



# WILLIAM & MARY LAW SCHOOL

VIRGINIA COASTAL POLICY CENTER

## Coastal Zone Management Narrative “Enforceable Policies” Advisory Committee Minutes

The Coastal Zone Management Advisory Committee met at 1:00 pm on March 3, 2017 at the Department of Game and Inland Fisheries headquarters to continue discussion of a narrative rewrite of Virginia’s enforceable policies, specifically the statutes and regulations under the authority of DGIF and VDACS. Present at the meeting were Elizabeth Andrews (VCPC), Chris Antoine (VCPC), Shep Moon (DEQ), Sharon Baxter (DEQ), John Fisher (DEQ), Bettina Sullivan (DEQ), Matt Hull (OAG), Justin Bell (OAG), Becky Gwynn (DGIF), Ray Fernald (DGIF), Keith Tignor (VDACS), Jason Bulluck (DCR), Erin Williams (VDACS), Steve Begg (VDOT), and Kevin Schmidt (VDACS). Kerry Kehoe (NOAA), John Kuriawa (NOAA), Greg Fleming (DoD), Ben McFarlane (HRPDC), and Mary Pohanka (Navy) participated via telephone.

- Elizabeth opened the meeting by confirming the minutes of the previous meeting. The minutes were approved.
- Discussion of De Minimis List
  - Elizabeth asked Greg to talk about MD’s de minimis list. Greg noted that that document was created because of the minimal impacts of some DOD projects in Maryland.
  - The Committee took a look at the list of de minimis activities from Maryland. Kerry Kehoe explained why two MD state agencies signed the document – while the Maryland Coastal Program is housed in the Department of Natural Resources (DNR), the implementation of federal consistency is shared between DNR and the Maryland Department of the Environment (MDE). MDE leads day-to-day oversight and project review, while DNR handles program changes, coordination, and more strategic initiatives. Kerry spoke about the Memo of Understanding (MOU) and the list, noting that the MOU was meant to address unique aspects of review and resolve some issues between MD and DOD.

- Bettina had presented the de minimis concept at a Coastal Partners meeting last year, so she was asked to discuss what the Coastal Partners had to say about the concept. She noted that DEQ is open to a discussion of de minimis activities with DoD. DEQ would like a list of de minimis activities. DEQ's review of past projects revealed more large than small projects. She noted three points: 1) Because Virginia has a networked program, all parties need to be in agreement. There is concern about going through the process with so many parties involved but DEQ is open to it. 2) Any agreement needs to be with the entire DoD, not just Ft. Belvoir. 3) If a federal agency decides a project will have no coastal impact, it can decide not to coordinate with DEQ. It can do a negative impact assessment. Or DEQ could do a general determination for activities like utility replacements.
  - Becky Gwynn noted that people were receptive to the idea of a de minimis list but also noted that it needed to be done in agreement with a broader group than each individual agency.
  - Greg Fleming responded that at Ft. Belvoir, they had been submitting project proposals individually because it was difficult to plan them together over a longer period of time but lately they had been trying to group projects together and run into problems because you cannot group projects that trigger an EA or EIS.
  - Elizabeth asked for any other comments on a potential de minimis list and MOU. None were offered and Elizabeth suggested that discussion wait until the policy drafting project was completed.
  - Greg wanted people to briefly look at the beneficial projects on the de minimis list and to note the lack of building demolition on the list. Greg thought it was worth discussion further down the line.
- Next, discussion turned to the DGIF narrative enforceable policies and the new language for policies 7 and 8.
    - Becky noted that DGIF still thought it was appropriate to keep policy 7 as a separate policy.
    - Next, the Committee looked at policy 8. Elizabeth asked if anyone thought that any activities would implicate the policy. Kerry stated that he thought it was unlikely that it would apply to federal activities.
    - Ray noted that Integrated Natural Resource Management Plans might address some of the activities of policy 8. Becky couldn't think of any instances of projects that would implicate federal activity.
    - Bettina noted that occasionally, culling projects might be federal but the Committee noted that those don't typically occur on Department-owned lands. Becky noted that the pieces that may stay are the ones relating to firearms or waterfowl. It was unclear whether or not many activities would implicate federal activities. The DGIF reps were asked what policies could be removed from policy 8. Removal of sub-parts a, b, c, d, f, g, h, m, and n was recommended.

