

April 30, 2007

Virginia Coastal Zone Management Program
Performance Report for State Cooperative Agreement Number: NA06NOS4190241
For the Period from October 1, 2006 – March 31, 2007

Semiannual Section B Report on Core Agency Implementation Activities

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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.

b) DEQ – Water Permitting Program

The Virginia Pollution Abatement permit (VPA) is required for facilities that collect and store water. For example, an agricultural facility that temporarily stores wastewater to be applied as part of an irrigation/fertilization program. 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, 2006 – March 31, 2007											
	Permits Issued / Avg Proc. Days		Permits Reissued / Avg Proc. Days		Permits Modified / Avg Proc. Days		Denied / Avg Proc. Days		Waivers / Avg Proc. Days		No Permit Required / Avg Proc. Days	
VPDES	4	522	19	313	9	352	0	0	NA	NA	NA	NA
VPA	0	NA	0	NA	0	NA	0	NA	NA	NA	NA	NA
VWP IPs	5	223	0	0	4	176	0	0	3	101	17	90
VWP GPs	197	62	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Totals												

*Data retrieved from the DEQ CEDS database

c) DEQ – Water Program Enforcement and Compliance

DEQ continues to apply both informal and formal enforcement measures in the enforcement program. 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, 2006 through March 31, 2007, DEQ issued 101 Warning Letters 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. DEQ issued 29 Notices of Violation during the subject period for violations of VPDES, VPA and VWPP program requirements and concluded enforcement cases with the issuance of 14 Consent Orders assessing a total of \$114,850 in civil charges. In addition, as part of an administrative settlement in a concluded case, a Supplemental Environmental Project requiring wetlands restoration will be performed.

d) DEQ – Air Permitting Program

**OFFICE OF AIR PERMIT PROGRAMS
PERMITS ISSUED REPORT FOR
VIRGINIA’S COASTAL RESOURCES MANAGEMENT PROGRAM**

Period: **October 1, 2006 – March 31, 2007**

PERMIT TYPE	NUMBER OF PERMITS ISSUED	AVERAGE PROCESSING TIME (Days)
PSD & NA	0	NA
Major	1	89
Minor	49	41
Administrative Amendment	7	31
Exemptions	85	11
State Operating	14	80
Federal Operating (Title V)	3	NA
Acid Rain (Title IV)	0	NA
Total Number Permits Issued	<u>159</u>	

* The average processing time is determined by computing the difference between when the application was deemed administratively complete and when the permit was issued.

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.

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.

**OFFICE OF AIR PERMIT PROGRAMS
PERMITS PENDING REPORT FOR
VIRGINIA'S COASTAL RESOURCES MANAGEMENT PROGRAM**

Permits pending as of **March 31, 2007**

PERMIT TYPE	NUMBER OF PERMITS PENDING
PSD & NA	1
Major	2
Minor	34
Administrative Amendment	5
Exemptions	16
State Operating	17
Federal Operating (Title V)	8
Acid Rain (Title IV)	2
Total Permits Pending	<u>85</u>

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.

**OFFICE OF AIR PERMIT PROGRAMS
PERMITS WITHDRAWN AND APPLICATIONS DENIED REPORT FOR
VIRGINIA'S COASTAL RESOURCES MANAGEMENT PROGRAM**

Period: **October 1, 2006 – March 31, 2007**

PERMIT TYPE	NUMBER OF PERMITS WITHDRAWN	NUMBER OF APPLICATIONS DENIED
PSD	0	0
Major	0	0
Minor	19	0
Administrative Amendment	0	0
Exemptions	2	0
State Operating	0	0
Federal Operating (Title V)	0	0
Acid Rain (Title IV)	0	0
Total Permits Rescinded	<u>21</u>	<u>0</u>

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 enforcement program. Informal measures such as Requests for Corrective Action, Informal Correction Letters, 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 of October 1, 2006 through March 31, 2007, DEQ issued 86 Requests for Corrective Action, 6 Informal Correction Letters, and 42 Warning Letters.

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 sought. DEQ initiated 9 new formal enforcement actions during the subject period via issuance of Notices of Violation. In addition, DEQ issued 12 Consent Orders and assessed \$211,022 in civil charges.

Air Program Enforcement and Compliance Actions taken, October 2006 – March 2007		
Type of Action	Number of Actions	Civil Charges Assessed
Consent Orders Issued	12	\$211,022
Warning Letters	42	n/a
Requests for Corrective Action	86	n/a
Informal Corrective Letters	6	n/a
Notices of Violation	9	n/a

2) VIRGINIA MARINE RESOURCES COMMISSION (VMRC)

a) VMRC – Habitat Management Division

During the period October 1, 2006 through March 31, 2007 the Habitat Management Division received 1413 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. Eleven sworn complaints were issued during the period.

The Habitat Management Staff completed actions on 1012 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 2006. Similarly those applications received near the end of the current reporting period are still under review. Habitat Management Staff also issued 39 general permits for Virginia Department of Transportation projects.

In addition to staff actions, the Full Commission considered 79 projects. During the reporting period the Commission considered 38 protested projects or projects requiring a staff briefing, including 8 appeals of local wetlands board decisions. The Commission also approved 41 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 31, 2006 Commission meeting, a public hearing was held on the ASMFC requirement to revise the Winter II commercial possession limit for scup. The commission moved to accept the staff recommendation, and the possession limit, for 2006, was adjusted from 3,000 pounds per trip to 6,500 pounds per trip.

At the November 28, 2006 commission meeting there was a discussion for consideration of Emergency Regulatory Action for the Spiny Dogfish fishery. The Commission moved to approve an emergency regulation, to be effective November 29, 2006, that establishes a 4,000 pound trip limit during the November 1, 2006 thru April 30, 2007, and to advertise for a public hearing at the December 19, 2006 commission meeting. That emergency amendment was adopted as a final regulation, by the Commission, on December 19, 2006.

At the January 23, 2007 meeting, there was request for approval of Procurement Procedures for the 2007 American Shad Restoration Program and a request for a public hearing to establish the 2007 Shad by-catch regulations. The commission moved to approve procurement procedures for the 2007 Shad Program; and, adopt the emergency regulation, effective February 1, 2007, for a status quo (to 2006) by-catch Fishery and a public hearing be advertised with the 3 options; The second option (FMAC option) would maintain the boundaries that applied to the 2006 fishery, in 2007, but drift gill nets and pound nets would be added as eligible gear types. This second option also sought a more liberal possession limit, for American shad, in that each permitted fisherman would be allowed a maximum of 10 American shad per day in both areas, rather than the 10 per vessel in the by-catch area and 5 per vessel in the spawning grounds, as for the 2006 by-catch fisheries. At the February 27, 2007 Commission meeting a public hearing was held to consider these emergency by-catch provisions, for American shad. The Commission moved to maintain the same management measures in 2007 that were in place for 2006.

