Virginia Coastal Resources Management Program Final Environmental Impact Statement

prepared by

Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
and
Council on the Environment
Commonwealth of Virginia

(On April 1, 1993, the Council on the Environment was consolidated into the Virginia Department of Environmental Quality.)

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VIRGINIA
COASTAL RESOURCES
MANAGEMENT PROGRAM

irginia Coastal Resources Management Program links state programs to manage coastal resources
rogram's coastal boundary includes the 29 counties and 15 cities within Tidewater Virginia. The
am is coordinated and monitored by the Virginia Department of Environmental Quality.

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UNITED STATES DEPARTMENT OF COMMERCE

FINAL ENVIRONMENTAL IMPACT STATEMENT

AND THE

VIRGINIA COASTAL RESOURCES MANAGEMENT PROGRAM

JULY 1985

Prepared by:

Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1305 East West Highway
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Commonwealth of Virginia Council on the Environment

(On April 1, 1993, the Council on the Environment was consolidated into the Virginia Department of Environmental Quality.)

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DESIGNATION: Final Environmental Impact Statement

TITLE: Proposed Federal Approval of the Virginia Coastal Resources Management Program

ABSTRACT: The Commonwealth of Virginia has submitted its Coastal Resources Management Program to the Office of Ocean and Coastal Resource Management for approval. Approval would allow program administrative grants to be awarded to the Commonwealth and would require that Federal actions be consistent with the program. This document includes a copy of the program which is a comprehensive management program for coastal land and water use activities. It consists of numerous policies on diverse management issues which are administered under existing Commonwealth laws and is the culmination of several years of program development. Virginia's coastal management program either promotes the beneficial use of coastal resources, prevents their impairment, or deals with major activities that substantially affect numerous resources. The program will enhance decision-making processes used for determining the appropriateness of actions in the coastal area.

Approval and implementation of the program will enhance governance of Commonwealth coastal land and water uses according to the coastal policies and standards contained in the existing statues, authorities and rules. Federal alternatives to program approval include delaying or denying approval, if certain requirements of the Coastal Zone Management Act have not been met. The Commonwealth could modify parts of the program or withdraw their application for Federal approval if either of the above Federal alternatives results from circulation of this document.
A draft Environmental Impact Statement was prepared in mid 1985. The comment period for the draft program and DEIS ended in October 1985. This final program EIS is prepared in response to comments received on the draft program EIS in anticipating of Federal approval of the proposed Virginia Coastal Resources Management Program.

APPLICANT: Commonwealth of Virginia, Council on the Environment

LEAD AGENCY: U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of Ocean and Coastal Resource Management

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NOTE TO READERS

The National Environmental Policy Act (NEPA) of 1969 requires that an environmental impact statement be prepared as part of the review and approval process by Federal government agencies of major actions which significantly affect the quality of the human environment. It is the general policy of the Federal Office of Ocean and Coastal Resource Mangement (OCRM) to issue combined environmental impact statements and program documents.

Part I of this Final Environmental Impact Statement (FEIS) was prepared by the Office of Ocean and Coastal Resource Management and provides summary information concerning the Virginia Coastal Resources Management Program (VCRMP) including how the Commonwealth has addressed the requiremets of the Federal Coastal Zone Management Act (FCZMA). Part II if the DEIS is a description of the Commonwealth's Coastal Management Program and was prepared by the Commonwealth of Virginia; it has been reviewed by the OCRM and is relied upon as a description of the proposed action for purposes of NEPA. Parts III through V fulfill the remaining NEPA requirements for a FEIS and were prepared by the Office of Ocean and Coastal Resource Management with assistance from the Commonwealth of Virginia. Part IV contains the comments received by the OCRM on the Draft EIS and program document and responses prepared by the OCRM and the Virginia Council on the Environment.

The Federal action contemplated is approval of the Virginia Coastal Resources Management Program under Section 306 of the Federal Coastal Zone Management Act of 1972, as amended (CZMA). An immediate effect of approval is the qualification of the Commonwealth for Federal matching of funds for use in administering the program. In addition, the CZMA provides a procedure for the state to review Federal actions for consistency with its approved coastal management program.

For purposes of reviewing this proposed action, the key questions are:

- whether the Virginia program is consistent with the objections and policies of the national legislation;

- whether the award of Federal funds under Section 306 of the Federal Act will help Virginia to meet those objectives;

- whether Virginia's management authorities are adequate to implement the program;

- whether there will be a net environmental gain as a result of program approval and implemention.

OCRM has made a preliminary determination that the answers to these questions are affirmative. OCRM wants the widest possible circulation of this document to all interested agencies and parties in order to receive the fullest expression of opinion on these questions. OCRM thanks those participating in the review of the VCRMP and this FEIS.

The appendices were presented with the Draft EIS and have not been been included in the final EIS. An errata sheet has been prepared for the Appendices, and it is found as the last page in this document. The Compendium of comments received on the DEIS/VCRMP is located in Part IX of this document.

Commonwealth of Virginia Coastal Resources Management Program
Final Environmental Impact Statement

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GLOSSARY OF ABBREVIATIONS

ASMFC	-	Atlantic States Marine Fisheries Commission
BMP	-	Best Management Practice
CGIF	-	Commission of Game and Inland Fisheries
COE	-	Council on the Environment
DCHR	-	Department of Conservation and Historic Resources
DMME	-	Department of Mines, Minerals and Energy
DOH	-	Department of Health
DPR	-	Division of Parks and Recreation
EIS	-	Environmental Impact Statement
EPA	-	Environmental Protection Agency
FEMA	-	Federal Emergency Management Agency
FIA	-	Flood Insurance Administration
GAPC	-	Geographic Area of Particular Concern
L&WCF	-	Land and Water Conservation Funds
MAFMC	-	Mid-Atlantic Fisheries Management Council
MLW	-	Mean Low Water
MOTC	-	Minerals Other Than Coal
MRC	-	Marine Resources Commission
NEPA	-	National Environmental Policy Act
NPDES	-	National Pollutant Discharge Elimination System
PBCDC	-	Public Beach Conservation and Development Act
SAPCB	-	State Air Pollution Control Board
SCC	-	State Corporation Commission
SCORP	-	State Comprehensive Outdoor Recreation Plan
SEAS	-	Shoreline Erosion Advisory Services
SWCB	-	State Water Control Board
SWCC	-	Soil and Water Conservation Commission
VCRMP	-	Virginia's Coastal Resources Management Program
VIMS	-	Virginia Institute of Marine Science
VOP	-	Virginia Outdoors Plan
WMA	-	Wildlife Management Area

PART I: OVERVIEW

PART I: OVERVIEW

A. SUMMARY OF THE VIRGINIA COASTAL RESOURCES MANAGEMENT PROGRAM

The Commonwealth of Virginia has developed a Coastal Resources Management Program describing current coastal legislation and management policies. The Program proposes no new state programs, organizations, regulations, or laws. It is based on an approach termed "networking," which is a framework and process for linking existing Commonwealth programs, agencies, and laws into a system that will meet Federal requirements for an effective Commonwealth Coastal Resources Management Program.

Part II of this document describes the core regulatory programs and legislation that are the basis of the Virginia Coastal Resources Management Program (VCRMP). It also includes 25 statements, which set forth the goals of coastal management in Virginia, and various policies embodied in statute and regulations. This summary briefly defines the core programs and addresses some key aspects of the program, such as benefits of participation in the Federal program, proposals for public access, energy facility planning processes, and shoreline erosion mitigation planning.

Virginia's initial participation in the planning phase of the Federal program ended in 1979 due to the failure of a comprehensive state coastal zone management bill to gain approval from the General Assembly. As a result, the Commonwealth did not receive Federal approval of its management program. Since that time several key elements of the 1979 bill have been enacted separately -- the Primary Coastal Sand Dunes Act in 1980 and non-vegetated wetlands statute in 1982. The Commonwealth also has adopted a set of coastal management goals and a biennial process of review and evaluation of activities which help achieve those goals. Having enhanced its management capability, the Commonwealth has now decided to seek Federal approval of its program.

1. Core Regulatory Program

The central feature of Virginia's Coastal Resources Management Program is a core of eight existing regulatory programs which ensure that critical land and water uses are subject to regulation by the Commonwealth. The core programs include:

- Fisheries Management, administered by the Marine Resources Commission and the Commission of Game and Inland Fisheries;
- Subaqueous Lands Management, administered by the Marine Resources Commission;
- Wetlands Management, administered by the Marine Resources Commission;

- Dunes Management, administered by the Marine Resources Commission;
- Nonpoint Source Pollution Control, enforced by the Department of Conservation and Historic Resources;
- Point Source Pollution Control, implemented by the State Water Control Board;
- Shoreline Sanitation, administered by the Department of Health; and
- Air Pollution Control, implemented by the Air Pollution Control Board.

The above programs are summarized below.

a. Fisheries Management. A newly adopted fisheries management policy administered by the Marine Resources Commission provides a comprehensive approach and clear direction for wise use of these important resources. The policy stresses the conservation and enhancement of finfish and shellfish resources and the promotion of commercial and recreational fisheries to maximize food production and recreational opportunities. The purpose is to achieve maximum benefit and long-term use by present and future generations. With a policy established, pre-existing state laws provide the means for achieving those policy directives through strict control of virtually all activities which involve the taking of living resources from Virginia waters.

b. Subaqueous Lands Management. Subaqueous lands administered by the Marine Resources Commission, including the beds of bays, oceans, rivers, streams or creeks, are the property of the Commonwealth unless conveyed by special grant. The management policy for such lands establishes conditions for granting or denying permits for use based on the following considerations:

- the effect on other permissible uses of state waters and bottomlands;
- the effect on marine and fisheries resources, wetlands, and adjacent or nearby properties;
- anticipated public and private benefits; and,
- water quality standards established by the State Water Control Board.

Statutes also prevent building, dumping, encroaching or otherwise trespassing upon the subaqueous lands of Virginia unless such acts are authorized under state law or permitted by the Marine Resources Commission (MRC). MRC has adopted a specific set of guidelines that informs the general public of the usual terms and conditions under which subaqueous activities are permitted in state waters.

c. Wetlands Management. The wetlands management policy, also administered by the Marine Resources Commission, is aimed at preserving wetlands, preventing their destruction, and accommodating necessary economic development in a manner consistent with wetlands preservation. It stems from the Wetlands Act of 1972 and was strengthened by the passage of the non-vegetated wetlands statutes adopted in 1982.

The Wetlands Act establishes a permit program and authorizes the creation of Local Wetlands Boards to administer it. The local Wetlands Boards review permit applications and make decisions, which may be reviewed by the Marine Resources Commission, to ensure that standards of the Wetlands Act are achieved. The Marine Resources Commission administers the Act in communities which do not have Wetlands Boards. Thirty local governments have established such Boards which oversee approximately 94% of non-state-owned wetlands. The VIMS provides day-to-day technical and scientific advice to the local wetlands boards.

d. Dunes Management. Dune protection is carried out pursuant to the Coastal Primary Sand Dune Protection Act passed in 1980. It is intended to prevent destruction of dunes, and "whenever practical to accommodate necessary economic development in a manner consistent with the protection of such features."

Local Wetlands Boards may elect to undertake the responsibility of reviewing proposed projects which may affect primary dunes. After review, the boards may grant or deny permits to alter dunes in accordance with the policies of the Act. As is the case with wetlands management, the Marine Resources Commission retains oversight of the program and administers it in localities where Wetlands Boards choose not to undertake this management.

e. Nonpoint Source Pollution Control. The Commonwealth has recognized the value of its Chesapeake Bay tributaries as important natural resources, and knows that erosion of soils increases the input of chemical nutrients and sediments to the rivers and the Bay. This increase can adversely affect finfish, shellfish, other aquatic life, recreation, commercial fisheries, and other uses of the Chesapeake Bay and its tributaries. Therefore, the State has established and implemented an erosion and sediment control program to conserve and protect these natural resources. This program is administered by the Department of Conservation and Historic Resources.

Under the Virginia Erosion and Sediment Control Law, the Department has established minimum standards, guidelines and criteria for the effective control of soil erosion and non-agricultural runoff. Erosion control programs are administered through local Soil and Water Conservation Districts, and adhere to state guidelines. In addition, the Districts provide monies for the control of nonpoint source pollutants from agricultural and urban areas through the Best Management Practices Program, a voluntary state program.

f. Point Source Water Pollution Control. The State Water Control Board is charged with the implementation of Virginia's State Water Control Law. The state accomplishes this task, in part, through the implementation of the National Pollutant Discharge Elimination System (NPDES), Permit Program and the issuance of No-Discharge Certificates.

The NPDES permits are issued for all discharges into groundwaters and surface waters. All discharges must meet either EPA specifications or Virginia's Water Quality Standards, whichever are more stringent.

No-Discharge Certificates for facilities which contain substances which could cause pollution if accidentally released to state waters. These must be obtained by anyone "who handles, stores, distributes, or produces" such substances.

g. Shoreline Sanitation. The Virginia State Department of Health has responsibility for the safe and sanitary collection and disposal of sewage. The Board of Health regulates the installation of septic tanks, sets standards concerning soil types suitable for septic tanks, and specifies minimum distances that tanks may be placed from streams, rivers, and other waters.

h. Air Pollution. The State Air Pollution Control Board has the authority to issue regulations governing air quality throughout the Commonwealth. Regulations have been adopted to implement the Commonwealth's policy to achieve health and safety. The Board fulfills the Commonwealth's responsibilities under the maintain such levels of air quality as will protect human health, welfare and Federal Clean Air Act to provide a legally enforceable State Implementation Plan for the attainment and maintenance of the National Ambient Air Quality Standards.

2. Geographic Areas of Particular Concern

The Virginia Coastal Resources Management Program has designated some areas where land and tidal water meet, to be worthy of special consideration in any planning or management process. These special areas are identified as "Geographic Areas of Particular Concern (GAPC)" and were developed through a study of environmental functions and values of coastal resources, including a review of coastal hazard areas. Three categories of GAPCs have been identified: 1) Natural Resource Areas of Particular Concern; 2) Natural Hazard Areas of Particular Concern; and 3) Waterfront Development Areas of Particular Concern.

Natural Resource Areas of Particular Concern include those areas that are vital to estuarine and marine ecosystems or are of great importance to areas immediately inland of the shoreline. These areas include vegetated and nonvegetated wetlands, spawning and nursery areas, coastal sand dunes, barrier islands, and special wildlife management areas.

Natural Hazard Areas of Particular Concern include those areas vulnerable to continuing and severe erosion, and areas susceptible to potential damage from wind, tidal and storm-related events including flooding.

Virginia has numerous mechanisms for the preservation or restoration of Geographic Areas of Particular Concern. Such areas receive special attention from the state because of their conservation, recreational, ecological and aesthetic values.

Finally, Waterfront Development Areas of Particular Concern have been identified as improtant because of Virginia's limited number of areas suitable for waterfront activities. This class of GAPC includes ports, commercial fishing piers and community waterfronts.

3. Shorefront Access Planning

Recreational activities in coastal areas are dependent upon two types of access: 1) access to the shoreline, and 2) access to the water. Planning for shorefront access under the Virginia Coastal Resources Management Program is provided by the existing planning process, the Virginia Outdoors Plan, and is implemented through a grants-in-aid program administered by the Department of Conservation and Historic Resources. The Department also manages state parks, natural and wildlife areas, game refuges, and the Virginia Outdoors Fund, a major source of money for the acquisition and development of recreational lands. Boat ramps for water access are provided by the Commission of Game and Inland Fisheries, and each year two additional ramps are planned for construction.

4. Energy Facility Planning Process

Based on established trends and projected growth, the major types of energy that will be consumed in the state will be electricity and petroleum, and the major type of energy that will be exported will be coal. Therefore, Virginia's planning process focuses on facilities involved in the production of electricity and petroleum, and in the export of coal.

The management program recognizes the importance of identifying energy facilities likely to locate in and significantly affect Virginia's coastal zone and assessing potential sites for such facilities. The Council on the Environment is developing an energy facility inventory system and preliminary facility assessment process to address coastal energy facilities which have been formally proposed and/or are under consideration. The Commonwealth also is involved in environmental impact reviews developed in accordance with the National Environmental Policy Act (NEPA) for energy facilities.

A state EIS is required for all state government projects costing $100,000 or more. These assessments include the consideration of alternative sites.

The management policies, authorities and techniques incorporated in the main body of Virginia's coastal program serve to manage energy facilities and their impacts.

5. Shoreline Erosion Mitigation Planning

The Coastal Resources Management Program addresses the need for continued assistance to the private and public sectors in the form of erosion abatement programs. The Shoreline Erosion Advisory Service (SEAS), established through the Shore Erosion Control Act, assesses the effects of shoreline erosion and provides technical assistance to property owners. The Public Beach Conservation and Development Commission (PBCDC) determines which public beaches are suffering from erosion, and provides monies to localities most in need of relief. With SEAS providing technical advice for all shoreline areas other than public

beaches, PBCOC providing technical advice and monies for public beaches, and the Virginia Institute of Marine Science providing technical assistance, advice, research and training in all areas of shoreline erosion, Virginia has a comprehensive, continuing program for the identification, control and mitigation of shoreline erosion.

B. CHANGES THE PROGRAM WILL MAKE

Existing Commonwealth authorities will be used to implement and enforce the Virginia Coastal Resources Management Program. The Program will result in changes in the way coastal resources are managed in the Commonwealth by requiring the Council on the Environment to monitor all state actions which could affect coastal resources, and to resolve all conflicts between state agency decisions and the provisions of the Coastal Resources Management Program.

The Commonwealth's objective in developing a coastal resources management program is to establish a comprehensive, coordinated approach for the protection, preservation and orderly development of the Commonwealth's coastal resources. The Virginia Coastal Resources Management Program incorporates three levels of responsibilities. Specific management activities, including the operation of Virginia's core regulatory programs, are conducted by a variety of individual agencies. This collection of individual activities, is tied together into a comprehensive program or "network" which is directed by the Secretary of Natural Resources. The Council on the Environment assists the Secretary by administering the details of the Program and acting as "lead agency" for purposes of Federal consistency and program enforcement and monitoring. The Program's goals and policies also provide the framework for cooperative action among governmental agencies to address coastal problems and resolve coastal policy questions.

The specific program goals and policies mentioned above will assume particular importance in Virginia as a result of the Governor's Executive Order which explicitly states that all State executive agencies must carry out their legally established duties in a manner consistent with and supportive of the Virginia Coastal Resources Management Program. The Executive Order directs the staff of the Council on the Environment to monitor all Commonwealth actions which could affect coastal resources. Further, the Order states that the Secretary of Natural Resources shall resolve all conflicts between Commonwealth agency decisions and the Coastal Resources Management Program. A process is provided for appealing decisions by the Secretary to the Governor.

The CZMA provides incentives and a national direction that cannot be provided by the states alone in addressing coastal issues and problems. The following are some additional anticipated affects of Federal program approval:

- Financial assistance to the Commonwealth to assure adequate program implementation activities by Commonwealth and local entities; and

- The use of the Federal consistency provision of the CZMA to ensure that Federal activities, federally licensed and permitted activities, Outer Continental Shelf (OCS) plans, and Federal assistance to Commonwealth and local governments are consistent with the Virginia Coastal Resources Management Program.

C. THE FEDERAL COASTAL ZONE MANAGEMENT ACT

In response to intense pressure on coastal resources, and because of the importance of coastal areas of the United States, Congress passed the Coastal Zone Management Act of 1972 (P.L. 92-583, as amended [CZMA], 16 USC 1451). The Act authorizes a Federal grant-in-aid program to be administered by the Secretary of Commerce, who in turn delegated this responsibility to the National Oceanic and Atmospheric Administration's (NOAA) Office of Ocean and Coastal Resource Management (OCRM).

The CZMA was amended July 16, 1976 (P.L. 94-370) September 18, 1978 (P.L. 95-372), October 1, 1980 (P.L. 96-464). and the Act and its amendments affirm a national interest in the effective protection and careful development of the coastal zone by providing assistance and encouragement to coastal states (and U.S. territories) to voluntarily develop and implement management programs for their coastal areas. Financial assistance grants under Sections 305 for program development and 306 for program implementation were authorized by the CZMA to provide coastal states and territories with the means for achieving these objectives.

Sections 305, 306, and 307 of the CZMA and implementing regulations published on March 28, 1979 (44 FR 18595) as codified at 15 CFR Part 923, provide the requirements and procedures for state management program development and Federal approval. In summary, the requirements for program approval are that a state develop a management program that among other things:

a. identifies and evaluates those coastal resources recognized in the Act that require management or protection by the state or territorial government;

b. re-examines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive, and enforceable, and must provide an adequate degree of predictability as to how coastal resources will be managed;

c. determines specific uses and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns. Uses and areas to be subject to management should be based on resource capability and suitability analyses and socio-economic considerations;

d. identifies the inland and seaward areas subject to the management program;

e. provides for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements; and

f. includes sufficient legal authorities and organizational structure to implement the program and to ensure conformance to it.

In arriving at these substantive aspects of the management program, states are obliged to follow an open process which involves providing information to and considering the interests of the general public, interest groups, local governments, and regional, state, interstate, and federal agencies.

Section 303 of the CZMA provides guidance on specific national objectives that warrant full consideration during the implementation of approved state coastal management programs.

Section 305 of the CZMA authorizes a maximum of four annual grants to develop a coastal management program. After its management program receives federal approval, the state is then eligible for annual grants under Section 306 to implement its management program. If a program has deficiencies which need to be remedied or has not received approval by the time Section 305 program development grants have expired, a state may continue development of a federally approvable coastal management program using only state funding. Federal funding assistance for program development under section 305 was terminated by the 1980 CZMA amendments.

Section 306 of the CZMA requires states to devote increasing portions (up to 30 percent) of their grant funds to activities leading to significant improvements in achieving national coastal management objectives specified in sections 303(2)(A) through (I). Section 306A of the CZMA also authorizes the award of grants for preservation of important natural areas, public access and urban development. Section 306(i) encourages states to inventory coastal resources of national significance and develop standards to protect them.

Section 307 contains the Federal consistency review provisions of the CZMA to ensure that Federal actions are consistent with the state's federally approved management program. Paragraph (1) and (2) of section 307(c) require that Federal activities and development projects in or directly affecting the coastal zone be consistent to the maximum extent practicable with a federally approved state management program. Subparagraphs (A) and (B) of section 307(c) require that federally licensed and permitted activities affecting the coastal zone, which are described in detail in Outer Continental Shelf plans, also is consistent with a federally approved state management programs. Section 307(d) requires Federal assistance to state and local governments for projects affecting the coastal zone to be consistent with a federally approved state management program.

Section 308 of the CZMA contains provisions for grants and loans to coastal states to enable them to plan for and respond to onshore impacts resulting from coastal energy activities including grants to mitigate the coastal impacts of coal transportation and alternative ocean energy activities. To be eligible for assistance under Section 308, coastal states must be receiving Section 305 or 306 grants, or, in the Secretary's view, be developing a management program consistent with the policies and objectives contained in Section 303 of the CZMA.

Section 309 allows the Secretary to make grants to states to coordinate, study, plan, and implement interstate coastal management programs.

Section 312 directs the Secretary to evaluate the performance of state coastal management programs on a continuing basis.

Section 315 authorizes grants to states to acquire lands for access to beaches and other public coastal areas of environmental, recreational, historical, aesthetic, ecological, or cultural value. It provides for the acquisition of islands for preservation, and for an estuarine sanctuary program to preserve a representative series of undisturbed estuarine areas for long-term scientific and educational purposes.

D. CROSS REFERENCE TO PROGRAM REQUIREMENTS

How the Virginia Coastal Resources Management Program Meets the Requirements of the Coastal Zone Management Act:

Requirements	Sections of Approval Regulations	Program Document
Sec. 306(a), which includes the requirements of Sec. 305:		
305(b)(1): Boundaries.	923.31 - 923.34	Ch. II
305(b)(2): Uses subject to management.	923.11	Ch. III
305(b)(3): Areas of particular concern	923.21, 923.22	Ch. V
305(b)(4): Means of control.	923.41	Ch. III, IV
305(b)(5): Guidelines on priorities of uses. . . .	923.21	Ch. V
305(b)(6): Organizational structure.	923.46	Ch. IV, I
305(b)(7): Shorefront planning process	923.24	Ch. VI
305(b)(8): Energy facility planning process. . . .	923.13	Ch. VII
305(b)(9): Erosion planning process.	923.25	Ch. VIII
Sec. 306(c), which includes:		
306(c)(1): Notice; full participation; consistent with Sec. 303	923.3, 923.51, 923.56, 923.58	Ch. XI
306(c)(2)(A): Plan coordination.	923.56	Ch. XI
306(c)(2)(B): Continuing consultation mechanisms .	923.57	Ch. XI
306(c)(3): Public hearings	923.58	Ch. XI
306(c)(4): Gubernatorial review and approval . . .	923.48	Inside Cover

Sec. 306(c) Continued:

306(c)(5):	Designation of recipient agency	923.47	Ch. IV
306(c)(6):	Organization.	923.46	Ch. IV
306(c)(7):	Authorities	923.41	Ch. III, IV, I
306(c)(8):	Adequate consideration of national interests	923.52	Ch. VII, XI
306(c)(9):	Areas for preservation/restoration. . .	923.22	Ch. V

Sec. 306(d), which includes:

306(d)(1):	Administer regulations, control development; resolve conflicts	923.41	Ch. III
306(d)(2):	Powers of acquisition, if necessary . .	923.41	Ch. VI

Sec. 306(e), which includes:

306(e)(1):	Techniques of control	923.41 - 923.44	Ch. III, IV
306(e)(2):	Uses of regional benefit.	923.12	Ch. IX

Sec. 307, which includes:

307(b):	Adequate consideration of Federal agency views.	923.51	Ch. XI
307(f):	Incorporation of air and water quality requirements.	923.45	Ch. III, I

PART II - DESCRIPTION OF THE VIRGINIA COASTAL RESOURCES MANAGEMENT PROGRAM

FYI cc: WOLFF/CAREY/CRITCHFIELD

COMMONWEALTH of VIRGINIA

Office of the Governor

Richmond 23219

Gerald L. Baliles
Governor

June 23, 1986

Mr. Paul Wolff
Assistant Administrator for
Ocean Services
National Ocean Service
NOAA
U.S. Department of Commerce
Washington, D.C. 20230

Dear Mr. Wolff:

I am pleased to submit for your review and approval the Virginia Coastal Resources Management Program.

I have examined the Program, and as Governor, approve it. The public and officials from all levels of government have had an opportunity to review and comment on two drafts of the Program document. Where appropriate, revisions have been made in response to comments offered during the course of those reviews.

The Program represents state policy as it applies to Virginia's coastal area, and, as Governor, I further certify that:

a) The Council on the Environment is lead agency for implementation of the Program;

b) The Council on the Environment Administrator is Program Manager for all matters relating to the Coastal Zone Management Act, and

c) The Commonwealth has the authorities and the organizational capability to implement the Virginia Coastal Resources Management Program.

With kindest regards, I am

Sincerely,

Gerald L. Baliles

COMMONWEALTH of VIRGINIA

Office of the Governor

Richmond 23219

Gerald L. Baliles
Governor

EXECUTIVE ORDER NUMBER THIRTEEN (86)

ESTABLISHMENT OF VIRGINIA COASTAL RESOURCES MANAGEMENT PROGRAM

By virtue of the authority vested in me by the Constitution of Virginia and Sections 2.1-39.1 and 2.1-41.1 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the Virginia Coastal Resources Management Program. I hereby direct all state agencies to carry out their legally established duties consistently with this program and in a manner which promotes coordination among those agencies in achieving its goals and objectives.

COASTAL RESOURCES POLICY

State agencies having responsibility for the Commonwealth's coastal resources shall promote the Program consistently with the following goals and objectives:

Prevention of Environmental Pollution and Protection of Public Health

1. To maintain, protect and improve the quality of coastal waters suitable for the propagation of aquatic life and recreation involving body contact.

2. To reduce non-point pollution, caused by inappropriate land uses and inadequate land management practices, in tidal streams, estuaries, embayments and coastal waters.

3. To reduce the potential for damage to coastal resources from toxic and other hazardous materials through effective site selection and planning as well as improved containment and cleanup programs.

4. To prevent significant deterioration of air quality.

5. To protect the public health from contaminated seafood.

Prevention of Damage to Natural Resource Base

6. To protect ecologically significant tidal marshes from despoliation or destruction.

7. To minimize damage to the productivity and diversity of the marine environment resulting from alteration of subaqueous lands and aquatic vegetation.

8. To minimize damage to the productivity and diversity of the marine environment resulting from the disruption of finfish and shellfish population balances.

9. To reduce the adverse effects of sedimentation on productive marine systems.

10. To maintain areas of wildlife habitat and to preserve endangered species of fish and wildlife.

Protection of Public and Private Investment

11. To conserve coastal sand dune systems.

12. To reduce or prevent losses of property, tax base and public facilities caused by shorefront erosion.

13. To minimize dangers to life and property from coastal flooding and storms.

Promotion of Resources Development

14. To promote the wise use of coastal resources for the economic benefit and employment of the citizens of the Commonwealth.

15. To protect and maintain existing uses of estuarine waters for shellfish propagation and marketing.

16. To encourage provision of commercial and industrial access to coastal waters where essential to desired economic activities.

17. To coordinate the Commonwealth's planning processes for major projects so as to facilitate consideration of alternative locations for such facilities within the context of long-term development patterns and implications.

18. To improve or maintain productive fisheries.

19. To encourage exploration and production of outer continental shelf energy reserves.

20. To provide for the extraction of mineral resources in a manner consistent with proper environmental practices.

Promotion of Public Recreation Opportunities

21. To provide and increase public recreational access to coastal waters and shorefront lands.

Promotion of Efficient Government Operation

22. To provide a shoreline permitting procedure, administered at the local level wherever possible, which assures both adequate review and mitigation of probable impacts as well as timely response to applicants.

Provision of Technical Assistance and Information

23. To provide state and local governing officials and private citizens with technical advice necessary to make wise decisions regarding uses of and impacts on coastal resources.

24. To conduct continuing educational programs in Coastal Resources Management for local and state officials.

25. To maintain and improve base data, maps and photoimagery supportive of decision-makers' needs.

ENFORCEMENT

The following agencies shall have primary responsibility for implementing the enforceable policies of the program:

Marine Resources Commission
Commission of Game and Inland Fisheries
Department of Conservation and Historic Resources
State Water Control Board
Department of Health
State Air Pollution Control Board
Council on the Environment

In addition, other agencies that conduct activities which may affect coastal resources shall conduct such activities in a manner consistent with and supportive of Virginia's Coastal Resources Management Program. For purposes of this Program, the Coastal Area shall mean Tidewater Virginia as defined in Section 62.1-13.2(d) of the Code of Virginia.

The Administrator of the Council on the Environment (COE) shall monitor all state actions which affect coastal resources. When, in the judgment of the COE Administrator, a state agency or regulatory board or commission is ready to act in a manner that appears to be inconsistent with the Program or has established a pattern of actions that appears to be inconsistent with the Program, the Administrator shall discuss the situation with the agency head to determine if a consistency problem in fact exists.

If, after discussion, the agency head and the Administrator are in disagreement about the existence of a consistency problem, the Administrator will inform the Secretary of Natural Resources of the disagreement. The Secretary shall then determine if a state consistency problem exists.

If the agency head and the Administrator agree that a consistency problem exists, the agency head shall attempt its resolution. If the agency head cannot resolve the problem, the Administrator shall advise the Secretary that a state consistency problem exists.

Upon notification of the existence of a consistency problem, the Secretary shall review the problem, determine how it would best be resolved, and effect such resolution within the Secretariat of Natural Resources or consult with other Cabinet offices to resolve consistency problems with agencies not within that Secretariat. If the Secretary is unable to resolve the problem, he shall report the problem to the Governor with recommendations for appropriate action. The Governor shall have ultimate responsibility for resolving any consistency problem which cannot be resolved by the agency head or by the Secretary.

Any person having authority to resolve consistency problems under the terms of this Executive Order shall resolve those problems in a manner which furthers the goals and objectives of the Program as set forth above and in accordance with existing state law, regulations and administrative procedures.

EFFECTIVE DATE

This Executive Order will become effective upon federal approval of the Program and will remain in full force and effect until June 30, 1990, unless superseded or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia on this 23d day of June, 1986.

Governor

Attested:

Secretary of the Commonwealth

§ 28.2-100 FISHERIES AND HABITAT OF THE TIDAL [illegible] 100

28.2-104. Commissioner; general powers and duties.
28.2-105. Legal representation for employees in criminal prosecution; compensation.

Article 2.

Support Activities.

28.2-106. Virginia Marine Patrol; law-enforcement responsibilities [illegible] tions; oath.
28.2-107. Commission to implement radio system.
28.2-108. Marine Patrols [illegible] inued.

ARTICLE 1.

Commission; Commissioner.

(This article is effective October 1, 1992).

§ 28.2-100. Definitions. — As used in this title, unless the context requires a different meaning:

"Commission" means the Marine Resources Commission.

"Commissioner" means the Commissioner of Marine Resources.

"Fish" or *"marine fish"* means those finfish species which spend a major portion of their lives in marine or estuarine waters. Sunfish, crappies, and carp are not considered to be marine fish.

"Fishing", *"fisheries"* or *"to fish"* means all operations involved in (i) taking or catching, (ii) using, setting or operating apparatus employed in killing, taking or catching, or (iii) transporting or preparing for market marine fish, shellfish, and marine organisms.

"Habitat" means those state-owned bottomlands, tidal wetlands and coastal primary sand dunes which are subject to regulation under Subtitle III of this title.

"Marine organisms" means those species other than marine finfish or marine shellfish which inhabit marine or estuarine waters. Terrapin and marine mammals are considered to be marine organisms.

"Marine shellfish" or *"shellfish"* means such species of mollusca as oysters and clams, and such species of crustacea as crabs.

"Officer" means a member of the Virginia Marine Patrol.

"Territorial sea" means the waters within the belt, three nautical miles wide, that is adjacent to Virginia's coast and seaward of the mean low-water mark.

"Tidewater Virginia" means the following counties: Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York; and the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and Williamsburg. (Code 1950, § 28-1; 1962, c. 406, § 28.1-1; 1968, c. 746; 1972, c. 472; 1992, c. 836.)

Mary Sue Terry
Attorney General

H. Lane Kneedler
Chief Deputy Attorney General

Francis C. Lee
Counsel to the Attorney General

COMMONWEALTH of VIRGINIA

Office of the Attorney General

R. Claire Guthrie
Deputy Attorney General
Human & Natural Resources Division

Gail Starling Marshall
Deputy Attorney General
Judicial Affairs Division

Walter A. McFarlane
Deputy Attorney General
Finance & Transportation Division

Stephen D. Rosenthal
Deputy Attorney General
Criminal Law Enforcement Division

Marian W. Schutrumpf
Director of Administration

May 30, 1986

Mr. Keith J. Buttleman
Administrator, Council on the Environment
903 Ninth Street Office Building
Richmond, Virginia 23219

Re: Legal Authority to Manage Virginia's Proposed Coastal Resources Management Program

Dear Keith:

You have asked that I evaluate the enforceability of Virginia's coastal policies, and of the administrative procedures necessary to network existing coastal policy enforcement authorities to carry out the proposed Virginia Coastal Resources Management Program. This program designates certain uses of Virginia's coastal resources for coordinated management under authority contained in existing law. The regulations needed for the administration of such statutes are already in place. The first part of this letter will identify the Program's enforceable coastal policies and the existing legal authority to enforce those policies. The second part will address the networking of these authorities to carry out the proposed Virginia Coastal Resources Management Program. This letter reflects my professional views and does not constitute an official opinion of the Attorney General, which is not required in this situation.

The identified means of enforcing the State's coastal policies provide for effective State control. In each case enforcement by injunction is authorized. In each case the policy and usually the execution is done at the State level or subject to State review. In many cases there are criminal penalties for violation of the law, regulations, and permit or plan conditions.

