DEQ OFFSHORE/COASTAL WIND ENERGY REGULATORY ADVISORY PANEL (OFFSHORE RAP)

DRAFT MEETING NOTES
RAP MEETING – TUESDAY, AUGUST 17, 2010
DEQ CENTRAL OFFICE 2ND FLOOR CONFERENCE ROOM

Meeting Attendees

RAP Members	*Interested Public*	*DEQ Staff*
Bob Bisha - Dominion	Robert Baldwin - NAVY	Chris Egghart
	Ruth Boethcher - DGIF	Bill Norris
James Casey – U.S. Navy	Guy Chapman – Dominion (Alternate for Bob Bisha)	Jennifer Perkins
John Daniel – Troutman Sanders	Stephen Czapka – Ecology & Environment, Inc.	Carol Wampler
Ray Fernald – DGIF	Patsy Kerr – USFF Navy (Alternate for James Casey – U.S. Navy)	
Larry Jackson – APCO (Alternate)	Laura McKay – DEQ (Alternate for James Golden/Rick Weeks)	
Ken Jurman - DMME	Elizabeth Murphy - VMRC	
Roger Kirchen - DHR		
Larry Lombardi – City of Norfolk		
Bob Matthias – Virginia Offshore Wind Coalition		
Nikki Rovner - TNC		
Chandler Smith – PBS&J		
Tom Smith – DCR		
Mark Swingle – Virginia Aquarium & Marine Science Center		
Lyle Varnell - VIMS		
Jonathan Miles, JMU		
Tony Watkinson - VMRC		
Bryan Watts – Center for Conservation Biology, William & Mary/VCU		
Rick Weeks - DEQ		

NOTE: The following Offshore RAP Members were absent from the meeting: James Golden – DEQ; Chelsea Harnish – Chesapeake Climate Action Network; Dan Holmes – PEC; Ron Jefferson – Appalachian Power; Larry Land – VACO; Thomas Numbers – ERM; Marina Phillips – Kaufman & Canoles

1. Welcome & Introductions (Carol Wampler):

Carol Wampler, RAP Leader and Meeting Facilitator welcomed all of the meeting participants to the meeting and thanked them for all of their hard work.

2. Goal for Today's Meeting (Carol Wampler):

Carol Wampler informed the RAP members that goal of today's meeting is to do our best to:

> Reach a General Consensus on all issues so that the RAP's recommendations may be submitted as public comments on the currently proposed Wind PBR before the comment period ends on August 20th.

She noted based on a memo that she and Cindy Berndt had compiled after the last RAP meeting and provided that to the DEQ Director. The direction from David Paylor, the Director of DEQ is that the comments/recommendations from the RAP can be submitted if the following requirements are met:

- Reach a General Consensus – If we don't reach consensus then all bets are off for incorporating the RAP's recommendations into the current Wind Energy PBR.
- DEQ staff needs to agree that the RAP's recommendations meet the goals of the statute.

NOTE: Even if the group reaches a general consensus the regulation still has to be approved by the Director.

3. Issues from Work Session - Monday, August 16th (Carol Wampler):

Carol Wampler noted that there were two issues from the work session held on Monday, August 16th that the group needed to address before the end of today's meeting. These are:

- **#1 – "Coastal Avian Mitigation" –** A DGIF Straw man that, among other options, directs contributions to research and/or habitat restoration as a method of offsetting avian impacts was presented during the work session. Can we agree on what these contributions should be?
- **#2 – "De Minimis"** – The RAP needs to decide whether there is a need to address "a very small project" or "de minimis" project.
    - The current requirements are very limited but functionally serve as a de minimis level.
    - Projects larger than 500 kW and less than 5 mw.
    - The requirements essentially are to notify DEQ and to get certification by local government and then they are ready to go.
    - The discussions at the work session were whether there needed to be additional requirements related to avian impacts for these "small' projects.
- **#3 – "Mitigation for birds" –** The first RAP set a cap of $5,000 per turbine per year as an offset for mitigation in the form of curtailment for bats and post-construction monitoring for bats and birds.
    - The work session participants discussed the possible mitigation for birds in both coastal and near shore settings.