At the January 23, 2007 Commission meeting there was a request for public hearing to establish the 2007 recreational summer flounder fishery management measures. The commission moved to approve the request to advertise for a public hearing. At the February 27, 2007 Commission meeting a public hearing was held to consider proposed amendments to Regulation 4 VAC 20-620-10 Et seq. to establish the 2007 Summer Flounder recreational fishing measures. The Options considered are as follows: Option 1 - 19" minimum size, 6 fish possession with no closed season; Option 2 - 18.5" minimum size, 5 fish possession, January 1 through March 31 and July 23 through 28 closed season (the vast majority of public opinions favored this option); Option 3 - 18.5 minimum size, 3 fish possession with no closed season; and Option 4 - 18" minimum size, 2 fish possession, January 1 through March 31 and July 16 through July 31 closed season. The Commission moved to accept the staff recommendation for Option 2, and this option was also favored by the majority of anglers who commented publicly.

At the January 23 Commission meeting a request to adopt emergency regulation establishing the 2007 Black Sea Bass commercial directed fishery and by-catch fishery quotas was made. The proposed quotas are 412,470 pounds for the 2007 Virginia directed fishery and 45,830 pounds for the bycatch fishery. The commission moved to adopt the emergency regulation and approve the advertisement of a public hearing for the February meeting. At the February 27, 2007 Commission meeting a public hearing to consider proposed amendments to Regulation 4 VAC 20-950-10 et seq., to establish the 2007 commercial Black Sea Bass harvest quotas and other restrictions was held. The commission moved to accept the staff recommendation to make the quotas adopted as emergency amendments permanent. Additionally, effective January 1, 2007, any pot or trap fished in federal waters is required to have two escape vents (increased from one) in the parlor portion of the trap, and any pot or trap using circle vents must increase the vent size from 2.375 inches to 2.5 inches. Also, the Commission moved to accept the staff recommendation to advertise for a March public hearing on the alternate allocation scheme; and the commission also moved to accept the staff recommendation to make the emergency amendments to Regulation 4VAC 20-950-10, et seq. permanent.

At the February 27, 2007 Commission meeting there was a request for public hearing to amend Regulation 4 VAC 20-450-10 et seq., "Pertaining to the Taking of Bluefish," to establish the 2007 commercial harvest quota. The Commission moved to accept the staff recommendation and to advertise for a March 2007 public hearing. At the March 27, 2007 Commission meeting

a public hearing was held to establish the 2007 commercial bluefish quota of 1,018,660 pounds. The commission moved to approve the 2007 commercial bluefish quota.

At the March 27, 2007 Commission meeting a public hearing was held to consider alternate methods for allocation of the 2007 black sea bass commercial harvest quota between directed and by-catch fisheries. The proposal would allocate 40,000 pounds as the Bycatch fishery quota (currently set at 45,830) and allocate 10,000 pounds to the Hardship set-aside (currently at 17,000). The plan would distribute 84% of the total quota to the Directed fishery based on individual's shares. The remainder of the quota would then be added to the Directed fishery quota, based on a three year average of an individual share holder's landings, divided by the three year average landings for the entire Directed fishery. The regulation which went into effect March 1, 2007 established the 2007 Virginia Directed fishery quota as 412,470 pounds and the Bycatch fishery quota as 45,830 pounds. Since the two fisheries have been in place VMRC has allocated 84% of the commercial quota to the Directed fishery and 16% to the Bycatch fishery. The current allocation (set by the Commission at the February 27, 2007 meeting), distributes 90% of the available quota to the Directed fishery. Due to the significant reduction in the overall 2007 quota, staff proposed this distribution, to alleviate some of the hardship this reduction would cause the Directed fishery. Based on landings estimates for the past 3 years, staff believed that reducing the Bycatch fishery quota to 45,830 should not have any effect on the way the fishery is allowed to operate. Staff also supports further reducing the quota to 40,000 pounds (as put for in the industry proposal), for the same reasons. The Commission moved to approve the amendments to Regulation 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass, only for 2007."

At the March 27, 2007 Commission meeting a request for public hearing in April 2007 to consider establishing conservation measures for Sheepshead, to include a 4-fish recreational possession limit and a commercial hook-and-line possession limit of 500 pounds. The commission moved to approve the advertisement of an April 2007 public hearing.

At the March 27, 2007 Commission meeting a request for public hearing in April 2007 to amend Regulation 4 VAC 20-900-10 et seq., "Pertaining to Horseshoe Crab", to establish a definition for male horseshoe crabs, a permitting and reporting system (call-in) for buyers of horseshoe crabs. The commission moved to approve the advertisement of an April 2007 public hearing.

At the March 27, 2007 Commission meeting a request for public hearing in April 2007 to consider amending Regulation 4 VAC 20-890-10 et seq., "Pertaining to Channeled Whelk", to modify the definition of a bait bag and establish a permitting and reporting system for buyers of channeled whelk. The commission moved to approve the advertisement of an April 2007 public hearing.

At the March 27, 2007 Commission meeting a request for public hearing in April 2007 to establish recreational and commercial possession limits for blueline tilefish and grouper species landed in Virginia. The commission moved to approve the advertisement of an April 2007 public hearing.

At the March 27, 2007 Commission meeting a request for public hearing in April 2007 to request a revision of the May 1 through October 30 possession-limit on spiny dogfish to 3,000 pounds, from 600 pounds. The commission moved to approve the advertisement of an April 2007 public hearing.

c) VMRC – Law Enforcement Division

Virginia Marine Patrol

ARRESTS / CONVICTIONS SUMMARY BY CATEGORY

Report Date:	April 05, 2007
Report Time:	14:15
Period Begin:	10/1/2002
Period End:	9/30/2007