VIRGINIA'S ENFORCEABLE COASTAL POLICIES

The uses subject to management identified by Virginia's Coastal Resources Management Program are commercial fishing; recreational fishing in freshwater tidal rivers; encroachments on subaqueous lands; encroachments on wetlands; encroachments on sand dunes; land disturbing activities needing erosion and sediment control; actual or potential wastewater discharges;

control of septic and other on-site domestic waste systems; and air pollution control. The enforceable policies for each use are discussed below.

1. Commercial Fishing

Title 28.1 of the Code of Virginia gives the Marine Resources Commission jurisdiction over all commercial fishing up to the fall line of all tidal rivers and streams. Section 28.1-23 sets the policy which is "to promote the general welfare of the seafood industry and to conserve and promote the seafood and marine resources of the State ...," and it gives the Marine Resources Commission authority to make regulations including regulations as to the taking of seafood. That same section makes the violation of any such regulation a misdemeanor. See § 7 below for the State Water Control Board's authority to protect Virginia's water quality standards for all beneficial uses which specifically include protection of all aquatic life.

2. Recreational Fishing in Tidal Freshwater Rivers

Section 29-13 sets forth the State's policy of protecting and preserving all "fish in the inland waters ... which ... shall be construed to mean and to include ... the brackish and freshwater streams, creeks, bays, including Back Bay, inlets and ponds in the tidewater counties," and it gives the Commission of Game and Inland Fisheries the power to enforce all laws to accomplish such purposes. Sections 29-125 and 29-127 provide authority to adopt regulations to control fishing; § 29-129 provides that it shall be a misdemeanor to violate a regulation of the Game Commission; and § 29-51 requires fishing licenses. Section 29-129.1 provides the power "to prescribe [by regulation] the seasons and ... limits for fishing ... or otherwise taking fish...." Section 29-130 provides authority to close or shorten a season when extreme weather threatens the birds, animals or fish. Section 29-14 directs the Commission to "prosecute all persons who violate" the fish and game laws.

3. Encroachment on Subaqueous Lands

Section 62.1-1 states the Commonwealth's subaqueous lands policy:

> All the beds of the bays, rivers, creeks and the shores of the sea within the jurisdiction of this Commonwealth, and not conveyed by special grant or compact according to law,

> shall continue and remain the property of the Commonwealth of Virginia, and may be used as a common by all the people of the State for the purpose of fishing and fowling, and of taking and catching oysters and other shellfish, subject to the provisions of Title 28.1, and any future laws that may be passed by the General Assembly.

Section 62.1-3 makes it unlawful "for anyone to build, dump or otherwise trespass upon or over or encroach upon or take or use any materials from the beds of the bays and oceans, rivers, streams, creeks, which are the property of the Commonwealth unless such act is pursuant to statutory authority or a permit from the Marine Resources Commission." It gives the Marine Resources Commission authority to issue permits for all reasonable uses of state-owned bottom lands which are not statutorily permitted. Such permits shall be in writing and shall specify such conditions as the Commission deems appropriate. It directs that the Commission be guided by § 1 of Article XI of the Virginia Constitution and

> consider, among other things, the effect of the proposed project upon other reasonable and permissible uses of State waters and State-owned lands, its effect upon the marine and fisheries resources of the Commonwealth, its effect upon the wetlands of the Commonwealth, except when its effect upon said wetlands has been or will be determined under the provisions of Chapter 2.1 (§ 62.1-13.1 et seq.) of this title and its effect upon adjacent or nearby properties, its anticipated public and private benefits, and, in addition thereto, the Commission shall give due consideration to standards of water quality as established by the State Water Control Board.
>
> No permit for a marina or boat yard for commercial use shall be granted unless the owner or other applicant prior to issue presents a plan for sewage treatment or disposal facilities which is approved by the State Department of Health. The Marine Resources Commission shall consult with any State agency, including the Virginia Institute of Marine Science, the Water Control Board, the State Department of

> Highways and Transportation and the State Corporation Commission whenever the decision of the Marine Resources Commission on an application for a permit relates to or affects the particular concerns or activities of other State agencies....

Section 62.1-3.1 gives the Marine Resources Commission the authority to go to court to seek an injunction against any act which violates § 62.1-3 and gives the court authority to direct the guilty person or the Marine Resources Commission, "at the cost of the person found to have acted unlawfully, to remove, tear down or otherwise take such steps as are necessary to protect and preserve the subject property of the Commonwealth."

4. Encroachments on Wetlands

Section 62.1-13.1 declares that Virginia's public policy is "to preserve the wetlands and to prevent their despoliation and destruction and to accommodate necessary economic development in a manner consistent with wetlands preservation." The Virginia Wetlands Act, § 62.1-13.1 et seq., authorizes local governments to set up a wetlands board to issue permits for wetlands development, § 62.1-13.6, and to adopt the wetlands zoning ordinance set forth in § 62.1-13.5. Section 62.1-13.3 provides the following standards for the use and development of wetlands:

> (1) Wetlands of primary ecological significance shall not be altered so that the ecological systems in the wetlands are unreasonably disturbed;
>
> (2) Development in Tidewater Virginia, to the maximum extent possible, shall be concentrated in wetlands of lesser ecological significance, in vegetated wetlands which have been irreversibly disturbed before July 1, 1972, in nonvegetated wetlands as described herein which have been irreversibly disturbed prior to January 1, 1983, and in areas of Tidewater Virginia apart from the wetlands.

Sections 62.1-13.5(4) and 62.1-13.9 prohibit the use or development of any wetland without a permit except for those uses specified in § 62.1-13.5(3).

If a locality does not elect to set up a wetlands board,

permits for wetlands development must be obtained from the Marine Resources Commission, § 62.1-13.9. Under §§ 62.1-13.10 and 62.1-13.11(2) the Commissioner reviews all decisions of local wetlands boards and notifies the Marine Resources Commission of any decision which in his opinion should be reviewed because he feels it does not follow the policy, standards and guidelines. Section 62.1-13.13 empowers the Commission to modify, remand or reverse the decision of a local wetlands board.

Section 62.1-13.16 gives the Commission "the power to prosecute all violations of any order, rule or regulation of the Commission or of a wetlands board" or of the Wetlands Act. Wetlands boards may prosecute violations of their orders or of the wetlands zoning ordinance. Section 62.1-13.18 makes the violation of "any order, rule or regulation of the Commission or of a wetlands board ... [or of] any provision of this chapter or of a wetlands zoning ordinance ... or any provision of a permit granted by a wetlands board or the Commission" a misdemeanor. Each day of violation following conviction is a separate offense. Section 62.1-13.18:1 provides injunctive relief for any act unlawful under the Wetlands Act.

5. Coastal Primary Sand Dunes

Section 62.1-13.21 declares Virginia's public policy:

> [I]n order to reasonably protect the public interest, promote public health, safety, the general welfare of the Commonwealth, protect private and public property from erosion and flooding and protect wildlife and the natural environment, it is declared to be the public policy of the Commonwealth whenever reasonably necessary to preserve and protect coastal primary sand dunes and to prevent their despoliation and destruction and whenever practical to accommodate necessary economic development in a manner consistent with the protection of such features.

Section 62.1-13.23 provides that "[n]o permanent alteration of or construction upon any coastal primary sand dune shall take place which would: (i) impair the natural functions of the dune as described herein; (ii) physically alter the contour of the dunes; (iii) destroy vegetation growing thereon as defined herein unless the wetlands board, or in its absence the Commission, determines that there will be no significant adverse ecological impact, or

that the granting of a permit hereunder is clearly necessary and consistent with the public interest considering all material factors."

Section 62.1-13.25(4) provides that "[a]ny person who desires to use or alter any coastal primary sand dune ... shall first file an application with the wetlands board...." Section 62.1-13.27 provides that the Sand Dune Act shall be enforced as provided in §§ 62.1-13.7 through 62.1-13.19 of the Wetlands Act. This gives the Marine Resources Commission the same power to modify, remand or reverse local sand dune decisions which it has with respect to wetlands decisions.

6. Land Disturbing Activities Needing Erosion and Sediment Control.

The Erosion and Sediment Control Law, § 21-89.1 et seq., provides control over erosion and sedimentation caused by development. Section 21-89.2 sets forth the Commonwealth's policy of conserving and protecting the land, water, air and other natural resources of the Commonwealth. Section 21-89.4 provides that the Virginia Soil and Water Conservation Board "shall establish minimum standards, guidelines and criteria for the effective control of soil erosion, sediment deposition and nonagricultural runoff which must be met in any control program." Section 21-89.5 requires either the local Soil and Water Conservation District or the county, city or town, to adopt an erosion and sediment control program which is consistent with the state program and guidelines. Section 21-89.6 provides that except for State plans filed with the Board and for agricultural operations, "no person may engage in any land-disturbing activity after the adoption of the conservation standards by the districts, counties, cities or towns until he has submitted to the district, county, city or town an erosion and sediment control plan for such land-disturbing activity and such plan has been reviewed and approved by the plan-approving authority."

Section 21-89.7 provides that "no agency authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities may issue any such permits unless the applicant therefor submits with his application the approved erosion and sediment control plan or certification of such approved plan from the local plan-approving authority or from the Board where appropriate, as well as certification that such plan will be followed." Provision is also made for requiring a reasonable performance bond.

Section 21-89.8 provides for the inspection of land-disturbing activities to ensure compliance with the erosion and sediment control plan. It provides that where the plan is not being complied with, the permittee shall be notified and if he fails to comply his permit is subject to revocation and he becomes subject to the other penalties provided. To insure that land-disturbing activities are controlled in accordance with the State program, § 21-89.11 provides that the Soil and Water Conservation Board may sue in circuit court for an injunction against a violation or threatened violation under § 21-89.6 (having an approved plan before disturbing land) or § 21-89.8 (complying with the plan); that the Attorney General shall, upon request of the Soil and Water Conservation Board, take appropriate legal action to enforce the provisions of the Erosion and Sediment Control Law; and that a violation of such sections is a misdemeanor, punishable by a fine up to $1,000 and/or 30 days imprisonment for each violation.

7. Actual or Potential Discharges of Waste Water Into State Waters

Section 62.1-44.2 provides that

> It is the policy of the Commonwealth of Virginia ... to: (1) protect existing high quality State waters and restore all other State waters to such condition of quality that any such waters will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them, (2) safeguard the clean waters of the State from pollution, (3) prevent any increase in pollution, (4) reduce existing pollution, and (5) promote water resource conservation, management and distribution, and encourage water consumption reduction in order to provide for the health, safety, and welfare of the present and future citizens of the Commonwealth.

Section 62.1-44.15 gives the State Water Control Board (the Water Board) authority "to exercise general supervision and control over the quality ... of all state waters...." Section 62.1-44.3 broadly defines "state waters" to mean "all water, on the surface and under the ground, wholly or partially within or bordering the State or within its jurisdiction...." Section

62.1-44.15(3)(a) gives the Water Board authority to set "such standards of quality and policies for any state waters consistent with the general policy set forth in this chapter ... and to take all appropriate steps to prevent quality alteration contrary to the public interest or to standards or policies thus established."

Subsection 5 gives the Water Board authority "[t]o issue certificates for the discharge of sewage, industrial wastes and other wastes into or adjacent to or the alteration otherwise of the physical, chemical or biological properties of state waters under prescribed conditions and to revoke or amend such certificates." Section 62.1-44.16(1) provides that "[a]ny owner who erects, constructs, opens, reopens, expands or employs new processes in or operates any establishment from which there is a potential or actual discharge of industrial wastes or other wastes to State waters shall first provide facilities approved by the Board for the treatment or control of such industrial wastes or other wastes."

Pursuant to its authority, the Water Board has adopted Regulation 6 which requires that all discharges to state waters must have a national pollution discharge elimination system (NPDES) permit. All other operations involving wastes which will not be discharged require a no-discharge certificate. Procedural Rule #2 sets forth the procedures to be followed in connection with securing a no-discharge certificate. Section 62.1-44.23 authorizes the Water Board to sue for an injunction against the violation of "any rule, regulation, order, water quality standard, or ... provision of any certificate issued by the Board or any provisions of the Water Control Law." Section 62.1-44.31 makes it unlawful not to comply with a Water Board special order, or to discharge sewage, industrial wastes or other wastes in violation of a certificate. Section 62.1-44.32 provides civil and criminal penalties for the violation of the Water Control Law or of a special final order of the Board, or a final court order.

Section 62 1-44.33 gives the Water Board power to adopt rules and regulations to control discharges from boats on all waters within the State, but such regulation must not be more restrictive than federal regulations unless needed to limit or avoid the closing of shellfish grounds. Violating such rules and regulations is a misdemeanor. Every law-enforcement officer of the State and its subdivisions has the authority to enforce such rules and regulations. Additional provisions control and prohibit the discharge of oil to state waters. Section 62.1-44.34:1 et seq.

8. Shoreline Sanitation Program

Section 32.1-2 gives the Commonwealth's policy to "provide a comprehensive program of ... environmental health services ... thereby improving the quality of life in the Commonwealth," and directs the State Board of Health and the State Health Commissioner to provide a comprehensive program to protect the public health.

Unless shoreline domestic waste systems are properly supervised, they form a potential source of water pollution. Section 32.1-164 provides that the Board of Health

> shall have supervision and control over the safe and sanitary collection, conveyance, transportation, treatment and disposal of sewage, all sewerage systems and treatment works as they affect the public health and welfare.... B. The regulations of the Board shall govern the collection, conveyance, transportation, treatment and disposal of sewage. Such regulations shall be designed to protect the public health and promote the public welfare and may include, without limitation:
>
> ***
>
> 5. Standards specifying the minimum distance between sewerage systems or treatment works and: ...
>
> (c) Streams and rivers
> (d) Shellfish waters
> (e) Groundwaters
> (f) Areas and places of human habitation....
>
> ***
>
> 8. A prohibition against the discharge of untreated sewage onto land or into waters of the Commonwealth.
>
> 9. A requirement that such residences, buildings, structures and other places designed

> for human occupancy as the Board may prescribe be provided with a sewerage system or treatment works.

Pursuant to its responsibilities, the Health Department administers a program to inspect the shoreline adjacent to shellfish growing waters to detect failing septic systems.

Section 32.1-165 provides that "[n]o county, city, town or employee thereof shall issue a permit for a building designed for human occupancy without the prior written authorization of the Commissioner or his agent." Section 32.1-246 provides that the Board of Health "is empowered and directed to adopt and promulgate all necessary regulations establishing minimum requirements for adequate sewerage facilities at marinas and other places where boats are moored according to the number of boat slips and persons such marinas and places are designed to accommodate."

Section 32.1-12 provides that the Board of Health "may make, adopt, promulgate and enforce such regulations and provide for reasonable variances and exemptions therefrom as may be necessary to carry out" the laws it administers. Section 32.1-26 authorizes the Board to issue orders to require any person to comply with the laws and regulations it administers. Section 32.1-27 makes failure to comply with such orders or any regulation a misdemeanor. It also provides for relief by injunction, mandamus or other appropriate remedy, and provides a civil penalty not to exceed $10,000 for each violation.

9. Air Pollution Control.

Section 10-17.18(b) gives the Air Pollution Control Board "the power to formulate, adopt and promulgate, amend and repeal rules and regulations abating, controlling and prohibiting air pollution throughout the State or in such areas of the State as shall be affected thereby...." Section 10-17.10 defines "air pollution" to mean "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare o safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property." Section 10-17.18(d) gives the Board the power to "enter orders diminishing or abating the causes of air pollution and orders for the purpose of enforcement of its rules and regulations...; institute legal proceedings, including suits for injunctions for the enforcement of its orders, rules and regulations and the abatement and control of air pollution and for the enforcement of penalties, all in

accordance with this chapter." Section 10-17.23 provides that "any owner violating, failing, neglecting or refusing to obey any rule, regulation or order of the Board may be compelled to obey the same and comply therewith by injunction, mandamus or other appropriate remedy." It also provides for a civil penalty not to exceed $25,000 for each violation, with each day of violation constituting a separate offense.

Pursuant to its authority, the State Air Pollution Control Board has adopted regulations to control air pollution which, among other things, meet the requirements of the Clean Air Act.

NETWORKING AND CONFLICT RESOLUTION

Each of the uses subject to management can be controlled by the State agencies identified. Can administrative procedures be developed which will network these authorities and provide the conflict resolution mechanisms called for by 44 C.F.R. 923.43(c)? The discussion above demonstrates that existing authorities can be used to implement the full range of policies and management purposes as required by § 923.43(c)(1). Paragraph (2) of subsection (c) requires that the State must bind each party exercising statutory authority which is part of the management program to conform with the policies and management techniques.

The policies are set forth in the statutes and regulations governing the various State agencies. What is needed is central coordination and a central statement of the Coastal Resources Management program policies to provide a unified Coastal Resources Management Program. This can best be done through an executive order. This would establish a substantial amount of uniformity since the Governor appoints all of the State agency heads concerned with coastal resources except the Executive Director of the Commission of Game and Inland Fisheries. Those he appoints serve at his pleasure. Section 2.1-41.2. The members of the Commission of Game and Inland Fisheries elect their own executive director, but the Governor still has effective control because § 29-4 permits the Governor to remove a member from the Commission during his term. Section 2.1-43 authorizes the Governor to remove the members of any state board or commission for failure to carry out a lawful directive, and makes the Governor the sole judge of the sufficiency of the cause for removal.

In order to see that the General Assembly's intent to use and protect Virginia's Coastal Resources is properly carried out, the

Governor will promulgate the Coastal Resources Management Program pursuant to his responsibility under § 2.1-41.1 "for the formulation and administration of the policies of the executive branch, including resolution of policy and administrative conflicts between and among agencies." Section 2.1-39.1 authorizes the Governor to delegate any of his powers to any cabinet secretary. The proposed Executive Order delegates authority to the Secretary of Natural Resources to resolve conflicts concerning the Coastal Resources Management Program. If unable to resolve a conflict, the Secretary of Natural Resources will report it to the Governor with recommendations for any needed action.

With kindest regards, I remain

Sincerely,

Frederick S. Fisher

Frederick S. Fisher
Assistant Attorney General

63:53-c648

PREFACE

In 1979 Virginia's participation in the planning phase of the federal Coastal Zone Management Program came to an end. That phase of the state-federal relationship ended because of the failure of a comprehensive state coastal zone management bill to gain General Assembly approval. The legislative gaps which would have been addressed by that bill finally prevented the development of a state coastal resource management program that could have met the requirements of the federal Coastal Zone Management Act. Consequently, Virginia did not become eligible for further participation and funding under the implementation phase of the program.

However, several key elements of that bill have since been enacted separately. Dunes and non-vegetated wetlands statutes were passed in 1980 and 1982 respectively. Also, in 1980, Virginia administratively adopted a set of coastal management goals and a process to biennially review and evaluate activities which help achieve those goals. And in his first address to the General Assembly in 1982, Governor Robb endorsed strong management of Virginia's coastal resources as a priority of his administration.

On the basis of these state actions, the Federal Office of Coastal Resources Management determined that Virginia was once again "making satisfactory progress" toward a coastal management program that would meet the criteria for approval under the federal Coastal Zone Management Act.

The Commonwealth has developed this state program document to qualify for the federal Coastal Zone Management Program for the following reasons:

(1) As a condition for receiving Coastal Energy Impact Program (CEIP) Funds,

(2) To become eligible for CZM Program implementation funds;

(3) To increase the state's share of potential federal Outer Continental Shelf (OCS) revenue-sharing funds.

(4) To be able to take advantage of the "federal consistency" element of the Coastal Zone Management Act (CZMA) which requires that any federal activity which directly affects, or any federally permitted activity which affects the coastal zone, be consistent with a state's federally approved coastal zone management program. This federal consistency requirement applies not only to federal facilities and federal permits but also to the creation, modification and elimination of federal regulations if they directly affect the coastal zone of Virginia (see Chapter X).

(5) To supplement and improve its coastal resource management program through the addition of these funds and the Federal consistency mechanism.

The Commonwealth anticipates using these federal funds for a number of types of activities. Any regulatory activity of the program would be eligible, including associated research and monitoring activities. Physical development projects for federal funding could include, but not be limited to: public access; the management of GAPCs; and improvement or revitalization of waterfront facilities, including urban waterfronts, commercial fishing ports and docking facilities.

This Virginia Coastal Resources Management Program document includes no new State programs, staff, organizations, regulations, or laws except for an Executive Order. It is based on an approach termed "networking" which provides a framework and process for linking existing state programs, agencies, laws, etc., into a system that the Commonwealth anticipates will meet Federal requirements for an effective State coastal zone management program. The core regulatory programs described in the document augmented by the executive order constitute the Virginia Coastal Resources Management Program submitted to the Office of Ocean and Coastal Resources Management (OCRM) for approval under the requirements of the Federal Coastal Zone Management Act.

INTRODUCTION

The Commonwealth's commitment to maintaining a sound program of coastal management stems from the unique importance of our coastal area. Geographically, 29 percent of Virginia's land area lies within Tidewater Virginia. Over 60 percent of our population resides within the coastal area. The great wealth of coastal resources is derived from extensive estuarine waters, their fringing shorelands, and the Chesapeake Bay and the access its natural harbors provide to the commercial centers of the world.

The Virginia shoreline along the four great tidal rivers (Potomac, Rappahannock, York, James) and the Chesapeake Bay, into which they drain, along with the Atlantic Ocean, totals approximately 5,000 miles in length. Approximately 250,000 acres of tidal wetlands form the biological base of productive nursery and spawning grounds, act as natural buffers against flooding and storm damage, and perform a role in water quality maintenance that has only recently begun to be understood and appreciated.

The most productive seed oyster grounds in the United States are found in the James River. Virginia's marine waters yield millions of dollars worth of finfish and shellfish annually (over $80 million in 1983). The land of Tidewater Virginia is relatively level and fertile, ideally suited for agricultural and forest production. Its rivers are natural highways for commerce, attracting diverse industries to the port areas. And the natural beauty of the land and water makes Tidewater Virginia one of the most pleasant living environments in the United States.

The very features that make Virginia's coastal area so attractive, however, have resulted in competing, and sometimes conflicting, use of its resources. Although some resources are renewable, overuse and improper use can and has resulted in their depletion or degradation. Careful stewardship of Tidewater's resources is essential. An estuarine system is comprised of complex physical, chemical, and biological cycles and is highly susceptible to damage. The transition area between shorelands and tidal waters is an especially fragile ecosystem, the equilibrium of which is easily upset by man's activities. Drainage from upland areas can have particularly detrimental effects on the marine environment.

There has long been a recognition in Virginia that the improper use of coastal resources risks destruction of a fragile environment, and possible loss of much of the State's economic base. The conservation and wise use of Virginia's coastal resources is a basic goal which stems from a widespread concern for the future well-being of Virginians, and is reflected in Article XI of the Virginia Constitution:

> "To the end that the people have clean air, pure water, and the use and enjoyment for recreation of adequate public lands, waters, and other natural resources,

> it shall be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings. Further, it shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment and general welfare of the people of the Commonwealth."

Toward implementation of this mandate, the Virginia Environmental Quality Act (§10-178) specifies that:

> "In furtherance of Article XI of the Constitution of Virginia and in recognition of the vital need of citizens of the Commonwealth to live in a healthful and pleasant environment, it is hereby declared to be the policy of the Commonwealth to promote the wise use of its air, water, land and other natural resources and to protect them from pollution, impairment or destruction so as to improve the quality of its environment."

With respect to coastal resources management, a variety of statutes have been enacted, policies stated and governmental programs undertaken toward fulfilling these mandates. These various responses have traditionally arisen as individual problems and needs have become apparent and generally have not evolved or developed as integral parts of a comprehensive management effort. Although generally operating effectively for their individual purposes, occasional overlaps, gaps or conflicts are inevitable. The Virginia Environmental Quality Act (§10-178) recognizes that dealing with such situations requires special emphasis by the State:

> "It shall be the continuing policy of the government of the Commonwealth -- in cooperation with the federal government, other state governments, local governments, other public and private organizations, and individuals -- to initiate, implement, improve, and coordinate environmental plans, programs, and functions of the State in order to promote the general welfare of the people of the Commonwealth and fulfill the State's responsibility as trustee of the environment for the present and future generations."

It is in direct response to this statutory mandate and the overriding importance of our coastal resources base that the Commonwealth has developed and will implement its Coastal Resources Management Program.

The Virginia Coastal Resources Management Program relies primarily on a core of eight regulatory programs. It ties these and other state activities which contribute to the management of coastal resources into a network coordinated by the Secretary of Natural Resources, with ultimate executive oversight by the Governor.

CHAPTER I

OVERVIEW

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B. Activities

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2. Core Regulatory Programs

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   b. Subaqueous Lands Management
   c. Wetlands Management
   d. Dunes Management
   e. Nonpoint Source Pollution Control
   f. Point Source Water Pollution Control
   g. Shoreline Sanitation
   h. Air Pollution Control

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   a. Coastal Natural Resource Areas of Particular Concern

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      (2) Spawning, Nursery and Feeding Grounds
      (3) Coastal Primary Sand Dunes
      (4) Barrier Islands
      (5) Significant Wildlife Habitat Areas
      (6) Significant Public Recreation Areas
      (7) Significant Mineral Resource Deposits
      (8) Underwater Historic Sites

   b. Coastal Natural Hazard Areas of Particular Concern

      (1) Highly Erodible Areas
      (2) Coastal High Hazard Areas

   c. Waterfront Development Areas

C. Coordination and Oversight

CHAPTER I

OVERVIEW

Virginia's Coastal Resources Management Program (VCRMP) consists of three basic elements. These are:

1) **GOALS AND POLICIES** - a set of 25 statements which set forth the goals of coastal management in Virginia and various policies embodied in statute and regulation;

2) **ACTIVITIES** - those activities and programs undertaken by state agencies, local governments and regional planning district commissions, which, directly or indirectly, affect coastal resources and thus serve, in varying degrees, to accomplish the goals of coastal resources management; and

3) **COORDINATION AND OVERSIGHT** - the executive management, policy direction, conflict resolution, and administration which directs the individual activities toward goals and policies of the VCRMP and keeps the overall programs running.

A. GOALS

The Commonwealth has established a set of twenty-five goals, which set forth a policy framework within which Virginia's network of regulatory and other programs will operate when coastal resources are involved. These goals have evolved from the Governor's Guidance Package: Areas of Emphasis for 1982-84 Biennium Budget, and from an earlier four-year coastal resources management planning program. [NOTE: These goals are intended to provide general guidance to agencies undertaking activities which affect Virginia's coastal resources. They should apply in cases where agencies are allowed discretion in the operation of programs or in individual decisions and where these goals are not inconsistent with statutory or regulatory policies. These goals are not intended to be "enforceable policies" as required in 15 CFR 923.11.]

Prevention of Environmental Pollution and Protection of Public Health

1. To maintain, protect and improve the quality of coastal waters suitable for the propagation of aquatic life and recreation involving body contact.

2. To reduce non-point pollution in tidal streams, estuaries, embayments and coastal waters caused by inappropriate land uses and inadequate land management practices.

3. To reduce the potential for damage to coastal resources from toxic and other hazardous materials through effective site selection and planning as well as improved containment and cleanup programs.

4. To prevent significant deterioration of air quality.

5. To protect the public health from contaminated seafood.

Prevention of Damage to Natural Resource Base

6. To protect ecologically significant tidal marshes from despoilation or destruction.

7. To minimize damage to the productivity and diversity of the marine environment resulting from alteration of subaqueous lands and aquatic vegetation.

8. To minimize damage to the productivity and diversity of the marine environment resulting from the disruption of finfish and shellfish population balances.

9. To reduce the adverse effects of sedimentation on productive marine systems.

10. To maintain areas of wildlife habitat and to preserve endangered species of fish and wildlife.

Protection of Public and Private Investment

11. To conserve coastal sand dune systems.

12. To reduce or prevent losses of property, tax base and public facilities caused by shorefront erosion.

13. To minimize dangers to life and property from coastal flooding and storms.

Promotion of Resources Development

14. To promote the wise use of coastal resources for the economic benefit and employment of our citizens.

15. To protect and maintain existing uses of estuarine waters for shellfish propogation and marketing.

16. To encourage provision of commercial and industrial access to coastal waters where essential to desired economic activities.

17. To coordinate State planning processes for major projects so as to facilitate consideration of alternative locations for such facilities within the context of long-term development patterns and implications.

18. To improve or maintain productive fisheries.

19. To encourage exploration and production of outer continental shelf energy reserves.

20. To provide for the extraction of mineral resources in a manner consistent with proper environmental practices.

Promotion of Public Recreation Opportunities

21. To provide and increase public recreational access to coastal waters and shorefront lands.

Promotion of Efficient Government Operation

22. To provide a shoreline permitting procedure which assures both adequate review and mitigation of probable impacts as well as timely response to applicants, administered at the local level wherever possible.

Provision of Technical Assistance and Information

23. To provide state and local governing officials and private citizens with technical advice necessary to make wise decisions regarding uses of and impacts on coastal resources.

24. To conduct continuing educational programs in Coastal Resources Management for local and state officials.

25. To maintain and improve base data, maps and photo-imagery supportive of decision-makers' needs.

B. ACTIVITIES

1. General

Coastal resources management is not new to Virginia. Virginians have long recognized the importance of the land and water resources which are the basis for the State's unique coastal heritage and they have taken many initiatives over the years to promote the wise use and protection of those resources. Much of the

population of the state lives and works along the coastal waterways, which serve as avenues of commerce and which provide nursery grounds for Virginia's fisheries as well as recreation areas for its citizens. The Commonwealth has long regulated its fisheries and controlled encroachments into submerged public lands. The Marine Resources Commission has managed Virginia's extensive commercial fisheries since before the turn of the century. With the enactment of the Wetlands Act in 1972, the Commission's authority was expanded to include the permitting of development in vegetated wetlands. Recent amendments have further extended that authority to protect coastal primary sand dunes and non-vegetated wetlands.

In all, over 20 state agencies as well as many localities, under the authorization of numerous state laws, conduct numerous activities which contribute to the management of Virginia's coastal resources. These activities are listed in Appendix I-1. While these activities form the basis for Virginia's Coastal Resources Management Program, and all contribute to accomplishing the goals of coastal management to varying degrees, there are certain activities or sets of activities which can be identified as making key contributions in a number of areas. These are discussed below.

2. Core Regulatory Programs

The heart of Virginia's Coastal Resources Management Program is a core of eight regulatory programs through which critical land and water uses and activities are subject to the control of the state. These are listed below, by geographic area. The "enforceable policies" necessary to manage the land and water uses listed below are those contained in the state and federal statutes, and agency regulations adopted pursuant to them, which apply to the operation of these core regulatory programs. All are incorporated into Virginia's coastal management program.

State law provides for the strict control of virtually all uses and activities which involve the taking of living resources from or encroachment into the water portion of the Virginia's coastal area; for complete control of Virginia's entire tidal shoreline through strict local regulation, with state overview, of all encroachments onto tidal wetlands and coastal dunes; and for the regulation of selected significant uses and activities in upland areas along Virginia's shoreline.

a. **Fisheries Management** - Regulatory Authority Over Commercial and Recreational Fishing -- Marine Resources Commission (MRC); Commission of Game and Inland Fisheries (CGIF).

b. **Subaqueous Lands Management** - Regulatory Authority Over All Encroachments In, On, or Over State-Owned Subaqueous Lands - Marine Resources Commission (MRC).

c. **Wetlands Management** - Regulatory Authority Over All Encroachments Into Vegetated and Non-Vegetated Wetlands -- Marine Resources Commission (MRC).

d. **Dunes Management** - Regulatory Authority Over All Encroachments Into Coastal Primary Sand Dunes -- Marine Resources Commission (MRC).

e. **Nonpoint Source Pollution Control** - Regulatory Authority Over Erosion and Sedimentation From Non-Agricultural Upland Land Disturbing Activities -- Department of Conservation and Historic Resources (DCHR).

f. **Point Source Water Pollution Control** - Regulatory Authority Over Existing, Planned or Potential Discharges to State Waters -- State Water Control Board (SWCB).

g. **Shoreline Sanitation** - Regulatory Authority Over Shoreline Use of Septic or Other On-Site Domestic Waste Systems -- State Department of Health (DOH).

h. **Air Pollution Control** -- Regulatory Authority Over Emissions Affecting Air Quality. -- State Air Pollution Control Board (SAPCB)

3. Geographic Areas of Particular Concern

Virginia's Coastal Resources Management Program gives special attention to the management of special areas -- areas which contain particularly important resources or in which natural conditions pose particular threats to man and his investments. Virginia's program (Chapter V of this document) identifies eleven categories of Geographic Areas of Particular Concern (GAPC) and describes the special management treatment afforded them under law and regulation.

a. Coastal Natural Resource Areas of Particular Concern

(1) Wetlands

(Protected under Virginia Wetlands Act by state regulation or local regulation with Marine Resources Commission (MRC) oversight. -- See Core Regulatory Program)

(2) Spawning, Nursery and Feeding Grounds

- James River Oyster Seed Beds
- Public Oyster Grounds
- Blue Crab Sanctuary
- Striped Bass Spawning Sanctuaries

Protected under special regulations of the Virginia Marine Resources Commission and selected state statutes.

(3) Coastal Primary Sand Dunes

Protected under Coastal Primary Sand Dune Protection Act -- see Core Regulatory Program.

(4) Barrier Islands

Protected under a variety of state, federal and private conservation organization ownerships.

(5) Significant Wildlife Habitat Areas

Ten areas protected and managed as Wildlife Management Areas by Commission of Game and Inland Fisheries.

(6) Significant Public Recreation Areas

Fourteen areas owned and managed by Division of State Parks and Recreation -- ongoing planning through Virginia Outdoors Plan -- acquisition may be by condemnation.

(7) Significant Mineral Resource Deposits

Extraction activities regulated under Minerals Other Than Coal Surface Mining Law administered by Department of Conservation and Economic Development.

b. **Coastal Natural Hazard Areas of Particular Concern**

(1) **Highly Erodible Areas**

Technical assistance to private owners through Shoreline Erosion Advisory Service under Shoreline Erosion Control Act -- financial assistance to local governments under Public Beach Conservation and Development Act.

(2) **Coastal High Hazard Areas**

Development in floodplains and coastal high hazard areas restricted by Uniform Statewide Building Code and through local zoning -- encouraged under Virginia Flood Damage Reduction Act.

c. **Waterfront Development Areas**

Availability of pass-through CZM funds to localities which ask for GAPC designation of waterfront areas and which develop special management programs for those areas.

C. COORDINATION AND OVERSIGHT

Coastal management is a mix of three different levels of responsibilities. Individual management activities, including the operation of Virginia's core regulatory programs, are conducted by a variety of individual agencies. This collection of individual activities is tied together into a comprehensive program or "network" by the overview, direction and coordination supplied by the Secretary of Natural Resources. The Council on the Environment assists the Secretary by administering the details of the program and acting as "lead agency" for purposes of program management, monitoring and reporting and grant management.

CHAPTER II

BOUNDARIES

A. Inland Boundary

B. Seaward Boundary

C. Boundaries at the Edges

D. Boundaries of Federal Lands

E. Interstate Boundaries

CHAPTER II

BOUNDARIES

A. INLAND BOUNDARY

One of the more important considerations in the development of Virginia's Coastal Resources Management Program is the delineation of those areas within which provisions in the plan will apply. For purposes of this program, the coastal area of Virginia's Management Area shall be defined to include all counties which border upon tidal waters: Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York; and the cities of Alexandria, Chesapeake, Colonial Heights, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Portsmouth, Poquoson, Richmond, Suffolk, Virginia Beach, and Williamsburg (Figure II-1). This coastal management area thus embraces all of Tidewater Virginia as defined in §62.1-13.2 of the Code of Virginia. Figure II-2 indicates the jurisdictions of the local planning districts in the coastal management area.