4. Proposals from August 16th Work Session (Carol Wampler): The proposals from the August 16th Work Session included the following:

- **DGIF Proposal:** Do study at $100 K plus $2,500 per turbine per year – (Plus Tiers). Have the zones designated as being important to birds.

- How much is needed to identify mitigation options for avian impacts.
- Impacts will continue for the life of the project.
- The $5,000 cap was based on bats.
- Mitigation for birds was not addressed. Does not make much sense that mitigation for birds in these intercontinental important zones should be based solely on a dollar figure. It should be scaled on the size of the project and the length of time for the project (there are long term impacts). It should not be just a single year payment.
- In those areas were a study was needed then the applicant would do the required studies.
- In those zones that do not require a study a figure of $100 thousand was proposed as an amount that would de-incentivize development in those critical areas.
- The per turbine amount of $2,500 per year would be adjusted based on tiers in the multiple zones of the coastal avian protection map.
- The tiers on the map that has been developed include tiers of "continentally important"; "regionally important"; or "locally or unknown important" zones.

- **Industry:** Concern was that during the course of the ridge top or on-shore discussions there were an agreement that there was a CAP on mitigation to provide money for mitigation for bats – expressed in terms of curtailment in the regulations. The amount specified was what was calculated to be equivalent to 120 hours of curtailment that resulted in loss of revenue. This is the industry's attempt to provide mitigation by curtailment. Capped at 120 hours. $5,000 per turbine per year.
  - Concern before yesterday's work session was that for the coastal and near shore areas that there appeared to be an interest that there be an additional fee in addition to that $5,000 amount that would include mitigation for coastal avians.
  - The $5,000 figure was the losses that were acceptable to the Industry and still have a viable project.
  - A provision was discussed that in no instance would cost of mitigation exceed the dollar equivalent of 120 hours of curtailment. The $5,000 was the ceiling not the floor.
  - It was suggested the pool of dollars ($5,000) could be split between mitigation (curtailment) for bats and mitigation for avians.
  - The cap of $5,000 would include "operational mitigation" and "post-construction monitoring".
  - It was noted that it is on the table that Industry make some kind of contribution to research or land acquisition. With a PBR everything needs to be on the table.
  - The question only had to do with the money: there are few means to mitigate for avian impacts – there is not a lot of information on the mitigation of avian impacts.
  - There is a lack of research on avian impacts.
- **TNC Comment –** At least match "avoided costs" of $20 to $35 thousand: The argument made by industry was that there is a limited amount of money that could be spent on mitigation to keep the viability of a project.
  - It was pointed out that in some of the coastal areas that have been mapped there will be a savings because of not having to do a survey because of existing work (absence of the need to do a survey).
  - Don't want to incentivize putting projects in these sensitive areas where it is evident that there will be a need for mitigation.
  - The survey would likely cost $20 to $35 thousand. It seems reasonable that at least that amount of money should be shifted to mitigation for coastal birds.
  - There is no agreement as to whether $20 to $35 thousand is sufficient or not. It is

probably not sufficient. The proposal is a step in the right direction on mitigating impacts to coastal birds. There is a lot of work left to determine if that is in fact sufficient.

- **DCR Comment - $70,000:** The majority of the zones do not require a field survey and could result in it being cheaper to do a project in a more sensitive area.
    - Therefore a figure of $70,000 was proposed as to cost for doing work in these sensitive areas that would be used to do research to better understand the impacts on birds. The money would be going to the same fund as the $20 to $35 thousand for research.
    - If there is such a fund it would be designated and clarified in guidance.

5. **Discussions of Issues – "De minimis" (RAP Members):** The RAP members briefly discussed the issue of "De minimis" projects. Their discussions included the following:

- **"De Minimis":** These are projects between 500 kW and 5 mw.
    - Projects of this size essentially are required to notify DEQ and have local government certification.
    - In the coastal/near shore area do we need to ask for something more? We don't have a lot of research data for avians in those areas.
    - It was suggested that for community scale projects (1 or 2 turbines) the impact on avians is unknown. Research is needed for these smaller scale projects just as it is for larger projects.
    - The statute provides for promoting small energy projects and to protect natural resources.
    - It was suggested that these small projects could have impacts on avians.
    - Once over the 500 kW size, for each mw after that a fee of $1,000 per mw for these smaller projects to account for mitigation for avian impacts was suggested.
    - It is unsure about the impacts of this fee would have on community scale projects.
    - The concern is that placing a fee on these smaller "de minimis" projects would essentially be amending an existing promulgated rule by the SCC. Don't see how we can discuss adding additional fees to an already promulgated rule.
    - It was noted that the statute provides that "if" the department determines there is a need for a PBR for the protection of the Commonwealth's wildlife and historic resources then a PBR will be developed and required.
    - The 5 mw exemption is already in existing law.
    - The department could determine "if" less than a full PBR is required for certain size projects.
    - It was noted that these smaller projects (5mw and less) are exempted in current law but that their effects are not negligible to historic resources.
    - A question was asked if there was something particularly related to impacts in the coastal zone that are related to historic resources? It was noted that "visibility" of the project is the factor that is of concern related to historic resources.
    - It was suggested that there could be an accumulation of impacts from a number of smaller projects that may exceed the impacts from a larger project.
    - It was noted that the siting of projects is a local government requirement and is a required before filing with DEQ.
- **"CAP":** Discussions of the "cap" as it relates to smaller projects (de minimis) included the

following:

- What is the cost to the industry?
- The goal is to promote wind energy and to protect resources.
- The mitigation for birds and other wildlife is an offset for expected damages.
- What will the industry bear? Should we be doing projects that don't have the head room to offset the damages and impacts?
- The discussions of the RAP have been trying to get a correct balance between the goals of promoting wind energy while providing protection to wildlife and historic resources.
- The $5,000 per turbine per year is the amount that has been proposed to cover both operational mitigation and for offsets and is to be done for every project.

6. The Big Picture (Carol Wampler):

Carol Wampler provided a summary overview of the status of the RAP's discussions and the timetable and requirements for moving forward with the RAP's recommendations. Her overview included the following:

- There is a statutory mandate of January 1 for development of the Wind Energy PBR. DEQ is doing everything that they can do to allow group to reach consensus to meet the deadline.
- If we don't meet the time deadline, we can't submit the RAP's recommendations as public comment. By default, the current proposal would go on its current path and become final in January.
- The RAP's proposal would then be used in a procedure to amend the original after it becomes final. This would be a separate action and a new regulatory action.
- In the meanwhile VMRC has authority in those areas so any projects in the near shore areas would be covered.
- Consensus means that you can live with it.
- Each RAP member needs to make a decision as to what is important.
- Have to have consensus today (at the latest tomorrow) to proceed with the RAP's recommendations as comments to the original PBR.
- There is still a possibility for the "25 signature" requirement that could disrupt the schedule and delay everything for approximately 3 months.

7. Discussions of Proposed Wind PBR with Offshore/Coastal Changes (Carol Wampler and RAP Members):

Carol Wampler provided an overview of the proposed Wind PBR with the Offshore/Coastal Changes included that would be the basis for the balance of today's discussions. Her comments included the following:

- The document being reviewed today is the entire proposed PBR with the proposed Offshore/Coastal Changes as they were recommended at yesterday's RAP work session. The changes are included in the boxes in the document.
- The group needs to focus on the changes that are identified in the boxes for the balance of today's discussions.

The RAP's discussions on the Proposed PBR included the following:

- Definition of "Coastal Avian Protection Zones" – Agreed to by RAP – **General Consensus**
- Definition of "Important Bird Areas"
    - Don't know if the 2nd sentence is needed. It is more if an explanation then a definition.
    - Suggestion was made to move that sentence to guidance.
    - The definition of "Important Bird Areas" is to read: "…means the designation of discrete sites by the National Audubon Society as having local, regional, continental or global importance for birds because they support significant numbers of one or more avian species during the breeding, wintering, and(or) migration seasons."
    - The balance of the original definition was approved to be moved to guidance.
    - Agreed to by RAP **-- Consensus**
- Definition of "Migratory corridors"
    - This definition was added with the addition of the Coastal Avian Protection Zone Map
    - Agreed to by RAP – **Consensus**
- Definition of "Migratory staging areas"
    - This definition was added with the addition of the Coastal Avian Protection Zone Map
    - Agreed to by RAP – **Consensus**
- Definition of "Near shore"
    - The RAP discussed the definition of "near shore".
    - What is the extent of the non-tidal surface waters? – The mean high water line in streams.
    - Is this relevant to our concerns?
    - The definition seems too broad. The definition is much broader than that which is typically used for that term.
    - The intent is to cover all of the items/areas that VMRC has jurisdiction over.
    - Recommendation was made to revise the definition to remove reference to "non-tidal surface waters".
    - The definition would now read: "Near shore waters" means all tidal waters within the Commonwealth of Virginia and seaward of the mean low-water shoreline to three (3) nautical miles offshore in the Atlantic Ocean."
    - Agreed to by RAP provided that there are no legal issues with this revised definition – **Consensus**
- Definition of "Other avian mitigation factors"
    - This definition was added to address "other" issues related to mitigation for avian impacts within the "Coastal Avian Protection Zone".
    - The individual terms in this definition are also included as new definitions in this version of the PBR.
    - Agreed to by RAP – **Consensus**
- Definition of "State owned submerged lands" – Agreed to by RAP – **General Consensus**
- Definition of "VMRC" – Agreed to by RAP – **Consensus**
- Definition of "wintering areas"
    - This is the last of the terms to be defined from the "other avian mitigation factors" definition.
    - Agreed to by RAP – **Consensus**
- **9VAC15-40-30.A.2**:

- The addition proposed during the work session was discussed by the RAP.
- This was proposed to account for projects located over water and tried to define who had siting authority.
- Discussions of the RAP included comments on possible "king grants" and the extension of local political boundaries into the water and jurisdiction of these "over water" and "in water" areas.
- It was noted that the ultimate decision over who has authority could be made by the General Assembly; decided by the Courts; or by an official decision/opinion by the Attorney General.
- The recommendation was made to remove the new language added to this section and use the original language.
- A recommendation was made to insert new language that would read: "…except, for projects to be located in near shore waters, the certification shall be by the authority or authorities determined to have jurisdiction over siting issues in those locations."
- The question was raised as to who would have to make the determination?
- It was noted that DEQ cannot make a legal decision on who has the authority.
- It was noted that the RAP's options related to this discussions is to either leave the language as it was originally proposed; reach consensus on proposed new language; or don't move forward with anything dealing with near shore until we have clarification – The concern then is how do we pull out the near shore concepts?
- The suggestion was made to go back to the original language and to remove any of the proposed additional text.
- This subsection would read: "2. In accordance with §10.1-1197.6 B 2 of the Code if Virginia, furnishes to the department a certification by the governing body of the locality or localities wherein the small renewable energy project will be located that the project complies with all applicable land use ordinances;" – Agreed to by RAP – **Consensus**

- **9VAC15-40-40.A 1**:
  - This section includes the provisions for "sea turtles" in the Desktop surveys and maps section.
  - The proposed addition is: "…and (iv) known or potential sea turtle nesting beaches located within one (1) mile of the disturbance zone."
  - A concern was noted that the concept of "potential" seems expansive and could exclude a large area of the coast line.
  - It was noted that there the nesting areas are on "ocean facing beaches" and that there are very few nesting areas and potential nesting areas.
  - It was also noted that these areas of nesting areas and potential nesting areas are already included in the available desktop survey information that is readily available.
  - We are at the northern extreme of the sea turtle nesting areas.
  - This section relates to the analysis portion of the sea turtle considerations.
  - Agreed to by RAP – **Consensus**
- **9VAC15-40-40.A.5:**
  - The proposal is to delete the original language and replace it with revised language.
  - The RAP agreed to the deletion – **Consensus**
  - The proposed new language was discussed by the RAP.
  - The RAP agreed to the use of the reference to the "Coastal Avian Protection Zone Map". – **Consensus**

- A comment was made that the phrase "shall stipulate to the conclusion of" is used in this section and several places throughout the document. This phrase should be changed to "shall rely on …"
- The RAP agreed to these changes – **Consensus**
- The revised language for this section would read: "…When a proposed wind energy project site will be located in part or in whole within one or more Coastal Avian Protection Zones, then the applicant shall perform avian field studies, or shall rely on existing scientific analysis as reflected by the Coastal Avian Protection Zones map, for each zone where the project is located, as follows:"
- Agreed to by the RAP – **Consensus**