Category	2002/2003		2003/2004		2004/2005		2005/2006		2006/2007	
	Arrests	Con-victions								
Buyers	34	29	35	25	5	3	2	2	0	0
Casting Garbage/Trash	0	0	0	0	1	0	3	2	1	1
Clams	12	10	4	4	2	2	5	4	0	0
Commercial Fishing License	9	7	11	10	4	3	5	4	5	4
Conchs	10	6	4	4	1	1	4	4	0	0
Crabs	174	159	145	133	163	147	88	80	12	12
Fish	286	245	192	170	241	208	304	284	155	141
Fishing without a license/revoked license	107	95	6	5	120	116	59	59	5	4
License Tags	4	2	3	1	9	6	9	4	3	2
Mandatory Reporting	0	0	0	0	0	0	1	1	0	0
Misc	0	0	0	0	0	0	1	1	0	0
Non-residents	0	0	0	0	1	1	0	0	0	0
Other Agencies	509	471	358	339	769	714	721	665	97	95
Oysters	22	19	17	16	101	88	82	80	31	26
Police Powers	188	159	299	251	137	112	61	55	41	39
Removal of Obstructions	0	0	0	0	2	2	6	5	1	0
Resisting officer	2	1	0	0	0	0	1	0	0	0
Shellfish	2	2	5	3	3	3	2	0	0	0
SW Recreational Licenses	691	670	516	481	322	305	413	397	37	36
TOTALS:	2050	1875	1595	1442	1881	1711	1767	1647	388	360
PERCENT OF CONVICTIONS:	91.46%		90.41%		90.96%		93.21%		92.78%	

vt.02.98051

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

Summons under "Police Powers" are all criminal vs fisheries. 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.

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

Activities of the Virginia Department of Health for the Virginia Coastal Resources Management Report are summarized below. These include statistics on applications for sanitary facilities at marinas and shellfish harvesting grounds.

The Department received and reviewed a total of 50 VMRC Permit Applications, and processed as follows:

Twelve (12) of the Permit Applications needed action in the Marina program.

Thirty-one (31) applications were approved based on meeting the requirements of providing adequate facilities.

Seven (7) applications were denied because of inadequate facilities.

The shellfish program had 2088 acres of shellfish grounds closed to harvesting. There were 1546 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, 2006 through March 31, 2007.

Regulatory Programs

Stormwater Management Program

The consolidation of the Virginia's stormwater management programs into DCR streamlines program implementation, increases program efficiencies and compliance, builds on successful online initiatives, and improves water quality. During the past six month period, staff assigned to the field within Tidewater localities provided services that include review of erosion and sediment control (ESC) and stormwater management plans, on site inspections, complaint response, enforcement support, and technical/regulatory training via the classroom and Internet.

DCR staff has been working with six large/medium (Phase I) Municipal Separate Storm Sewer Systems (MS4s), during the past six months, to develop and reissue the individual permit for the storm sewer systems. The six localities are Chesapeake, Hampton, Newport News, Norfolk,

Portsmouth and Virginia Beach. In addition, staff has been working with the small (Phase II) MS4 localities in the review of their annual reports.

DCR staff is responsible for processing registration statements for land-disturbing activities that are covered by the General Permit for Discharges of Stormwater from Construction Activities. For the reporting period, approximately 1,335 land disturbing activities were issued General Permit coverage. During this time period, DCR staff also completed approximately 559 site inspections for compliance with the General Permit.

A major focus of Stormwater Management Program staff during this reporting period has been development of the revised regulations for the Stormwater Management Regulations. A Technical Advisory Committee (TAC) was formed to provide review and recommendations for the Parts II, II and XIII of the regulations. In addition, DCR has established an internal drafting team to develop the regulations per guidance provided by the TAC.

Urban Program staff continued to educate government officials, private contractors, and consultants in the essential elements of Erosion and Sediment Control (ESC) via classroom training and the online “Responsible Land Disturber (RLD) Certificate of Competence” Program. Approximately 844 people completed classroom training and approximately 1,739 people were certified or recertified for the RLD Program. In addition, 267 individuals were certified through the examination process as Inspectors, Plan Reviewers, Program Administrators and Combined Administrators.

Nutrient Management Regulations

DCR’s nutrient management program encourages the proper land application and efficient use of fertilizers, manures, sewage sludge and other nutrient sources utilized for agricultural and urban purposes, in ways that protect and improve the quality of Virginia’s ground and surface waters. DCR field nutrient management specialists developed nutrient management plans on 6,600 new and revised acres of land in the Coastal Zone during the reporting period.

DCR’s new cost-share practices introduced July 1, 2006 promoted nutrient management plans and practices. Of the “priority practices” which are nutrient management plan preparation and implementation, conservation tillage, cover crops, riparian buffers, and livestock exclusion, cover crops practices have had the most increase in participation. It is expected that annual cover crop acres will increase approximately 10 -15%, to about 98,000+ acres. Contract cover crop acres, a new practice for this year will represent 7,500 + acres. Most of these acres are in the Coastal Zone area of Virginia.

As of July 1, 2006 all state lands in Virginia receiving nutrient applications are required to have nutrient management plans. This has proved a challenge as some agencies have very little experience in nutrient management planning. However with a combined effort of state specialists as well as certified planners in the private sector, to date we estimate the over 97% of all qualifying state lands have nutrient management plans which equates to approximately 15,000 acres. In addition to this accomplishment, the next set of plans will emphasize the use of organic nutrient sources (chicken litter), as an alternative to fertilizer, thus increasing the amount of land

receiving litter in the state that has a nutrient management plan. These plans address a wide range of land uses including farm land, athletic fields, recreational areas, and landscape areas.

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 become familiarized with the VA Coastal NPS Program and partners and moved through program development. Contracts between the DEQ CZM and DCR SWCD were continued to be finalized to meet full program operations. Reprogramming of the remaining funds has continued.

The CNP Program Manager continued to undertake the development of the VA Nonpoint Source Pollution Education for Municipal Officials (NEMO) Program through a coordinated effort between the NOAA/EPA/NPS Chesapeake Bay Office and Virginia partners. Virginia Coastal Nonpoint Education for Municipal Officials Program (VA NEMO) is a partnership between the Chesapeake Bay Office of NOAA/EPA to provide technical assistance to localities in the Virginia portion of the Chesapeake Bay. Through the coordinated process, Mathews County was selected as the pilot site for the VA/ Chesapeake NEMO Program due to their request for assistance, willingness to participate and readiness of their undertaking of the Comprehensive Plan revision. The program relies upon the DCR Regional Offices (Regional Managers and Watershed Coordinators), DCR Division of Chesapeake Bay Local Assistance (DCBLA), Planning District Commissions, Soil and Water Conservation Districts, and Watershed groups as the delivery mechanism.

The Virginia Clean Marina Program met during the reporting period to begin making efforts towards the re-invigoration of the Program including the strategic planning efforts to develop a sustainable program.