Tidewater Virginia is a clear and exact legal description under Virginia law sufficient to permit a determination whether property or an activity is located within the management area and includes the following areas required by regulation:

(1) Those areas the management of which are necessary to control uses which have direct and significant impacts on coastal waters;

(2) Areas of Particular Concern;

(3) Waters under Saline Influence;

(4) Salt Marshes and Wetlands;

(5) Beaches;

(6) Transition and Intertidal Areas; and

(7) Islands.

B. SEAWARD BOUNDARY

The seaward limit of the Virginia Coastal boundary is the three-mile outer limit of the United States territorial sea.

FIGURE II-1

VIRGINIA'S CRM PROGRAM MANAGEMENT AREA

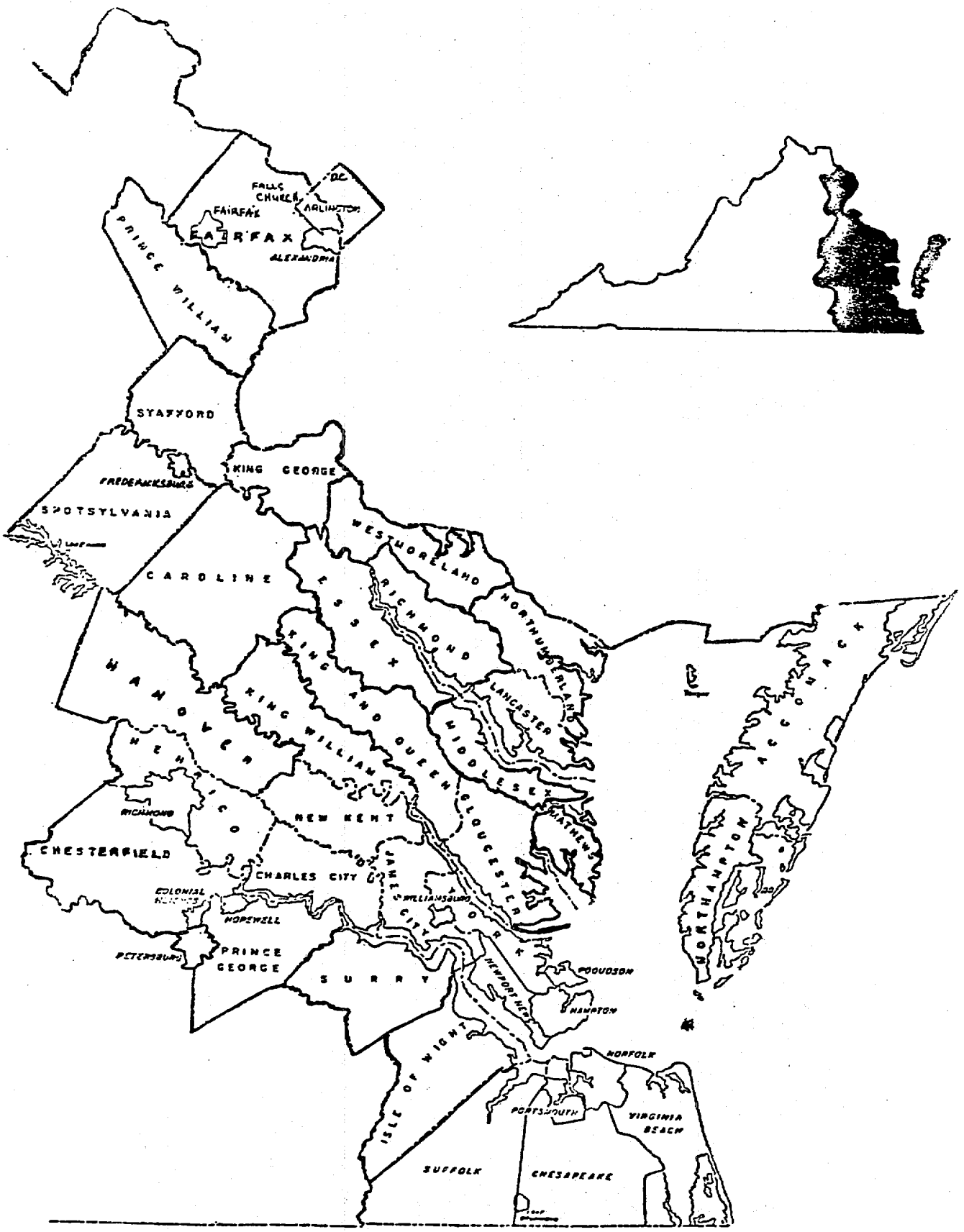
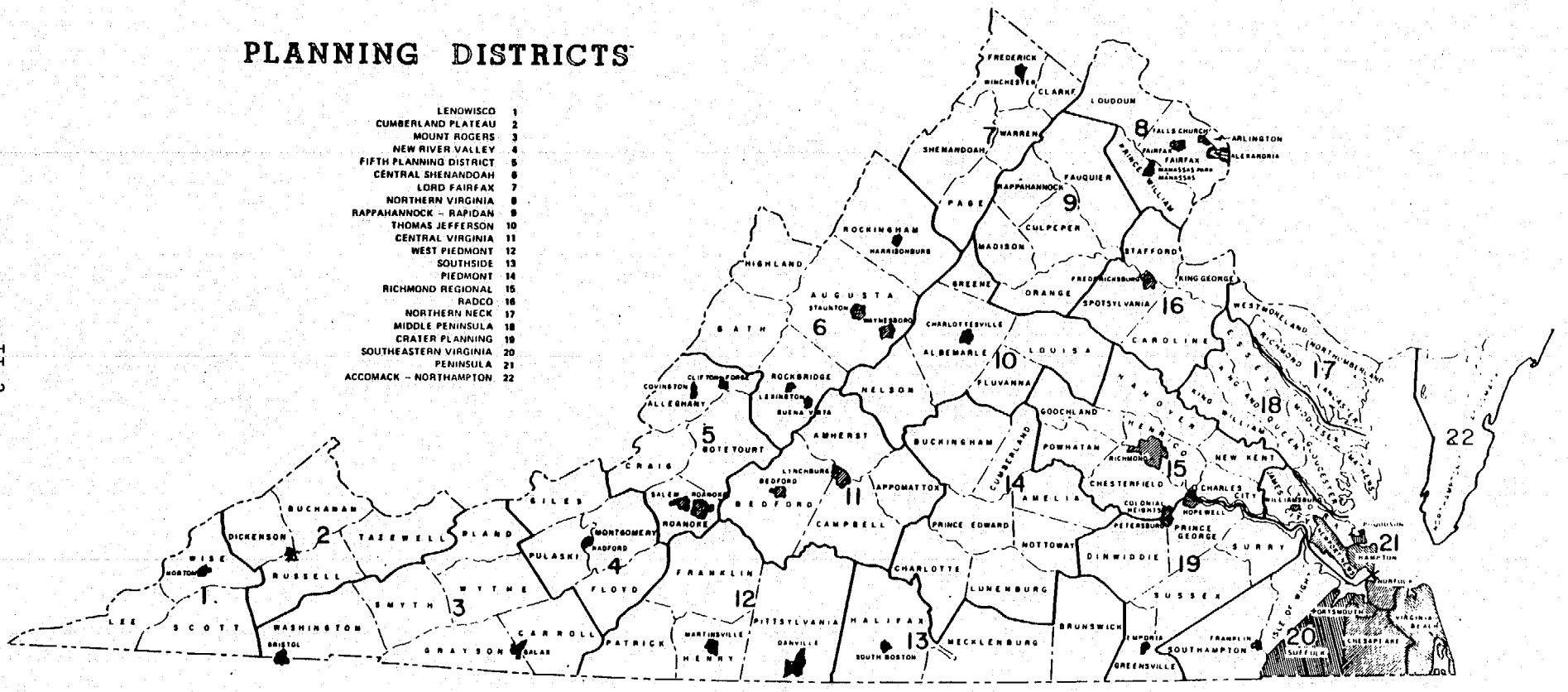


FIGURE II-2


PLANNING DISTRICTS
LENOWISCO 1
CUMBERLAND PLATEAU 2
MOUNT ROGERS 3
NEW RIVER VALLEY 4
FIFTH PLANNING DISTRICT 5
CENTRAL SHENANDOAH 6
LORD FAIRFAX 7
NORTHERN VIRGINIA 8
RAPPAHANNOCK - RAPIDAN 9
THOMAS JEFFERSON 10
CENTRAL VIRGINIA 11
WEST PIEDMONT 12
SOUTHSIDE 13
PIEDMONT 14
RICHMOND REGIONAL 15
RADCO 16
NORTHERN NECK 17
MIDDLE PENINSULA 18
CRATER PLANNING 19
SOUTHEASTERN VIRGINIA 20
PENINSULA 21
ACCOMACK - NORTHAMPTON 22
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

C. BOUNDARIES AT THE EDGES

The mean low water (MLW) line marks the seaward limit of private property ownership in Virginia. However, pursuant to the Virginia Wetlands Act of 1972 as amended ownership of the shoreline does not entitle one to make alterations along the shoreline, unless these alterations are statutorily allowed, or unless one obtains a permit through the Marine Resources Commission. The upper limits of vegetated wetlands have been established in Virginia by the Virginia Wetlands Act of 1972 which, in addition to a biological definition, establishes an elevation equal to 1.5 times the mean tide range measured above mean low water at a site. The mean tide range is the difference in elevation between mean lower water and mean high water. In 1982 nonvegetated wetlands were included within the regulatory program afforded by the Wetlands Act. Nonvegetated wetlands were defined to include all lands between mean low water and mean high water not included in the definition of vegetated wetlands. Thus, though private individuals may own intertidal shorelines, they may not make significant alterations in them without a permit.

D. BOUNDARIES OF FEDERAL LANDS

Pursuant to §304(1) of the CZMA, excluded from the coastal area are those lands the use of which is by law subject solely to the discretion of or which is held in trust by the federal government, its officers or agents.

Sizable land areas are therefore excluded from Virginia's coastal area and management by virtue of federal ownership and/or jurisdiction. Indeed, one of the largest single users of land in Tidewater Virginia is the federal government. Maps and charts depicting federal lands have been developed with the cooperation of federal agencies which hold land in Tidewater. From these individual agency maps, Table II-1 and II-2 indicating total federal holdings have been compiled. A catalog of all federal holdings is found in Appendix II-1.

E. INTERSTATE BOUNDARIES

Interstate (lateral) boundaries determining the extent of adjacent state sovereignty in coastal waters have been established by compact and approved by Congress. They are defined in the Code of Virginia as follows:

"§7.1-4.1. Boundary line between Virginia and North Carolina eastward from low-water mark of Atlantic Ocean. --The Boundary line between Virginia and North Carolina eastward from the low-water mark of the Atlantic Ocean shall be and hereby is a line beginning at the intersection with the low-water mark of the Atlantic Ocean and the existing North Carolina-Virginia boundary line; thence due east to the seaward jurisdictional limit of Virginia; such boundary line to be extended on the true ninety degree bearing as far as a need for further delimitation may arise;

§7.1-7.1. Boundary line between Virginia and Maryland eastward from Assateague Island. --The boundary line between Maryland and Virginia eastward from Assateague Island shall be, and hereby is, established and described as follows: Beginning at a point on the Maryland-Virginia line located on Assateague Island designated as station "Pope Island Life Saving Station (1907)" defined by latitude 38•01' 36.93" and longitude 75•14'47.105"; thence due east (true) to the Maryland-Virginia jurisdictional limit."

Thus, Maryland owns most of the Potomac River below mean low water, except for numerous embayments on the Virginia side of the river.

Initial contacts have been made with Maryland and North Carolina on the questions of interstate boundaries so that any issue relating to compatible management of common resources and incompatible uses occurring at the juncture of state boundaries may be identified and resolved.

TABLE II-1

Federal Land Acreage in Virginia by Planning District

District	Total Area	Federal Acres	Percent
8	508,278[1]	74,190.32	14.60
15	1,015,552[2]	5,238.22	.50
16	899,392	120,595.56	13.40
17	477,120	406.52	.08
18	827,584	956.31	.11
19	373,709[3]	8,378.08	2.20
20	898,880[4]	91,093.66	10.10
21	292,361	41,673.64	14.70
22	445,504	19,918.07	4.50
	5,738,380	362,456.38	

[1]Does not include Loudoun County
[2]Does not include Goochland and Powhatan
[3]Does not include Dinwiddie, Greenville, and Sussex Counties and Emporia City
[4]Does not include Franklin City and Southampton County

TABLE II-2

Federal Land in Tidewater Virginia by Federal Agency[1]

Agency	Acres
U. S. Army	113,685.96
U. S. Navy	108,418.43
Department of Interior (Fish & Wildlife Service)	79,090.00
Department of Interior (National Park Service)	36,861.17
Department of Interior (Bureau of Land Management)	1,332.05
Federal Aviation Administration	11,875.06
U. S. Air Force	3,583.00
NASA	6,772.00
Coast Guard	680.36
Department of Commerce	6.90
Federal Highway Administration	4.20
TOTAL FEDERAL ACREAGE	362,309.13
TOTAL ACRES IN TIDEWATER VIRGINIA	5,738,380.00
PERCENTAGE FEDERALLY OWNED	6.3%

[1]Includes fee simple and land where federal government has lesser interests such as leases, permits, and licenses.

CHAPTER III

CORE REGULATORY PROGRAM:

Uses and Activities Subject to Management and Means of Exerting State Control

A. Fisheries Management

1. Fisheries Management Plans
2. Commercial Harvesting
3. Marine Recreational Fishing
4. Federal, Interstate Coordination
5. Research
6. Artificial Reefs
7. Tidal Freshwater Recreational Fishing

B. Subaqueous Lands Management

C. Wetlands Management

1. Definition
2. Permit Program
3. Guidelines and Technical Assistance

D. Dunes Management

E. Nonpoint Source Pollution Control

F. Point Source Water Pollution Control

G. Shoreline Sanitation

H. Air Pollution Control

CHAPTER III

CORE REGULATORY PROGRAM:

Uses and Activities Subject to Management and Means of Exerting State Control

The heart of Virginia's Coastal Resources Management Program is a core of eight regulatory programs through which critical land and water uses and activities are subject to the control of the state. This chapter lists, by geographic area, those uses and activities and describes the legal and institutional means (programs and authorities) by which they are controlled. The Attorney General's Office of Virginia has reviewed these policies and has certified their enforceability (see Appendix III-1). All state statutes and all agency regulations adopted pursuant to them and pursuant to applicable federal laws which apply to the operation of these core regulatory programs are incorporated into Virginia's coastal management program. The texts of key statutes and regulations are in the Appendices to Chapter III and the FEIS Addendum.

The Federal CZM Act (Section 305(e)) requires that a state program provide for any one of a combination of the following general techniques for control of land and water uses within its coastal area.

Technique A: State establishment of criteria and standards for local implementation

Technique B: Direct state land and water use planning and regulation.

Technique C: State review on a case-by-case basis of actions affecting land and water uses subject to the Program

In its coastal resource management program the Commonwealth relies on a mix of Techniques A and B. The section on each core regulatory program in this chapter includes a description of the management technique used in that program.

State law provides for the strict control of virtually all uses and activities which involve the taking of living resources from or encroachment into the water portion of Virginia's coastal area; for complete control of Virginia's entire tidal shoreline through strict local regulation, with state overview, of all encroachments onto tidal wetlands and coastal dunes; for the regulation of selected significant uses and activities in upland areas along Virginia's shoreline and for the control of emissions affecting air quality.

A. <u>FISHERIES MANAGEMENT</u> - Regulatory Authority Over Commercial and Recreational Fishing - Marine Resources Commission (MRC); Commission of Game and Inland Fisheries (CGIF).

Policy: "It shall be the goal of fisheries management within the Commonwealth of Virginia to conserve and enhance finfish and shellfish resources, and to preserve and promote both commercial and recreational fisheries, and, thereby, to maximize food production and recreational opportunities. The marine resources of the Commonwealth shall be managed for their maximum benefit and long-term use by present and future generations. The fisnery management plans prepared and implemented according to law shall also have as a goal the preservation of the Commonwealth's exclusive right to manage the fisheries within its territorial jurisdiction.

Fishery management shall be based upon the best scientific, economic, biological and sociological information available, shall be responsive to the needs of interested and affected citizens, shall promote efficiency in the utilization of the resources, and shall draw upon all available capabilities in carrying out research, administration, management, and enforcement." (§28.1-23.1).

The Governor and the General Assembly have oversight responsibilities for the appointed bodies that are the Marine Resources Commission and the Commission of Game and Inland Fisheries. The Secretary of Natural Resources has direct oversight responsibilities for agency functions of both commissions. Both agencies use technique "B" to carry out their regulatory responsibilities. For details of these management relationships see the following program information as well as Chapter IV, Organizational Structure.

Conservation and promotion of marine resources is accomplished through the authority of the Virginia Marine Resources Commission (MRC) to promulgate and enforce regulations and establish licenses. By statute, "the MRC has the authority to make such regulations as it deems necessary to promote the seafood and marine resources of the State, including regulations as to the taking of seafood, when regulations do not conflict with the provisions of statutory law" (§28.1-23. All statutes concerning saltwater fisheries management are contained in Laws of Virginia Relating to the Marine Resources of the Commonwealth and can be found in Appendix III-2A) and the FEIS Addendum. Jurisdiction of the MRC extends inland to the fall-line of all streams and rivers and seaward to the three mile territorial limit. Pursuant to this authority the Commission has issued numerous Regulations and Orders.

Statutes are currently in effect to conserve certain species and control a wide range of commercial fishing devices. Crabs, oysters, striped bass, cobia, fluke and red drum are addressed specifically in regards to harvestable length. Fixed fishing devices and oyster, clamming and crab harvesting equipment are regulated by statutes for resource conservation and to reduce conflicts. Examples of programs and activities pertaining to fisheries management in Virginia are explained below.

1. Fisheries Management Plans

As a result of the General Assembly's passage of both §28.1-23.1 and the Chesapeake Bay Initiatives in 1984, fisheries management plans (FMPs) for the oyster and the blue crab will be developed in 1984-86. FMPs will be developed for numerous other species over the coming years, and a significant effort has already been expended in the development of background information for these FMPs.

2. Commercial Harvesting

"Commercial harvesting" means all operations involved in using, setting, taking, catching or operating apparatus employed in killing, taking or catching fish and shellfish for the purpose of making a profit. Virginia is actively involved in regulating the commercial harvesting of fish and shellfish.

The Commission has explicit authority in the areas of shellfish management because shellfish require a high degree of management to prevent their depletion. Seasons, gear used, areas harvested and catch limits are basic vehicles used in management. The oyster tax system and State monies provide for oyster shell and seed planting of public grounds defined in the Baylor Study which currently comprise approximately 240,000 acres.

A surveying grid system has been established state wide for the accurate survey and resurvey of public and private oyster ground. Private leaseholds currently comprise approximately 100,000 acres and account for roughly 45 percent of total production of market oysters and 17 percent of seed oyster production.

The MRC has improved its management of shellfish by expanding its ability to monitor shellfish populations. As of February, 1979, the MRC became responsible for the collection of all inshore fishery statistics in agreement and under contract with the National Marine Fisheries Service. These data are of high priority as decision-making tools.

The Commission enforces the laws and regulations associated with the transplanting of shellfish from condemned (polluted) grounds to approved (clean) waters for the natural process of depuration.

3. Marine Recreational Fishing

For particular fish species in need of protection, MRC has issued regulations restricting the recreational taking of certain marine fish. A saltwater sportfishing license is not now required in Virginia.

4. Federal, Interstate Coordination

The Commissioner of the MRC is responsible for coordination between interstate, regional and federal fisheries programs and Virginia fisheries management. He is a voting member of the Potomac River Fisneries Commission, Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fisheries Management Council (MAFMC).

5. Research

The Virginia Institute of Marine Science (VIMS) may conduct independent research to be used in support of the management responsibilities of MRC, the SWCB, ASMFC and MAFMC. Duties of VIMS include studies and investigations of the commercial and sport-fishing industries and problems of other sections of the maritime economy. VIMS advises MRC as to the means by which fishery resources may be conserved, developed and replenished. VIMS is directed to conduct studies and investigations of marine pollution in cooperation with the State Water Control Board and the Department of Health, making results and recommendations available to appropriate agencies, including MRC.

6. Artificial Reefs

The Artificial Reef Program provides for the enhancement of recreational fishing. A tire baling operation continues to supply reef material to the Tower Reef site located in the Atlantic Ocean off Cape Henry. "Artificial reef" means any structure or materials placed in the waters or on the subaqueous land of the State for the purpose of improving the recreational fishery.

7. Tidal Freshwater Recreational Fishing

The Commission of Game and Inland Fisheries (CGIF) is vested with jurisdiction over fish located within tidal brackish and freshwater creeks (§29-13 and §29-125, see Appendix III-2), and with enforcement powers of prosecution (§29-14). In addition, the CGIF has the authority to prescribe regulations concerning the taking of those fish (§29-148 to 29-153). All regulations concerning tidal freshwater recreational fishing are contained in Regulations of the Commission of Game and Inland Fisheries Commonwealth of Virginia. Some of the regulations which restrict the use of these freshwater fish include: fishing seasons (R 23-1); creel limits (R 23-2); size limits (R 23-3); sale (R 23-4); and importation (R 23-6) (see Appendix III-6).

Fish stocks are evaluated by the fishery biologists of the Commission to assure sufficient and desired reproductive potential. The Commission then patrols these brackish and freshwater creeks on a routine basis, to insure compliance with the regulations and checking for properly licensed fishermen. The Commission, in conjunction with other state agencies, monitors all projects on all fresh waters to ensure that they are not detrimental to migratory stocks of fish. In addition, the Commission has a commitment to opening Virginia's tidal rivers to the free passage of anadromous fish to their ancestral spawning grounds in the upper reaches of these rivers.

B. SUBAQUEOUS LANDS MANAGEMENT - Regulatory Authority Over All Encroachments In, On or Over State-Owned Subaqueous Lands - Marine Resources Commission (MRC).

> **Policy:** "In granting or denying any permit for the use of state-owned bottomlands, the Commission shall be guided in its deliberations by the provisions of Section 1 of Article XI of the Constitution of Virginia, and shall consider, among other things, the effect of the proposed project upon other reasonable and permissible uses of state waters and state-owned bottomlands, its effect upon the marine and fisheries resources of the Commonwealth, its effect upon the wetlands of the Commonwealth, except when its effect upon said wetlands has been or will be determined under the provisions of Chapter 2.1 (§62.1-13.1 et seq.) of this title, and its effect upon adjacent or nearby properties, its anticipated public and private benefits, and, in addition thereto, the Commission shall give due consideration to standards of water quality as established by the State Water Control Board." (§62.1-3).

The Commission uses technique "B" to carry out its regulatory responsibilities in this area. For details of this management relationship see the following program information as well as Chapter IV, Organizational Structure.

Subaqueous lands include the beds of the bays, oceans, rivers, streams and creeks. They are the property of the Commonwealth unless conveyed by special grant or compact.* Uses of public subaqueous lands are subject to the provisions of Virginia's CRMP.

*There are no official estimates of the amount of these privately owned subaqueous lands, but from MRC's regulatory viewpoint, they are insignificant. Regulation of these privately owned subaqueous lands is essentially not an issue in Virginia.

All statutes concerning encroachments onto state-owned subaqueous lands are contained in Laws of Virginia Relating to the Marine Resources of the Commonwealth of Virginia. Section 62.1-3 of the Virginia Code (see Appendix III-2) states that it shall be unlawful and constitute a misdemeanor for anyone to build, dump or otherwise trespass upon or over or encroach upon or take or use any materials from the beds of the bays and ocean, rivers, streams and creeks which are the property of the Commonwealth unless such act is pursuant to statutory authority or a permit by the Marine Resources Commission.

In granting or denying any permit for the use of State-owned subaqueous land, the Marine Resources Commission is guided in its deliberations by the provisions of Section I of Article XI of the Constitution of Virginia and considers, among other things, the effect of the proposed project upon: other reasonable and permissible uses of State waters and State-owned bottom land; marine and fisheries resources; wetlands; adjacent or nearby properties; anticipated public and private benefits; and state water quality standards.

To clarify the normal conditions attached to projects affecting the subaqueous land of Virginia, the Marine Resources Commission adopted the "Subaqueous Guidelines: Guidelines for the Permitting of Activities which Encroach in, on or over the Subaqueous Lands of the Commonwealth of Virginia", and can be found in Appendix III-3. This statement confirms and standardizes the policies and procedures of the MRC for the permitting of activities affecting subaqueous land, guides the MRC staff in performance of their duties, and informs the general public of the usual terms and conditions under which subaqueous activities are permitted in State waters.

Activities specifically regulated by the subaqueous guidelines include: dredging; filling and dredge material placement; the placement of mooring buoys; the placement of overhead and submarine crossings; and the construction of piers, docks and ramps, bulkheads, jetties, groins, and marinas and other places where boats are moored.

"Marina" means any installation operating under public or private ownership which provides dockage or moorage for fifteen (15) or more boats (exclusive of paddle or rowboats) and provides through sale, rental or fee basis any equipment, supply, or service for the convenience of the public or their lease, renters or users of their facilities. "Other places where boats are moored" means any installation operating under public or private ownership which provides dockage, moorage mooring for boats either on a free, rental or fee basis for the convenience of the public. Facilities classified as "marina's" by the Department of Health (DOH) are required to meet more stringent sanitary facility and pump out facility requirements than are "other places where boats are moored."

Other regulated subaqueous activities include the placement of artificial reefs for the purpose of improving the recreational fishery and offshore mining for minerals from subaqueous lands (see Appendix III-2, §62.1-3 and 62.1-4 of the Virginia Code).

C. WETLANDS MANAGEMENT - Regulatory Authority Over All Encroachments Into Vegetated and Non-Vegetated Wetlands - Marine Resources Commission (MRC).

Policy: "It is declared to be the public policy of this Commonwealth to preserve the wetlands and to prevent their despoliation and destruction and to accommodate necessary economic development in a manner consistent with wetlands preservation" (§62.1-13.1).

The Wetlands Act (§62.1-13.1 through 62.1-13.20) was enacted in 1972 and can be found in Laws of Virginia Relating to the Marine Resources of the Commonwealth. This legislation establishes a local-state management program which sets forth the clear declaration of public policy above.

The Marine Resources Commission uses technique "B" to carry out its regulatory responsibilities when local wetlands boards have not been established. Where established according to state law, the local wetlands boards use technique "A" to carry out their regulatory responsibilities. For details of these management relationsnips see the following program information as well as Chapter IV, Organizational Structure.

1. Definition

Wetlands are defined to include both vegetated and non-vegetated wetlands (§62.1-13.2, Appendix III-2).

2. Permit Program

The Wetlands Act establishes a permit program and authorizes the creation of local Wetlands Boards to administer it. Any county, city or town that enacts a wetlands zoning ordinance pursuant to Chapter 2.1 of the Code of Virginia, which pertains to wetlands, may create a wetlands board. The local wetlands board must consist of five or seven residents of the county, city or town and are appointed by the governing body of the county, city or town. Terms of office are for five (5) years. The local wetlands board (if one has been appointed)* receives the permit application, gives public notice, holds a public hearing and makes a decision which is reviewed by the MRC and can be appealed to MRC.

If the permit applicant indicates that the proposed project involves wetlands and no local wetlands board exists in the county,

* Thirty local governments have established Wetlands Boards, which cover approximately 94% of non-state-owned wetlands.

city or town of the project, a public hearing to consider effects on wetlands is held in the locality with a member of the MRC staff acting as hearing officer after notice of that hearing has been advertised at least once a week for two weeks in a local newspaper. A written synopsis of the wetlands public hearing is reviewed by the MRC and a decision to either approve, modify or deny is rendered.

To ensure that local decisions adequately achieve the policies and standards of the Wetlands Act and follow procedures specified in law, the Commissioner of Marine Resources reviews all decisions of local boards and notifies the Marine Resources Commission of any decision which, in his opinion, the Commission should review. The Commission must review local wetlands boards' decisions when an appeal is made by the permit applicant or the locality where the wetlands are located, or when twenty-five or more freeholders of property within the locality petition the appeal or when the commissioner requests the review.

The Commission has the authority to modify, amend or reverse local decisions when: the local decision will not achieve the policies of the Wetlands Act or reasonably accommodate the wetlands guidelines; or the rights of the appellant or the applicant have been prejudiced because the local decision is in violation of constitutional provisions, in excess of statutory authority, affected by error of law, unsupported by evidence or is arbitrary, capricious or an abuse of discretion. The Commission's decision may be appealed to the courts.

3. Guidelines and Technical Assistance

Tidal Marsh Inventories which identify and map vegetated wetlands by political jurisdiction, were conducted by the Virginia Institute of Marine Science (VIMS). This is a continuing responsibility of VIMS. These inventories, assist State and local personnel in wetlands management. A study of non-vegetated tidal wetlands explaining the value of these areas to the natural environment was also completed by VIMS.

In order to assist local wetlands boards in their decision-making, the Marine Resources Commission with the assistance of the Virginia Institute of Marine Science has promulgated Wetlands Guidelines, which can be found in Appendix III-4. These guidelines list wetlands by type and value and provide criteria for evaluating alteration of wetlands.

Persons who desire to use or develop any wetlands other than for the exempted uses listed in Appendix III-2, §62.1-13.5 of the Virginia Code must obtain a permit from the local wetlands board or the Virginia Marine Resources Commission.

The SWCB Wetlands Policy (see Appendix III-7) guides that agency when it issues NPDES discharge permits and approves the construction of wastewater treatment plants.

D. DUNES MANAGEMENT - Regulatory Authority Over All Encroachments Into Coastal Primary Sand Dunes - Marine Resources Commission (MRC).

Policy: "It is declared to be the public policy of the Commonwealth whenever reasonably necessary to preserve and protect coastal primary sand dunes and to prevent their despoliation and destruction and whenever practical to accommodate necessary economic development in a manner consistent with the protection of such features." (§62.1-13.21)

The Marine Resources Commission uses technique "B" to carry out its regulatory responsibilities when local wetlands boards have not been established. Where established according to state law, the local wetlands boards use technique "A" to carry out their regulatory responsibilities. For details of these management relationships see the following program information as well as Chapter IV, Organizational Structure.

The Coastal Primary Sand Dune Protection Act (Virginia Code §62.1-13.21 through 62.1-13.28) incorporates a permitting process concerning alterations of dunes into the established permitting system of the Wetlands Boards. All statutes concerning dunes management are contained in Laws of Virginia Relating to the Marine Resources of the Commonwealth. The Act provides localities with the option of administering the Act's policies and provisions. Local Wetlands Boards are given primary authority and responsibility to review projects in sand dunes, and to grant or deny permission to alter sand dunes in accordance with the policies of the Act. The Marine Resources Commission (MRC) retains oversight of the program, and is required to administer the permitting program in localities that choose not to administer the Act.

Coastal primary sand dunes are defined in §62.1-13.22 (see Appendix III-2).

Since it is the more permanent dunes that the state is protecting, as opposed to temporary beach features, the requirement that vegetation be growing on at least part of the dune was included in the law.

Section 62.1-13.23 requires that no permanent alteration of, or construction upon, any coastal primary sand dune shall take place which would:

(i) impair the natural functions of the dune.
(ii) physically alter the contour of the dune.
(iii) or destroy the vegetation of the dune.

Exceptions to this can only be permitted by the MRC when clearly necessary and consistent with the public interest, considering all material factors. Only a limited number of uses of these dunes are exempted from the permitting process (§62.1-13.25(3)).

In order to assist local wetlands boards in their decision-making, the MRC with the assistance of the Virginia Institute of Marine Science has promulgated "Coastal Primary Sand Dune Guidelines" (pursuant to Virginia Code §62.1-13.24 concerning the disturbance of sand dunes). These guidelines set forth the biological and physical consequences of the uses of these dunes, and provide criteria for evaluating alterations of sand dunes, and are in Appendix III-5.

E. NONPOINT SOURCE POLLUTION CONTROL - Regulatory Authority Over Erosion and Sedimentation From Non-Agricultural Upland Land Disturbing Activities - Department of Conservation and Historic Resources (DCHR).

Policy: "The General Assembly has determined that the lands and waters comprising the watersheds of the State are great natural resources; that as a result of erosion of lands and sediment deposition in waters within the watersheds of the State, said waters are being polluted and despoiled to such a degree that fish, aquatic life, recreation and other uses of lands and waters are being adversely affected; that the rapid shift in land use from agricultural to nonagricultural uses has accelerated the processes of soil erosion and sedimentation; and further, it is necessary to establish and implement a statewide coordinated erosion and sediment control program to conserve and to protect the land, water, air and other natural resources of the Commonwealth." (§21-89.2).

The Governor and the General Assembly have oversight responsibilities for the Board of Conservation and Historic Resources. The Secretary of Natural Resources has oversight responsibility for the Department of Conservation and Historic Resources. The Department has established minimum standards, guidelines and criteria for the effective control of soil erosion, sediment deposition and non-agricultural runoff by local governments (Technique "A"). For details of this management relationship see the following program information as well as Chapter IV, Organizational Structure.

The 1973 Virginia Erosion and Sediment Control Law (see Appendix III-2 §21-89.1 et. seq. of the Virginia Code), as amended, was enacted to control the erosion of upland soil to prevent sedimentation, turbidity and pollutant problems in State waters. The Department of Conservation and Historic Resources has established minimum standards, guidelines and criteria for the effective control of soil erosion, sediment deposition and non-agricultural runoff pursuant to §21-89.4. That section provides that these minimum standards, guidelines and criteria must be met in any control program. Section 21-89.5 provides that either the local soil and water conservation district of the local city, town or county must adopt an erosion and sediment control program which is consistent with the state program and guidelines. Local erosion and sediment control programs have in fact been adopted throughout the state. These local programs must follow the state guidelines.

Section 21-89.6 provides that no [illegible] disturbing activity until he has filed an erosion [illegible] trol plan which has been reviewed and approved by the local authority. The plan must be found to meet the conservation standards in the local program. These must conform with the state guidelines, or, under §21.89.12, could be more restrictive. Section 21-89.8 requires periodic inspections of land disturbing activities to ensure compliance with the approved plan. The Department can insure land disturbing activities are controlled in accord with the state program by applying under §21.89.11 to the circuit court to enjoin a violation or threatened violation under §21-89.6 or §21-89.8. The State Erosion and Sediment Control Program consists of the minimum standards, guidelines, and criteria for control of soil erosion which are set forth in the Virginia Erosion and Sediment Control Handbook which must be enforced by the local Erosion and Sediment Control Programs. The general criteria used in this program can be found in Appendix III-8.

All "land-disturbing activities" as defined by §21-89.3 are subject to the Erosion and Sediment Control Program.

F. POINT SOURCE WATER POLLUTION CONTROL - Regulatory Authority Over Existing, Planned or Potential Discharges to State Waters - State Water Control Board (SWCB).

Policy:

The State Water Control Board is charged with the implementation of Virginia's State Water Control Law. To enforce this law, the SWCB establishes water quality standards, issues waste discharge certificates, adopts regulations, and requires compliance.

> "It is...against public policy for an owner who does not have a certificate issued by the Board to (1) discharge into state waters inadequately treated sewage, industrial wastes, other wastes, or any noxious or deleterious substances, or (2) otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses"(62.1-44.5).

The Governor and the General Assembly have oversight responsibilities for the State Water Control Board. The Secretary of Natural Resources has oversight responsibility for the agency functions of the State Water Control Board. The Board uses technique "B" to carry out its regulatory responsibilities. For details of this management relationship see the following program information as well as Chapter IV, Organizational Structure.

1. NPDES Permits

The Board has the authority to issue regulations concerning water quality of the coastal zone as indicated in Virginia Code §62.1-44.15 (See Appendix III-2).