- Ray and Becky thought most of the sub-parts of policy 8, with the exception of sub-part k, would rarely come up in this context.
  - A downside to leaving policy 8 as it is, is that it is cumbersome and may not be approved, noted both Becky and Bettina.
- For policy 2, Ray noted that the title and text should be “Nonindigenous Aquatic Nuisance *or* Predatory or Undesirable” to accurately reflect the statute.
- Next, the Committee turned to the combination of VDACS and DGIF policies on Threatened & Endangered Species.
  - “Expressly authorized by” was advised to be removed or, conversely, change “Department” to “Commissioner”.
  - Another issue discussed was how to organize the permitted or prohibited activities. Keith noted that it should list what is prohibited except as authorized by the Commissioner. Must change the language to show that authority comes from the Commissioner.
  - Bettina asked how that was different from DGIF. Elizabeth and Matt noted that the Department gave permission instead of the Commissioner. We also need to remove the term “harvest” from the list and substitute it with “remove,” noted Keith.
- Before the Committee moved on, it discussed the possibility of DCR being added to policy 8 in addition to the other changes above. Matt agreed to talk to counsel for the DCR Natural Heritage Program to determine whether it would be appropriate to include the DCR statutes.
- Next, the meeting moved on to the other VDACS policies relating to noxious weeds, etc.
  - John Kuriawa asked if there were lists of the weeds mentioned in the policies. Keith noted that there are lists in the regulations.
  - John Kuriawa was concerned about how people would be aware of which weeds were included.
  - Elizabeth noted that it was not possible to include the lists without references to regulations. John noted that this was a big problem that they wrestled with in MD and never solved. John suggested this issue warranted further discussion. There was general concern about how to deal with issues of changing lists of weeds and threatened and endangered species, and how to deal with the fact that certain quarantines only applied to certain counties.
- Justin asked how the public would be able to review the policies. He suggested a table of links to further clarify things like the list of noxious weeds. Elizabeth noted that they would have to figure out how to do that without butting up against the NOAA prohibition on incorporation of regulations by reference.

- Kerry noted that it may be possible to reference the definition of “noxious weeds” without incorporating regulations by reference through paraphrasing.
  - Keith then asked about how to incorporate updates to the authorities. Elizabeth clarified that NOAA does not approve the list of cited authorities; it only approves the enforceable policies, checking that there is adequate authority.
  - John Kuriawa noted that it is difficult to see how these 4 VDACS policies would be applied in federal project circumstances. It might be better to think about the activities that might be applicable and focus the language on applying to those while remaining valid based on VA law. Kerry agreed.
  - Elizabeth then asked for examples of activities to which enforceable policies would apply, to help the group use broader language in future policy drafts. Bettina and John Fisher gave some examples.
  - Shep noted that drafting the policies required a look at the language from both sides: Take stock of the law and then take stock of the goal of the policy and draft it based on that. Ray noted that approaching it agency by agency may not make it easier to draft that way in the beginning of the project.
  - Elizabeth noted how important it is to get each agency’s input during the initial drafting of the policies and then look back and try to make policies broader. The Committee agreed that for now, that is the best approach.
  - Elizabeth called for final comments on the VDACS policies. VDACS representatives thought the quarantines policies might need to reference a specific chapter (§ 3.2-703). Additionally, they noted that the first sentence should be changed to say “quarantine of a pest”.
  - VDACS asked for the inclusion of additional authority for quarantines and that some language be changed in the policies (e.g., say “in violation of the quarantine” instead of “without express authorization”).
- Elizabeth then went over next steps.
    - Goals are to finalize the language for DGIF and VDACS this month. Shep noted that if all Committee members are willing to send in approval by email, another meeting in March may not be necessary. VCPC will work on getting the revised language out to the Committee soon for final review. The Committee did not schedule another meeting at this time.