The VA DCR Coastal NPS Program Manager, through consultation with the Eastern Shore Planning District Commission (ESPDC) and the DEQ Total Maximum Daily Load (TMDL) Program, met to select the Occohannock River as the site for the TMDL Implementation Plan (IP). The ESPDC organized a meeting in late December 2006 of the VA Departments of Health, Conservation, and Environmental Quality; the VA Marine Resources Commission; NRCS and local NGOs to select the site and develop the overall approach to developing the Implementation Plan. The development of the TMDL IP will follow the guidance as identified on the VA DEQ Web for developing TMDL IPs.

The VA DCR CNP Program Manager has been working with the VA Department of Health to see the completion of the sanitary survey of the selected site to facilitate the development of the Implementation Plan. The VA DCR will be entering into a contract with the ESPDC to develop the IP.

The Occohannock River was selected due to its location as a boarder 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

No report is available at this time.

c) DCR – Division of Planning and Recreation Resources

No report is available at this time.

d) DCR- Division of Chesapeake Bay Local Assistance

No report is available at this time.

5) Department of Game and Inland Fisheries (DGIF)

Core Coastal Management Programs

Recreational fishing

The expansion of the northern snakehead population was monitored by DGIF biologists during 2006. Boat electrofishing catch rate increased significantly from 0.2 fish/hr in 2004 to 6.1 fish/hr in 2006; while reported angler catches during 2006 (24) equaled the combined total of the two previous years. Maximum size increased each year suggesting the population was maturing. The largest snakehead seen yet weighed 12 pounds and was 31" long. This female was captured during an electrofishing survey in May, 2006.

The first northern snakehead nest was located in early September, 2006, and data suggest snakeheads had a protracted and/or repeat spawning season that lasted from April to September. Females had an average of 40, 786 eggs. Collection patterns suggested snakeheads originated from Dogue Creek and traveled along the Virginia shoreline to colonize creeks to the north (Little Hunting) and south (Pohick and Occoquan). Although some fish crossed the Potomac River and were found along the Maryland shore, they seemed reluctant to enter water that was deep or swift. The radio telemetry study suggested that most snakeheads moved little, apparently content to stay in the abundant, shallow, and heavily-vegetated habitats of Dogue Creek.

Seventeen food items, including 15 fish species, were identified from snakehead stomach contents, and banded killifish was the most commonly food item. Bluegill, pumpkinseed and white perch were also commonly consumed. The non-fish food items were crayfish and frogs.

Although population size increased, known range did not appear to increase or increased at a slower rate. However, increases in angler catch during 2006 at the northern and southern terminus of the existing distribution suggested range expansion was probably imminent.

Anadromous fish monitoring and restoration: Juvenile alosine sampling using a bow-mounted push net began in June 2006 on the James and Rappahannock rivers and in upper Lake Chesdin (Appomattox River) and continued through October 2006. 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. No alosines were found in Lake Chesdin (large juvenile American shad were found in Chesdin in November 2005). 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). All juvenile alosines collected upstream of Boshers Dam (pool) in 2006 were of hatchery origin. The otoliths of these fish had an oxytetracycline mark that was received in one of the American shad hatcheries. DGIF biologists are still awaiting the results of the otolith analysis on American shad collected in the tidal James and Rappahannock rivers.

DGIF is nearing completion of its review of the 2006 Boshers Dam Fishway passage data, collected via digital video. The number of American shad passed in 2006 (>60 through most of

the video) is slightly higher than the number passed in 2005 (46). Since the fishway opened in 1999 the peak year for American shad passage was in 2002 (697). Sea lamprey, also a native anadromous fish, is commonly seen using the fishway as well. The fishway was recently reopened in March for the 2007 migration season.

Compliance and enforcement issues

During this reporting period, DGIF Law Enforcement personnel spent a majority of their enforcement time dealing with hunting-related issues throughout the region. One complaint of illegal striped bass activity did result in the arrest of two individuals for taking 14 undersized fish. Routine patrol resulted in approximately six additional arrests for illegal striper. Wardens have worked and continue to work on illegal fishing complaints particularly along the James River in Surry and Charles City Counties.

Wardens spent a disproportionate amount of time in January, February, and March conducting surveys of all waterfowl blinds on tidal waters. However, there have been no reports of anything out of the ordinary with respect to the Chesapeake watershed in general.

Generally, region boat ramps are in good repair. Patrols for abuse have had a positive impact in the past and is a priority with anticipated increase of use.

Project impacts and federal consistency reviews: During the reporting period, DGIF reviewed and commented on approximately 300 new and ongoing projects within the coastal zone of Virginia. These included residential or commercial developments, highway projects, other public works projects, and private inquiries from a multitude of private and public entities, and included a significant number of federal consistency reviews. Project recommendations consisted of construction time-of-year restrictions (TOYR), mitigation of unavoidable impacts upon endangered and threatened species, avoidance and minimization of habitat impacts, interagency consultation on mitigation proposals, and review of studies and biological opinions developed pursuant to the National Environmental Policy Act, Clean Water Act, Federal Energy Regulatory Commission project license applications, and Section 7 of the Endangered Species Act.

Wetland/stream mitigation banking: Over the last 6 months, DGIF participated in the review of 2 existing and 5 proposed wetland/stream mitigation banks located within the coastal zone. One of the existing banks consists of over 6 acres of created tidal marsh located on a tributary to the Elizabeth River in Chesapeake.

Geographic information systems activities: DGIF continued to maintain spatial datasets of wildlife locations and resources in the coastal zone. DGIF has designed a unified species observation database to maintain over 12 different wildlife location datasets in a single enterprise structure. This system, funded through a partnership with VDOT, will be implemented within the next few months. DGIF has begun processing finer scale hydrography data, 1:24,000 National Hydrography Dataset (NHD), for use as a standardized hydrography dataset for Virginia and as the basis for DGIF's aquatic habitat classification. 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! is nearing release. This interactive mapping and reporting system will allow users to view and query species, habitats, threats, and conservation 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 have been created for approximately 32 species. DGIF is also developing spatial information for recreational opportunities, including completing a revision of our public fishing lakes database (containing almost 200 lakes), developing a comprehensive boating access database, and collecting location information on marker buoys and waterfowl hunting blinds.