Pursuant to these powers, §44.15, it has promulgated Regulation No. 6 which develops Virginia's National Pollutant Discharge Elimination System (NPDES) Permit Program, (see Appendix III-9). EPA has accepted this Program as meeting its requirements, and Virginia now issues the NPDES permits. Thus the state has direct control over all discharges to waters, groundwaters and surface waters, in or affecting the coastal zone.

When NPDES permits are issued which have the potential to detrimentally affect wetlands or shellfish waters, the permits must address the conditions imposed in the Board's Wetlands Policy (see Appendix III-7), and the Policy for the Protection of Water Quality in Virginia's Shellfish-Growing Waters (see Appendix III-10).

All NPDES permits must meet either EPA guidelines, or Virginia's Water Quality Standards, whichever are more stringent. There are a number of Water Quality Standards which apply to waters of the coastal zone, and these can be found in State Water Control Board, Water Quality Standards, Commonwealth of Virginia (see Appendix III-11).

All NPDES systems and sewage treatment works are subject to joint supervision of the SWCB and Virginia Department of Health (DOH), as provided by the State Water Control Law. Current National Pollutant Discharge Elimination System (NPDES) procedures require a permit for essentially all sewage discharges to state waters. Application for the necessary permit is made concurrently to the SWCB and DOH, and both agencies are involved in the determination regarding approval. (§62.1-44.18 - §62.1-44.19).

Any facility which, upon construction or alteration has the potential to discharge or will, in fact, discharge industrial wastes must also receive an NPDES permit before construction or alteration may begin. The law specifies that such application will be made to the SWCB which must then process the application according to a statutorily mandated timetable. The same application procedure is used in situations where domestic sewage from the industrial establishment is treated and disposed of jointly with industrial wastes. A ruling approving or disapproving the application is made within a four-month period from the date the application is filed. (§62.1-44.16)

2. No-Discharge Certificates

To complement the NPDES permit program, which is primarily applied to point source discharges into State Waters, the State Water Control Board (SWCB) administers a no-discharge certificate program. This is keyed to activities that can be operated and maintained in a manner which reuses or recyles wastewater and which does not require point source discharges. Thus, anyone "who handles, stores, distributes, or produces" substances which would cause pollution should they find their way into state waters, must obtain

this certificate. For example, a no-discharge certificate may be required of a wood treatment facility. The wood treatment facility in this case would not be producing an effluent but there could be the potential for water pollution, either as runoff from the land, or as an overflow or rupture of a holding pond at the facility.

The SWCB inspects facilities that it believes may cause pollution problems, despite the lack of any discharge from the facility to state waters. If the SWCB believes there could be water pollution problems, then it can require the facility to submit plans to control these potential problems. Upon request of the SWCB, such parties are required to install facilities or adopt measures necessary to prevent the escape, flow, or discharge of the materials involved into state waters. If the measures taken are approved by the Board, it issues a certificate. This program significantly exceeds federal requirements in many areas. The SWCB derives its authority to implement this program from the Virginia State Code §62.1-44.16 and §62.1-44.17, and has issued Procedural Rule No. 2 explaining the requirements of the program (see Appendix III-12).

3. Enforcement

The SWCB has a variety of administrative and legal mechanisms to bring about compliance with the State Water Control Law and with permits. Initial contact regarding non-compliance is generally made by Regional Offices by telephone, visits, inspections, and letters.

These contacts are for the purpose of determining the causes of the violations, offering technical assistance, and impressing on the violator the need for corrective action. This is often all that is needed to resolve the problem. Should non-compliance be protracted, or should the violator be noncooperative, the Office of Enforcement contacts the violator. In addition to the contacts made by the Regional Offices, the following actions are followed as necessary to bring about compliance:

(1) Directives - The Executive Director can issue a Board Directive which, if violated, is enforceable by issuance of a Special Order.

(2) Consent Orders - If the violator and SWCB can agree on appropriate actions to attain compliance, a Consent Order is issued. This is the same as a Special Order, but is issued with the consent of the violator who waives his right to a hearing. Consent Orders are enforceable by injunction, and civil or criminal penalties.

(3) Special Orders - These are issued only after a hearing with at least 30 days notice, and are enforceable by injunction and civil or criminal penalties.

(4) Emergency Special Orders - Same as a Special Order, but can be issued immediately without a hearing if gross pollution is occurring which threatens the public health, safety or welfare, the health of animals or aquatic life, a public water supply, or reasonable uses of State waters. A hearing must be held after the issuance of such orders, and they are enforceable by Injunctive Relief.

(5) Injunctive Relief - The Board may go to court to obtain an injunction or mandamus to require compliance with the several types of Special Orders.

(6) Penalties - Both civil penalties and criminal fines are available as remedies for violations of permits, the Law, and Special Orders. The maximum civil penalty that can be assessed by a court is $10,000 per day of violation. The maximum fine for a criminal act that can be assessed by a court is $25,000 per day of violation.

G. SHORELINE SANITATION - Regulatory Authority Over Shoreline Use of Septic or Other On-Site Domestic Waste Systems - Department of Health.

Policy: "The General Assembly finds that the protection, improvement and preservation of the public health and of the environment are essential to the general welfare of the citizens of the Commonwealth. For this reason, the State Board of Health and the State Health Commissioner, assisted by the State Department of Health, shall administer and provide a comprehensive program of...environmental health services, educate the citizenry in health and environmental matters...and abate hazards and nuisances to the health and to the environment, both emergency and otherwise, thereby improving the quality of life in the Commonwealth." (§32.1-2).

"The regulations of the Board [of Health] shall govern the collection, conveyance, transportation, treatment and disposal of sewage. Such regulations shall be designed to protect the public health and promote the public welfare" (§32.1-164).

The Governor and the General Assembly have oversight responsibilities for the State Board of Health. While the Secretary of Human Resources has oversight responsibility for the Department of Health, the Secretary of Natural Resources has oversight responsibility for the coastal resources management program which includes agencies outside of Natural Resources. The Department of Health works with local governments using a combination of techniques "A" and "B" to carry out shared regulatory responsibilities. For details of this management relationship see the following program information as well as Chapter IV, Organizational Stucture.

The Virginia State Board of Health has supervision and control over the safe and sanitary collection and disposal of sewage. The regulation of sewage, as it may affect the public health, is primarily the responsibility of the Board of Health, though it has joint responsibility with the State Water Control Board concerning discharges to State Waters (§32.1-164). The Board of Health is empowered through Virginia Code §32.1-165 to regulate the installation of septic tanks, (see Appendix III-2). In addition the Board sets standards concerning soil types suitable for septic tanks and specifies minimum distances from streams, rivers and other waters, and these criteria are contained in Sewage Handling and Disposal Regulations. A summary of these regulations can be found in Appendix III-13.

Though the septic tank permitting program is run by the County Health Departments pursuant to §15.1-520, the local sanitarians in these County Health Departments are state employees. These County Health Departments receive oversight from the Directors of the local County Health Departments, and these Directors each are responsible for a region of the State that includes a number of counties. In addition, there are central office staff in Richmond that work with the local sanitarians. Thus the entire system is a State-County coordinated effort, and does have state enforcement authority.

Before any onsite sewage disposal facility can be installed, a permit must be first obtained from the County Health Department stating that the location is suitable for onsite disposal. Plans for the sewage disposal facilities must then be submitted to the County Health Department for approval. Once installed, but before being covered up with dirt, the sewage disposal facility must be inspected and approved by the local sanitarian.

H. AIR POLLUTION CONTROL - Regulatory Authority Over Emissions Affecting the Quality of the Air.

Policy:

> It is declared to be the public policy of the Commonwealth to achieve and maintain such levels of air quality as will protect human health, welfare and safety and to the greatest degree practicable prevent injury to plant and animal life and property, will foster the comfort and convenience of its people and their enjoyment of life and property, and will promote the economic and social development of the Commonwealth and facilitate enjoyment of its attractions (§10.17.10)

The Governor and the General Assembly exercise oversight responsibility for the State Air Pollution Control Board. The Secretary of Natural Resources has oversight responsibility for the agency functions of the Board staff.

The Board has the authority to issue regulations covering air quality throughout Virginia as indicated in the Virginia Code §10-17.18 (See Appendix III-2).

Air quality regulations are adopted to implement the policy set forth in the Virginia Air Pollution Control Law and to fulfill the Commonwealth's responsibilities under the Federal Clean Air Act to provide a legally enforceable State Implementation Plan for the attainment and maintenance of the National Ambient Air Quality Standards. All of the agency's regulations are published in one basic book called the Regulations for the Control and Abatement of Air Pollution (See Appendix III-14). The regulations list the various types of sources of air pollutants and require that "No owner or other person shall begin actual construction, reconstruction or modification of any of (those) types of sources without first obtaining from the Board a permit to construct and operate or to modify and operate such source."

CHAPTER IV

ORGANIZATIONAL STRUCTURE

A. Authorities

B. Administration of the Individual Core Regulatory Programs

C. Administration of the VCRMP

1. General Program Management
2. Monitoring VCRMP Elements

D. Related Coordination and Oversight

1. Chesapeake Bay Commission
2. The Chesapeake Bay Initiatives
3. The Chesapeake Executive Council
4. The Virginia River Basin Committees
5. Biennial Coastal Resources Management Review and Evaluation Process

CHAPTER IV

ORGANIZATIONAL STRUCTURE

A. AUTHORITIES

The ultimate responsibility for the coordination and oversight of Virginia's coastal resources management activities rests with the Governor and will be exercised by the Secretary of Natural Resources in conjunction with other affected Secretaries.

Virginia Code §2.1-39.1 authorizes the Governor to "designate and empower any secretary...to perform... any function which is vested in the Governor by law...." Executive Order Twelve (June 30, 1978), delegates to the Governor's Cabinet Secretaries certain management responsibilities and authorities. These authorities, listed below, provide the Secretary of Natural Resources* with the capability to review and evaluate the Commonwealth's numerous CRM activities:

1) To designate policy priorities and guidelines to effect comprehensive, long-range and coordinated planning and policy formulation involving more than a single agency or for the commerce and resources function;

2) To direct the formulation of a comprehensive program budget encompassing the programs and activities, for the commerce and resources function;

3) To direct the preparation of alternative policies, plans, and budgets for commerce and resources;

4) To resolve administrative, jurisdictional, policy, program, or operational conflicts among any of the assigned agencies or officers;

5) To hold assigned agency head(s) accountable for the administrative, fiscal, and program performance of such agency....

Assisting the Secretary of Natural Resources in carrying out these responsibilities with respect to CRM is the Council on the Environment and its staff. Virginia Code §10-186 clearly mandates and authorizes the involvement of the Council in this area:

"...Advise the Governor and General Assembly...on matters relating to environmental quality and the effectiveness of actions and programs designed to enhance that quality; and recommend...measures it believes are necessary to enhance the quality of the State's environment...."

*Effective July 1, 1986 the position of Secretary of Commerce and Resources is replaced by a Secretary of Economic Development and a Secretary of Natural Resources.

The Executive Order created to support the VCRMP binds all state coastal resource management activities into a coordinated effort and requires that those activities be consistent with the VCRMP.

Virginia will use a mix of "Technique A" and "Technique B" in its control over land and water uses subject to management under the Core Regulatory Programs. Control Technique A consists of state establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance. Examples of the uses of Technique A in Virginia are the Wetlands Management and the Dunes Management Programs. Control Technique B consists of direct state control of land and water uses subject to the Core Regulatory Program on the basis of direct state authority. Examples of the uses of Technique B in Virginia are the Fisheries Management and the Water Pollution Control Programs. Virginia's Shoreline Sanitation Program is a mix of both Technique A and B, with both local and state implementation of state guidelines and subject to state control.

B. ADMINISTRATION OF THE INDIVIDUAL CORE REGULATORY PROGRAMS

The central feature of Virginia's Coastal Resources Management Program is a core of eight existing regulatory programs which ensure that critical land and water uses are subject to regulation by the Commonwealth. The core programs include:

- Fisheries Management, administered by the Marine Resources Commission and the Commission of Game and Inland Fisheries;
- Subaqueous Lands Management, administered by the Marine Resources Commission;
- Wetlands Management, administered by the Marine Resources Commission;
- Dunes Management, administered by the Marine Resources Commission;
- Nonpoint Source Pollution Control, administered by the Department of Conservation and Historic Resources;
- Point Source Pollution Control, administered by the Virginia Water Control Board;
- Shoreline Sanitation, administered by the Department of Health; and
- Air Pollution Control, administered by the Air Pollution Control Board.

The Virginia Coastal Resources Management Program takes a networking approach, and the eight core regulatory programs listed above constitute its primary base as a management program. Each of the programs is administered by a state agency that is associated with a citizen board or commission, and each of those citizen bodies carries out regulatory functions related to coastal resources management.

The roles of the regulatory boards and commissions and the relationships between each of them and its respective agency are well established in state laws, regulations and administrative procedures as well as case law. While the regulatory agencies provide detailed technical information and recommendations to their citizen boards and commissions, it is those citizen bodies that are charged with making the primary administrative decisions that shape Virginia's system of environmental and resource management. Day to day program administration and enforcement of each of the eight core regulatory programs, of course, is the responsibility of the agencies.

Virginia has identified numerous activities, now performed by over 20 different agencies, which contribute in varying degrees to the achievement of CRM goals. Included in these are the eight core regulatory programs. Almost all of these activities were individually established in response to particular problems and needs and would be carried out whether they are called CRM activities or not. These activities will continue to be the responsibility of the respective individual agencies.

Federal regulations (15 CFR 923.57) require coastal management agencies "...before implementing any management program decision which would conflict with any local zoning ordinance, decision or other action, to send notice of such management program decision to any local government whose zoning authority is affected thereby." There are two classes of management decisions that might require such a notice and each has its own mechanism for dealing with local governments.

- Any change in state regulatory policy that is being proposed formally by a state agency must follow the requirements of the state's Administrative Process Act which calls for notice in The Virginia Register of Regulations.

- If the management policy decision involves the acquisition of property for public use, the state agency, according to the state Planning and Budgeting System Manual (chapt. 3, vol. 3, pp. 111), must determine whether the acquisition is acceptable to the local government.

The Virginia Coastal Resources Management Program is designed to make use of the existing state management system of citizen regulatory bodies working with state agencies. The networking approach of the VCRMP incorporates eight of the programs in that system while providing a mechanism for central monitoring and problem resolution as required by the federal Coastal Zone Management Act of any state participating in the federal program.

C. ADMINISTRATION OF THE VCRMP

1. General Program Management

Administrative functions associated with the CZMA will be the responsibility of the staff of the Council on the Environment operating as the state's lead agency for all matters relating to the CZM Act and the state's participation in the federal Coastal Zone Management Program. The Administrator of the Council on the Environment will be the Program Manager for the VCRMP.

Beyond those routine administrative functions there is a mechanism described below that will ensure that the various components of the VCRMP network will operate in a manner consistent with the policies of the state's coastal program.

2. Monitoring VCRMP Elements

Monitoring of State agency actions for consistency with the VCRMP will be the responsibility of the COE and will be accomplished through review of the following types of information:

- Notices of applications for state environmental permits.
- Periodic reports by state agencies on permit applications and issuances, etc.
- Agendas and minutes of agency meetings.
- Other state agency publications such as newsletters.
- News Media.
- Comments and questions by interested parties.

Consistency problems that might arise within the state government will be dealt with in the following manner:

- The Administrator of the Council on the Environment shall monitor all state actions which affect coastal resources. When, in the judgment of the Administrator, a state agency or regulatory board or commission is ready to act in a manner that appears to be inconsistent with the VCRMP or has established a pattern of actions that appears to be inconsistent with the Virginia Coastal Resources Management Program the Administrator shall discuss the situation with the agency head to determine if a consistency problem, in fact, does exist.

- If, after discussion, the agency head and the COE Administrator are in disagreement about the existence of a consistency problem the COE Administrator will inform the Secretary of the disagreement, and the Secretary will determine if a state consistency problem exists.

- If the agency head and the Administrator agree that a consistency problem does exist, the agency head will attempt its resolution. If the agency head cannot resolve the problem, the Administrator will advise the Secretary of Natural Resources that a state consistency problem exists.

- The Secretary will review the situation, determine how it might best be resolved, effect such resolution within the Secretariat of Natural Resources, or consult with other cabinet offices to resolve consistency problems with agencies not within that Secretariat.

- If unable to so resolve the problem, the Secretary of Natural Resources will report to the Governor with recommendations for any needed action. Any remedy to a consistency problem that might be considered at any level of state government either would have to be in accordance with existing state laws, regulations and administrative procedures or would require amendments to those laws, regulations and administrative procedures. The Governor shall have ultimate responsibility for resolving any consistency problem which cannot be resolved by the agency head or by the Secretary.

D. RELATED COORDINATION AND OVERSIGHT

The Commonwealth is involved in a wide range of other activities that all contribute to the coordination and oversight necessary to coastal resources management. The number of such activities is growing yearly and the most visible of these are grouped under the following headings: the Chesapeake Bay Commission, the Chesapeake Executive Council, the Virginia river basin committees, the Chesapeake Bay Initiatives, and the Biennial Coastal Resources Review and Evaluation Process. The Biennial Coastal Resources Review and Evaluation Process and the river basin committees are part of the VCRMP. The other activities are not but will contribute to the effectiveness of the VCRMP. Each of these is described briefly below.

1. The Chesapeake Bay Commission

The Chesapeake Bay Commission was created in 1980 by joint action of the Maryland and Virginia General assemblies (NR Article, Sec. 8-302, Annotated Code of Maryland; Title 62.1, Sec. 62.1-69.5 to 62.1-69.20, Code of Virginia). The Acts creating the Commission recognized Chesapeake Bay and its tributaries, wetlands, and dependent natural resources as an integrated ecosystem shared by the two states. The substantial joint interest of the two states in the use of resources includes management and regulatory programs, implementation methods, and actions affecting migratory fowl, finfish, shellfish, commercial and mercantile use, and water quality.

With the recent addition of Pennsylvania as a member the Commission now covers the greatest portion of the Bay's drainage area.

The executive branch of Virginia state government is represented on the Commission by the Secretary of Natural Resources. The Council on the Environment staff provides support to the Secretary for this area of responsibility.

The Commission is active in a number of areas that are important in Chesapeake Bay coordination and oversight. Its frequent meetings provide a necessary opportunity for representatives of the three states, primarily legislators, to gather together to discuss Bay matters from a legislative point of view. The Commission identifies significant issues and develops recommendations for legislative action some of which involve the introduction of similar legislation in the member of Bay issues so as to provide the information and analysis to support the development of recommendations. The Commission also conducts a highly public biennial evaluation of Bay conditions and management.

2. The Chesapeake Bay Initiatives

Recent years have witnessed an alarming decline in the health of the Chesapeake Bay. Fisheries have declined, water quality has deteriorated and habitats are being depleted. In 1983 the EPA Chesapeake Bay Study provided clear evidence of this decline.

Throughout the summer and fall of 1983, Virginia's resource agencies, with the invaluable help of many citizen groups and individuals, began to develop an ambitious and long-range program of action to reverse these disturbing trends. Maryland, Pennsylvania, and the District of Columbia and the federal government did the same, and in December of that year the Chesapeake Bay Agreement was signed. Starting with the Commonwealth's 1984-86 biennium budget the executive and legislative branches of state government have worked together to develop a set of evolving Chesapeake Bay Initiatives that address the restoration and protection of the Chesapeake Bay estuarine system. The Initiative budget items are clearly identified as elements in a comprehensive and integrated package of Bay management activities and have been developed and funded as a highly visible and highly popular package.

The Administrator of the Council on the Environment is charged with overall program coordination and tracking. Detailed quarterly reports are developed as the basis for quarterly review meeting conducted by the Secretary of Natural Resources. A comprehensive annual report on the progress of the initiatives is also published and widely distributed.

3. The Chesapeake Executive Council

The purpose of the Council is to support a cooperative approach among the Environmental Protection Agency (EPA), the State of Maryland, the Commonwealths of Pennsylvania and Virginia, and the District of Columbia (the states) to fully address the extent, complexity, and sources of pollutants entering the Bay, recognizing that EPA and the states share the responsibility for management decisions and resources regarding the high priority issues of the Chesapeake Bay.

The Executive Council is the highest formally constituted executive branch body in the Bay area. It is composed of policy level (State Cabinet/Department Secretaries) officials from the participating states and Regional Administrator, EPA Region III. The Council facilitates the development of consensus on Bay water quality and resource issues. The Council meets quarterly or more often if needed.

The Commonwealth of Virginia is represented on the Council by the Secretary of Natural Resources and the Secretary of Human Resources. The Council on the Environment staff provides support to the Secretary of Natural Resources for this area of responsibility.

The Council serves as a forum for the discussion of key interstate and federal-state matters relating to the Chesapeake Bay estuarine system. It advises EPA on the use of EPA-Chesapeake Bay funds and guides the continuing development and annual refinement of the Chesapeake Bay Restoration and Protection Plan. It also produces an Annual Report and an annual State of the Bay Report which summarizes Bay conditions and trends. The Council is served by the following committees, subcommittees and advisory bodies.

The Implementation Committee is the operating level arm of the Executive Council. As such, it is composed of representatives from federal and state department in such areas as health, agriculture and natural resources. In addition to the state and EPA members, other agencies participate on the Implementation Committee. These are the Corps of Engineers, the National Oceanic and Atmospheric Administration, the Soil Conservation Service, the Fish and Wildlife Service and the U.S. Geological Survey. The Council on the Environment Administrator is a member of the Implementation Committee and coordinates the state's work with that committee for the Secretary of Natural Resources.

This committee meets monthly to address the institutional/-management objectives of the Council. It is assisted by five subcommittees and one advisory committee, the Scientific and Technical Advisory Committee (STAC). The subcommittees are Planning, Modeling and Research, Nonpoint Sources, Monitoring and Data Management. The Council on the Environment Administrator is the Chairman of the Planning Subcommittee.

The Scientific and Technical Advisory Committee (STAC) is composed of research managers and other senior scientists, and its purpose is to provide advice to the Implementation Committee on the entire range of scientific and technical matters that relates to Bay management. While they are asked to deal with some narrowly defined immediate issues their main responsibility is to take the long view on major Bay issues.

The Citizens Advisory Committee (CAC) is a broadly representative group of citizens who provide advice to the Chesapeake Executive Council on Bay issues. The group has an average membership of 25 individuals and meets quarterly. The CAC chairperson reports to the Council at each of its meetings. The CAC addresses a wide range of topics, and like the STAC, it is primarily concerned with providing advice from a long-range, commprehensive perspective.

4. The Virginia River Basin Committees

The Virginia river basin committees were created to provide citizens living in the drainage basins of the Virginia tributaries to the Bay with an opportunity to participate in the identification and resolution of key management issues relating to the water quality and resources of the Chesapeake Bay estuarine system. There are eight river basin committees with a total average membership of 160 individuals representing the widest range of basin interests. (Most of the Virginia CAC members have elected to serve on a river basin committee as well.) The coordination and support of the river basin committees is provided by Citizens Program for the Chesapeake Bay staff operating in close cooperation with the Council on the Environment Administrator.

At this point in their evolution the primary focus of the efforts of the river basin committees is the Commonwealth's planning and budget process. The scheduling of the meetings and activities of the committees is tied to the schedule of that state process so that the citizens have the earliest possible opportunity to recommend budget actions and to respond to preliminary state budget proposals. Their formal comments and recommendations are addressed to the Secretary of Natural Resources and the Governor.

5. Biennial Coastal Resources Management Review and Evaluation Process

The biennial CRM review and evaluation process is the primary mechanism by which the State assesses the long-term management objectives of its coastal resources. Through this process the Secretary of Natural Resources and the Governor are advised of the successes and/or failures of the State over the preceding biennium in meeting its CRM goals and are provided with recommendations for any modifications to the state's CRM goals and activities that would improve Virginia's ability to meet its basic goals. The biennial CRM review and evaluation process takes the form of a sequence of steps:

a. Agencies' Biennial CRM Evaluation

As part of their biennial program proposal each of the agencies of State government which conducts activities which contribute toward the management of Virginia's coastal resources evaluate those programs and activities. Each evaluation covers:

- Current status of the resources and of the management programs which deal with them will be judged and an evaluation will be made of the contributions the listed activities have made toward the CRM goals over the past biennium. This evaluation will focus on those agency program objectives and performance measures which are associated with listed activities and will relate them to CRM goals.

- An identification of problems perceived in carrying out specific activities or achieving specific agency objectives, including:

  a) an identification of any areas in which activities have decreased in productivity or where a reallocation of resources could result in increased productivity, including recommendations for where such activities or programs should be revised, reduced, dropped or assumed by another entity (individual, local government or other state or federal agency); and

  b) an identification of modifications to activities necessary to more fully achieve the specific CRM program goals.

- An identification of any additional goals the State should pursue toward improving the management of its coastal resource and which should therefore be incorporated into Virginia's CRM program.

All such evaluations are forwarded to the Administrator of the Council on the Environment.

b. Staff Compilation and Overall CRM Evaluation

Upon receipt of the individual biennial CRM evaluations, the staff of the Council on the Environment compiles a single overall CRM evaluation for the Secretary of Natural Resources. The focus of this evaluation is an assessment of the overall success or failure of the State in meeting its CRM goals with particular emphasis on identification of management opportunities and recommendations for improvement.

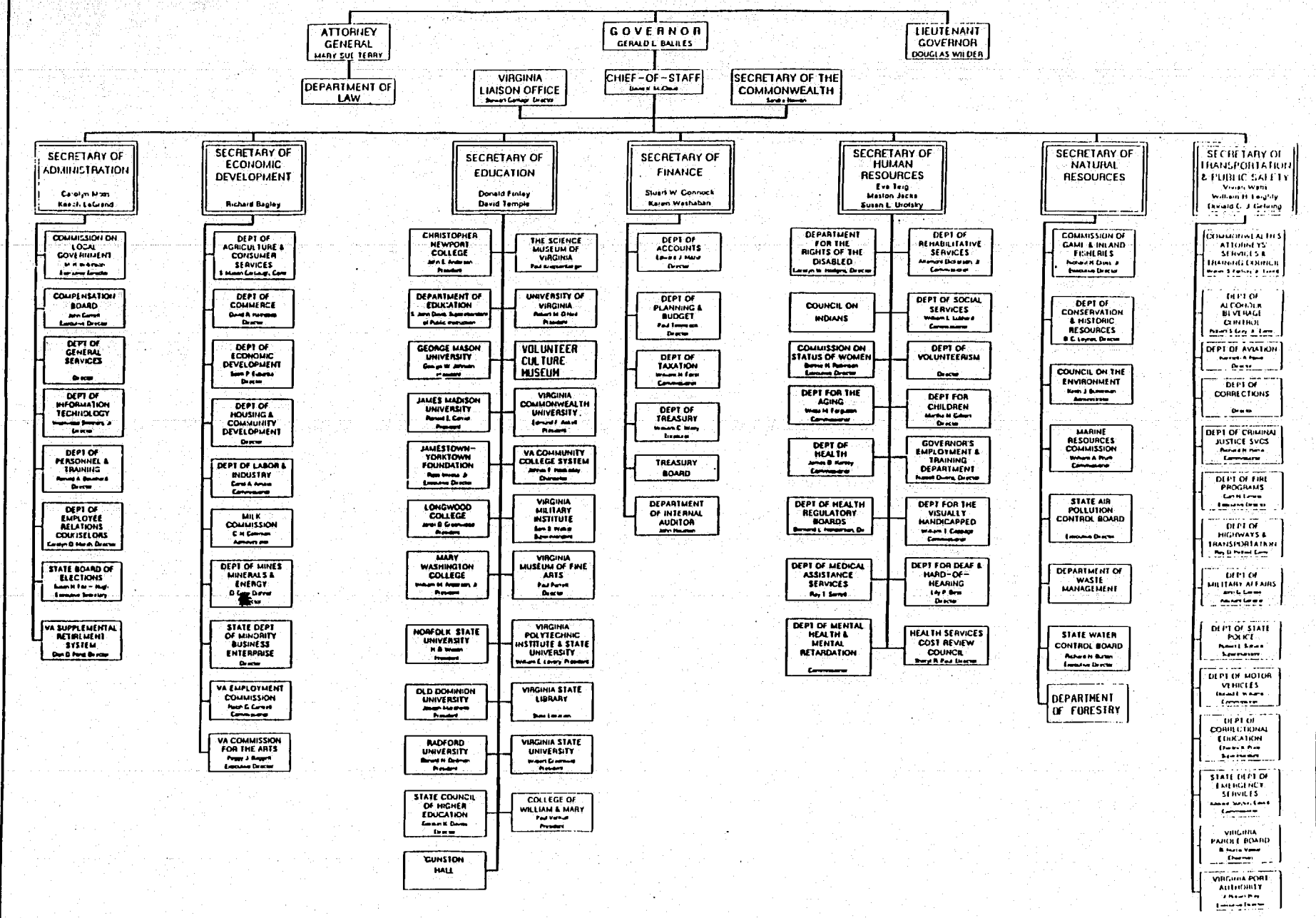
c. Actions by the Secretary

Upon receipt of the biennial CRM evaluation the Secretary reviews its findings and recommendations. Based upon this evaluation and other relevant information, the Secretary develops final recommendations for reporting to the Governor on the status of coastal resources management in Virginia. Any final recommendation by the Secretary of Natural Resources that relates to the activities of a state agency outside of his or her purview will not be submitted to the Governor until and unless the appropriate Secretary has concurred with that recommendation. If a cabinet level impasse should occur the issue would be resolved by the Governor.

d. Coastal Resource Management Update

Upon completion of the biennial CRM review and evaluation sequence, the State Coastal Resources Management document will be revised to reflect any changes to CRM-related activities that may have resulted from legislative or administrative action, as well as any modifications to the coordinative mechanisms. These revisions will be submitted to OCRM for formal incorporation into the VCRMP as an amendment or a routine program implementation effort pursuant to 15 CFR 923.80-85. The document which describes Virginia's management of its coastal resources will thus be kept current so it can serve as an up-to-date catalogue of CRM-related goals, activities and mechanisms for coordination. This document will be kept on file by the Secretary of Natural Resources. Copies of the document, as well as copies of a summary thereof, will be kept by the Administrator of the Council on the Environment and will be available to interested citizens or other parties requesting information on how Virginia manages its coastal resources.

VIRGINIA STATE GOVERNMENT – EXECUTIVE BRANCH – 1986



CHAPTER V

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CHAPTER V

GEOGRAPHIC AREAS OF PARTICULAR CONCERN

A. INTRODUCTION

Population growth in Tidewater has placed great demands on the Commonwealth's valuable coastal and marine resources. Projected increases in growth and development clearly dictate that management and especially planning functions be improved at both local and state levels. While the impacts of this population increase may be felt throughout the coastal area, they are particularly intense in the coastal edges where land and tidal waters meet to form extremely dynamic, productive, fragile and highly desirable environments. With the goal of accommodating necessary growth while preserving this environment, the Coastal Resources Management Program has designated some areas as worthy of special consideration in any planning or management process; that is, as Geographic Areas of Particular Concern.

The impacts of past projects and the anticipated increasing pressure to develop the shoreline have combined to produce two major concerns relative to the use of coastal edges. Projects which were designed, located and constructed without a sufficient data base from which to plan, or without knowledge or consideration of long range implications, caused undesirable, and in some cases, unnecessary effects. The potential for loss of life and property is increasing due to the growing concentration of residents and structures along the shore where the vulnerability to coastal natural hazards is the greatest. To resolve these and other concerns, Virginia has assessed the problems and developed various programs over the years.

The process of identifying and designating geographic areas of particular concern is viewed as a planning aid for the VCRMP. It is expected that once the reasons for concern are identified and the impacts from any particular use are determined, decisionmakers will give special consideration to these areas. The "priorities of use" associated with each GAPC are advisory in nature.

Many of the GAPCs were developed through a study both of the environmental functions and values of coastal resources, and of the hazards in coastal areas. These studies were conducted during the initial development phases of the CRM Program during the 1970's, and included contacting numerous state agencies and holding a series of public hearings. Public hearings were held throughout the summer of 1978, and in the fall of 1983 all Tidewater Planning District Commissions were addressed concerning the CRM Program.

B. TYPES OF GAPCS

1. Natural Resource Areas of Particular Concern

Certain natural resources, such as wetlands, along the coastal edges are vital to the health and productivity of Virginia's estuarine and marine ecosystems. Other resources, such as dunes, are integral to the stability of the shoreline and may protect inland areas from flooding and high winds. These resources are also considered coastal resources of state and national significance. To prepare recommendations for identifying these and other resources as Geographic Areas of Particular Concern, three steps were necessary:

- o The environmental functions that are vital to estuarine and marine ecosystems or are protective in nature had to be determined;
- o The edge resources that perform one or more of these vital functions had to be identified; and
- o Existing management programs had to be identified and evaluated.

The scientific community generally considers five broad environmental functions to be either vital to estuarine and marine ecosystems or of great importance to areas immediately inland of the shoreline. These are:

- o Storage of energy, nutrients and essential materials;
- o Primary production of plant matter needed to support estuarine and marine organisms;
- o Provision of essential or particularly significant habitat for estuarine and marine organisms;
- o Maintenance of water quality; and
- o Stabilization and protection of coastal areas against adverse effects of wind and wave action (erosion and flooding).

A review of scientific data pertaining to the environmental functions and values of various coastal resources indicates that the following resource types perform one or more of the vital functions outlined above:

- a. Vegetated and non-vegetated wetlands
- b. Spawning and nursery areas
- c. Coastal sand dunes

d. Barrier islands

e. Significant wildlife management areas.

In addition to natural resources that perform vital functions to estuarine and marine ecosystems, there are certain other resources in the coastal zone that need special treatment. Virginia has recognized the need for their management over the years, and the appropriateness for the inclusion of these resources in the CRM Program became evident during the development of the Program Document. These resources areas are:

f. significant public recreation areas

g. sand and gravel deposits

h. underwater historic sites.

2. Natural Hazard Areas of Particular Concern

There are also naturally occurring processes on the shoreline of tidal waters which may present a hazard to life or property in developed areas, or in areas where future development may aggravate the hazard or become vulnerable due to oversights in location and construction. As was the case with the determination of resource areas of particular concern, certain steps were necessary for the identification of hazardous processes and the areas vulnerable to them. These were:

- The processes and phenomena which may present a hazard to life and/or property had to be determined;
- Geographic areas subject to these hazards had to be identified; and
- Existing protective or mitigatory programs had to be identified and evaluated.

It is generally considered that the two greatest coastal hazards most amenable to planning and management of a continuing nature are:

- Continuing and severe erosion; and
- Potential damage from wind, tidal and storm related events.

Federal and State authorities have conducted and are continuing with studies designed to identify areas subject to the above hazards. As a result of the Virginia Institute of Marine Science series of Shoreline Situation Reports and the Federal Flood

Insurance program, these areas have largely been determined and are:

a. Highly erodible areas; and

b. Flood plains, notably high hazard areas.

The following is a discussion of individual GAPCs, the nature of concern and the programs that have been instituted to address the problems in these areas. In most cases of resource and hazard areas of particular concern, the definitions also connote their boundaries. The only exceptions to this are some of the spawning, nursery and feeding areas. The definition of each GAPC is what may be termed its generic basis, but where an area physically meets the requirements of the definition, it is to be considered site specific.

For the purpose of this discussion, the following definitions apply:

Preservation: The maintenance, in unaltered form, of any resource in its natural state, except when structural methods are deemed necessary to protect that resource from natural destruction.

Conservation: The limited (balanced with protection and/or replenishment) use of a resource, its products or associated indigenous life, provided the resource itself is not irreversibly damaged.

3. Waterfront Development Areas of Particular Concern

Despite Virginia's extensive coastline there are a limited number of areas suitable for the accommodation of waterfront development activities. As growth and development accelerate in the coastal area the need to effectively manage those limited areas also increases. What constitutes an area for waterfront development is so varied and so site and use specific that only the most general criteria have been established in the VCRMP.