- **9VAC15-40-40.A.5 a – n (Zones 1 – 14):**
  - This text addresses each of the zones in the Coastal Avian Protection Zones Map.
  - The suggestion had been made earlier that the phrase "shall stipulate to the conclusions of" should be revised to "shall rely on…"
  - In these sections dealing with the Coastal Avian Protection Zones the language revisions should be made to each of the separate zones and should replace the current text that reads: "…or stipulate to the conclusion of likely significant adverse impact to these resources as presented in the Coastal Avian Protection Zone map." With "…or shall rely on existing scientific data as presented on the Coastal Avian Protection Zone map."
  - Agreed to by the RAP – **Consensus**
- **9VAC15-40-40.A.5.f (Zone 6):**
  - A concern was noted over the inclusion of a reference to a specific county in this section.
  - The RAP agreed to permit DEQ to revise the text of this section to avoid the use of a specific county name. – **Consensus**
- **9VAC15-40-40.A.5.i (Zone 9):**
  - A concern was noted over the inclusion of a reference to a specific county in this section.
  - The RAP agreed to permit DEQ to revise the text of this section to avoid the use of a specific county name. – **Consensus**
  - An editorial correction was proposed: The second sentence in this section should be revised to read: "The applicant shall conduct aerial transect surveys of waterfowl and seabirds **during** the fall and spring migration seasons…"
  - Agreed to by RAP – **Consensus**
- **9VAC15-40-40.B.2:**
  - Proposed new language was agreed to by the RAP provided that any non tidal references are removed or clarified. – **Consensus**
- **9VAC15-40-40.B.3:**
  - Proposed new language was agreed to by the RAP provided that any non tidal references are removed or clarified. – **Consensus**
- **9VAC15-40-40.B.4:**
  - Proposed revised language was agreed to by the RAP provided that any non tidal references are removed or clarified. – **Consensus**
- **9VAC15-40-50.A:**
  - The text needs to be revised to read: "A. The department shall find that significant adverse impacts to wildlife are likely whenever the wildlife analyses prescribed in

9VAC15-40-40 A document that **any of** the following conditions exists:"
    - Agreed to by the RAP – **Consensus**
- **9VAC15-40-50.A.2:**
    - The determination stage of the evaluation process is included in this section.
    - The proposed language reads: "2. State-listed T&E wildlife are found to occur within the disturbance zone; or the disturbance zone is located on or within one (1) mile of a known or potential sea turtle nesting beach."
    - Agreed to by RAP – **Consensus**
- **9VAC15-40-50.A.3:**
    - The RAP discussed the wording of this section addressing avian impacts in the Coastal Avian Protection Zones.
    - It was proposed that the text should be revised to read: "Within the Coastal Avian Protection Zones, the applicant's field studies indicate that significant adverse impacts to avian resources are likely or the applicant stipulates that existing scientific analysis, as reflected on the Coastal Avian Protection Zones map, supports a conclusion that significant adverse impacts to avian resources are likely."
    - No objections were raised to using this language in analysis and determination sections.
    - Agreed to by RAP – **Consensus**
- **9VAC15-40-60.B.2:**
    - These are well established protocols that are used all up and down the coast to address sea turtles. This belongs in regulation and not in guidance because the items identified in this section are required and enforced.
    - Agreed to by RAP – **Consensus**
- **9VAC15-40-60.B.2 a:**
    - It was suggested that the disturbance zone identified in this subsection should include a reference to "sea turtle nest survey zone".
    - The proposed revisions would read: "…and one (1) mile beyond the northern and southern reaches of the disturbance zone (hereinafter "sea turtle nest survey zone") between sunrise…"
    - Agreed to by the RAP – **Consensus**
- **9VAC15-40-60.B.2.b:**
    - It was recommended that the word "crawl" in this subsection should be replaced with "sea turtle nest".
    - The revised text would read: "b. If construction is scheduled during the nesting season, then including measures to protect nests and hatchlings found with the sea turtle nest survey zone."
    - Agreed to by the RAP – **Consensus**
- **9VAC15-40-60.B.2.c:**
    - Agreed to by RAP – **Consensus**
- **9VAC15-40-60.B.2.d:**
    - The proposal is to remove the text currently listed in this subsection related to notification of DEQ, DGIF, etc.
    - This deletion agreed to by the RAP – **Consensus**
- **9VAC15-40-60.B.3:**
    - The RAP discussed the wording of this section.
    - The proposal was made to revise the text to read: "3. For avian resources within any of