WildlifeMapping

To date, the WildlifeMapping program has trained over 1,300 volunteers and has generated over 53,000 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 2007, all WildlifeMapping workshops are being conducted in conjunction with chapters of the Virginia Master Naturalist Program. The Virginia Master Naturalist program currently has 10 active chapters with 11 additional chapters scheduled to begin training volunteers this year. 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. 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. The newest edition of the VBWT Guide is now available. This version combines all three regions into a single volume. The guide is available for \$8.50 representing cost recovery for DGIF. DGIF has coordinated with Virginia Tourism Corporation for the fulfillment process. A new toll-free number; 1-866-74VABWT has been implemented while the 1-866-VABIRDS number is phased out. Staff are visiting all trail sites and arranging meetings with site managers and tourism officials. These meetings will allow for full cooperation and coordination for the VBWT. A contractor was hired to install road signage for the Trail in fall of 2006. The contractor has completed all but far southwest Virginia and should complete the final VDOT district in late April 2007. This road signage enhances the ease of use for trail users and has produced an increased interest in the Trail statewide.

DGIF has contracted with the Conservation Management Institute 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 DGIF's management and development efforts for the VBWT.

Site enhancements continue at Willis Wharf Marina. This VBWT trail site on the Eastern Shore Loop is the future site of a wildlife viewing platform. This platform will enhance the ecotourism potential of the Willis Wharf community, providing spectacular views of highly productive mud flats and salt marshes – habitat for a variety of shorebirds. This project is nearing the end of its design phase and will soon move into bidding and construction. Plans and engineering work have been done by the Capital Program staff at DGIF with guidance from the Watchable Wildlife Section. Input has been solicited from all concerned partners including Virginia CZM, Northampton County and the Willis Wharf Village committee. The designs reflect the desire for an attractive and utilitarian structure that would integrate well into the working waterfront of Willis Wharf.

Local and Regional Coastal Avian Meetings

DGIF staff attended several avian coordination and professional meetings during this reporting period. In September, DGIF participated in the Northeast Coordinated Bird Monitoring (NECBM) Workshop held in Ithaca, NY. The NECBM Partnership was developed in 2006 to implement a regional bird monitoring framework that will state, federal and non-governmental partners in improving the coordination and effectiveness of their monitoring efforts. The workshop took the first steps in cataloguing existing bird surveys, building consensus on monitoring priorities, and implementing new programs in US Fish and Wildlife Service Region 5. The workshop resulted in the formation of taxonomic-based working groups, including a marsh bird working group of which DGIF is an active member. DGIF attended the Virginia Coastal Avian Partnership (VCAP) meeting that was held on the Eastern Shore in late January. At the meeting, DGIF participated in facilitated sessions designed to update the Partnership's 1996 "Conservation Action Plan for the Avian Communities in the Virginia Barrier Islands". The plan will act as a framework for prioritizing and guiding avian conservation work on the Virginia coast over the next 10 years. The plan will be incorporated into the Virginia Coastal Zone Management Program's Seaside Management Plan.

Interagency Bird Conservation Initiatives

DGIF interagency bird conservation coordination is being implemented through the 2006 launching of the Virginia Bird Conservation Initiative (VABCI). VABCI is a response to the need for a partner-driven, state-level effort to provide an organizational framework for bird conservation activities in the state. The initiative will also tie local conservation actions to larger regional and national conservation goals and perspectives, and forge permanent partnerships for information exchange and collaboration on avian conservation activities. VABCI consists of three working groups representing Virginia's physiographic provinces: the coastal plain, the piedmont and the ridge and valley; and a committee overseeing their operations. DGIF organized a meeting of the VABCI Coastal Plain Working Group in conjunction with the VCAP meeting on the Eastern Shore in late January. The meeting introduced partners to the Initiative's goals and processes, laid the foundation for the coordination of volunteer marsh bird surveys and riparian bird surveys, and reviewed population estimates for Virginia's Species of Greatest Conservation Need as identified in Virginia's Wildlife Action Plan.

The Initiative continues to work toward integration of state-level goals and actions with the broader regional context through coordination with established Bird Conservation Region (BCR) Initiatives such as the South Atlantic Migratory Bird Initiative (SAMBI) and the Mid-Atlantic Bird Conservation Initiative (MABCI). In November, DGIF members of the MABCI Steering Committee reviewed and provided technical input into a draft Implementation Plan for the Initiative.

B. FEDERAL CONSISTENCY

During the first half of FY 2007, the Office of Environmental Impact Review/Federal Consistency reviewed 98 development projects and management plans located in Tidewater for consistency with the Virginia Coastal Resources Management Program (VCP). This represents approximately 74 % of the 133 projects reviewed during the last six months. Major state projects accounted for 24 projects and, as shown in Table 1, 74 were federal projects of which 45 were federal actions, and 29 were federally funded projects (predominantly local government projects). The 45 federal projects included 38 direct federal actions and 7 federal approvals (licenses and approvals).

In addition, the OEIR participated in several activities, to include NEPA scoping meetings and workshops, pertaining to the development of new energy sources along Virginia's offshore coast and Fort Monroe BRAC Summit. EIR staff also participated in several deliberations involving consistency issues pertaining to Dominion's early site permit (ESP) currently under review by the Nuclear Regulatory Commission.

The OEIR continues to maintain a webpage for Federal Consistency for the Commonwealth. The 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. As previously reported, several federal and state agencies including the White House's Council on Environmental Quality, the U. S. Federal Highway Administration, U. S. Department of Energy and the University of Virginia still have direct links to the OEIR web page.

Table 1 depicting federal projects in Tidewater, Virginia reviewed from October 10, 2007 through March 31, 2007.

TYPE OF FEDERAL PROJECTS REVIEWED*	NUMBER OF PROJECTS COMPLETED	REVIEW PERIOD
Direct Federal Actions	38	30-60 Days
*Indirect Federal Actions (approvals & permits)	7	90 Days
Federally Funded Projects	29	30 Days
Outer Continental Shelf	0	1 under review
TOTAL	74	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).

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Significant Projects reviewed for Consistency with the VCP 10/1/2006 to 3/31/07

1. Federal Consistency Certification Review of the North Anna Early Site Permit Application, Louisa and Spotsylvania Counties, Virginia, DEQ-05-079F (comments mailed November 21, 2006)

Project Description

Dominion Virginia Power Company (“Dominion,” or “the applicant”) applied to the Nuclear Regulatory Commission for an Early Site Permit to allow it to reserve a site at its existing North Anna Power Station (“NAPS”) for the addition of two more nuclear reactors. Under NRC’s Early Site Permit program, the applicant may, upon approval, reserve the site for as long as 20 years while it undertakes site preparation and preliminary construction activity. Because NAPS is situated on Lake Anna, which flows through a dam into the North Anna River through Spotsylvania County, the proposed addition of two power units is subject to Virginia’s Coastal Zone Management Program. The applicant submitted a federal consistency certification in late March 2005. Earlier submissions had included a federal consistency certification, submitted in late 2003 and withdrawn; and a Draft EIS issued by the Nuclear Regulatory Commission (NRC) in late 2004, comment period ending in early March 2005.