C. SPECIFICATION OF GAPCs

1. COASTAL NATURAL RESOURCE AREAS OF PARTICULAR CONCERN

a. Wetlands

(1) Description of the Concerns

The values and functions of vegetated wetlands are well documented. A vast majority of the plant matter produced by tidal

marshes is utilized as a food source either directly by marsh animal communities or indirectly by estuarine and marine aquatic organisms. Many species of commercially and recreationally important finfish, shellfish and crabs feed upon decayed marsh vegetation (detritus). Marsh vegetation and associated soils help maintain water quality by removing or chemically altering sediments or pollutants and nutrients from waters which pass over and through them. Many of these substances are stored in marsh plants and soils and transformed into organic substances utilized in the aquatic food web. Tidal marshes also provide essential habitat for wildlife, waterfowl, shellfish, finfish, and crustaceans, and act as a protective buffer against flooding and erosion.

Despite the absence of vascular vegetation, many non-vegetated wetlands such as mudflat and sandflat areas may support algal growth with the potential to exceed the primary production rates of the most productive marsh plants. Algae is an important food source for estuarine and marine organisms because it may be utilized more directly than marsh vegetation which must first be broken down to usable components by bacterial action (decay). In addition to primary production of plant material, non-vegetated wetlands, especially mudflats, are extremely important in the storage and cycling of nutrients. Both mudflats and sandflats may also support heavy populations of worms, molluscs, and crustaceans in addition to the algae, (collectively considered as biomass). Recent evidence indicates that the indigenous biomass associated with sandflats, even though made up of fewer species, could exceed that of mudflats if not for the effective "grazing" of organisms dependent on these areas for food. At high tide, these areas become feeding grounds for fish and crabs. At low tide, they are subject to "grazing" by many species of birds.

The increasing loss of wetlands, due to the relatively unrestricted development in wetlands, became of great concern in Virginia. These wetlands were disappearing at alarming rates and without sufficient regulatory control to determine the optimum use of the resource for the public. Therefore, in 1972 the General Assembly passed the Virginia Wetlands Act (which was revised in 1982) and thereby formally recognized the importance of wetlands and the need for their protection.

(2) Planning and Management Program

Though these wetlands are included in the Core Regulatory Program because of their location at the edges of the coastal zone, they are given special designation as a Geographic Area of Particular Concern as a result of their worth as a valuable resource. Through the passage of the Virginia Wetlands Act of 1972, and the incorporation of nonvegetated wetlands within the Act in 1982, the state formally recognized the importance of vegetated wetlands and the need for their protection.

The Wetlands Act prescribed standards for use in the development of wetlands (Virginia Code §62.1-13.3):

> "(1) Wetlands of primary ecological significance shall not be altered so that the ecological systems in the wetlands are unreasonably disturbed;
> (2) Development in Tidewater Virgina, to the maximum extent possible, shall be concentrated in wetlands of lesser ecological significance, in wetlands which have been irreversibly disturbed before July one, nineteen hundred seventy-two, and in areas of Tidewater Virginia apart from the wetlands."

To implement these standards, the Wetlands Act (Virginia Code §62.1-13.4) directed the Virginia Institute of Marine Science (VIMS) to evaluate wetlands by type (i.e. their value to the estuarine environment) to maintain a continuing inventory of those wetlands, and to set forth the consequences of use of these wetland types. Wetlands are defined by the Act (Virginia Code §62.1-13.2) as indicated in Chapter III. These resources are delineated in the series of Shoreline Situation Reports and the Tidal Marsh Inventories as published by VIMS, and the resources will be monitored for changes.

The Act authorizes localities to guide development in wetlands through the adoption of local wetlands zoning ordinances, the creation of wetlands boards, and the institution of wetlands permit programs. Training and technical assistance in implementing the wetlands act at the local level is provided by MRC and VIMS. VIMS staff provide an environmental assessment of each permit to local boards. Localities, MRC and VIMS all encourage pre-submission consultation to prospective applicants. In the absence of local action, the Act authorizes the Virginia Marine Resources Commission to directly manage and permit wetland activities. The Marine Resources Commission is required to review all local decisions and is empowered to hear or make appeals of the local decisions and modify or reverse local decisions where necessary to enforce the purposes of the Act. Lastly, the Act establishes a process whereby local or State wetlands permit decisions may be appealed to the courts.

In addition to Virginia's wetlands permit requirements, any person proposing a project that will involve alteration of wetlands must also obtain a permit from the U.S. Army Corps of Engineers. The Corps' permit authority emanates from Section 10 of the Rivers and Harbor Act of 1899 and Section 404 of the 1972 amendments to the Federal Water Pollution Control Act.

(3) Priority of Use

In order of consideration from highest to lowest, the priorities of use in wetlands are:

(1) Preservation

(2) Conservation

(3) Recreation (hunting, fishing, fowling)

(4) Agricultural (Grazing)

(5) Development

Development in wetlands is the lowest priority use of these areas, and the state discourages such action.

b. Spawning, Nursery and Feeding Grounds

(1) Description of the Concerns

Every year, Virginia's estuaries teem with millions of young crabs and fish that were born in and near its estuarine waters and migrated to brackish water for protection, favorable growing conditions and food. They live there for the first months of their life and migrate back to the ocean as juveniles. The vital role of estuaries in the life cycle of these organisms is one of the best reasons for the judicious use and planning of the coastal environment.

Maintenance of the biological productivity and integrity of Virginia's valuable fisheries requires the protection of those areas within coastal waters that serve as spawning, nursery, and feeding areas for finfish, shellfish and crustaceans. These areas are difficult to identify and delineate because they vary among the major classes of organisms and by species. Location of these areas is especially difficult in the case of finfish because of their mobility and because each species requires different water conditions, and these requirements vary with their individual life-stages.

(2) Planning and Management Program

Currently, several State agencies are actively involved in fisheries research, management of fishery stocks, regulation of fishing activity, and protection of important fishery habitats. The most active of these agencies include the Virginia Institute of Marine Science, the Virginia Marine Resources Commission, Bureau of Shellfish Sanitation (State Health Department), Commission of Game and Inland Fisheries, State Water Control Board, and the State Soil and Water Conservation Commission. Authority existing in the Code of Virginia relating to the research, management jurisdictions and responsibilities of these agencies (especially Titles 28.1 and 62.1) provide sufficient State authority to protect essential fishery areas as they are identified.

The locations of major spawning and nursery areas for oysters, blue crabs and striped bass in Virginia are well documented, and receive special protection. The following is a description of

these identified Geographic Areas of Particular Concern and the protection provided to them. Statutes pertaining to these areas are contained in Laws of Virginia Relating to the Marine Resources of the Commonwealth.

(3) Areas

(a) James River Oyster Seed Beds

The oyster seed beds of the James River provide the majority of the oyster seed used in Virginia's portion of the Chesapeake Bay, and are of crucial importance to the oyster industry of Virginia. For these reasons, the James River seed beds have long been protected and managed for a high yield of seed oysters. The protected beds are located in the mid to lower salinity water of the James River, and are specifically delineated in §28.1-98, (see Appendix III-2). A permit from the MRC is required prior to the removal of any seed oysters from these beds (Virginia Code §28.1-97). In addition the length of the harvesting season is specified, and only hand collecting or hand tonging is allowed (Virginia Code §28.1-82).

In order of consideration from highest to lowest, the priorities of use for James River oyster seed beds are:

1) Conservation;

2) Commercial and Recreational Fishing; and

3) Development (dredging).

Dredging in seed bed areas is the lowest priority use of these areas, and the state discourages such action.

(b) Public Oyster Grounds

Article 3 of the Constitution of Virginia protects the state's natural oyster beds for the use of the general public. The oyster rocks in Virginia which produce oysters through the natural strike of oyster larvae were surveyed in 1894-95 and are called Baylor Grounds (Virginia Code §28.1-100). These Baylor Grounds and additional grounds are set aside by the General Assembly and are designated on maps maintained by the Engineering and Surveying Section of the Fisheries Management Division of the Marine Resources Commission. Seasons and harvesting gear are regulated by the MRC (Virginia Code §28.1-82) to maintain healthy populations on the rocks. Records of oysters harvested are kept (Virginia Code §28.1-92) and taxes are used to replenish these areas with clean shell upon which oyster larvae attach (§28.1-94). Thus the MRC maintains strict authority over and control of use of these natural rocks.

In order of consideration from highest to lowest, the priorities of use for Baylor Grounds are:

1) Conservation;

2) Commercial and Recreational Fishing; and

3) Development (dredging).

Dredging in Baylor Grounds is the lowest priority use of these areas, and the state discourages such action.

(c) Blue Crab Sanctuary

The mouth of the Chesapeake Bay is designated as an area of particular concern for the taking of crabs during the period from June 1st until September 15th. This area represents the major spawning ground for the blue crabs of the Bay, and the spawning primarily occurs during this time interval. For these reasons the commercial harvesting of crabs from this delineated area is prohibited during this time interval (Virginia Code §28.1-170). The noncommercial catching of crabs in this area is relatively insignificant due to the rough open-water nature of the area and thus is permitted.

In order of consideration, the priorities of use for the blue crab sanctuary are:

1) Preservation;

2) Conservation.

(d) Striped Bass Spawning Sanctuaries

Striped bass spawn in fresh water of the upper reaches of most of the major tidal rivers of Virginia. Due to the recent declines in their populations, measures have been taken to improve their reproductive potential. The upper tidal reaches of the James, Pamunky, Mattaponi and Rappahannock Rivers are designated as areas of particular concern for striped bass during their spawning period from April 1 through May 31. No striped bass may be taken from these designated areas during these times, and any that are caught then must be immediately returned to the water. This regulation is enforceable by the MRC and CGIF, and provides the needed protection to ensure compliance on the part of sport and commercial fishermen.

In order of consideration from highest to lowest, the priorities of use for striped bass spawning sanctuaries are:

1) Preservation;

2) Conservation;

3) Seasonal Commercial and Recreational Fishing.

c. Coastal Primary Sand Dunes

(1) Description of the Concerns

Sand dunes serve several vital functions, the most important of which are stabilization of the shoreline and protection of the beach and backshore areas from erosion and the effects of storm surge flooding. Further, dunes help promote the growth of vegetation and subsequently stabilize backshore areas, providing important habitat and reservoirs of sand for beach replenishment. The dunes are the result of fragile environmental balances, because many of the stabilizing plants are living at the extreme of environmental tolerances and can be easily disrupted. Thus indescriminate development in these dunes can cause the loss of these vital resources.

(2) Planning and Management Program

The Coastal Primary Sand Dune Protection Act (Virginia Code §62.1-13.21 through 62.1-13.28, see Appendix III-2) incorporates a permitting process concerning alterations of dunes into the established permitting system of the Wetlands Boards. The Act provided localities with the option of administering the Act's policies and provisions. Local Wetlands Boards were authorized with primary authorities and responsibility to review projects in sand dunes, and to grant or deny permission to alter such dunes in accordance with the policies of the Act. The Virginia Marine Resources Commission (MRC) retains oversight of the program, and is required to administer the permitting program in localities that choose not to administer the Act.

These sand dunes, as defined in the Act, are fully described in Chapter III, but basically they consist of a mound of unconsolidated (sandy) soil with a 10% or greater change in grade upon which certain types of vegetation are growing. In Virginia, the primary distribution of coastal sand dunes is along the Atlantic shores of Virginia Beach and the Eastern Shore. Isolated dunes can also be found along the shores of the Cities of Hampton and Norfolk. The specific locations of the dunes appear in the Shoreline Situation Reports of VIMS.

(3) Priority of Use

In order of consideration from highest to lowest, the priorities of use for coastal dune systems are:

1) Preservation;

2) Conservation;

3) Recreation (which does not alter the dune or damage its vegetation); and

4) Development.

Development in coastal dune systems is the lowest priority use of these areas, and the state discourages such action.

d. Barrier Islands

(1) Description of the Concerns

Virginia's barrier island complex includes the least altered chain of barrier islands on the east coast of North America. As such, this 60-mile island chain constitutes a unique and priceless asset to the Commonwealth. The islands act as an important buffer against coastal storms and protect the extensive wetland areas and mainland lying behind the islands from erosion, flooding, and destruction. In addition, these islands, and the dune systems found on them, serve as storage units for sand and other sedimentary materials utilized in coastal processes along the island chain. The islands and the important resources found on or around the island (vegetated and non-vegetated wetlands, and dunes) also provide food and/or habitat for numerous species of fish, birds, particularly waterfowl, and other organisms. Development in these islands can cause serious ecological damage due to the limited space available for wildlife use.

(2) Planning and Management Program

For purposes of the GAPC elements, Virginia's barrier islands complex is defined as the group of eighteen islands located along the Atlantic Ocean side of the Eastern Shore which includes Assateague (Virginia portion), Wallops, Assawoman, Metomkin, Cedar, Paramore, Revel, Sandy, Hog, Rogue, Cobb, Wreck, Godwin, Ship Shoal, Myrtle, Mink, Smith, and Fisherman's Island. These islands are accurately delineated on USGS topographic maps.

Existing management programs affecting use of the barrier islands are numerous and relate primarily to ownership. Three of the islands, Assateague, Wallops, and 60 percent of Fisherman's, (the remaining 40 percent is a privately owned hunting lodge) are federally owned and managed. Wreck Island is owned and protected by the Commonwealth of Virginia. Assawoman and part of Cedar Island are privately owned, in the first case by an individual, and in the case of Cedar, by hundreds of individuals. Smith and Hog Islands also have privately owned individual lots. The remaining portion of Hog and Cedar Islands and the other eleven islands are owned and managed collectively by The Nature Conservancy as the Virginia Coast Reserve.

Virginia recognizes the valuable protection afforded to these barrier islands through their ownership by federal and private organizations dedicated to the protection and conservation of these islands. In addition to protection afforded by their respective owners, the barrier islands are subject to existing State and federal resource management programs affecting shorelands (wetlands), State waters, and State bottoms (subaqueous lands).

(3) Priority of Use

As can be seen, barrier islands contain many areas which have already been determined as GAPCs, and the priorities of use in each reference area are the same. However, each island as an entity is also being considered a GAPC. Each island is an ecosystem unto itself, consequently activity in one portion may well affect the entire island. Therefore the highest priority of use of the barrier islands is Preservation.

Uses of lower priority are:

1) Hunting, fishing and fowling;

2) Recreation, including but not limited to boating, camping and picnicing; and

3) Research of coastal processes, including testing of erosion abatement techniques.

e. Significant Wildlife Management Areas

(1) Description of the Concern

Game animals in the coastal zone receive high hunting and fishing pressures, and consequently their populations can become quite diminished. These hunting and fishing areas are needed to provide recreation for the public, yet management is needed to ensure healthy standing populations of the animals.

(2) Planning and Management Programs

In response to this need for highly managed hunting and fishing areas, the Commission of Game and Inland Fisheries (CGIF) selects and purchases Wildlife Management Areas (WMAs) as areas for the preservation and propagation of wildlife (Virginia Code §29-11). Currently there are ten WMAs in the coastal zone, and their locations are delineated in the CGIF's publication A Guide to Virginia's Wildlife Management Areas. The CGIF continually searches for new WMAs with sufficient size and suitable habitat quality to support desired wildlife populations. The CGIF manages these areas for optimum wildlife populations, and is vested with enforcement (Virginia Code §29-13) and prosecution (Virginia Code §29-14) powers concerning the protection, propagation and preservation of game birds, game animals and game fish within these areas. Monies received from the sale of hunting, trapping and fishing licenses are used toward the purchase of these WMAs (Virginia Code §29-20).

(3) Priority of Use

In order of consideration, the priorities of use in Significant Wildlife Management Areas are:

1) Conservation; and

2) Recreation (hunting, fishing, fowling).

f. Significant Public Recreation Areas

(1) Description of the Concerns

The Commonwealth of Virginia is rich in natural and cultural resources which provide the basic resources for outdoor recreation opportunities. However, some of these resources present certain problems or issues which hinder or limit their utilization for recreation. With the continually burgeoning population of the coastal zone, the need to properly eliminate these hinderances toward use, and the need to anticipate and plan for recreational needs in the future becomes mandatory.

(2) Planning and Management Program

The Virginia Outdoors Plan (VOP) is the planning process by which the Commonwealth describes problems, and develops objectives and policies applicable to significant public recreation areas. The VOP is endorsed by the Governor as the State Comprehensive Outdoor Recreation Plan (SCORP).

The VOP/SCORP is updated on a five-year cycle, having been originally issued in 1965 with updated versions produced in 1970, 1974, 1979 and 1984. The inventory of recreational areas is continually revised on field sheets by local parks and recreation officials, local and regional planners, extension agents, and state agency planners. Division of Parks and Recreation planners integrate the revisions by discarding duplicated information, researching missing data and updating the data bank at Virginia Commonwealth University. From the tabulated differences between inventoried facilities available for use and statistical demand estimates, planners describe the means to improve the use of existing areas, and determine where new areas are needed. The 1984 Plan projects needs for land and facilities to the year 2000.

To provide significant public recreation areas, the Director of Conservation and Economic Development, with the approval of the Board of Conservation and Economic Development, may purchase areas of scenic beauty, recreational utility, historical interest, remarkable phenomena, or any other unusual features (Virginia Code §10-21). The Virginia State Parks thus acquired within the coastal zone are designated as Geographic Areas of Particular Concern. The system includes 14 state parks and natural areas in the coastal zone, and serves a variety of basic recreational needs within an hour's drive of major population centers, thus preserving and managing for public enjoyment a cross-section of the best examples of scenic natural resources. The state continually reviews proposed areas for their acquisition by, or acceptance into, the Division of State Parks program. Park Rangers are authorized (Virginia Code §10-9) to enforce the regulations established for the protection of the parks.

Some park areas are acquired by the state for the purpose of wildlife conservation or to provide sanctuary to critical wildlife areas. For instance, the Charles C. Steirly Heron Rookery was donated to the state to preserve one of the few remaining heron rookeries in the state. False Cape State Park is one of the few remaining undeveloped areas along the Atlantic Coast, and provides a haven for wildlife, especially for migratory birds using the Atlantic Flyway. Wreck Island is one of the barrier islands separating the Eastern Shore from the Atlantic Ocean, and it provides a haven for wildlife including otter, mink, raccoon, and nesting shore birds. An area of Caledon State Park provides limited public access in order to protect the large number of bald eagles that nest or stop over there.

(3) Priority of Use

In order of consideration from highest to lowest, the priorities of use in the State Parks are:

1) Recreation (hunting, fishing, fowling, swimming, education, camping, picnics, day use, etc.);

2) Education,

3) Conservation; and

4) Preservation.

g. Sand and Gravel Resources

(1) Description of the Concerns

High quality sand and gravel deposits are valued resources in the coastal zone. Unless properly conducted, however, the mining of these mineral resources can result in a variety of environmental impacts. State regulatory programs are designed to control or eliminate the types of problems discussed below.

The improper mining of sand and gravel from subaqueous bottom lands can result in numerous problems. The destruction of valuable subaqueous habitat can occur, either by direct physical destruction, or by heavy sedimentation of surrounding areas. If mining operations are of a sufficiently large scale, it is conceivable that the pattern of currents in the estuary could be affected, which in turn can affect salinity patterns, settlement of marine larvae, etc. Other potential problems resulting from indiscriminate siting of subaqueous mining operations might include the cutting of subaqueous cables, pipelines, etc.

The improper mining of sand and gravel from upland areas can also cause numerous problems. A major environmental concern is that the reclamation of the land be undertaken so that it can be used later for another purpose.

Ungraded open pits pose the danger of collapse and have little use. Mined areas that fill in with water to only a very shallow depth can cause stagnant water conditions that act as large breeding areas for mosquitoes. Scrap metal, lumber and other debris are unsightly, and can pose a safety hazard when left behind after a mining operation. In addition, the actual mining operation, if not visually screened, can be of aesthetic concern to people living in the vicinity of the mine.

Another major concern with the upland mining of sand and gravel is the erosion and sedimentation that can occur. If proper drainageways are not constructed, not only can excessive erosion within the drainageway occur, but flooding can occur where adequate drainage is not provided. Where disturbed soils on slopes occur, a tremendous amount of sediment can be washed into streams unless some sort of filtering or settling mechanism is provided.

Another concern of upland sand and gravel mining is the potential for air pollution by dust. Dust can be thrown up into the air both during the mining operation, and by the trucks hauling materials from the site.

(2) Planning and Management Program

As indicated in Chapter III, the Virginia Marine Resources Commission (MRC) has statutory authority (§62.1-3 Virginia State Code, see Appendix III-2) over the taking of materials from the beds of the bays and ocean, rivers, streams and creeks that are the property of the Commonwealth. Thus, prior to the mining of sand and gravel from subaqueous lands, a prospective mining operation must receive a permit from the MRC. For an explanation of the guidelines used by the MRC in the granting of permits for projects affecting subaqueous lands, see Chapter III.

The Minerals Other Than Coal Surface Mining Law (Virginia Code §45.1-180 et seq., see Appendix III-2) provides the Department of Mines, Minerals and Energy (DMME) with enforcement authority over numerous aspects of the mining of sand and gravel. This act provides DMME with authority over three major areas of concern in upland areas as discussed above: reclamation, erosion and sedimentation; and acid mine drainage.

The DMME's authority over mined land reclamation enables it to require the land be graded so that it does not present a safety hazard, and so that it can be reused for other purposes. If sand or gravel is mined from below the water table, the resulting pond or lake formed after mining is completed must be at least 4 feet in depth, thus ensuring that no stagnant shallow areas are created. Scrap metal and lumber from the mining operation must be removed from the site once mining is terminated. In addition, during mining operations, screening shall be planned to effectively eliminate or favorably modify an unsightly view of mining operations.

All mining operations must have adequate drainage, erosion and sediment control measures. The Virginia Surface Mine Drainage and Sediment Control Handbook, contains approved design methods and technical standards for design and construction for drainage and sediment control measures. Alternate methods and designs of sediment and drainage control structures other than those contained in the Handbook may be submitted with appropriate design data and construction specifications for approval.

To prevent harmful releases of acidic water from any surface mining operation, the pH of water draining from these mines must generally be between a pH of 6 and 9.

In addition to the DMME's regulatory authority over sand and gravel mining, there are two state agencies that regulate pollutant emissions from these operations. The SWCB will apply either NPDES permit requirements on any discharge from the operation, or No-Discharge Certificate requirements, if there is the potential for a discharge from the site even if none is proposed. Both of these SWCB permits are discussed in detail in Chapter III, Section 7. The State Air Pollution Control Board (SAPCB) regulates dust emissions

to the atmosphere from sand and gravel mining facilities. Regulations for existing sources, and regulations for new and modified sources provide guidelines for regulating dust problems. Generally, these regulations allow the SAPCB to regulate dust problems arising both due to hauling materials and to mining practices, in addition to other dust pollution problems that might arise.

(3) Priority of Use

In order of consideration from highest to lowest, the priorities of use for sand and gravel deposits are:

(a) Conservation

(b) Development

h. Underwater Historic Sites

(1) Description of the Concerns

Virginia has a long and colorful history, and as such, there are a number of historical sites of interest in the coastal zone. Some of the historical sites are underwater. Of these, some are submerged as a result of the continual rise in sea level (the original site of Jamestown Island is now submerged). Others, more commonly, are sites where ships have sunk. Since these historical sites are underwater, they are more difficult for archaeologists to recover the artifacts, and must remain in place until sufficient funds become available for their removal and display. Further, since it has become popular to dive for these artifacts, the historical sites of interest to the state must be protected from random disturbances and looting, the indescriminate dredging of subaqueous material or other disturbances of the submerged lands.

(2) Planning and Management Program

The Virginia Marine Resources Commission (MRC) has specific statutory authority over the taking of underwater historic property (§62.1-3 and §10-262 in Appendix III-2). Underwater historic property is defined as any submerged shipwreck, vessel, cargo, tackle or refuse sites or submerged sites of former habitation, that has remained unclaimed on the state-owned subaqueous bottom and has historic value as determined by the Virginia Historic Landmarks Commission.

Nothing in the Virginia Code may be construed to divest the United States of any property interest in submerged property owned by the United States, nor may restrict the right of the United States to engage in salvage of any such property, unless the Federal government has affirmatively disclaimed title to the property.

Underwater historic property is preserved and protected, and is the exclusive property of the Commonwealth. Its preservation and protection is the responsibility of the state, primarily the

MRC, Department of Conservation and Historic Resources (DCHR), and the Virginia Institute of Marine Science (VIMS). As far as is practical, these artifacts and sites are preserved, protected and displayed for the public benefit within the county or city within which they are found.

Anyone desiring to conduct recovery operations or to disturb underwater historic property in any way must first apply for and receive a permit from MRC. If the MRC, with the concurrence of the VHLC and in consultation with VIMS and other concerned state agencies, finds that granting the permit is in the best interest of the State, it grants the applicant a permit. Permit conditions require that all objects recovered be the exclusive property of the state, and that the applicant receive either a fair share of the objects recovered, or a reasonable percentage of their cash value. Recovery operations undertaken pursuant to such a permit are carried out under the general supervision of the VHLC to ensure that the maximum amount of historic, scientific, archaeologic and educational information is recovered and preserved.

(3) Priority of Use

In order of consideration from highest to lowest, the priorities of use of underwater historic sites are:

1) Preservation

2) Conservation

3) Recreation (Diving)

4) Development

Development over or dredging in underwater historic sites is the lowest priority of use of these areas, and the state discourages such action.

2. COASTAL NATURAL HAZARD AREAS OF PARTICULAR CONCERN

a. Highly Erodible Areas

(1) Description of the Concern

Shoreline erosion is primarily a natural phenomenon produced by the effects of changes in sea level and waves (wind, tide, and storm driven) on coastal shorelines. The nature and extent of shoreline erosion in Tidewater Virginia have been well documented through research efforts of the Virginia Institute of Marine Science (VIMS). Historical studies conducted by VIMS indicate that during the period 1850-1950 over 28,000 acres of coastal land were lost due to shoreline erosion. This represents an average loss of

280 acres per year. Recent estimates made by VIMS staff indicate that current average annual losses exceed 300 acres per year. Severe problems arise in areas where erosion is consistently prevalent with no seasonal accretion to mitigate the total effect.

While shoreline erosion contributes to direct physical destruction of ecologically important coastal resources and often impairs aquatic habitat and organisms through sedimentation, it has been and will probably continue to be considered a major coastal problem mainly because of its impacts on the man-made environment. Shoreline erosion poses a significant threat to coastal property owners because it often results in the loss and/or impairment of land and structures representing significant public and investments. Because the potential for and severity of impacts to both natural and man-made environments may increase dramatically with the extent and rate of erosion, it is essential to identify shoreline segments that are exhibiting high rates of erosion and to develop effective means to minimize the effects of erosion in these areas.

(2) Planning and Management Programs

Planning for highly erodible areas will be accomplished through local comprehensive plans and zoning, with considerations given to the inherent danger to certain types of development, notably residential and industrial/commercial, upon locating in these areas.

The Commonwealth of Virginia, by Section 21-11.16 of the Code of Virginia, has recognized the significance of the erosion problem. The General Assembly has declared that:

> "The shores of the Commonwealth of Virginia are a most valuable resource that should be protected from erosion which reduces the tax base, decreases recreational opportunities, decreases the amount of open space and agricultural lands, damages, or destroys roads and produces sediment that damages marine resources, fills navigational channels, degrades water quality and, in general, adversely affects the environmental quality; therefore, the General Assembly hereby recognizes shore erosion as a problem which directly or indirectly affects all of the citizens of this State and declares it the policy of the State to bring to bear the State's resources in effectuating effective practical solutions thereto. (1972, c, 855)"

Section 21-11.18 of the same article vests the Soil and Water Conservation Commission with the duty and responsibility to identify and evaluate solutions to erosion problems, to coordinate and evaluate all State erosion abatement programs, and to secure assistance from the federal government in the protection of waterfront property.

Highly erodible areas, as shown in Appendix V-2 are defined as those shoreline segments exhibiting an erosion rate equal to or greater than 3 feet per year.

In 1980 the General Assembly amended the Shore Erosion Control Act and established the Shoreline Erosion Advisory Service (SEAS) with offices in Tidewater (§21-11.19). SEAS provides technical assistance to private property owners experiencing erosion problems.

Also in 1980, the General Assembly passed the Public Beach Conservation and Development Act which established the Public Beach Conservation and Development Commission (Virginia Code §10-215 through §10-222). The Commission is empowered to determine beaches suffering from erosion, and to provide monies to those localities most in need of relief. The Commission provides technical advice to localities and is charged with the responsibility of encouraging research and development of new erosion control techniques. At the same time that SEAS and the Public Beach Conservation and Development Commission were chartered, the General Assembly directed the Virginia Institute of Marine Science to engage in research and providing training, technical assistance and advice on erosion along tidal shorelines to these bodies and other agencies.

(3) Priority of Use

In order of consideration from highest to lowest, the priorities of use for highly erodible areas are:

1) Preservation;

2) Conservation;

3) Recreation; and

4) Development.

b. Coastal High Hazard Areas

(1) Description of the Concern

There is a significant State concern over the vulnerability of coastal residents to the harmful effects of flooding. The destructive effects of coastal flooding are most frequently felt in low lying land bordering the Atlantic Ocean, Chesapeake Bay and associated tributaries. The area of particular concern in this case is the coastal high hazard area, defined as those portions of the 100-year flood (or base flood) plain that may be subjected to high velocity waters including hurricane wave wash and tsunamis.

The "northeaster" which battered Tidewater and other parts of the state in late April, 1978, also produced severe damages. Estimates by the Virginia Office of Emergency Services indicate that storm-related damages in Northumberland, Lancaster, Gloucester, York and Isle of Wight counties and the cities of Poquoson, Hampton, Norfolk, and Virginia Beach exceeded 10 million dollars.

(2) Planning and Management Program

Currently, several programs exist which attempt to prevent or minimize damages that may result from coastal flooding. Direct federal involvement in flood damage abatement has occurred through passage and implementation of the National Flood Insurance Act of 1968, the Housing and Urban Development Act of 1969 and the Federal Flood Disaster Protection Act of 1973. These acts authorize the sale of federally subsidized flood insurance to local citizens living in designated flood plains under the provision s of the emergency or regular National Flood Insurance Program. However, insurance availability within a particular locality is contingent upon adoption and enforcement of flood plain use controls by the locality. Entrance of a locality into the regular program, which provides a greater degree of insurance coverage, requires adoption of more stringent flood plain zoning ordinances by the locality. As of June 1, 1984, 66 Tidewater localities (towns, cities and counties) were participating in the flood insurance program, 37 of which were enrolled in the regular program. While 25 Tidewater localities were not participating in the flood insurance program, only 9 are prone to periodic flooding -- 3 of which have only minor floodplain areas.

The Virginia Flood Damage Reduction Act of 1977 (see Appendix III-2, §62.1-44.108 et seq. of the Virginia Code) is intended to guide development in flood plains by assisting and encouraging localities to adopt, administer and enforce sound flood plain ordinances to qualify them for participation in the regular National Flood Insurance Program. The State Water Control Board is charged with carrying out the purposes of the Act and periodically inspects local flood plain management programs to ensure their effectiveness, and establish guidelines for action that assures local citizens of the opportunity to purchase insurance under the regular program.

Several actions have been taken to implement this Act. First, on November 26, 1973, the State Board of Housing amended the Statewide Building Code to set forth special mandatory floodproofing requirements for all new construction within designated flood plains. A subsequent amendment, adopted June 19, 1978 included more stringent requirements for construction within coastal high hazard areas. While these floodproofing requirements were adopted for statewide application, they are not effective until high hazard areas have been determined by each local government. Detailed delineation of the high hazard areas is currently being undertaken by the Federal Emergency Management Agency (FEMA) with efforts completed in 13 communities. At present, historical records are being used to delineate coastal flood plains until these studies by FEMA are completed. Upon their completion, both the 100-year flood plain and the high hazard areas will be delineated accurately.

The State Water Control Board is now providing localities with a model Flood Plain Zoning Ordinance. Because localities must adopt and enforce a similar ordinance in order to qualify for participation in the regular National Flood Insurance Program, the Board's model ordinance can help localities in meeting the requirement. While local adoption is not mandated by the State at present, it is required by the Federal Flood Insurance Administration, for participation in the National Flood Insurance Program.

In summary, planning of high hazard areas for localities will be accomplished through local comprehensive plans and zoning, with considerations given to the inherent danger to certain types of development, notably residential and industrial/commercial, upon locating in these areas. Management of coastal high hazard areas rests with the locality through decisions made on development in these areas and with the Commonwealth through strict adherance to building codes. The federal government has provided considerable disincentives for improper development and specific guidelines for acceptable development in its Federal Flood Insurance Act provisions.

It is Commonwealth policy to lessen the risk of flood losses in connection with state lands and installations, and state and/or federally financed or supported improvements. Pursuant to state Policy Memorandum Number 3-78, Flood Plain Management Program for State Agencies (Appendix V-3), certain requirements have been established for state agencies. All state agencies directly responsible for the construction of buildings, structures, roads or other facilities are to evaluate flood hazards when planning the location of new facilities and to preclude the uneconomic, unnecessary or unnecessarily hazardous uses of flood plains. If construction must occur in flood plains, then it must comply with the Statewide Building Code and §1910.3, 1910.4 and 1910.5 of the National Flood Insurance Regulations. Transportation facilities that must be located in floodways are to be constructed so that they, and all other existing or foreseeable facilities, do not raise the level of floodwater more than one foot.

(3) Priority of Use

As was the case with highly erodible areas, the States' prime interest in treating high hazard areas as a GAPC is the protection of life and property. Thus, priorities are tailored toward uses that will promote the protection of life and property.

1) Preservation;

2) Conservation;

3) Recreation; and

4) Development.

The Virginia Department of Emergency Services conducted a 3-year effort dealing with coastal hazards. Maps indicating hurricane risk areas, hurricane preparedness plans for local governments and a handbook for hurricane hazard mitigation were produced. The handbook, Disaster Preparedness Handbook, Hurricane Hazard Mitigation in Virginia, contains such information as setback lines and improved building standards.

3. WATERFRONT DEVELOPMENT AREAS OF PARTICULAR CONCERN

a. Description of Concerns

This class of APC is included in Virginia's program because of the great economic and social value assigned to waterfront development areas such as ports, commercial fishing piers and community waterfronts. Because of the limited availability of such areas and the pressures brought to bear on their development it is essential that they are managed as effectively as possible.

b. Planning and Management Program

The designation of an area as this type of GAPC will be a possibility open to local governments and regional authorities under the VCRMP. The management of such areas is already the responsibility of local governments and some regional authorities. Designation will allow federal CZMA funds to be used to assist planning for such areas and the implementation of those plans.

Any local government or regional authority wishing to apply for waterfront development funds through the VCRMP must request that the area be designated a Waterfront Development APC. The public benefits to be derived from the designation of the area must be identified and substantiated. Public benefits would include such things as increased recreational access, creation of new local employment, provision fo docking and marketing facilities for local watermen, etc.

The request for designation of an area as a Waterfront Development APC will be part of any application that a local government or regional authority will make for funds to be applied to such an area. The COE Administrator will make the decision on designation as the first step in the application review process. Once designated an area will remain on the APC list which will be reviewed periodically by COE staff. Designation of an area does not mean an associated application has been either accepted or rejected.

In order to be designated as a Waterfront Development APC an area must meet the following criteria:

- There is a comprehensive development and management plan for the area or provision has been made or is being made to create such a plan.
- All local, state and federal environmental requirements have been met or will be met.
- There is adequate access for the intended uses of the area or provision has been made or is being made for such access.
- Full public participation in the planning and development phases for the area has been and will continue to be encouraged and facilitated.

c. Priorities of Use

This type of APC is a development and/or redevelopment APC. The VCRMP recognizes two broad classes of priority uses for waterfront development APCs with the first class having by far the highest priority:

(1) Water access dependent activities

(2) Activities significantly enhanced by a waterfront location and complementary to other existing and/or planned activities in a given waterfront area.