the Coastal Avian Protection Zones that are referenced in 9VAC15-40-40 A 5, the applicant shall take all reasonable measures to avoid significant adverse impacts, or shall demonstrate in the mitigation plan what significant adverse impacts cannot be practicably be avoided and why additional proposed mitigation actions are reasonable."
    - Agreed to by RAP – **Consensus**
    - A proposal was made to include the following language in guidance instead of in the regulation: "Those zones identified as having international importance to birds shall be afforded greater protection in terms of mitigatory actions to avoid, minimize, or offset impacts. Mitigation measures may include, but are not limited to: a. Micro siting adjustments (adjusting turbine locations within the disturbance zone); or, b. Seasonal restrictions or conditions regarding land clearing, construction, or maintenance activities to protect nesting birds; or c. Logistical or financial support of scientific research investigating the efficacy and cost-effectiveness of project design, construction or operational mitigation strategies (such as curtailment on a temporal or meteorological basis to coincide with peak bird movement/migration across the disturbance zone) to reduce project impacts on birds and their essential coastal habitats; or d. A contribution to a fund designated for bird habitat protection and management within the Coastal Avian Protection Zone; or e. Any combination of items (a) through (d) of this subsection."
    - Agreed to by the RAP – **Consensus**
- **9VAC15-40-60.B 5 a:**
    - The RAP discussed the concern of bird fatalities and the means for making estimates of those fatalities over water.
    - A proposal was made to revise this section to read: "a. Estimate the level of avian and bat fatalities associated with the wind energy project, accounting for scavenger removal and searcher efficiency; **however, estimates of avian and bat fatalities shall not be required for areas seaward of the mean low-water shoreline.**"
    - Agreed to by the RAP – **Consensus**
- **9VAC15-40-70.A:**
    - The revised text would include the sentence: "For any part of a site that is located in near shore waters, the site plan shall also include bathymetry; the location and depth of underground cables; transmission lines and pipelines; navigational channels; and beaches, marshes and other emergent terrestrial features."
    - The RAP discussed this proposal and agreed provide that the definition of near shore waters is modified as agreed previously. – **Consensus**
- **9VAC15-40-70.B:**
    - The insertion of the term "Coastal Avian Protection Zones" was agreed to by the RAP. – **Consensus**
    - The addition of the following text was proposed: "If any part of a site is located in near shore waters, the context map shall also include bathymetry; navigational channels; commercially licensed fixed fishing devices; permitted aquaculture operations; shellfish leases; public shellfish grounds; artificial reefs; and submerged aquatic vegetation."
    - The RAP agreed to the proposed language provided the definition of near shore waters is modified as agreed to previously. – **Consensus**
- **9VAC15-40-90.C:**
    - The following additional text was proposed: "…location of the proposed project,

however, for projects located on state-owned submerged lands, the meeting shall be held in the locality that is the closest distance from the approximate center of the project's disturbance zone."
    - Agreed to by the RAP – **Consensus**
    - The proposed language to be included in guidance: "For projects located on state owned submerged lands, the applicant shall provide the notice prescribed in 9VAC15-40-90 A to the local government in each of the localities where significant natural resource impacts from the project are likely to occur." Was agreed to by the RAP. – **Consensus**
- **9VAC15-40-120.B:**
    - Staff noted the addition of the Coastal GEMS application in the listing of available resources.
    - A concern was raised over the inclusion of all of the documents by reference. It seemed to be a large number of documents and would make the Permit by Rule into a very thick document.