Stay

Beginning in September 2005, the applicant and DEQ agreed to a stay of the review process (under the Federal Consistency Regulations as they existed prior to January 2006) to allow development and consideration of a new cooling process for the proposed third reactor unit, which was proposed as a water-cooled unit, the water to be withdrawn from Lake Anna (the fourth and final unit would be air-cooled, according to the applicant). The stay was lifted by mutual agreement in May 2006. Meanwhile, the NRC issued a Supplemental Draft EIS in June 2006; the comment period for that document ended in early September. NRC held a public hearing on its Draft EIS on August 15, 2006; DEQ held a public hearing on the federal consistency certification on August 16 in the same high school, in Mineral, Louisa County, a few miles from the NAPS site. The review of the federal consistency certification was completed on November 21, 2006.

Conditional Concurrence

DEQ provided a conditional concurrence with the federal consistency certification (and the proposed issuance of the Early Site Permit), subject to the following conditions:

- That prior to construction and operation of one or both of the proposed new units, including any site preparation and preliminary construction activities, Dominion shall obtain all required permits and approvals not yet secured for the activities to be performed, to which the enforceable policies of the Coastal Program apply, and that Dominion will also adhere to all the conditions contained in those permits and approvals; and
- That, should the NRC later approve Dominion's application and issue an Early Site Permit, in accordance with 15 CFR Part 930, section 930.4(a)(3), the NRC shall include in the Early Site Permit the additional condition submitted by Dominion on

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November 10, 2006 at the request of the Department of Game and Inland Fisheries, pertaining to the completion of an Instream Flow Incremental Methodology study.

2. Federal Consistency Certification Review of the Commonwealth Railway Mainline Safety Relocation Project, Cities of Chesapeake, Portsmouth, and Suffolk, DEQ-07-011S
(comments mailed March 14, 2007)

Project Description

The Virginia Port Authority proposed to relocate the existing Commonwealth Railway, Inc. rail line that runs through the cities of Portsmouth and Chesapeake to a new line that will run in the medians of the Western Freeway (Route 164) and Interstate Route 664. The proposed corridor is located in Suffolk as well as Portsmouth and Chesapeake. The corridor is approximately 5.5 miles long and 100 feet wide, extending from the APM Marine Terminal (under construction in Portsmouth) past the Route 164/I-664 interchange in Suffolk, and ending at a point southwest of the Pughsville Road/I-664 intersection in Chesapeake, serving a future Craney Island Marine Terminal. Approximately 4.3 miles of the existing railroad, from Coast Guard Boulevard in Portsmouth to I-664 in Chesapeake, would be abandoned. A new road overpass would be constructed on Route 17 where the at-grade rail corridor makes the transition from the median of Route 164 to that of I-664.

The project is to be funded by federal as well as state funds. The document was presented as a Draft Environmental Assessment (Draft EA) to meet National Environmental Policy Act requirements; and it includes Appendix D, a federal consistency certification, to meet Coastal Zone Management Act requirements. It served as a state Environmental Impact Report ("EIR") as well, in order to meet state environmental review requirements for a Virginia Port Authority project.

Concurrence

Following review of the Draft EA/federal consistency certification/state EIR, DEQ and reviewing agencies concurred with the federal consistency certification. In the discussion of federal consistency, DEQ and reviewing agencies gave guidance to the Port Authority on what is

needed for compliance with the Wetlands Management, Non-point Source Pollution Control, and Coastal Lands Management enforceable policies in particular. The review was completed within the 60-day deadline for state EIR review.

3. Federal Consistency Certification Review of Potomac Expansion Project, Fairfax County, DEQ-06-143F (comments mailed January 11, 2007)

Project Description

Williams/Transcontinental Gas Pipeline Company, the applicant for Federal Energy Regulatory Commission licensing (hereinafter “the applicant”), proposes to construct three pipeline segments to its existing system. One of the segments, along with above-ground facilities, is proposed in western Fairfax County, which is within Virginia’s coastal zone. The applicant would remove 3.18 miles of existing 36-inch diameter pipeline and replace it with 3.43 miles of new 42-inch diameter pipeline. Portions of the existing pipeline, principally those under road crossings, would be abandoned in place. The project would involve approximately 66 acres of

land disturbance, with approximately 44.28 acres required for operation. The construction right-of-way would vary from 104 feet to 118 feet in width.

Concurrence

DEQ and reviewing agencies concurred with the federal consistency certification, provided that the applicant and its contractors comply with all applicable requirements. DEQ provided guidance on enforceable policies (land use requirements of Coastal Lands Management and guidance on water withdrawals, wetland impacts, and air quality). DEQ also provided guidance on protection of rare plants and the wood turtle, a threatened species.

4. Federal Consistency Determination Review of Implementation of 2005 Base Realignment and Closure (BRAC) Recommendations and Related Army Actions at Fort Lee and Fort Belvoir, DEQ-06-167F

Project Description

The Defense Base Closure and Realignment (BRAC) Commission recommendations became law in November 2005, and require the Army to realign Fort Lee. This would involve relocating approximately 7,700 military personnel to Fort Lee, building additional facilities to accommodate personnel and functions, and conducting training and other operations at both Fort Lee (in Prince George County) and Fort A. P. Hill (in Caroline County). Fort A.P. Hill would have an additional 4-day daily personnel load of 880 soldiers and instructors, along with a limited number of permanent personnel.

The Draft EIS, which included the federal consistency determination, described four alternative courses of action:

1. Emphasis on use of “buildable” land (without environmental constraints);
2. Emphasis on use of undeveloped, unconstrained land north of Route 36;
3. Emphasis on consolidation with existing Quartermaster School while minimizing the displacement of existing facilities; and
4. Emphasis on maximum consolidation.

The second of these emphases is defined as the preferred alternative, and is the only one evaluated in detail in the Draft EIS.

Concurrence

DEQ and reviewing agencies discussed the enforceable policies of the Virginia Coastal Resources Management Program, providing guidance on coastal lands management (land use requirements of the Chesapeake Bay Preservation Act) and non-point source pollution control. In regard to advisory policies and other issues arising at Fort Lee, DEQ and reviewing agencies mentioned protection of bald eagle nests, recommended wildlife protection and mitigation measures including compensation formulas for wetland losses and effective riparian buffers, and stated concerns regarding the proximity of the project areas to the neighboring Petersburg National Battlefield Park.