Specific alternative uses for an area and the specific priorities of use for that area would have to be part of the information provided by a local government in its attempt to have an area designated as an APC.

D. Areas for Preservation or Restoration

Virginia has numerous mechanisms for the preservation or restoration of areas. Such areas receive special attention by the state for conservation, recreational, ecological and aesthetic values.

Section C of this chapter (Specification of APCs) outlines both the criteria and the procedures by which designations are made for the following areas receiving this special attention: wetlands; certain spawning nursery and feeding grounds; coastal primary sand dunes; barrier islands; significant wildlife habitat areas; public recreation areas; and highly erodible areas. The criteria for the designation of these APR's are the same as for APC's. Since all of the sites are defined by Virginia statute, all existing areas, such as wetlands, are included by definition, as would be any newly created wetland, acquired public recreation area or other such site.

CHAPTER VI

SHOREFRONT ACCESS PLANNING AND PROTECTION

A. Introduction

B. General Policies

C. Virginia Outdoors Plan

D. Parks, Natural Areas and Wildlife Management Areas

E. Waterfront Recreational Land Acquisition

F. Waterfront Recreational Facilities

G. Wetlands and Bottomlands Protection

H. Waterfront Historic Properties

CHAPTER VI

SHOREFRONT ACCESS PLANNING AND PROTECTION

A. INTRODUCTION

Virginia's coastal lands and waters have long been considered a valuable recreational, as well as commercial, resource. Throughout the Commonwealth's history, citizens have used Virginia's coast for fishing, boating, sunbathing and simply enjoying the atmosphere provided by the land-water-sky interface. Few people however, have been fortunate enough to own waterfront property. Consequently, most people have to rely on the government, in the case of public beaches, or private industry in the case of marinas, for access to the coast.

Recreational activities in coastal areas are dependent upon two types of access: access to the shoreline and also access to the water. Virginia's shoreline is utilized for surf fishing, sunbathing, picnicking, camping, hunting, and beach walking and jogging. Other recreational activities extend into the coastal waters beyond the shoreline, such as fishing, surfing, hunting waterfowl, swimming, and sailing and boating. Access to the shoreline is a common requirement of all coastal recreation activities. However, many shoreline features, such as marshes which comprise most of the shoreline, are generally not as suitable for recreation activities as are beaches. Beaches are undoubtedly the coastal feature most in demand for the types of shoreline recreation mentioned above.

The Virginia CRM program defines beaches as zones of unvegetated and unconsolidated soil that extends landward from mean low water to where there is a marked change in soil or physiographic form, or to the line of permanent vegetation. In the absence of vegetation, the inland limit of a sandy beach shall be identified by an increase in elevation or by existing structure. This definition of a beach is consistent with state law.

The Code of Virginia (Section 10-217) defines a "public beach" as a sandy beach located on a tidal shoreline suitable for bathing in a city, county or town and open to indefinite public use. This defintion does not include public beaches associated with federal or state lands. The list of public beaches in Virginia is as follows:

1) County of Stafford	AquaPo Beach	.3 miles
2) Town of Colonial Beach	Central Beach	2.5 miles
	Castlewood Park Beach	
3) Northumberland County	Northumberland County Beach	100 feet

4) Mathews County	Mathews County Public Beach	1,000 feet
5) Gloucester County	Gloucester Point Public Beach	.1 miles
6) York County	Yorktown Beach	.3 miles
7) City of Hampton	Groundview Beach and Preserve	
	Malo Beach	3.5 miles
	Buckroe Beach	
8) City of Newport News	Anderson Park Beach	1.5 miles
9) City of Norfolk	Huntington Park Beach (all northern shoreline)	7.9 miles
10) City of Virginia Beach	Resort strip beach	7.8 miles
	Little Island Beach	
11) Town of Cape Charles	Cape Charles Public Beach	1,762 feet

(All distances are approximate)

Beach use/sunbathing is the single most popular outdoor recreation activity participated in by Virginians, in terms of total numbers of participants. Nearly half the population participates in this activity. There are a surplus of beach resources, but because many of these beach areas are privately owned, and many which are publicly owned are inaccessible, there is actually a deficit of available public beaches. However, a substantial amount of high quality beach can be made available. The primary need is for funds so that access and parking facilities can be developed.

Access to coastal waters for activities from a boat is provided by marinas and boat landings. Other water-based recreational activities occur from piers, beaches and to a lesser extent, marshes (waterfowl hunting). In all cases, recreational use of coastal waters requires first acquiring access to the shoreline.

In spite of the great abundance of tidal water and coastal shoreline in Virginia, recreational use of the water is somewhat limited. Inadequate or insufficient access to tidal waters is the primary limiting factor. A high percentage of all waterfront lands are in private ownership and unavailable for public use. While there is a substantial amount of publicly owned waterfront, much of it consists of marshlands and/or tidal flats that have little recreational potential.

While there are over 290 marinas with about 250 fee ramps plus another 165 developed public landings in tidal waters, these are insufficient to adequately handle demand. This excess demand is evidenced by waiting lists for marina slips and hour long waits at many public boat launching facilities. It is estimated that by

1990 resident boating demand will exceed 33.5 million annual activity days in the Tidewater areas of Virginia, and over 87,000 watercraft will be competing for access. The accommodation of this tremendous increase in recreational boating demand will require local, state and federal agencies, as well as the private sector, to carefully coordinate the development of 50 new public landings and approximately 7,000 additional marina slips.

In Virginia, access to the shoreline is provided primarily through public and private facilities, including national parks, national wildlife refuges and military installations at the federal level; and state parks, wildlife management areas, public boat landings, natural areas and trails at the state level. Commercial campgrounds and shoreside amusement parks also provide opportunities for access to Virginia's shoreline. Local governments have provided for marine recreation through the establishment of public beaches.

B. GENERAL POLICIES

It is the policy of the State:

1) To protect and preserve underwater historic property as exclusive State property by all State agencies. (Virginia Code §10-145.9).

2) To assist the Commission of Game and Inland Fisheries for the development of projects that will increase the number of public fishing areas, boat launch areas, and game managing lands. (Virginia Outdoors Plan).

3) To develop each State Park existing or proposed, to its optimum capacity without destructive over-use. (Virginia Outdoors Plan).

4) To create and put into effect a long range plan for the acquisition, maintenance, improvement, protection and conservation for public use of those areas of the State best adapted to the development of a comprehensive system of outdoor recreation facilities in all fields, including, but not limited to parks, forests, camping grounds; fishing and hunting grounds; scenic areas, waters and highways, boat landings, beaches and other areas of public access to navigable waters; and to facilitate and encourage the fullest public use thereof.

5) To preserve much of the natural unspoiled coastal complex of barrier islands, bays and marshes for its priceless ecological and recreational values to all people, now and in the future. (Virginia Outdoors Plan).

6) To develop or retain for public enjoyment a reasonable part of the recreational, potential, and scenic values in all new lakes and existing rivers and bays, in connection with developments for other purposes. (Virginia Outdoors Plan).

7) To protect certain lands as commons for the use and benefit of the people of the state. (10 Hening Statutes 266, 1780) including seashores not granted under colonial government (§62.1-1, Code of Virginia).

8) To maintain quality waters for recreational use by regulations which require conformance to water quality criteria and standards (§62.1-194, Code of Virginia).

9) To request in each biennium adequate funds for carrying out recommendations of the Virginia Outdoors Plan.

C. VIRGINIA OUTDOORS PLAN

Planning for coastal access under the Coastal Resources Management program is provided by the existing planning process for outdoor recreation of the Commonwealth. The Division of Parks and Recreation (DPR) is the state agency with primary responsibility for planning and managing the outdoor recreation opportunities of the Commonwealth, including access to and use of Virginia's coastal lands and waters. In this role, the DPR is responsible for the preparation of the Virginia Outdoors Plan (VOP), the coordination of matters which relate to recreation, and the implementation of the VOP Plan through a grants-in-aid program.

The Virginia Outdoors Plan, 1984, is the planning process by which the Commonwealth describes problems, and develops objectives and policies applicable to coastal management. This plan also provides sources of assistance to local governments and private industry for access. Through the implementation of the VOP, national interests are considered, and coordination among various levels of government and the private sector is accomplished. The VOP is endorsed by the Governor as the State Comprehensive Outdoor Recreation Plan (SCORP) and is accepted by the National Parks Service, Department of the Interior, as the plan qualifying Virginia for receipt of (matching) acquisition and development grants under the Land and Water Conservation Act, the funds of which are used for implementing the VOP.

All state agencies are charged to cooperate with the Division of Parks and Recreation in implementing the Plan. Criteria related to coastal access policies, recommendations, funding assistance programs and identification of sites as potential recreational geographic areas of particular concern are described in the VOP. The

Division also has the authority, with the Governor's approval, to adopt new criteria and practices responsive to changing recreational needs, such as the need for additional and improved points of access along the coast.

The VOP/SCORP is updated on a five-year cycle, having been originally issued in 1965 with updated versions produced in 1970, 1974, 1979 and 1984.

The inventory of recreational areas is continually revised on field sheets by local parks and recreation officials, local and regional planners, extension agents, and state agency planners. DPR planners integrate the revisions by discarding duplicated information, researching missing data and updating the data bank at Virginia Commonwealth University.

Public participation in development of the VOP is solicited during the planning cycle by contact with local groups and State special interest organizations, and at publicized public review meetings.

A means of coordination between the State, district and local park planning efforts is available through the Department of Housing and Community Development which provides substantial matching money for operation of the planning district commissions. The DPR provides advisory assistance to the localities and districts in the preparation of their plans, and reviews their plans in draft form. The 1984 Virginia Outdoors Plan was designed in part to provide useful information for the local and regional agencies and to stimulate increased coordination.

From the tabulated differences between inventoried facilities available for use and statistical demand estimates, DPR planners describe the means to improve the use of existing areas in two formats: recreation regional proposals (proposals which balance existing and potential supply with projected area demands) and statewide activity systems (such as all state parks expanded to management limits, all boat ramps, etc.). Needs for swimming, boating and fishing areas and facilities depicted on the activity systems are ranked in comparison with other activity needs. These needs are studied by selected agencies to recommend opportunities for meeting anticipated needs, such as land for sale, excess public lands, proposed development or relocation projects. The results of the systems assessment are furnished to the DPR grants administration staff for comparison with available funding and assistance requests. The most promising projects are refined with input from pertinent state and local agencies and the list of projects to be funded is compiled to arrive at an optimum priority list for funding approval. Upon completion of the selection process, the new projects are added to the inventory. This process is repeated as funding becomes available.

D. PARKS, NATURAL AREAS AND WILDLIFE MANAGEMENT AREAS

Parks are provided for the recreational pleasure of the people of the Commonwealth by state and federal agencies, and other political subdivisions. Federal areas, authorized by the National Seashore Act of 1963, include Assateague National Seashore and the George Washington Birthplace National Monument. State parks are authorized by §10-21, Code of Virginia and are administered according to rules of the State Parks System by the Commissioner of Parks and Recreation, under authority from the Board of Conservation and Economic Development. The system includes 14 state park areas within the coastal zone, 11 of which are adjacent to tidal waters. These parks serve a variety of basic recreational needs within an hour's drive of major population centers, preserving and managing for public enjoyment a cross-section of the best examples of scenic natural resources. Regional parks (Northern Virginia Regional Park Authority) operate under §15.1-1278, Park Authorities Act, to provide facilities primarily for citizens of member jurisdictions, on a scale larger than what individual localities are customarily able to establish. Local parks, which are "public areas" managed for the public welfare under §15.1-1232, include areas and facilities affording citizens extensive opportunities for viewing, walking, fishing, picnicking, and boating on or near the shorefront.

Wildlife Management Areas and Refuges provide passive and active recreational opportunities. Ten state wildlife management areas are maintained by the Virginia Commission of Game and Inland Fisheries under authority of §29.11 for public shooting, fowling, and fishing, all of which are located on tidal water. Game refuges may also be established under §29.11 for preservation, propagation, and stocking programs for game birds, animals, fish and other wildlife. Such lands have value as passive recreational areas, for wildlife observation. Federal refuges conduct active public visitation programs.

E. WATERFRONT RECREATIONAL LAND ACQUISITION

The Virginia Outdoors Fund is a major source of money for the acquisition and development of recreational lands at the state and local levels. It consists of state funds appropriated by the General Assembly, and federal funds allocated to the State from the Land and Water Conservation Fund. It is administered by the DPR in accordance with the Virginia Outdoors Plan. Money is authorized by the Board, subject to the National Park Service, for specific qualifying projects of certain state agencies and of the cities, towns, counties and regional park authorities throughout the State. The Division of Parks and Recreation and the Commission of Game and Inland Fisheries both receive funds through this program.

The majority of these projects are funded with 50 percent Land and Water Conservation Funds (L&WCF); and in the case of major State Park acquisition and developments, the other 50 percent consists of appropriated State money. For Commission of Game and Inland Fisheries projects, the Outdoor Fund provides 50 percent L&WCF, and when available, 25 percent State and 25 percent local monies. Regional Parks Authority projects are funded 50 percent L&WCF, 30 percent State funds, when available, and 20 percent local funds. An extra 5 percent of State funding appropriated is to stimulate efforts to establish park authorities with memberships composed of two or more political subdivisions.

Expenditure of the Virginia Outdoors Fund is a significant implementation approach for resource management, in the case of shorefront acquisition, through the direct responsibility of the Board of Outdoor Recreation. Outdoors Funds are available only through the Board of Outdoor Recreation, and are obligated on a project-by-project basis.

The Open Space Land Act (§10-151 through 158 of the Code of Virginia) grants authority to public bodies to acquire or designate property for use as open space land and to make necessary expenditures pursuant to the goals of the Act. Power to acquire recreational lands rests with the Division of Parks and Recreation as administered by the Board of Outdoor Recreation (§10-21). The management of access roads to shorefront resources through the Recreational Access Road Fund (§33.1-223) has resulted in improved access roads to 40 parks and recreation areas.

The Virginia Supreme Court in Bradford vs. The Nature Conservancy 1982, recognized the existence of common lands that provide access for public fishing, fowling and hunting on certain wetlands and beaches. It should be noted, however, that marshland granted prior to 1830 and intertidal strips granted prior to 1770 are exempted from common access. This recent leading case will undoubtedly result in future cases recognizing common lands in other privately owned Virginia shoreline.

It is the policy of the State:

1) To protect the natural ecological characteristics of the wetlands adjoining our bays and rivers, through regulation or acquisition as necessary. (Virginia Outdoors Plan)

2) To provide shorefront access acquisition and development assistance to localities by maintaining eligibility to receive Land and Water Conservation Funds through the program of the Division of Parks and Recreation (L&WCF funds are allocated statewide for a full range of recreational projects, not limited to coastal areas).

3) To protect areas, properties, lands or any estate or interest therein, of scenic beauty, recreational utility, historical interest, remarkable phenomena or any other unusual features which should be acquired, preserved and maintained for the use, observation, education, health and pleasures of the people of Virginia by the Board of Conservation and Historic Resources, Division of Parks and Recreation (§10-21, Code of Virginia).

F. WATERFRONT RECREATION FACILITIES

Boat ramps are provided by the Commission of Game and Inland Fisheries under §29-11. Each year two additional ramps are planned for construction. Presently, there are 57 in the coastal area. On a case-by-case basis, the Commission buys, develops and manages public ramps where increased usage would result and when sufficient funding is available.

Public Landings are managed in trust for the public by the Department of Highways and Transportation. Approximately 120 sites which were formerly private steamboat landings, wharves or docks are now open to the public. These were assigned by legislation in 1932.

Bridges which are physically suited for fishing platforms that are being replaced by newer structures are deeded to qualifying localities for their recreational use. Approaches to dismantled bridges are reserved for fishing, canoeing, or other suitable activities if cooperative management contracts are accepted by local interests. The type of contract utilized depends upon deed covenants, type access desired and other variables, and may take the form of a cooperative maintenance agreement or actual transfer of title, as allowed by the Department of Highways and Transportation in §33.1-207 Code of Virginia.

G. WETLANDS AND BOTTOMLANDS MANAGEMENT

The protection and management of the states wetlands and bottomlands is the responsibility of the Virginia Marine Resources Commission and is described in Chapter III, Core Regulatory Programs.

H. WATERFRONT HISTORIC PROPERTIES

The Commonwealth of Virginia has a long history of settlement and development, and much of that history has involved its extensive shoreline. In Virginia the protection and preservation of historic shorefront properties is aided by the Virginia Historic Landmarks Commission.

Buildings, structures, and sites of historical, architectural, and/or archaeological interest are significant resources for the Commonwealth, both from the standpoint of cultural enrichment for our citizens and from the standpoint of functional resources for society. However, these resources are vulnerable to irrevocable damage or destruction resulting from ignorance of their value, redevelopment pressures, and financial burdens. The Virginia Historic Landmarks Commission's activities within this program are aimed at the preservation, appreciation, and efficient use of these resources.

Broadly stated, the agency's mission is to encourage the preservation, rehabilitation, and continued use of Virginia's cultural resources. The Commission seeks to carry out its mission through the legislatively mandated activity of surveying the Commonwealth's buildings, structures, and sites of architectural, historical, archaeological, and/or cultural interest, and by entering the outstanding examples on the Virginia Landmarks Register. The Commission uses this register as the foundation of its efforts to educate the general public to the value of cultural resources.

The Commission serves property owners and land-use planners in their efforts to recognize, maintain, and rehabilitate cultural resources. These services range from technical advice for property owners on specific preservation problems to assistance to localities in planning for the preservation and continued use of cultural resources. The Commission also serves Federal and State agencies by assessing the impact of proposed public projects on existing cultural resources. The Commission further serves property owners by administering various financial incentive and assistance programs designed to encourage rehabilitation of historic structures.

Underwater historic sites are dealt with in Chapter V, Geographic Areas of Particular Concern.

Chapter VII

ENERGY FACILITY PLANNING PROCESS

A. Identification of Energy Facilities Likely to Locate in or Which May Significantly Affect Virginia's Coastal Zone.

1. Definition

2. Discussion

a. Electric Generating Facilities

b. Plants for Processing and Refining Petroleum

c. OCS Onshore Support Facilities

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B. Procedures for Assessing the Suitability of Sites for Such Facilities

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C. Articulation and Identification of Enforceable State Policies, Authorities and Techniques for Managing Energy Facilities and Their Impacts

D. Identification of How Interested and Affected Parties and Private Parties Will be Involved in the Planning Process

Chapter VII

ENERGY FACILITY PLANNING PROCESS

In all likelihood Virginia will be faced with the siting of one or more energy facilities within its coastal zone in the next decade. According to data developed by the United States Department of Energy and other major forecasters, it is likely that Virginia's demand for energy will grow by 20 percent in the next decade to approximately 1.8 quadrillion BTUs.

The demand for and production of energy in Virginia (or any jurisdiction) is determined by the composition of its economy and the natural resources which it possesses. Virginia consumes approximately 1.5 quadrillion BTUs of energy per year, of which approximately 20 percent is produced within its borders. The major sectors of Virginia's economy that consume primary energy are: transportation (37 percent), electric power generation (33 percent), industrial (15 percent) and residential/commercial (15 percent). Although Virginia's coal mines produce approximately 1.0 quadrillion BTUs of energy annually, only a small percentage of this coal is utilized within the Commonwealth, while most of Virginia's coal is exported to other states and overseas. There are limited amounts of other energy resources being produced in Virginia; however, imported petroleum is the primary fuel consumed in the State.

Given the above mix in the Commonwealth and its projected growth, the major types of energy that will be consumed in the State will be electricity, petroleum, and natural gas and the major type of energy that will be exported will be coal. Therefore Virginia's planning process focuses on facilities associated with electricity, petroleum and natural gas and in the exportation of coal.

Such facilities have widespread social, economic, and environmental consequences and they cannot be located without extensive analysis of their likely effects or without the involvement of local, state, and federal agencies and numerous private interests. Coastal resources in estuarine environments are extremely fragile. Such facilities are likely to have especially significant impacts on these resources and therefore require special care in siting and measures to mitigate against adverse environmental impacts when proposed to be located in coastal areas.

The Commonwealth has a major interest in these facilities and plays a central role in location decisions for them, and recognizes that there is a national interest in their siting.

In order to systematically describe Virginia's Energy Facility Planning Process, the Commonwealth's approach will be shown within the framework of the Coastal Zone Management Act requirements (15 CFR 923.13):

(1) Identification of energy facilities which are likely to locate in or which may significantly affect a state's coastal zone.

(2) Procedures for assessing the suitability of sites for such facilities.

(3) Articulation and identification of enforceable state policies, authorities and techniques for managing the siting of energy facilities and their impacts.

(4) Identification of how interested and affected public and private parties will be involved in the planning process.

These will be dealt with as sections of this Chapter entitled IDENTIFICATION, ASSESSMENT, MANAGEMENT and PUBLIC PARTICIPATION.

A. IDENTIFICATION: Identification of Energy Facilities Likely to Locate in or Which May Significantly Affect Virginia's Coastal Zone.

1. Definition

The CZMA requires that a state's program document list the entire range of energy facilities that theoretically could locate in the state's coastal zone. That list of energy facilities is as follows and includes equipment and facilities which could be used primarily:

a. in the exploration for, or the development, production, conversion, storage, transfer, processing, or transportation of, any energy resources; or

b. for the manufacture, production, or assembly of equipment, machinery, products or devices which are involved in any activity described (above). This includes but is not limited to:

(i) electric generating plants;

(ii) petroleum refineries and associated facilities;

(iii) gasification plants;

(iv) facilities used for transportation, conversion, treatment, transfer, or storage of liquefied natural gas;

(v) uranium enrichment or nuclear fuel processing facilities;

(vi) oil and gas facilities, including platforms, assembly plants, storage depots, tank farms, crew and supply bases, and refining complexes;

(vii) facilities, including deepwater ports, for the transfer of petroleum;

(viii) pipelines and transmission facilities; and

(ix) terminals which are associated with any of the foregoing.

As was explained on VII-1 the types of energy facilities that are likely to locate in Virginia are limited. Consequently, based on our assessment of location trends Virginia's energy facility planning process will focus on the following four types of facilities:

a. Electric generating facilities of 100 megawatts (MW) or more, and electric transmission lines of 150 kilovolts (KV) or more, or either when such facility is of sufficient size or magnitude of impact to make them subject to state review through the federal environmental impact statement process;

b. Plants for processing or refining petroleum or natural gas when such plants are of sufficient size or magnitude of impact to make them subject to state review through the federal environmental impact statement process;

c. Onshore facilities for the support of outer continental shelf oil and gas exploration and development when such facilities are of sufficient size or magnitude of impact to make them subject to state review through the federal environmental impact statement process.

d. Coal exporting piers when such piers are of sufficient size or magnitude of impact to make them subject to state review through either the federal or state environmental impact statement process.

2. Discussion

a. Electric Generating Facilities.

As noted, additional fossil fuel and/or nuclear power plants will be needed in the future in spite of energy conservation efforts by the government and individuals and by commercial and industrial establishments. In recent years utility plans have been subject to fluctuation, due in part to changes in energy demand patterns, utility financing problems and regulatory uncertainty.

Because power plants and associated facilities affect the land, water and air, decisions regarding energy policy alternatives require comprehensive environmental analysis.

Land requirements for power plants are substantial. Water impacts are due mostly to the use of large quantities of cooling water to condense spent steam. Fossil fueled power plants account for significant discharges of sulphur dioxide, nitrogen oxides and particulate matter. Other concerns include noise, esthetics and impacts from transmission lines. Furthermore, the socio-economic effect of the facility is very significant to the area in which it is located, particularly because manpower needs during the construction stage are large but the long-term employment associated with the operation is low. This causes an influx of people seeking employment at the construction stage. Families and work crews require housing and other facilities which rural areas may not be equipped to provide. The resultant development patterns and problems are often undesired. In summary, it is possible that an electrical generating plant of significant size can change the natural, cultural, and economic environment in the coastal area.

b. Plants for Processing and Refining Petroleum

Private industry typically initiates the siting process for petroleum refineries and associated facilities, such as terminals, when the demand for facilities is such that there is a reasonable opportunity for profit. The public knows less about the demand for petroleum refineries than for electric generating plants because government is not as actively involved in assessing the need for the former, or in providing for their siting. Private industry, of course, is reluctant to release data on its analysis of the demand for facilities in specific areas. Thus, it is difficult to quantify the potential demand for additional petroleum refineries in Virginia to the extent that the future demand for power plants can be quantified, for example.

Representatives of the American Petroleum Institute and the U.S. Department of Energy have previously acknowledged that there was no current need for new petroleum refineries in the region.

A large oil find on the OCS off the East Coast could, on the other hand, increase the demand such that industry will seek new refinery sites. New refineries may also be in demand if the type of OCS crude varies substantially from the type presently refined, although it may be cheaper to modify existing refineries.

That OCS development will create new demand for refineries is not clear, however. The Council on Environmental Quality has pointed out that:

> "In some OCS frontier areas, the refinery siting problem may not arise at all. Insofar as OCS oil simply replaces imports, there will be no call for new refineries to handle it."

Nevertheless, many elements work together to favor coastal sites, including good markets in populous coastal cities, access to crude oil from abroad, and cheap water transportation. With OCS development, and possibly, superports looming on the horizon, the pressure to locate refineries in the coastal zone will probably continue.

Oil refineries are land intensive. Refineries with a capacity of at least 100,000 barrels a day are able to yield different products to meet seasonal--for example, gasoline in the summer, fuel oil in the winter--geographic, and marketing variations in demand. This flexibility encourages the siting of large refineries, with attendant demands for land. A new domestic refinery in the 250,000 barrel per day range requires roughly 1,000 to 1,500 acres of clear, flat, industrially zoned land. The site should have a maximum slope of 5 degrees, moderately well-drained soil and the capability to support large storage tanks and processing units.

Being largely automated and having substantial acreage of storage tanks and pipelines, a petroleum refinery requires few employees per acre, that is, the employee:acre ratio is low. The capital investment per acre of actual refinery area (operating area excluding buffer and unused acreage) is, however, very high.

Water in large quantities is essential to petroleum refinery operations. The amount of water used depends upon the size of the refinery, the complexity of the product mix, the processing and cooling system technology, and water quality. With an efficient mix of water and air cooling, a 250,000 barrel per day refinery uses between 5 and 15 million gallons of water per day.

Finally, oil refineries require substantial amounts of energy. Electricity, fuel oil, and gas are the major power sources, with purchased electricity typically providing nearly 80 percent of the

refinery's energy needs. Heavy-duty transmission lines and electrical substations are, therefore, normally necessary adjuncts to a refinery complex.

c. OCS Onshore Support Facilities

Virginia has expressed strong support for OCS oil and gas development in the past so long as it is done in a manner that assures protection of the state's environmental and economic interests.

Possible demand for platform fabrication, pipeline yards or other onshore support facilities must be prepared for in the state's energy facility planning process. Such facilities are land intensive, require locations near the state's most important coastal resources and may cause severe effects.

Pipe coating yards generally use less space than platform fabrication yards, but still require from 100 to 150 acres of waterfront land. A marginal wharf of 750 feet on water 20 to 30 feet deep; 150,000 gallons of water per day; and one million kilowatt hours of energy are also typically needed. Pipe coating yards are in demand for relatively short periods of time, thus a site easily adapted to another use at the termination of the pipe coating activity is indicated. Access to rail and major highways is desirable for transporting cement and other supplies.

The siting of a new fabrication yard depends on a significant oil or gas discovery because platforms can be towed from the Gulf region at less cost unless a large number of platforms are required. If the find is of sufficient size to warrant new fabrication facilities, industry spokesmen believe only one fabrication yard will be needed on the East Coast.

Storage depots also benefit from nearby transportation networks. They vary in size according to the operation requiring support, the facilities available, and the materials requiring storage.

There appears to be little demand for Virginia service bases during exploratory drilling operations. Delaware and Rhode Island bases are being used to support exploratory operations in the Mid-Atlantic.

A wide array of federal, state and local measures provide pollution controls for OCS development operations. The Outer Continental Shelf Lands Act and the Federal Water Pollution Control Act allow the federal government to impose strict offshore operation standards.

d. Coal Exporting Piers

Both private industry and the state initiate siting processes for coal exporting piers when the demand for the facilities is sufficiently large. The increasing worldwide demand for coal makes it likely that Virginia's exports will continue to rise, and that the need for additional piers may arise in the future.

Coal exporting piers are not as land-intensive as refineries. Typically, a pier that handles 30 million tons per year reqires less than 500 acres. The presence of a coal pier will result in such aesthetic impacts as tall elements in the visual scene. Coal piles may reach 65 feet or more in height, and such equipment as the master stackers, reclaimers and shiploaders will extend over 100 feet in the air; however, they are relatively slender and are usually not in a vertical position.

Water quality in the vicinity of coal exporting piers can be affected by several sources. During construction, water quality may be affected by dredging, runoff from disturbed soils, lubrication oils from construction equipment, etc. Once the facility is constructed, other sources must be considered such as runoff from coal piles, sanitary wastes, etc.

Due to shoreline requirements of coal piers, wetlands and valuable subaqueous bottoms can be eradicated or severely impacted. These effects must be given full consideration.

B. ASSESSMENT: Procedures for Assessing the Suitability of Sites for Such Facilities.

There will be two related avenues for the assessment of the suitability of sites proposed for coastal energy facilities. One is an informal mechanism for examining potential sites and the other is the set of existing formal environmental review processes.

1. COE Energy Facility Inventory and Preliminary Site Assessment Process

This will be a new COE function which will have two components: energy facility inventory system and preliminary facility assessment process.

(a) Energy Facility Inventory System

An inventory of coastal energy facilities will be created and maintained at the office of the COE. Specifically, the inventory

will be on coastal energy facilities which have been formally proposed and/or are under consideration. The COE will actively seek information regarding all potential coastal energy facilities. This will involve monitoring industrial news, federal notices and other relevant sources of information and may include periodic inquiries of utilities and other energy-related concerns. The inventory will be updated as new information and analysis is developed. The inventory will be available for review by interested parties during normal working hours at the COE offices.

The preliminary organization of individual facility files within the inventory is expected to be as follows:

(i) Description of coastal energy facility being proposed and/or considered.

- o Type and scale of facility
- o Site(s)
- o Proponent/developer
- o Development schedule

(ii) Preliminary Assessment of facility and site(s)

- o Facility site requirements
- o Costs and benefits
- o Environmental
- o Other

  } o Typical of class of facility
  } o Specific to a given facility

- o Location and general characteristics of similar and related facilities
- o Availability of additional sites meeting facility site requirements

(iii) Applicable federal, state and local requirements

- o Environmental
- o Other

(iv) Statements of interested parties

- o Proponent/developer
- o Local government

- o Areawide agencies
- o State government
- o Federal government
- o Community groups
- o Others

(b) Preliminary Site Assessment Process

The staff of the COE is available to provide coordination for potential developers of coastal energy facilities who may wish to meet with state regulatory agencies to determine what requirements the facility must meet and to learn what preliminary assessment the agencies can make of the facility and the sites. The COE will publicize the availability of this service and will make direct contact with proponents of specific projects to encouarge them to use that service. The COE will assist the facility proponent and state agencies to determine the scope of concerns that are likely to arise if and when the facility project reaches the permitting stage. The COE staff will provide the developer and the agencies with copies of the facility file and will discuss any significant issues which may have emerged.

2. Environmental Impact Review

All energy facilities included in this Energy Facility Planning Process, by definition will be subject to the environmental impact review process under the National Environmental Policy Act (NEPA). For purposes of Virginia's program, only those electric generating plants and transmission lines, petroleum processing plants, OCS onshore support facilities, and coal exporting piers which are of sufficient size or magnitude of impact to require an environmental impact statement (EIS) are included, unless the coal exporting pier is state initiated. A state initiated coal exporting pier can trigger a state EIS which is discussed later in this section. Any such facility, thus, must meet two criteria to fall under this definition. First, a facility must require that some federal action be taken, such as the issuance of a Corps of Engineer's permit, to bring it under the jurisdiction of NEPA. Second, a facility must have a significant "effect on the human environment" in order to trigger the requirement for an EIS.

These criteria are sufficiently inclusive to satisfy the needs of an energy facility planning process. The focus of Virginia's coastal management program is on the coastal edges and waters. The

Corps of Engineers, under §10 of the Rivers and Harbors Act and §404 of the Clean Water Act, has jurisdiction, concurrent with that of the state, over any encroachment into these edges and waters. Thus, for any energy facility project which would have direct effect on Virginia's coastal resources, the federal jurisdiction necessary to invoke NEPA is not in question.

The second criteria addresses the significance of the project. To require an EIS a project must be one "significantly affecting the human environment." The environmental review process, under NEPA and Council on Environmental Quality regulations, provides for an environmental assessment which can lead to either a "finding of no significant impact" or to the requirement that an EIS be undertaken. State review, coordinated by the Council on the Environment, occurs even at the environmental assessment stage as well as later. Therefore, even if there is a question as to the significance of the potential impacts, the state has an environmental document to review and may comment accordingly. In any case, any energy facility which would have a significant impact on Virginia's coastal resources would require that an EIS be prepared.

Among other things, an EIS must characterize the project site and address the environmental impacts of the project as proposed, as well as the impact of alternatives, including alternative locations.

The state's involvement in the EIS process begins even before the document is drafted. The state, along with other interested parties, may participate in the "scoping" process through which pertinent issues and interests are identified before the EIS writing begins. Later, the state reviews and comments on the draft EIS as well as the final. In Virginia, the Council on the Environment is responsible for coordinating the state's review of federal environmental documents and responding to appropriate officials on behalf of the Commonwealth. The Council is also the lead agency for coastal management and works closely with the Secretary of Natural Resources in both of these roles.

(a) State Participation in the Federal EIS Process

The Constitution of the United States does not address environmental protection per se. Federal legislation relating to environmental protection has a constitutional basis in such powers as the commerce power, the treaty power, the admiralty power, the taxing power, the power over Federal property, and others.

The National Environmental Policy Act of 1969 (NEPA) is the key piece of Federal legislation relating to the Federal Government's concern over environmental values. NEPA (Public Law 91-190)

set forth a declaration of national environmental policy and created in the Office of the President a Council on Environmental Quality (CEQ). NEPA also created an environmental impact statement requirement.

Pursuant to NEPA, all federal actions must be consistent with the policy of the Federal government to encourage productive and enjoyable harmony between man and his environment. In order to foster this harmony, an environmental impact statement is required along with recommendations or reports on "major Federal actions significantly affecting the quality of the human environment." An EIS is not required if a Federal action is not major and significant.

Executive Order 11514 (1970) directs the CEQ to issue guidelines to all Federal agencies concerning their implementation of the NEPA, EIS requirement. Federal agencies have developed individual procedures in accordance with the CEQ Guidelines. Each Federal agency has its own procedures tailored to its own particular operations, yet the general process is the same for all agencies.

Each Federal agency has identified types of projects which normally do not have significant environmental impacts due to their nature or size. When an agency initiates a project of this type, it may simply proceed with the project.

The initiating agency may wish to prepare an Environmental Assessment if a project is not obviously major and significant, but is significant enough to deserve further study. The Assessment can serve as a study to determine project significance or as a closer look at environmental considerations simply for the sake of better planning. CEQ encourages agencies to prepare Environmental Assessments for all projects.

Upon completion of an Environmental Assessment the initiating agency makes a determination of a project's significance. An EIS must be filed if a project is found to be "major and significant." If not, the initiating agency may proceed. (In certain instances CEQ Guidelines do require that the initiating agency give public notice of a finding of no significant environmental impact, and then wait at least thirty days before proceeding).