8. **Discussions of Issues – (RAP Members):** The RAP members discussed issues related to the Permit by Rule, with emphasis on the amount of money that should be required as a contribution to fund research and/or habitat protection as mitigation offset for adverse avian impacts in the Coastal Avian Protection Zones. Their discussions included the following:

- Even if this group reaches consensus it is within the discretion of the Director to approve or disapprove a recommendation.
- The $5,000 CAP was proposed to the original RAP and was provided with a calculation based on some scientific basis and background information.
- These other CAPs that are being proposed may have some scientific basis, but that justification has not been provided. Don't have the research as a backup. There is a lot of scientific data that would lead to that presumption.
- There is a lack of data available to support use of one approach over another.
- The problem is trying to rectify the differences between the various options being considered.
- It was noted that this is an incredibly complicated issue that the RAP is trying to resolve at the last possible point in the process.
- It was noted that there was data available for "radio towers" in the coastal zone that could probably be obtained to form some basis for calculation of loss and development of a "CAP".
- How much research can we buy with what amount of money?
- How much habitat can we buy?
- What would a study cost?
- It was noted that the figure given for the approximate savings that could be obtained from not having to do a study of $20 to $35 thousand was just for one year. Typically a full scale research study on avian issues would cost around $90 to $150 thousand or more for a multi-year study.
- With regard to radio towers and power transmission lines, are those companies required to pay for certain studies every year? The answer was that the law doesn't provide for this.
- What does loss mean?
- The concept is trying to deal with the value of the loss of the resource.
- Are we making it harder to do a wind energy project than another type of project?
- The RAP discussed projects in the coastal zone and federal and other requirements for various

kinds of energy generation projects. It appears that the fee of $5,000 is going to be twice as expensive as traditional projects. The numbers don't add up. It was noted that the $5,000 was in addition to other current federal and state requirements.

- It was noted that the wind energy source in Virginia's Coastal area is fairly modest and is not one of the strongest areas for wind energy.
- Siting of one of these facilities is one of the most critical issues and DEQ has little control over it.
- It was recommended that these other fee options needed to be taken out of consideration. Need to default to treating mitigation for avian impacts to the level proposed for T&E and Sea turtles. Need to be reasonable.
- If the studies are that important then maybe there are some other avenues to pursue to get the needed money for those studies. At this stage we will not be able to agree to a money figure or agree to who that amount of money needs to go to.
- A proposal was made and agreed to by Industry to **drop the cap** that was originally proposed and move ahead with this since there appears to be no way to reach agreement over what the cap should be. This would mean that an applicant would then do what is reasonable to address impacts without a consideration of a cap. – **Consensus**
- Wildlife mitigation is required because of bats if nothing else.
- For every application that comes in, a wildlife mitigation plan at least for bats would be needed and the likelihood of T&E; Sea Turtles; Avian impacts in the coastal/near shore areas would need to be indicated.
- DEQ will determine whether the application meets the requirements. DEQ cannot approve an application without consultation with the other Natural Resource agencies (DHR for Historic Resources; DGIF for Wildlife; DCR for Natural Heritage; and VMRC for near shore). It was suggested that VIMS should also be included.
- It was noted that Industry accepted the limitations and CAP identified for "bats" because there were known operational concepts and procedures that could be quantified for "bats". That certainty is not available for avian and other resources. The same databases of information are not available.
- There are a lot of different issues that went into the curtailment discussions for bats.
- There is nothing of an "operational" nature for birds.
- The proposal on the table is to forget trying to set a CAP amount and go back to the DGIF straw man with the bullet points being moved to guidance.
- There are no requirements for post-construction monitoring. There is no way to assess the changes in utilization of the project area by wildlife. Displacement is a key concept of this type of evaluation.
- It was suggested that a statement be added that the applicant should assess changes in avian utilization of project sites located within the Coastal Avian Protection Zone. – in Guidance.
- The RAP agreed to use the DGIF Straw man and to move the bullet points into guidance. – **Consensus**
- Under the SCC Rule which was transferred to DEQ as a policy decisions that projects in certain size categories don't have to do anything. The "de minimis" concept. If there is an attempt to change this rule it would be a break in the policy decision. Even a small project in critical areas could have an impact.
- The policy and intent is to make it no harder that it currently is.
- The RAP agreed that staff could do "wordsmithing" of the recommendations made and agreed

to today to move forward with this process. – **Consensus**

9. Meeting Wrap-Up (Carol Wampler)

Carol Wampler thanked all of the RAP members for their participation in this process and congratulated them on reaching consensus. She noted that she would not disband the RAP at this stage of the process, just in case there is a need to pull them back together.

She noted that she will work with staff to capture all of the recommendations agreed to by the RAP and incorporate them into "comments" to the current PBR and submit them by Friday, August 20, 2010.

10. Meeting Adjourned:

The meeting was adjourned at 5:00 PM.