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5. Federal Consistency Determination Review of Phase II Construction of Beach Cottages at Naval Air Station, Dam Neck Annex, Virginia Beach, DEQ-06-214F

The Navy proposes to construct ten rental residential units (five duplex structures) at the Oceana Naval Air Station, Dam Neck Annex. The cottages would be located behind the primary sand dune and elevated on wooden piles, with parking under the cottages. The access driveway would be constructed of marl (i.e., crushed oyster shells). A wooden walkway would be constructed over the dune at one location for beach access. In addition, the project would include a sewage lift station and a sanitary force main to connect the cottages to an existing sanitary sewer. A ground source heat pump would provide cooling and hot water for the cottages.

Concurrence

DEQ and reviewing agencies concurred with the consistency determination, acknowledging that the Marine Resources Commission has no jurisdiction over the dunes on the naval base and that the project would not require a Virginia Water Protection Permit from DEQ. However, DEQ and reviewing agencies took the opportunity to provide background information on sand dunes and the impacts of building there, and to clarify apparent Navy misunderstanding of the relationship of water permitting regulatory authority of DEQ and the Army Corps of Engineers. With respect to advisory policies, DEQ and reviewing agencies gave guidance on the protection of sea turtles, the management of underground storage tanks, and consultation with Virginia Beach on sand dune delineation.

6. Outer Continental Shelf Oil and Gas Leasing Program: 2007-2012 (06-148F)

Project Description

The U.S. Department of the Interior (USDOI), Minerals Management Service (MMS) submitted a Draft Environmental Impact Statement (DEIS) that analyzes the effects of the adoption of a schedule of outer continental shelf (OCS) oil and natural gas lease sales. The document describes the size, timing, and location of leasing activities, consistent with the requirements of Section 18 of the Outer Continental Shelf Lands Act, 43 U.S.C. §1344, for the period of mid-2007 through mid-2012. The proposed action is a plan to offer areas of the Federal OCS for lease for oil and natural gas exploration and development. The proposed program establishes a schedule that the USDOI will use as a basis for considering where and when leasing might be appropriate over a five-year period. The document analyzes the potential consequences of a 5-year leasing program which would schedule 21 sales in 7 of the 26 OCS planning areas, including one sale in the OCS planning area off the Virginia coast. Activities analyzed for environmental impacts included drilling oil and natural gas exploration and production wells; installing and operating offshore platforms and pipelines, and onshore support facilities; and transporting oil using ships or pipelines.

Commonwealth Policy Pertaining to Offshore Natural Gas

The DEQ response included the Commonwealth's policy to support federal efforts to determine the extent of natural gas resources 50 miles or more off the Atlantic shoreline, including appropriate federal funding for such an investigation, and support for the inclusion of the Atlantic Planning Areas in the MMS's draft environmental impact statement with respect to natural gas exploration 50 miles or more off the Atlantic shoreline. Alternatives in the draft EIS

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which included leasing within 50 miles of the shoreline are not supported under the Commonwealth's policy.

Federal Consistency Guidance

DEQ reminded the MMS that pursuant to the Coastal Zone Management Act of 1972, as amended, prior to initiating leasing activities, MMS is required to determine the consistency of its activities affecting Virginia's coastal resources or coastal uses with the Virginia Coastal Resources Management Program. The consistency determination must include an analysis of the activities in light of the Enforceable Policies of the VCP, and submission of a consistency determination reflecting that analysis and committing MMS's actions to be consistent with the Enforceable Policies. MMS was encouraged to consider the Advisory Policies of the VCP as well. A consistency review for applicable phases of the leasing process should be undertaken prior to implementation. The MMS was further advised that federal consistency under CZMA would apply for both onshore activities and offshore activities occurring within and outside the state's 3-mile territorial waters when such activities would affect the state's coastal resources and uses within the territorial limit.

7. Dry Dock 8 Modernization, Norfolk Naval Shipyard (06-195F)

Project Description

The Department of the Navy proposed to modernize and extend landward the existing Dry Dock 8 (DD8) at the Norfolk Naval Shipyard (NNSY) in the City of Portsmouth. Construction activities include the relocation of key utility infrastructures (electrical, steam, fresh water, salt water, and compressed air) from the head of the existing dock to the head of the proposed extension. Demolition would include the partial removal of a utility tunnel, limited crane rail foundations, utilities, and the existing dock headwall. Excavation activities would include removal of upland soils at the inboard extension of DD8 using a steel sheet pile cofferdam braced excavation. Construction would include a pile foundation and a new structural concrete, arch-shaped headwall. In addition, the two existing elevators, one passenger and one freight, would be removed, stored and reinstalled. The Navy submitted a federal consistency determination that found the proposal consistent to the maximum extent practicable with the enforceable policies of the Virginia Coastal Resources Management Program (VCP).

Fifteen-day Extension of the Review

During the course of the coordinated review of the Navy's proposal, DEQ found that there was insufficient information provided in the federal consistency document to determine project consistency relative to the point source management enforceable policy under DEQ's authority and as administered through Virginia Water Protection Permit review procedures (Virginia Code §62.1-44.15:5 and Water Quality Certification pursuant to Section 401 of the Clean Water Act). It was DEQ's understanding that additional dredging proposed by the Navy in a separate action was necessary to achieve the required depths in the channel to accommodate passage of both the existing Nimitz class carriers and the new bulbous-bow Nimitz class carriers.

Therefore, DEQ-TRO determined that the consistency determination submitted by the Navy for the modernization of DD8 could not be viewed as a single and complete project because additional dredging was required to address channel depth limitations that would prevent the larger class carriers from accessing the modernized dry dock. In accordance with 15 CFR Part Page 7, Task 3

930, sub-section 930.41(b) of the federal consistency regulations, DEQ's Office of Environmental Impact Review (OEIR) requested a 15-day extension of the 60-day review period in order to facilitate the analysis of the additional information necessary to complete the review of the proposal. Specifically, DEQ requested that the Navy provide the agency with additional information and analysis of the proposed dredging that would be needed to allow access to the modernized DD8 by the larger Nimitz class carriers.