An initiating agency must give public notice of its intent to file an EIS as soon as practicable after the decision to prepare the statement is made.

When the Draft EIS has been prepared, the initiating agency must file it with the Environmental Protection Agency, make it available to Federal, State and local agencies and to the public, and wait at least 45 days to receive comments on the document. All comments received during that period must be substantively addressed in the Final EIS and reproduced along with specific responses in an appendix to the Final EIS.

Federal agencies should provide copies of EISs that address projects that will impact on Virginia's environment to all those Virginia State agencies having interests and expertise in pertinent areas. The Council on the Environment coordinates the State's review of federal Environmental Impact Statements and provides the initiating agencies with the consolidated comments of the State. The Council's comments represent the State's review of the proposed action from the perspective of the total environment and are not limited to any specific aspect of environmental concern.

After the review period for the Draft EIS, the initiating agency must file a Final EIS with EPA before proceeding. The Final EIS must be given the same sort of public notice as the Draft, and copies must be provided to any persons, organizations, or agencies which submitted comments on the Draft. The Council coordinates the State's review of the Final EIS and provides consolidated State comments to the initiating Federal agency.

Thirty days after the Final EIS is filed with EPA, the initiating agency may proceed with the project. The decision to proceed is made by the initiating agency. When Federal agencies reviewing the EIS have major objections, they may refer such objections to CEQ. The thirty-day period may then be extended while CEQ works to resolve the issues. In special instances, CEQ may give advice to the President of the United States, who has the ultimate authority in the Executive Branch with respect to proposed actions of Federal agencies.

A basic difference between the Federal EIS Process and the State EIS Process is the much larger amount of resources devoted to the Federal Process. The State has made up for this to some extent by its emphasis on substance rather than form. The average State EIS is much shorter and less expensive to produce and to review than the average Federal EIS.

Federal Executive Order 11991 (1977) directed the CEQ to "issue regulations to Federal agencies for the implementation of the procedural provisions of the Act (NEPA)". The President directed in part that the regulations be "designed to make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives".

Thus state participation in the federal EIS process provides Virginia with the formal opportunity to review and comment on the impacts of a proposed energy facility, and constitutes a procedure for assessing the suitability of sites for such facilities for purposes of the Energy Facility Planning requirement.

(b) State EIS Process

While the state is highly involved in the federal environmental impact review process as described above, §10-17.107 of the Virginia Code), the state also has its own environmental impact review process which can be set in motion sooner than the federal process. For the purposes of a discussion of the energy facility planning process, this state process need only be described for the situation where a state-initiated coal exporting pier is involved. Should the situation arise where a state-initiated coal exporting pier would be sufficiently small and of such minor impact that a federal EIS would not be required, a state EIS may well still be required. The state requirement applies if a state project will cost $100,000 or more.

Under the state EIS procedure, the Council on the Environment (COE) is responsible for coordinating the review of the EIS. The agency proposing the action submits the EIS to COE, and COE then sends copies out to agencies that are expected to have an interest in the project. These agencies then send their comments to COE, and COE makes recommendations based on the agencies' comments. The Governor has final review authority in a case of irreconcilable disputes between agencies.

C. MANAGEMENT: Articulation and Identification of Enforceable State Policies, Authorities and Techniques for Managing Energy Facilities and Their Impacts.

Energy facilities identified for purposes of meeting this program requirement will, by definition, have (or have the potential for) direct and significant impacts on Virginia's coastal zone. Therefore, those management policies, authorities and techniques incorporated in the main body of Virginia's coastal program will serve also to manage energy facilities and their impacts. These "Core Regulatory Programs" are discussed in Chapter I and III. Programs pertinent to energy facilities include:

Fisheries Management - Regulatory Authority Over Commercial and Recreational Fishing -- Marine Resources Commission (MRC); Commission of Game and Inland Fisheries (CGIF).

Subaqueous Lands Management - Regulatory authority over all encroachments in, on or over state-owned subaqueous lands -- Marine Resources Commission.

Wetlands Management - Regulatory authority over all encroachments into vegetated and non-vegetated wetlands -- Marine Resources Commission.

Dunes Management - Regulatory authority over all encroachments into coastal primary sand dunes -- Marine Resources Commission.

Nonpoint Source Pollution Control - Regulatory authority over erosion and sedimentation from non-agricultural upland land disturbing activities -- Department of Conservation and Historic Resources.

Point Source Water Pollution Control - Regulatory authority over existing, planned or potential discharges to state waters -- State Water Control Board.

Air Pollution Control - Regulatory Authority Over Emissions Affecting Air Quality -- State Air Pollution Control Board.

D. PUBLIC PARTICIPATION: Identification of How Interested and Affected Parties and Private Parties Will be Involved in the Planning Process.

There are three ways in which the public and other interested parties may become involved in the process of siting energy facilities in Virginia's coastal area: the COE coastal energy facility and site assessment function, the state and federal environmental review processes and the public hearings, etc., associated with the VCRMP core regulatory programs.

Coastal energy facilities which have been formally proposed and/or are under consideration will be on the agenda for one or more of the COE's quarterly meetings. A summary of the active energy facility files in the inventory will be given at each quarterly meeting as well as notice of related public hearings or any other opportunity for interested parties to comment on the facility. All comments received at COE meetings as well as those received at other times will become part of the files associated with the COE coastal energy facility inventory.

Public comment is also an integral part of the environmental impact statement process to which all other energy facilities (as defined for purposes of this requirement) are subject. Virginia's procedures for implementation and coordination of its part in the EIS process allow public input to the Council on the Environment as it coordinates the EIS review among state agencies and formulates the position of the Commonwealth for reply to the federal sponsoring agency. In addition, federal procedures allow for individual citizens or groups to comment directly to the federal agency on the EIS. Also, Virginia's EIS process allows for public input to the Council on the Environment as it coordinates the state EIS.

In addition, a number of the core regulatory programs cited under section C of this chapter, which provide specific controls for specific types of impacts, also contain requirements for public notice, hearing and consideration of public comments in agency decisions.

CHAPTER VIII

SHORELINE EROSION MITIGATION PLANNING

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SHORELINE EROSION MITIGATION PLANNING

The Commonwealth, having a tidal shoreline exceeding 5,000 miles in length, is graced with a wide diversity of shore types, including the low-lying barrier islands of the Eastern Shore, the ocean front headland-barrier spit of southeastern Virginia, and the shores of Chesapeake Bay and other estuaries which range from high bluffs to tidal marshes.

All of these shoretypes are affected by the natural process of erosion. Problems arise from that natural process when it damages the resources, and compromises man's use of the shorefront. Problems also arise when man's activities on the shoreline cause erosion which adversely affects adjacent shoreline areas. Man, thus, may be an agent as well as a victim of erosion.

In Virginia coastal shoreline erosion occurs in many areas and in some areas the problem is severe. Map VIII-1 shows the extent of erosion in Virginia's coastal area and indicates where there is an existing or potentially high rate of erosion. Some of the high erosion areas are also either conservancy lands, federal lands or park areas and/or are already protected by other core laws or as GAPCs.

The general approach toward shoreline erosion mitigation in Virginia is as follows:

1) The assessment of shore erosion is a Commonwealth function;

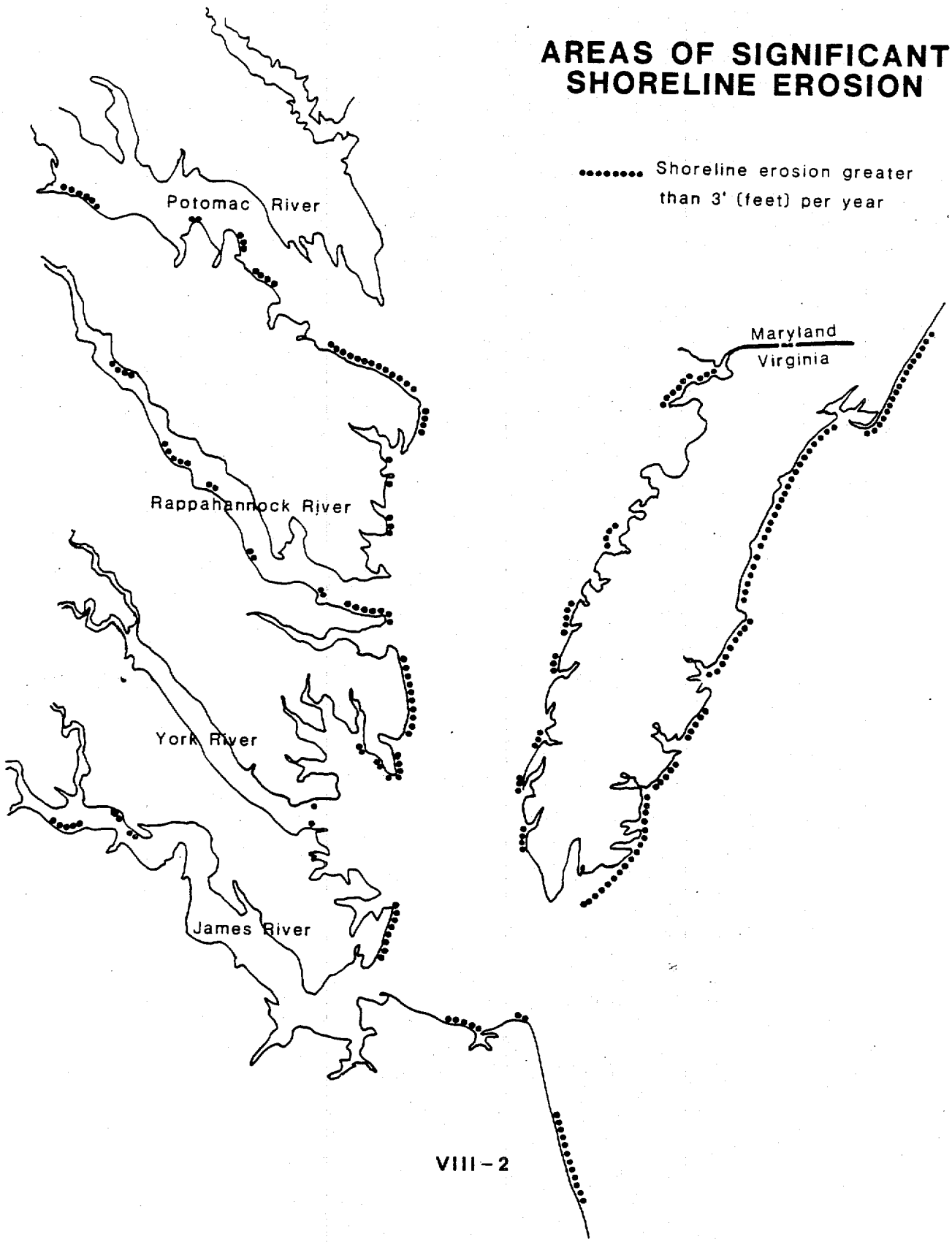
2) Through the Public Beach Conservation Act public funds can be used to protect public property (beaches) subject to erosion;

3) Through the Shore Erosion Control Act private property owners can receive planning and technical assistance from the Commonwealth on the mitigation of erosion problems, but construction costs are a private matter.

The Commonwealth of Virginia, through Virginia Code §21-11.16 recognizes the significance of the shoreline erosion problem. The General Assembly has declared that:

> "The shores of the Commonwealth of Virginia are a most valuable resource that should be protected from erosion which reduces the tax base, decreases recreational opportunities, decreases the amount of open space and agricultural lands, damages, or destroys roads and

AREAS OF SIGNIFICANT SHORELINE EROSION



produces sediment that damages marine resources, fills navigational channels, degrades water quality and, in general, adversely affects the environmental quality; therefore, the General Assembly hereby recognizes shore erosion as a problem which directly or indirectly affects all of the citizens of this State and declares it the policy of the State to bring to bear the State's resources in effectuating effective practical solutions thereto."

Section 21-11.18 of the same article vests the Soil and Water Conservation Commission with the responsibility to identify and evaluate solutions to erosion problems, to coordinate and evaluate all State erosion abatement programs, and to secure assistance from the federal government in the protection of waterfront property.

In 1980 the General Assembly amended the Shore Erosion Control Act and established the Shoreline Erosion Advisory Service (SEAS) with an office in Gloucester County (Virginia Code §21-11.19). SEAS assesses the effects of shoreline erosion, and provides technical assistance to property owners for the mitigation of their erosion problems. The office has a staff of three engineers and a secretary who offer services to both land owners and prospective buyers. Persons considering buying property can obtain information on historical erosion rates in the area, and are provided advice on types of erosion structures needed, prospective costs and advice on where to build a house. The office will help landowners with their permit application for erosion control measures. In addition, the office will help the landowner with arranging contractor bids, and will act as an inspection agent for the landowner while the structures are being built. In addition, if the landowner decides to build the erosion control structure himself, they will help with design and cost analysis.

Also in 1980, the General Assembly passed the Public Beach Conservation and Development Act which established the Public Beach Conservation and Development Commission (PBCDC) (Virginia Code §10-215 through 10-222). The Commission is empowered to determine which beaches are suffering from erosion, and to provide monies from a dedicated state fund to those localities most in need of relief. The Commission provides technical advice concerning beach erosion mitigation, control and restoration, and it also provides this information to local governments for other coastal erosion problems. In addition, the Commission is charged with the responsibility of encouraging research and development of new erosion control techniques. The Commission is composed of eight members, with a full time staff of two persons.

With SEAS providing technical advice for all shoreline areas other than public beaches, with the PBCDC providing technical advice and monies for public beaches, and with VIMS providing technical assistance, advice, research and training in all areas of shoreline erosion (Virginia Code §21-11.20 and §28.1-195), Virginia has a comprehensive, ongoing program for the control and mitigation of shoreline erosion.

CHAPTER IX

USES OF REGIONAL BENEFIT AND THE NATIONAL INTEREST

A. Uses of Regional Benefit

B. The National Interest

CHAPTER IX

USES OF REGIONAL BENEFIT AND THE NATIONAL INTEREST

A. USES OF REGIONAL BENEFIT

1. Introduction - Federal Program Requirement/Definitions

Federal approval of a state's coastal program requires that program to have "a method for assuring that local land and water use regulations do not unreasonably restrict or exclude land and water uses of regional benefit."

For VCRMP purposes a land or water use may be considered "of regional benefit" when it:

- has inter-jurisdictional impacts of an environmental, social, economic or cultural nature, and
- has, or has the potential to have, a direct and significant impact on coastal waters.

A local decision to restrict or exclude a land or water use of regional benefit may be considered "unreasonable" when that decision is made without sound legal basis or substantive rationale -- that is, when it is arbitrary and capricious in nature.

The fact that the numerous state agencies have the authority to acquire land for a variety of public facilities means that there is an additional constraint on potentially "unreasonable" local decisions. That land acquisition authority applies to such facilities as state highways, state educational institutions and state park and recreation areas.

2. Means of Dealing with Unreasonable Local Restrictions

The ultimate method by which the state can assure that local land and water use regulations do not unreasonably restrict or exclude land and water uses of regional benefit is through judicial review. A basic principle of American law, and the law of the Commonwealth of Virginia, is that any person aggrieved by an action of another, including actions or inactions of government, can seek redress through the courts. A key factor in any such review is the reasonableness of the action being challenged.

The only legal authority under which a local government can regulate the private business of citizens is the state's police power -- its power to enact laws relating to the public health, welfare and safety. In Virginia, such local use of state police power must be based on a specific delegation of that power, through municipal charter or enabling statute, for a specific purpose. Localities have no inherent power and, apart from such delegation,

local governments have no authority to regulate the affairs of citizens, including their use of land. Therefore, any such regulation must be in accordance with the limitations and protections of the Constitutions of Virginia and of the U.S., of the enabling statutes and any applicable case law. Any regulation that is not reasonable would fail to meet these tests.

There is one form of local regulation, validly authorized by statutory delegation of the police power, for the express purpose of regulating land and water uses. Va. Code §15.1-486 et seq. authorizes local governments to control land uses through the enactment of zoning ordinances. This statute, in its first three sections, specifies:

- Purposes of zoning ordinances (§15.1-489).
- Matters to be considered in drawing zoning ordinances and districts (§15.1-490).
- Permitted provisions in ordinances; amendments (§15.1-491).

These sections provide local governments with a basic framework within which to regulate land uses. As such, they also establish, in general terms at least, what local uses of this delegated police power may be considered reasonable.

These sections also contain at least two specific requirements for reasonableness:

> "§15.1-490. Matters to be considered in drawing zoning ordinances and districts. -- Zoning ordinances and districts shall be drawn with reasonable consideration for..."
>
> (emphasis added)
>
> "§15.1-491. Permitted provisions in ordinances; amendments. -- A zoning ordinance may include, among other things, reasonable regulations and provisions..."
>
> (emphasis added)

Based upon these statutory provisions and upon the Constitutional guarantees of equal protection and due process, among others, Virginia courts have determined zoning to be a legitimate function of government and have established an even more precise framework within which local land use regulation may occur.

> **Zoning ordinances are constitutional.--** Zoning ordinances are so generally regarded as constitutional that their status may be said to have been fixed. Woodward v. Staunton, 12 Va. L. Reg. (n.s.) 352; Yick Wo v. Hopkins, 118 U.S. 356, 6 S. Ct.

1064, 30 L. Ed. 220 (1886); New York ex rel. Lieberman v. Van De Carr, 199 U.S. 552, 26 S. Ct. 144, 50 L. Ed. 305 (1905).

Delegation of police power. -- The General Assembly has delegated to local governments the police power to establish and regulate zoning districts. Board of Supvrs. v. Rowe, 216 Va. 128, 216 S.E.2d 199 (1975).

Zoning is a legislative power vested in the Commonwealth and delegated by it, in turn, to various local governments for the enactment of local zoning ordinances. Byrum v. Board of Supvrs., 217 Va. 37, 225 S.E.2d 369 (1976).

In particular, the requirement for reasonableness in local use of zoning is made clear by Virginia case law.

Read as a whole, the zoning statutes strike a deliberate balance between private property rights and public interests. Board of Supvrs. v. Snell Constr. Corp., 214 Va. 655, 202 S.E.2d 889 (1974). The General Assembly of Virginia has undertaken to achieve in the enabling legislation a delicate balance between the individual property rights of its citizens and the health, safety and general welfare of the public as promoted by reasonable restrictions on those property rights. Board of Supvrs. v. Horne, 216 Va. 113, 215 S.E.2d 453 (1975)."

Irrational classification as to uses not permitted. -- A classification cannot prohibit or restrict certain uses and permit other uses where there is no valid basis, reasonably related to the public health, safety, morals, welfare or other proper object of the police power, for distinguishing between them. Board of Supvrs. v. Rowe, op.cit.

Exclusion of use related to police power upheld. -- The exclusion from a zoning district of a particular use, or category of uses, will be upheld where that exclusion is substantially related to a proper exercise of the police power. Ibid.

At the same time, case law acknowledges that zoning is discretionary and further, certain zoning decisions to some extent must in the end be arbitrary. Local governments are given wide discretion in making such decisions as well as a presumption that those decisions are valid unless clearly shown to be otherwise.

Wide discretion in zoning. -- Local governing bodies, because of their knowledge of local conditions and the needs of their individual communities, are allowed wide discretion in the enactment and amendment of zoning ordinances. A court should not substitute its judgment for that of the local legislative body unless there has been a clear abuse of power. Byrum v. Board of Supvrs., op.cit.

Classification to some degree arbitrary. -- Classifications of districts into broad use categories, sub-classifications of uses permitted and uses prohibited are, to some degree, arbitrary. Board of Supvrs. v. Rowe, op.cit.

But presumed reasonable if substantially related to public welfare. -- Zoning sub-classifications are presumed to be reasonable, but, unless they are substantially related to the public health, safety or welfare, the restrictions on use offend both the equal protection and due process guarantees. Ibid.

Sustained if reasonableness fairly debatable. -- Zoning ordinances must not be arbitrary and unreasonable, but if their reasonableness is fairly debatable they must be sustained. Byrum v. Board of Supvrs., op.cit.

While zoning is the main means by which local governments can regulate land and water uses, it is not the only means. The implementation of other local ordinances, building codes for example, could have the effect of restricting or excluding certain land and water uses. However, because those other ordinances do not have as their basic purpose the regulation of land uses, they could not be applied specifically for that effect. Any such effect would have to be merely incidental to whatever is the real purpose of the ordinance. In any case, the basic test of reasonableness would apply in those cases as well as in zoning.

In summary, unreasonable local restrictions or exclusions of land and water uses of regional benefit would, by definition, be contrary to law and practice in the Commonwealth of Virginia. No such unreasonable local restriction or exclusion would be sustained by Virginia courts. The right of any party (such as the proponent of a use of regional benefit) whose rights might be violated to challenge any such unreasonable action in court assures "that local land and water regulations do not unreasonably restrict or exclude land and water uses of regional benefit."

B. THE NATIONAL INTEREST

The federal CZMA and associated regulations (15 CFR 923.52) require that a state's management program provides for adequate consideration of the national interest involved in planning for, and in the siting of, facilities which are necessary to meet requirements which are other than local in nature. Table IX-1 summarizes facilities in which there is a national interest in planning, siting and other activities relative to coastal mangement in Virginia. The VCRMP meets the requirement to consider the national interest in the following manner.

Table IX-1

Facilities in Which There is a National Interest

Uses	Associated Facilities	Associated Federal Agencies
National defense and aerospace	Military bases and installations defense manufacturing facilities; aerospace facilities	Department of Defense, National Aeronautics and Space Administration
Energy production and transmission	Oil and gas rigs, storage, distribution and transmission facilities: power plants, deepwater ports, LNG facilities, geothermal facilities, coal mining facilities.	Department of Energy, Department of the Interior, Department of Commerce, National Oceanic and Atmospheric Administration, Department of Transportation, Corps of Engineers, Federal Energy Regulatory Commission, and Nuclear Regulatory Commission
Recreation	National seashores, parks, forests, large and outstanding beaches and recreational waterfronts.	Department of the Interior, Department of Agriculture, Department of Housing and Urban Development
Transportation	Interstate highways, railroads, airports, ports, aids to navigation including Coast Guard stations.	Department of Transportation, Department of Commerce, Corps of Engineers

During Virginia's preliminary program development, a list of federal agency CZM contacts was compiled. Communication with those agencies ensured that an exchange of ideas and comments between the Federal agencies and the state was developed and continued. It also provided a ready means for resolving misunderstandings. Table IX-2 summarizes the state-federal consultation that was undertaken at that time. In the second stage of Virginia's program development various federal agencies (Table IX-3) were sent copies of Virginia's preliminary Public Review Document for review and comment through NOAA's federal agency scoping process. Comments were received from 5 of the 14 federal agencies. Through its contacts with Federal agencies, and through them the many published sources of national interest laws, regulations and policies, the Commonwealth has been informed of the entire range of national interests in the planning for, and siting of, facilities to meet requirements which are other than local in nature (15 CFR 923.52).

Virginia recognizes that certain activities are in the national interest and seeks to assure that there is a balance between protection and development by giving full consideration for siting, in the coastal area, of all facilities of national interest and requiring that environmental concerns be fully considered as well. Facilities in the coastal zone which are in the national interest are discussed below:

a) National Defense Facilities

Virginia accommodates numerous national defense facilities in or affecting the coastal area. The regulation of these activities listed in the document shall not prohibit any activity conducted by the Department of Defense that is essential for national defense or because of emergency. Such activities which directly affect the coastal zone shall be conducted consistently with all state regulations to the maximum extent practicable.

b) Energy Facilities

Virginia supports efforts to increase the nation's energy producing and handling capabilities and recognizes the need to have adequate sites for all types of energy facilities. The state is mindful, however, of the necessity for balancing the need for such facilities against the need to consider environmental and other relevant factors when making decisions about the location and development of energy facilities in the coastal zone.

Table IX-2

Early Federal Participation

Federal Agency	2/76 Introductory Meeting	9/76 Defense Meeting	2/77 Alternatives	9/77 Response	9/77 Proposals	9/77 Response	6/78 Meeting Invitation	6/78 Affirmative Response
Department of Transportation/ Coast Guard	*		*	*	*	*	*	*
Navy	*	*	*		*	*	*	
Corps of Engineers	*	*	*	*	*	*	*	
Air Force	*	*	*	*	*	*	*	*
National Aeronautics & Space Admin.	*	*	*	*	*		*	
NASA Wallops Flight Center			*		*		*	
Department of the Interior (Regional)			*		(discontinued regional contact)			
Bureau of Land Management			*	*	*	*	*	
Fish and Wildlife Service	*		*	*	*	*	*	*
Bureau of Mines			*	*	*	*	*	
U.S. Geological Survey			*	*	*	*	*	
National Park Service					*	*	*	
Atlantic Marine Center (NOS MARAD)	*		*	*	*	*	*	*
National Marine Fisheries Service	*		*	*	*	*	*	*
Economic Development Admin.			*	*	*	*	*	
General Services Admin.	*		*		*			
Environmental Protection Agency			*	*	*	*	*	*
Federal Energy Admin.			*	*	*		*	
Federal Power Commission			*		*	*	*	
Energy Research & Development Admin.			*		*		*	
Nuclear Regulatory Commission			*	*	*	*	*	
Dept. of Energy			*		*	*	*	
Dept. of Housing & Urban Development			*		*		*	
Soil Conservation Service			*		*	*	*	
Dept. of Commerce			*		*		*	
Council on Environmental Quality			*		*		*	

Table IX-3
Federal Agencies Receiving
Draft CRM Document*
for 1985 Federal Scoping Review

Advisory Council on Historic Preservation

Atlantic States Marine Fisheries Commission

Department of Agriculture

Department of Defense

Department of Energy

Department of Health and Human Services

Department of Housing and Urban Development

Department of Interior

Department of Justice

Department of Transportation

Environmental Protection Agency
- o Headquarters
- o Region III

Federal Emergency Management Agency

Federal Energy Regulatory Commission

General Services Administration

National Marine Fisheries Service

Nuclear Regulatory Commission

U.S. Air Force (Bolling Air Force Base)

U.S. Army Corps of Engineers

U.S. Coast Guard

*November, 1984 public review draft

c) Recreation

In Virginia's coastal area recreation constitutes a major industry and opportunity. Public beaches and state parks provide recreational opportunities for Virginia citizens and out-of-state visitors. Virginia meets the national interest in recreation through:

- direct state ownership and management of coastal parks and recreation areas.

- acquisition and eminent domain authority to expand or acquire recreation areas.

The Virginia program relies on the recreation policies of the Virginia Outdoors Plan and its planning process to provide continuing consideration of the national interest in recreation.

d) Transportation

National interest in transportation is determined through review of the Department of Transportation and other federal transportation laws. The major objective in transportation is to provide fast, safe, efficient, and convenient access via one or more modes of transportation for the movement of goods, people and services to, from and through the coastal zone. The national interest in transportation facilities is protected in Virginia through the development and implementation of the State's port and highway plans and other state transportation planning an implementation processes.

Continued consideration of the national interest in the planning for siting of facilities in the coastal zone will be provided through the existing state permitting and licensing programs. In all cases of state permits and/or licenses required for a coastal facility the national interest will be considered.

During program implementation, the Commonwealth will continue to consider the national interest in its decisions. During implementation, Virginia will take into consideration the following federal policy information, in addition to federal/state consultation:

a) Presidential policy statements and executive orders relating to energy, the environment, commerce and recreation;

b) Future federal laws and regulations;

c) Future statements from federal agencies regarding national interests;

d) Plans, reports and research studies from federal and interstate groups, (e.g., interstate energy plans, river basin plans); and

e) Testimony from federal officials at public hearings.

CHAPTER X

FEDERAL CONSISTENCY

A. Federal Activities

B. Federally Licensed and Permitted Activities

C. OCS Plans

D. Federal Assistance to State and Local Governments

CHAPTER X

FEDERAL CONSISTENCY

One of the benefits to the Commonwealth of Virginia from participation in the federal coastal management program will be the opportunity to ensure that federal actions are consistent with Virginia's federally approved Coastal Resources Management Program. The federal Coastal Zone Management Act (CZMA) establishes several broad categories of federal actions which must be consistent with a state coastal management program. Paragraphs (1) and (2) of Section 307(c) of the CZMA requires that federal activities, and development projects in or directly affecting the coastal zone be consistent to the maximum extent practicable with a federally approved State management program. Subparagraphs (A) and (B) of section 307(c) require that federally licensed and permitted activities affecting any land or water uses of the coastal zone, including those which are described in detail in Outer Continental Shelf plans prepared by industry, also be consistent with a federally approved state management program. Section 307(d) requires federal assistance to state and local governments for projects affecting the coastal zone to be consistent with a state coastal management program.

The Council on the Environment (COE) is the lead agency in Virginia for reviewing and responding to all federal consistency determinations and certifications in Virginia. In that review process the COE will consult with appropriate state agencies and institutions as needed. If COE finds that an activity as proposed will be inconsistent with the management program, COE will work with the federal agency and other interested parties, in accordance with federal consistency provisions, to ascertain whether the activity, project, or plan can be made consistent with the approved management program. The basis for consistency determinations by federal agencies, and consistency certifications by applicants for federal permits and others and the consistency determination reviews by the Council on the Environment is the set of enforceable policies contained in existing state law and regulations as described in Chapter III, Core Regulatory Program and for some GAPCs in Chapter V.

COE intends to carry out the federal consistency provisions without causing burdensome responsibilities on applicants and federal agencies. In this regard, COE will use, to the maximum extent feasible, information required by existing federal regulations such as environmental impact statements, environmental assessments, permit applications and grant applications. This information, however, must include the necessary information outlined in the National Oceanic and Atmospheric Administration (NOAA) federal consistency regulations (15 CFR 930).

Situations may arise where the COE would have to formally reconsider a finding it has made on a proposed federal action. Such a reconsideration might occur if the proposed federal action were to change significantly and/or if important new information on the possible effects of that action became available.

A. FEDERAL ACTIVITIES

Federal agencies are responsible for determining whether federal activities directly affect the state's coastal area and whether those activities are consistent to the maximum extent practicable with the state's approved program. Federal agencies shall consider all development projects within the Commonwealth's coastal area to directly affect that coastal area. All other types of Federal activities within the coastal area are subject to federal agency review to determine whether they directly affect the coastal area. Federal activities outside of the coastal area (e.g., on excluded federal lands, on the Outer Continental Shelf with the exception of oil and gas lease sales, or landward of the coastal area) are subject to federal agency review to determine whether they directly affect the coastal area (15CFR 930.33).

Consistency review determinations made by federal agencies for activities directly affecting the coastal zone will be submitted to COE as the designated lead coastal agency. The federal activities listed in Part I of Figure X-1 are likely to require a federal consistency determination. Unlisted activities will be monitored through the intergovernmental review process and other federal notification processes. The COE will notify federal agencies of unlisted federal activities which federal agencies have not subjected to a consistency review but which, in the opinion of the COE, directly affect the coastal area and require a federal agency consistency determination. The Commonwealth's listing of federal activities and its monitoring procedures are neither a substitute for nor eliminate federal agency responsibility under 15 CFR 930.33 and 930.34 to provide the COE with consistency determinations for all development projects in the coastal area and for all other federal activities which the federal agency finds directly affect Virginia's coastal area (15 CFR 930.35).

Federal agencies are required to notify the state of proposed activities that will directly affect the coastal zone and must provide COE with a consistency determination at the earliest practicable time in the planning of the activity, preferably when the analysis of alternatives is still ongoing. In any case, the consistency determination must be provided to COE no later than 90 days before final approval of the activity. If a federal agency decides that a consistency determination is not required for a federal activity because the activity does not directly affect the coastal area the federal agency shall provide the COE with a notification, at the earliest practicable time in the planning of the activity, briefly setting forth the reasons for its negative determination.

Notification of this negative determination must be given only for:

(1) a Federal activity identified by a State agency on its list or through case-by-case monitoring;

(2) a Federal activity which is the same as or similar to activities for which consistency determinations have been prepared in the past; or

(3) Federal activities for which the Federal agency undertook a thorough consistency assessment and developed initial findings on the effects of the activity on the coastal zone.

The intent of the provision for negative determinations is to provide the state with an opportunity to review borderline cases.

In meeting the federal requirement (15 CFR 930.37) to notify the state of a proposed activity the federal agency is encouraged to give notice through the NEPA process or the Commonwealth Intergovernmental Review Process (CIRP). If NEPA is not applicable to a given federal activity, the federal agency is then to directly notify the COE of the proposed activity. Since the COE is already the state agency responsible for coordinating state involvement in the NEPA process the use of that process for notification would simplify matters. Other federal processes will serve for notification if the COE is not notified directly or through the NEPA process.

When a proposed federal activity will involve the NEPA process the federal agency must provide the COE with all applicable NEPA documents as part of the federal agency's obligation to provide adequate information for the COE's review of the agency's consistency determination. In such cases the COE's review process will not begin until an Environmental Assessment or a Draft Environmental Impact Statement has been provided to the COE. During the development of NEPA documentation the COE encourages federal agencies to consult with the state at the earliest possible time.

Upon receipt of a consistency determination from a federal agency, the COE will have 45 days to inform the federal agency of its agreement or disagreement with the consistency determination. If the information provided in support of a consistency determination does not adequately address a potential impact on the state's coastal area the state may request that an Environmental Assessment or a Draft Environmental Impact Statement be developed. The COE will make a reasonable effort to respond in writing to all consistency determinations and all necessary data and information including applicable NEPA documents. If the COE makes no response to the federal agency within the 45-day period the federal agency is to presume that the COE is in concurrence with the consistency determination. If needed, COE may request a one-time extension of 15 days. The consistency determination will be based upon the enforceable program policies as described in Chapter III and for some GAPCs in Chapter V.

In the event COE is in disagreement with a federal agency's consistency determination, COE will provide the agency with its reasons for disagreement, and suggested alternatives, which, if adopted, would make the activity consistent with the state's coastal program and the agency's right to request mediation by the U.S. Secretary of Commerce (15 CFR 930.42).

B. FEDERALLY LICENSED AND PERMITTED ACTIVITIES

Federal regulations (15 CFR 930.50 et seq.) require that applicants for federal licenses or permits for activities affecting any land or water use in the coastal area or for certain renewals or amendments to such licenses or permits shall provide the federal permitting agency with a certification that the proposed activity is consistent with the state coastal program. At the same time an application for a license or permit is submitted to a federal agency, federal regulations (15 CFR 930.57) require that the applicant shall transmit a copy of the application together with the necessary data and information for the consistency certification to COE. When a proposed federal license or permit will involve the NEPA process the applicant must provide the COE with all applicable NEPA documents as part of the federal agency's obligation to provide adequate information for the COE's review of the consistency certification.

Federal agencies may not issue a license or permit unless the state concurs with the applicant's consistency certification, or is conclusively presumed to concur because the COE has not responded within the mandated time frame or unless the U.S. Secretary of Commerce finds that a proposal is consistent with the objectives of the federal Coastal Zone Management Act or is necessary in the interest of national security. Licenses and permits subject to consistency review are listed in Part II of Figure X-2. In addition, COE will continue to monitor other unlisted federal licenses and permits and, if necessary, will notify the federal agency, the applicant, and the Assistant Administrator of NOAA within 30 days of notification that an unlisted license or permit will be subject to a consistency review.

The COE shall evaluate the consistency certification based on the state's enforceable coastal policies, regulations and procedures contained in Chapter III, and Chapter V. The COE will make a reasonable effort to respond in writing to all consistency certifications of this class within 30 days of the receipt of the consistency certification and all necessary data and information including applicable NEPA documents. If the COE makes no response to the applicant and the federal agency within 6 months the applicant and the federal agency are to presume that the COE is in concurrence with the consistency certification. If the COE has not completed its consistency evaluation within three months of receipt of the consistency certification and the necessary data and information, COE shall notify the applicant and the federal agency of the status of the evaluation and the basis for further delay.

