VA Code § 28.2-104.1.

Sand Dunes and Beaches

It is declared to be the public policy of the Commonwealth to preserve and protect coastal primary sand dunes and beaches and to prevent their despoliation and destruction and whenever practical to accommodate necessary economic development in a manner consistent with the protection of such features.

- No permanent alteration of or construction upon any coastal primary sand dune or beach shall take place which would:
- Impair the natural functions of the dune or beach;

- Physically alter the contour of the dune or beach; or
- Destroy vegetation growing thereon unless there will be no significant adverse ecological impact, or the project is clearly necessary and consistent with the public interest, considering all material factors.

Consideration shall be given to the importance of coastal primary sand dunes and beaches with their unique physiographic features which, in their natural state, serve as protective barriers from the effects of flooding and erosion caused by coastal storms, thereby protecting life and property; provide an essential source of natural sand replenishment for beaches and an important natural habitat for coastal fauna; and enhance the scenic recreational attractiveness of Virginia's coastal area

VA Code § 28.2-1401 and § 28.2-1408.