Concurrence

In subsequent information and discussion, the Navy provided clarification of the relationship between the proposed improvements to Dry Dock 8, the new Nimitz class ships, and the

proposed Norfolk Harbor dredging. According to the Navy, the proposed upgrades to DD8 were necessary only to accommodate the bulbous-bow design of the new Nimitz class ships which will otherwise be able to access DD8 in the same manner as the existing class. The Navy asserted that the proposed improvements to DDS are unrelated and independent of the current Environmental Impact Statement studies underway for the Norfolk Harbor dredging. Based on the additional information, DEQ agreed that the proposed modernization of the DD8 facility is not dependent on the proposed deepening of Norfolk Harbor currently under study, and concurred that the proposal is consistent to the maximum extent practicable with the enforceable policies of the VCP

8. Airport Security Fencing at the Tangier Island Airport (06-218F)

Project Description

The Tangier Island Airport Authority (Airport Authority) proposed to construct security fencing at the airport in the Town of Tangier. The proposal included the installation of two sections of fence totaling approximately 1,275 feet in length. One section would be 550 feet in length and run parallel to, and 10 feet off, the eastern edge of the apron along the airport property boundary. The fence would terminate at the northern end of the apron at a bend in Route 1305. The other section of fencing would be 775 feet in length and located on the western side of the airport in the Route 1305 right-of-way. The fence would be installed approximately 10 feet from the roadway pavement. The fence would consist of 10-foot panels of 4-foot chain link fence attached to 6-foot posts sunk 2 feet in the ground and held in place with a 2-foot by 8-inch diameter concrete footings. The Airport Authority submitted a federal consistency certification which found the proposal consistent with the enforceable policies of the Virginia Coastal Resources Management Program (VCP).

Conditional Concurrence

Based on DEQ's review of the consistency certification and the comments submitted by the agencies administering the enforceable policies of the VCP, the Commonwealth conditionally concurred that the proposal is consistent with the VCP. In accordance with 15 CFR Part 930, §930.4, the conditional concurrence is based on the Airport Authority obtaining Corps confirmation of the presence or absence of wetlands on site and all necessary permits and authorizations prior to any ground disturbance. Also the Airport Authority must adhere to all the conditions of applicable permits and approvals, including any additional requirements determined as conditions of a Virginia Water Protection Permit (VWPP). If the requirements of paragraphs (a)(1) through (3) of 15 CFR Part 930, §930.4 are not met, the conditional concurrence becomes an objection under 15 CFR Part 930, §930.63. Should the conditional

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concurrence become an objection based on the Airport Authority's failure to comply with the applicable enforceable policies, pursuant to 15 CFR Part 930, Subpart H, the Airport Authority may request that the Secretary of Commerce override this objection (see 15 CFR Part 930, §930.63(e)).

C. PROGRAM CHANGES

At the February 1, 2007 Coastal Policy Team meeting the group discussed possible program updates. The following list of program update priorities was developed:

Priority	Topic	Name	Agency	Type	Citation
1	Fisheries	Department of Game and Inland Fisheries; Director	DGIF	statute	29.1-109
1	Fisheries	Unlawful to hunt, trap or fish without license	DGIF	statute	29.1-300
1	Fisheries	DGIF's authority to promulgate regs for wildlife protection	DGIF	statute	29.1-502 et seq.
1	Fisheries	Unlawful to take or attempt to take, possess, sell or transport fish except as permitted	DGIF	statute	29.1-531
1	Fisheries	MRC's authority to promulgate regs to promote seafood and marine resources	MRC	statute	?
2	Point Source Water	VA Pollutant Discharge Elimination System Permit Regulation	DEQ	regulations	9VAC25-31-10
3	NPS Pollution	Erosion and Sediment Control Program	DCR	statute	10.1-560
3	NPS Pollution	Erosion and Sediment Control Regulations	DCR	regulations	4VAC50-30-110
4	Air Pollution	Air Pollution Control Law	DEQ	statute	10.1-1300 et seq.
4	Air Pollution	Air Pollution Control Board Regulations for the Control and Prevention of Air Pollution	DEQ	regulations	9VAC5-20-10 et seq.
		2006 Executive Order		E.O.	
	Coastal Lands	Chesapeake Bay Act	DCR	statute	10.1-2100 et seq.
	Coastal Lands	Chesapeake Bay Act Regulations	DCR	regulations	9VAC10-20-30 et seq.
	Dunes	Coastal Primary Sand Dunes & Beaches Act	MRC	statute	28.2-1400 et seq.
	Dunes	Barrier Island Policy	MRC	regulations	4 VAC 20-440-10
	Fisheries	Virginia Pesticide Control Act/Tributyltin Regulatory Program	VDACS	statute	3.1-249.59 et seq.
	Fisheries	Pesticide Control Act enforcement	VDACS	regulations	2VAC20-20-10
	Fisheries	Surface Water Criteria	DEQ	regulations	9VAC25-260-140

	Point Source Water	VA Water Permit Protection Law (State Water Control Law)	DEQ	statute	62.1-44.2 et seq.
	Point Source Water	VA Water Permit Protection Regulations	DEQ	regulations	9VAC25-210 et seq.
	Point Source Water	VA pollution abatement (VPA) general permit regulation	DEQ	regulations	9VAC25-32-10
	Shoreline Sanitation	Septic tank regulatory program	DOH	statute	32.1-164
	Shoreline Sanitation	Prior approval required before issuance of building permit	DOH	statute	32.1-165
	Shoreline Sanitation	Authority for DOH to promulgate regulations for sewage treatment facilities at marinas	DOH	statute	32.1-246
	Subaqueous Lands	Subaqueous Land Mgmt	MRC	statute	28.2 chapter 12
	Wetlands	Tidal Wetlands Act	MRC	statute	28.2 chapter 13
	Wetlands	Tidal Wetlands Act Mitigation Regulation	MRC	regulations	4VAC20-390-10 et seq.

Potential New Enforceable Policies to Add:

NPS Pollution	Stormwater VPDES General Permit	DCR
NPS Pollution	Stormwater Management Plan	DCR
Waste	Waste Management Regs	DEQ
	- landfill siting/ permitting	
	- UST & AST	
	- hazardous waste	
Endangered Species	State ESA	DGIF
	- habitat, if any	
Historic	Coastal Historic Structures/ Properties (lighthouses, etc.)	DHR
Are these enforceable? If not, can we take steps to make them enforceable?		
Recreation	Public beaches & recreational use of coastal land/water	DCR
NPS Pollution	Floodplains	DCR
NPS Pollution	Stream Buffers	DCR/ DOF?

The Environmental Law Institute is currently finalizing proposals for FY06 (\$20,000) and FY07 (\$20,082) to address the top four program change priorities.