Public notice of the proposed activity will be provided by the federal agency reviewing the application for the federal license or permit (e.g., intergovernmental review notices, notice of availability of NEPA environmental impacts statements) as provided for in federal regulaitons (15 CFR 930.61).

Where a state agency has assumed the responsibility for administration of a federal license or permit program the issuance of such a license or permit by that state agency shall constitute state concurrence with the consistency certification. In the case of the VMRC and the joint permitting process for local, state and federal wetlands permits the issuance of a state wetlands permit for any activity also requiring a Corps of Engineers' 404 permit shall constitute state concurrence with the consistency certification.

When COE objects to a consistency certification, it will notify, in writing, the applicant, the federal agency and the Assistant Administrator of NOAA. As required by federal regulations (15 CFR 930.64) the notification will describe how the proposed acitivty is inconsistent and alternatives, if any, which would make the activity consistent, and the applicant's right of appeal to the U.S. Secretary of Commerce.

C. OCS Plans

Plans for the exploration, development and production of Outer Continental Shelf (OCS) resources and all associated license and permits for activities described in detail in such plans which affect land and water uses in the coastal area will be evaluated for consistency with Virginia's coastal resource management program in accordance with NOAA federal consistency regulations. The review will be coordinated by COE and based on the enforceable policies and standards of the state's coastal program (15 CFR 930.70 et seq.) In accordance with a 1984 U.S. Supreme Court decision (Secretary of the Interior et al. v. California et al., 464 U.S. 312 (1984)) and NOAA regulations interpreting that decision (50 FR 35210 (Aug. 30, 1985)), OCS lease sales are not subject to the federal consistency provisions of the CZMA.

The COE is already the state's coordinator for OCS matters and will process all OCS plans as soon as reasonably possible. The maximum review period as established by federal regulations is 3 months following commencement of state review, with an additional 3-month period available to the state upon notification to the appropriate parties of the status of the review and the basis for further delay. Total review time cannot exceed 6 months. The COE will make a reasonable effort to respond in writing to all consistency certifications for OCS plans within 60 days of receipt of the consistency certification and all necessary data and information including NEPA documents where applicable. If the COE makes no response to the applicant and the federal agency within 3 months the applicant and the federal agency may presume that the COE is in concurrence with the consistency determination. In the event that

the COE objects to a consistency certification for an OCS activity the COE, as required by Federal regulations (15 CFR 930.79) will provide the applicant and the federal agency with: 1) the COE's reasons for disagreement, 2) suggested alternatives which, if adopted, would make the OCS plan consistent with the State's coastal program, and 3) notice of the applicant's right to appeal to the U.S. Secretary of Commerce.

In accordance with regulations found at 30 CFR 250.34-1(1) and Section 307(c)(3)(B) of the CZMA, no license or permit (e.g., permit to drill) shall be issued until such time that the Virginia Council on the Environment has "concurred" or has been conclusively presumed to concur, with the lessee's (i.e., applicant's) coastal zone consistency certification accompanying an exploration, development or production plan. In the case of an objection, the "approved" plan shall be returned by the federal agency to the lessee for modification to accomodate the State's objection. Alternatively, the objection can be appealed to the Secretary of Commerce pursuant to the procedures described in (15 CFR 930.120 et seq.). In no case will a permit or license be granted until the U.S. Secretary of Commerce has taken action on the consistency objection.

Public notice of the proposed activity will be provided by the federal agency reviewing the OCS plan and its associated licenses and permits. Notice will be provided through regular OCS related procedures of the federal government.

D. FEDERAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Through the state's intergovernmental review agency, COE will receive applications for federal assistance. State or local government applications for projects affecting the coastal zone including planning, design, construction, alteration or expansion of physical development projects will be subject to a consistency review and federal regulations (15 CFR 930.90 et seq.) require that the applicant must certify consistency with the policies of the program. This certification must be contained in the intergovernmental review notification or another process.

The COE will make a reasonable effort to respond in writing to all consistency certifications of this class within 30 days of receipt of the consistency certification and all necessary data and information including NEPA documents, where applicable. If an applicant for federal assistance has not provided the COE with a consistency certification, the COE will contact the applicant and the federal agency informing them that a consistency certification is required under federal regulations (15 CFR 930.95).

If the COE objects to an application it will notify the state intergovernmental review agency, the applicant and the federal agency of its disagreement with the consistency certification. Unless and until the objection is resolved federal funds may not be obligated to that activity. The objection will describe how the

proposed project is inconsistent with enforceable policies and shall recommend alternative measures, if any, which would make the project consistent. Applicants will also be notified of appeal procedures under NOAA regulations (15 CFR 930.96).

If the COE offers no objections to an application within the 60 day time period of the intergovernmental process then the applicant and the federal agency are to presume that the COE is in concurrence with the consistency certification.

FEDERAL ACTIVITIES SUBJECT TO CONSISTENCY REVIEW
UNDER THE VIRGINIA COASTAL PROGRAM

PART I. FEDERAL ACTIVITIES AND DEVELOPMENT PROJECTS LIKELY TO DIRECTLY AFFECT THE COASTAL ZONE

Department of Commerce/National Marine Fisheries Service

- Fisheries management plans.

Department of Defense/Army Corps of Engineers

- Proposed projects, authorizations for dredging, channel work, breakwaters, other navigation works, erosion control structures, reservoirs, dams, beach nourishment, and other public works projects.

Department of Defense/Air Force, Army and Navy

- Location, acquisition, and design of new or enlarged defense installations. Actions conducted on federal lands with potential impact on non-federal coastal land and water including construction, expansion or surplusing of buildings or acquisition of land.

Department of the Interior/Fish and Wildlife Services

- Acquisition and management including master plans of National Wildlife Refuges.

Department of the Interior/National Park Service

- Acquisition and management including master plans of national parks and seashores.

Department of Transportation/Coast Guard

- Location, design, and acquisition of new or enlarged installations as well as closure of existing facilities.

Department of Transportation/Federal Aviation Administration

- Construction, maintenance, and demolition of federal aids to navigation.

General Services Administration

- Disposal of surplus federal land, property acquisition and building construction.

PART II. FEDERALLY LICENSED AND PERMITTED ACTIVITIES

Department of Defense/Army Corps of Engineers

- Section 9 and 10 permits; Rivers and Harbors Act of 1899.

- Section 404 permit; Clean Water Act and amendments.

- Section 103 permit, Marine Protection Research and Sanctuaries Act of 1972.

Department of Energy/Federal Energy Regulatory Commission

- License for non-federal hydroelectric projects; Section 4(e), Federal Power Act.

- Abandonment of gas pipeline; Section 7, Natural Gas Act.

- Certificates authorizing construction, or operation of or facilities for transportation or storage of natural gas; Section 7, Natural Gas Act.

Department of Energy/Economic Regulatory Administration

- Options and orders for permission for delivery of imported LNG.

Department of the Interior/Bureau of Land Management and Mineral Mangement Service

- Permit for pipeline rights-of-way for oil and gas transmission on Outer Continental Shelf.

Department of Transportation/Coast Guard

- License for the construction and operation of deepwater ports; Deepwater Port Act of 1974.

- Permit for construction or modification of bridge structures across navigable waters of the United States.

Department of Transportation/Federal Aviation Administration

- Permit and license for the construction, operation, or alteration of airports.

Environmental Protection Agency

- National Pollution Discharge Elimination System (NPDES) permit; Section 402 & 403, Federal Water Pollution Control Act.

- Ocean dumping permit (exercised jointly with Army Corps of Engineers).

- Section 102 permit, Marine Protection Research and Sanctuaries Act of 1972. Designation of Ocean Dumping and Incineration sites (including at sea incineration).

Nuclear Regulatory Commission

- Permit and license required for the construction and operation of nuclear plant.

Interstate Commerce Commission

- Abandonment of rail lines.

National Park Service

- Land and Water Conservation Fund

- National Historic Preservation Fund

CHAPTER XI

PARTICIPATION BY THE PUBLIC AND OTHER INTERESTED PARTIES

A. Participation During Early Stages of Coastal Resources Management Program Development

1. Regional Advisory Committees
2. Public Hearings
3. Publications
4. Federal Agency Consultation

B. Participation After Reactivation of CRM Program Development Efforts

1. Public Hearings
2. Local Government Coordination
3. Other Public Meetings
4. Biennial Review
5. Continuing Federal Agency Consultation

C. Participation Opportunities After Program Approval

1. Major Planning, Management and Budget Processes

   a. Virginia's Biennial Planning and Budget Process
   b. Chesapeake Bay Commission's Biennial Review
   c. Chesapeake Executive Council's Planning Process
   d. NOAA's Review of VCRMP

2. Meetings of Major Government Organizations

3. Virginia's River Basin Committees

4. Other Participation Opportunities

CHAPTER XI

PARTICIPATION BY THE PUBLIC AND OTHER INTERESTED PARTIES

The management of coastal resources is a complex task due to the presence of a variety of natural resources, land and water uses, and their interrelationships in and around Virginia's creeks, rivers, the Chesapeake Bay, and the Atlantic Ocean. It was recognized early in the program that opportunities for participation by those individuals and groups who have interests in the future of Virginia's coastal zone was critical to the development of an effective and acceptable management program. Consequently, involvement in the program by state and federal agencies, local governments, regional organizations, private and public interest groups, citizens and their legislative representatives, was sought, encouraged and obtained from the outset.

Virginia first initiated its coastal resources management program in the summer of 1974. Since that time, public participation efforts have been directed toward achieving three goals:

1) To provide ample opportunity for public participation in the planning and implementation process,

2) To inform government agencies; civic, professional, and interest groups; and the general public about the program's status development, and implementation on a continual basis, and

3) To increase public understanding of coastal planning and management needs.

A. PARTICIPATION DURING EARLY STAGES OF COASTAL RESOURCES MANAGEMENT PROGRAM DEVELOPMENT

1. Regional Advisory Committees

When Virginia was formulating its preliminary coastal resources program plan, regional advisory committees (RACs) were organized in each regional planning district during the Fall of 1974. The RACs were then the primary channel for public participation in coastal resources management (CRM) for each planning district region. Additionally, the RACs were a focal point for public comment and input in program development. Membership of the RACs included local government representatives, private organizations with coastal zone interests, and citizens at large. State agency staff members from VIMS, the Division of State Planning and Community Affairs, and MRC kept the planning district commissions informed on the CRM program by acting as liaisons with the RACs.

2. Public Hearings

Numerous public hearings including legislative committee public hearings have been held during program development.

Prior to public hearings held for the originally proposed coastal resources management program, 926 copies of Proposals for Coastal Resources Management in Virginia were distributed to the public. As listed below, forty-six public hearings or meetings were held on this document from October through December 1977.

Norfolk	October 12, 1977*
Eastern Shore	October 13, 1977*
Saluda	October 17, 1977*
Warsaw	October 18, 1977*
Hampton	October 19, 1977*
Richmond	October 20, 1977*
Fredericksburg	October 24, 1977*
Northern Virginia	October 26, 1977*
Hopewell	October 27, 1977*
Fredericksburg	November 21, 1977
Prince George	November 29, 1977
Norfolk	November 30, 1977
Glenns	December 1, 1977
Richmond	December 6, 1977
Hampton	December 7, 1977
Springfield	December 8, 1977
Warsaw	December 13, 1977

*An afternoon and evening hearing was held on this date.

By Legislative Committees:

Richmond	July 18, 1978
Hampton	July 19, 1978
Warsaw	July 25, 1978
Fredericksburg	July 27, 1978
Eastern Shore	August 9, 1978
Norfolk	August 10, 1978
Senate Committee on Agriculture, Conservation and Natural Resources	December 28, 1978
Subcommittee of Committee on Agriculture, Conservation and Natural Resources	January 12, 1979
Subcommittee of Committee on Agriculture Conservation and Natural Resources	January 29, 1979
House Committee on Conservation and Natural Resources	February 16, 1979

Public hearings were held by the Joint Subcommittee on Coastal Resources Management on an "Issue Paper" in six locations in Tidewater in July and August, 1978. Subcommittee Chairman Joseph Gartlan met with local officials at each hearing location, prior to the hearings, to allow further comment and participation by those who would be most affected by the Coastal Resources Management Act. Additional public hearings were held during the 1979 General Assembly Session while the Coastal Resources Management Act was being considered by the Senate Agriculture, Conservation and Natural Resources Committee and the House Conservation and Natural Resources Committees.

Comments on the Virginia CRM program have been many and varied in their focus, scope, and level of detail. The majority of comments received prior to the 1982 reactivation of the CRM program development efforts were made during comment periods associated with public hearings held during 1977, 1978, and 1979.

3. Publications

During the program planning process, numerous publications were developed to help increase public understanding of the program. Pamphlets, brochures and fact sheets on coastal resources management were developed and distributed to public and private groups. Mailings totaled over 9000. Newspaper articles on the program were published in Tidewater newspapers. Newsletters published by the Virginia Institute of Marine Science, Virginia Polytechnic Institute Extension Service, and the State Soil and Water Conservation Commission have periodically included articles about CRM during program development. Two program drafts were published for discussion purposes: Alternatives for Coastal Resources Management in Virginia (January 1977) and Proposals for Coastal Resources Management in Virginia (September 1978) (public hearing document). The public comments received on these program drafts were instrumental in developing the final program proposals.

Numerous technical reports were prepared throughout the planning process on the premise that a sound management program needs to be based on technical information. The Commonwealth's vegetated wetlands and shorelines have been extensively inventoried. The resulting 31 Tidal Marsh Inventories and 28 Shoreline Situation Reports define the condition, form, type and location of Virginia's wetlands and the remainder of the shoreline in a scale useful for meeting the management needs of local governments.

4. Federal Agency Consultation

During Virginia's preliminary program development, a list of Federal agency CZM contacts was compiled. Communication with these individuals ensured that an exchange of ideas and comments between

Federal agencies and the State was developed and continued. It also provided a ready means for resolving misunderstandings. Tables IX-2 & IX-3 summarize thestate-federal consultation that was undertaken at this time.

B. PARTICIPATION AFTER REACTIVATION OF CRM PROGRAM DEVELOPMENT EFFORTS

In 1980, Virginia developed its own Coastal Resources Management program based on state programs existing at the time. They were tied together by a biennial review and coordination process. In 1982 Virginia reactivated its efforts to achieve federal approval of its Coastal Resources Management program. Since 1980, a number of additional public participation activities have been undertaken.

1. Public Hearings

During 1980 through 1984, significant additions were made to Virginia's CRM program. Numerous public hearings were held in the Virginia House and Senate to discuss the proposed changes.

a. A subcommittee of the House Conservation Committee was appointed to address non-vegetated wetlands. A public hearing was held for this purpose at Virginia Beach during September of 1979. Subsequent meetings of the subcommittee were held in Richmond during December 1979 and January 1980.

b. During January and February of 1980, both the House and Senate conducted public hearings to discuss possible action for non-vegetated wetlands. Two pieces of legislation were introduced and reported on.

c. During January and February of 1980, both the House and Senate conducted public hearings to discuss the Coastal Primary Sand Dunes Protection Act and the establishment of a Chesapeake Bay Commission. Three separate pieces of legislation were introduced and reported on related to protection sand dunes. The Sand Dune bill became law in 1980.

d. Public hearings were held by three House and Senate Committees between January and February of 1982 to address procedures of wetlands boards.

e. The 1984 General Assembly session resulted in several public hearings regarding sand dune legislation. During January and February more than 7 legislative public hearings were held to discuss reaches of the Chesapeake Bay and emergency sand grading activities of non-vegetated wetlands on the Atlantic shoreline.

The Council on the Environment held many public hearings of its own throughout the state between 1980 and 1984 related to the CRM program implementation. Major issues of the hearings listed below included coastal management issues and Virginia's program, as well as issues specifically related to Bay management.

Richmond	June 26, 1979
Hampton	June 27, 1979
Roanoke	June 28, 1979
Fairfax	June 11, 1980
Blacksburg	June 12, 1980
Norfolk	June 17, 1980
Richmond	June 18, 1980
Norfolk	April 14, 1981
Richmond	April 15, 1981
Abingdon	April 16, 1981
Arlington	April 21, 1981
Charlottesville	April 22, 1981
Charlottesville	April 28, 1982
Blacksburg	April 29, 1982
Fairfax	May 3, 1982
Norfolk	May 4, 1982
Abingdon	May 10, 1983
Danville	May 11, 1983
Newport News	May 18, 1983
Arlington	May 19, 1983

2. Local Government Coordination

Local governments have been given a special opportunity to participate in the CRM program development. Eight meetings were held during the months of September and October of 1983 at Tidewater regional planning district commission offices where the CRM program was presented by the Council on the Environment. Listed below are the locations where those meetings were held.

Richmond Regional Planning District Commission	October 13, 1983
Eastern Shore Regional Planning District Commission	October 17, 1983
Peninsula Regional Planning District Commission	October 18, 1983
Southeastern Regional Planning District Commission(mail only)	October 19, 1983
Middle Peninsula Regional Planning District Commission	October 19, 1983
Radco Regional Planning District Commission	October 19, 1983
Northern Neck Regional Planning District Commission	October 24, 1983
Crater Regional Planning District Commission	October 26, 1983
Northern Virginia Regional Planning District Commission	October 27, 1983

The Commonwealth has relied on the planning district commissions within the coastal area to serve as a vehicle for coordinating its VCRMP with applicable plans of local governments and areawide agencies. No conflicts between the VCRMP and any applicable plan has been identified by any local government or areawide agency.

The CRM program will continue to receive input and direction from local governments through the PDC's established for each planning region. Because of their proximity to local governments and the relatively accessible forum they provide for citizens, the PDC's often serve as the main communication lines between citizens in coastal localities and the implementing state and local agencies.

3. Other Public Meetings

Miscellaneous other meetings have recently been conducted to ensure the continued involvement and participation of public and private groups. Presentations of the CRM Program have been made by the Council on the Environment to following groups since Fall 1983:

State Chamber of Commerce
Virginia Manufacturers Association
Environmental Defense Fund
Chesapeake Bay Foundation
Conservation Council of Virginia
League of Women Voters
Garden Clubs of Virginia
Virginia Audubon Society
Nature Conservancy
Virginia B.A.S.S. Federation
Float Fishermen of Virginia
Trout Unlimited
Various civic groups

Quarterly meetings of the Council on Environment include staff reports and recent activities and allow for public review and comment. Those meetings which included reports of Virginia's Coastal Resources and Bay Management programs, review of the CRM process, discussions of proposed and enacted coastal legislation, as well as comments by private and public groups, are listed below.

Richmond	January 7, 1980
Richmond	April 15, 1980
Melfa	October 14, 1980
Richmond	January 13, 1981
Norfolk	April 15, 1981
Richmond	July 21, 1981
Staunton	October 28, 1981
Richmond	February 2, 1982
Richmond	July 22, 1982

Highland Springs	January 11, 1983
Richmond	July 7, 1983
Richmond	October 18, 1983
Richmond	January 10, 1984
Richmond	July 25, 1984

4. Biennial Review

Maintaining a commitment to a comprehensive approach toward management of vital and irreplacable resources, in 1981 Virginia initiated a process for biennial review and evaluation of its coastal resources. Every two years the Council on the Environment undertakes a thorough review and analysis of state agency activities pertaining to Virginia's Coastal Resources Management Program. A document is produced and distributed to the public, private interests groups, state, regional, and local agencies, and other interested parties. Comments and recommendations are reviewed and evaluated for possible inclusion in the program.

The 1983 biennial review included a special focus on the development of new and enhanced statewide activities related to the Chesapeake Bay. For this reason, public review of and input for the State's CRM program took a slightly different format. The 1983 and early 1984 public hearings and meetings listed elsewhere in this section resulted in a much higher rate of participation.

C. PARTICIPATION OPPORTUNITIES AFTER PROGRAM APPROVAL

The responsibility to provide the public and other interested parties with opportunities to participate in the VCRMP after program approval will be met through a variety of mechanisms described below. The public, local governments, areawide agencies, state government agencies and institutions, federal government agencies and other interested parties will have continuing opportunities to review VCRMP activities and to raise questions and make comments and suggestions. The COE is already charged with coordinating the State's involvement in Bay and coastal matters and, as the VCRMP lead agency, the COE will make every reasonable effort to ensure that all of those interested in the VCRMP will have an opportunity to gain information and to be heard.

1. Major Planning, Management and Budget Processes.

a. Virginia's Biennial Planning and Budget Process.

The Commonwealth has a planning and budget process that is almost continuous and designed to produce a plan of operations and budget every two years. While this is primarily an internal state government process the COE will solicit comments and recommendations on Bay and coastal matters so that all interested parties can

offer comments and recommendations to be considered in the planning and budget process.

b. Chesapeake Bay Commission's Biennial Review.

The Chesapeake Bay Commission is setting up a pattern of biennial reviews of Bay management. These reviews will be well-publicized public events lasting several days, and a major effort will be made to invite all potentially interested parties. It is expected that there will be opportunities to ask questions and to make comments and recommendations. As this is a legislative commission it has a major role in shaping state coastal policies and related legislation and funding.

c. Chesapeake Executive Council's Planning Process.

The Chesapeake Executive Council has begun a process of developing and annually updating a 3-year plan for the cooperative management of the Chesapeake Bay. The plan consists of statement of Bay management goals and objectives, a detailed overview of all relevant state and federal implementation programs and information on related activities such as public participation and environmental monitoring. The function of the plan is to provide for the most effective use of limited resources to achieve Bay restoration and protection. Chesapeake Bay management activities are a major portion of the Commonwealth's coastal resource management effort. The COE is the state's coordinator for matters relating to the Chesapeake Executive Council.

Various Federal and State agencies are represented on the Council's Implementation Committee, the scientific community is represented on the Council's Scientific and Technical Advisory Committee and a wide range of interests is represented on the Council's Citizens Advisory Committee. Interested parties may direct questions, comments and recommendations to any of these groups, including the Council, during the annual plan review process.

d. NOAA's Review of VCRMP.

Under Section 312 of the Federal Coastal Zone Management Act NOAA is required to periodically review the performance of states participating in the federal coastal program. Since the CRMP is a voluntary program the primary function of the review is to determine whether the state is meeting CZMA requirements so it can continue to receive CZMP funds. This is a public process, and NOAA solicits comments from interested parties so that the most searching review can be achieved.

2. Meetings of Major Government Organizations

Interested parties have many opportunities to comment on coastal matters at a wide range of regularly scheduled public meetings. Notice of these meetings will be found in the "Calendar of

of Events" of the Virginia Register of Regulations and/or public information materials of the organizations.

The major coastal related government organizations are as follows:

a. Virginia Council on the Environment; quarterly meetings and biennial public hearings.

b. Chesapeake Executive Council and its Citizens Advisory Commitee; quarterly meetings

c. Chesapeake Bay Commission; quarterly meetings.

d. Regularly scheduled meetings of Virginia's management agencies.

3. Virginia's River Basin Committees

The Virginia river basin committees were created to provide citizens living in the drainage basins of the Virginia tributaries to the Bay with an opportunity to participate in the identification and resolution of key management issues relating to the water quality and resources of the Chesapeake Bay estuarine system. There are eight river basin committees with a total average membership of 160 individuals representing the widest range of basin interests. (Most of the Virginia CAC members have elected to serve on a river basin committee as well. The coordination and support of the river basin committees is provided by Citizens Program for the Chesapeake Bay staff operating in close cooperation with the Council on the Environment Administrator.

At this point in their evolution the primary focus of the efforts of the river basin committees is the Commonwealth's planning and budget process. The scheduling of the meetings and activities of the committees is tied to the schedule of that state process so that the citizens have the earliest possible opportunity to recommend budget actions and to respond to preliminary state budget proposals. Their formal comments and recommendations are addressed to the Secretary of Natural Resources and the Governor.

4. Other Participation Opportunities

These are two other categories of participation opportunities that are available to interested parties: miscellaneous government reviews and special notices and meetings.

a. Miscellaneous government review processes.

There are two government review processes that often deal with projects, grants, etc. relating to the coastal area. One of these is the NEPA process and the other is the federal-state intergovernmental review process. In both cases Federal, State and areawide agencies are directly involved in the processes, and other interested parties have the opportunity to participate through the areawide agencies (planning districts).

b. Special notices and meetings.

In those few instances where other notification procedures will not apply and/or be adequate the COE will make a reasonable effort to notify interested parties of important VCRMP related events, deadlines, etc. Special meetings with COE staff and/or other VCRMP stae agencies also can be arranged by the COE at the request of an interested party and at the convenience of all parties involved.

PART III - ALTERNATIVES TO THE PROPOSED ACTION

PART III: ALTERNATIVES TO THE PROPOSED ACTION

A. INTRODUCTION

Given the nature of the proposed action, which is approval of the Virginia Coastal Resources Management Program, all Federal alternatives involve a decision to delay or deny approval. To delay or deny approval could be based on failure of the Virginia program to meet any one of the requirements of the Federal Coastal Zone Management Act. In approving a CZM program, affirmative findings must be made by the Assistant Administrator of the National Ocean Service on CZMA statutory and regulatory requirements.

The Commonwealth's response to the need for wise coastal management has been to combine eight core regulatory programs and twenty-four goals into a comprehensive program to manage coastal resources in an administrative network coordinated by the Secretary of Natural Resources with ultimate oversight by the Governor.

In an effort to elicit public and agency comment and assure that the Assistant Administrator's determination will be appropriate, this Section provides for the alternative to delay or deny approval based upon any deficiencies identified through the public review process. Before examining the alternatives, the following Section identifies the generalized impacts that would result from delay or denial on any basis.

1. Loss of Federal Funds to Administer the Program. Under Section 306 of the CZMA, Virginia would receive $1 million for the first year to administer its coastal management program. The loss of these funds and future funding would negatively impact the State's ability to enhance their current management efforts.

2. Loss of Consistency of Federal Actions with the Coastal Resources Management Program and its Policies. Program approval would mean that Federal actions would be subject to the consistency provisions of Section 307(c) and (d) to determine their consistency with the VCRMP. This would be of particular concern to the Commonwealth of Virginia since its coastal zone is heavily influenced by Federal activity.

3. Loss of Adequate Consideration of the National Interest in the Siting of Facilities Which are Other Than Local in Nature as Required by Section 306(c)(8) of the CZMA. By delaying or denying program approval, the Commonwealth and local governments would be under no obligation under Section 306(c)(8) to give adequate consideration to coastal facilities that are of national interest. This could result in loss of public benefit that the use of such facilities may provide. Irrespective of this Federal provision, Virginia's process for reviewing the siting of facilities as a matter of course takes the national interest into account.

B. FEDERAL/COMMONWEALTH ALTERNATIVES

Alternative 1: The Assistant Administrator could delay or deny approval if the scope of the program (authorities and policies) is not sufficient to meet the Federal requirements.

Sections 302 and 303 of the Federal Coastal Zone Management Act prescribe a wide scope of resources, impacts and uses which must be managed by a state coastal management program. The Virginia Coastal Resources Management Program is based on existing Commonwealth laws, policies, goals and regulations which, together, should provide adequate management of coastal resources and impacts including wetlands, fisheries, subaqueous lands, dunes, nonpoint source pollution, point source pollution, shoreline sanitation, and air pollution. Should the scope of the existing laws and regulations be insufficient to meet Federal requirements based on concerns raised as a result of the review of this document, the Assistant Administrator could deny or delay approval until new laws or regulations increasing the scope of the program authorities and/or their specificity are adopted.

- In response to such actions, the Commonwealth could adopt new laws or regulations remedying the deficiencies, or withdraw its application for Federal approval of the Virginia Program.

Alternative 2: The Assistant Administrator could delay or deny approval if the Commonwealth is not adequately organized to implement the Management Program.

The ultimate responsibility for the coordination and oversight of Virginia's coastal resources management activities rests with the Governor and will be exercised by the Secretary of Natural Resources in conjunction with other affected Secretaries. Assisting the Secretary in carrying out these responsibilities with respect to the Virginia Coastal Resources Management Program is the Council on the Environment and its staff.

The Program consists of three levels of operational responsibility. Implementation of the core regulatory program is carried out at the operational level; policy guidance is provided at the overview level; and, on the administrative level, administrative details are handled which are necessary for coordination of the overall program.

It is the goal of this program to improve and enhance present Commonwealth level coastal resource protection and decision making through the coordination of agency actions. If weaknesses or gaps are found in the organizational structure, they could cause a loss in the approved program status, funding under all sections of the CZMA, and Federal consistency authority.

- In response to such actions, the Commonwealth could strengthen the organizational structure of the program as developed to ensure effective implementation of the Virginia Coastal Resources Management Program; develop a program using a different management scheme; or withdraw the application for Federal approval of the Virginia Coastal Resources Management Program.

PART IV: DESCRIPTION OF THE AFFECTED ENVIRONMENT

PART IV: DESCRIPTION OF THE AFFECTED ENVIRONMENT

Because of its extent and diversity, Virginia's coastal area is difficult to describe concisely and simply. With oceanfront shoreline and three miles of offshore territorial sea and estuaries which bring the effects of salt, tide, and navigation as much as 100 miles inland, the portion of the Commonwealth known as "Tidewater Virginia" measures over 180 miles from north to south and more than 130 miles east to west. Within this area, both natural and cultural features range widely from the wild, undeveloped beaches of the barrier islands to the "hard" shoreline of Hampton Roads' port facilities, to the pastoral forests and farms along the lower James, from the bustling boardwalk on a summer weekend at Virginia Beach, to the solitude of oystermen working the Rappahannock oyster rocks in mid-winter.

Diverse and extensive as it is, Virginia's coastal area naturally contains numerous features and qualities of value to man in one way or another--values which make us consider those features as coastal resources. It should be noted that "value" and "use" are interpreted here in a broad, ecological sense so that coastal features which are not directly used by man but which play integral roles in s ystems whose other components may be used directly, may be given equal or even greater importance than some other features. In such cases, the systems are described or the interrelationships noted.

If a particular resource is considered valuable because of the use man does or could make of it, then factors which damage or destroy that resource or otherwise interfere with man's ability to use it must be viewed as resource management conflicts or problems.

For purposes of organization, Virginia's coastal resources are divided into three geographical subsets: A. The Land; B. The Edges; and C. The Water. A fourth element, D., deals with the biological productivity or Living Resources associated with the entire coastal area.

A. LAND

The land portion of Virginia's coastal area consists of Tidewater Virginia as defined in Virginia Code §62.1-13.2. This area measures over 180 miles from north to south and more than 130 miles east to west, and includes the easternmost third of the Commonwealth. Encompassing 29 counties and 17 cities, it extends from Fairfax County on the Potomac River southward to Southampton County and the cities of Chesapeake and Virginia Beach on the North Carolina border.

Although Tidewater Virginia represents only 11,300 square miles or about 29 percent of the land area of the Commonwealth, it contains much of the state's wealth in terms of population and economic and natural resources. In 1981, 3,156,400 people or 58 percent of Virginia's population were located in Tidewater. Much of this area's population and economic growth during the past years occurred in the Tidewater's five Standard Metropolitan Statistical Areas.

1. Geography

Much of Tidewater is low-lying land, traversed by tidal rivers, streams, and creeks which flow into the Chesapeake Bay. Three major peninsulas characterize this eastern part of Virginia: the Northern Neck between the Potomac and the Rappahannock Rivers, the Middle Peninsula between the Rappahannock and the York Rivers, and the Peninsula between the York and the James Rivers. These rivers are navigable to the Fall Line, a visible line, generally evidenced by rapids, which marks the inland extent of tidal influence.

The Eastern Shore, forming the lower tip of the Delmarva Peninsula, lies eastward of these peninsulas across the Chesapeake Bay. Isolated barrier islands lie off its Atlantic Coast, and tidal inlets indent the Bay side.

The extreme southern part of Tidewater extends roughly from the south bank of the James River to the North Carolina border.

2. Groundwater Geology

Groundwater in the Tidewater Virginia area varies considerably in quantity, and accessibility (depth) from one locality to another. Groundwater in this area can be obtained from three major zones: groundwater aquifers, the upper artesian aquifer, and the principal artesian aquifer. Throughout most of the region, the Yorktown sandstone formation is the principal aquifer. In general, water reaches these aquifers by percolation downward through the intervening layers of sediments which increase in depth toward the sea. Water stored in these aquifers is normally under pressure and will flow freely from a well until the pressure is reduced. If the water is withdrawn faster than the water is replenished through downward percolation and movement, the water table is lowered and shallow wells will go dry. Thus, excessive withdrawal of groundwater in populated areas may cause severe water supply problems. Furthermore, excessive pumpage of groundwater over prolonged periods may cause saltwater intrusion and land subsidence.

3. Topography

Tidewater Virginia is a low plain, ranging from sea level to an average of 300 feet in elevation at the Fall Line, where it borders on the Piedmont Physiographic Province.

The southeastern portion contains the largest acreage of level land, and fairly large, flat poorly drained areas occur in the middle and northern parts as pocosins (swamps) and low marine terraces. These terraces are flat, step-like, and separated by scarps, generally increasing in elevation away from the Atlantic Ocean. At least three of these terraces can be identified in the Hampton Roads area: the Princess Anne Terrace, the Dismal Swamp Terrace, and the Wicomico Terrace. In general, the surface relief of the area varies from level to gently rolling with some bluffs along the edges of drainageways.

On the Eastern Shore the topography is generally low, featureless, and frequently marshy, with barrier islands and shoals extending offshore in places.

4. Soils

Differences in soils are caused primarily by geologic formations (parent materials, temperature, rainfall, topography, and drainage. Soils in Tidewater may be described in three regions: Chesapeake Bay Region, Middle Coastal Plain, and Flat Woods.

Soils within the Chesapeake Bay Region are developed mostly from marine deposits of sand, silt, and/or clay. Most of the sandy soils are near the Bay. Soils in which impervious hardpans have developed are closer to the Fall Line. Forestlands and pastures are the prevalent feature of these soils, and crops can be grown if proper drainage is provided.

The Middle Coastal Plain contains large areas of poorly drained soils, which are developed from the same marine deposits and parent materials as the Chesapeake Bay Region. Soils of this region are suited for many of the same uses as those in the Chesapeake Region: pastures, forestlands, crops, and, in some areas, septic systems.

The Flat Woods region is located in the southeastern part of the Commonwealth. The area is generally flat, and most of the soils are poorly drained; however, there are small areas of well-drained soils which are important locally. The Dismal Swamp, which occupies 4 percent of this area, is covered by organic soils such as peat, mucky peat, and mud. Associated with the Dismal Swamp area and other smaller swamps in the Tidewater area are mineral soils high in organic matter.

5. Climate

The Tidewater Virginia area has a humid, oceanic climate, with temperatures averaging 40 degrees (F.) in January and 78 degrees in July. The average annual precipitation is approximately 46 inches. The average growing season is about 220 days, and snows are infrequent. Surface winds are generally westerly throughout the year with a shift to the northwest during winter and to the southwest during summer.

The length of the growing season is indicated by the number of freeze-free days annually. The freeze-free days in the northern part of Tidewater Virginia number approximately 190 days a year. The southern part of the area is freeze-free an average of 210 to 250 days annually.

Because of its location on the Chesapeake Bay and the Atlantic Coast, the area has suffered from damages caused by storm flooding. There have been approximately 80 hurricanes and major storms since 1900, nearly all of which have occurred between May and October. The highly saline tides, coupled with rainstorms, have frequently flooded the lower-lands along the coast and caused damages to roads, buildings, and crops. Based on the 1933 100-year flood recorded at Norfolk, the flood elevation along the Chesapeake Bay is approximately 8 feet above sea level. The area along the Atlantic Coast has a 100-year flood level at about 9 feet in elevation.

Climate is an important factor in the area's growth. In spite of occasional weather extremes, the combination of reliable annual rainfalls and warm climate is favorable for water-oriented activities and growth of agricultural crops and forests.

6. Vegetation

Tidewater Virginia is a botanical crossroads for many of the plant species of the northern, southern, and central states. Mixed hardwood forests compose the most extensive forest cover. These hardwood forests are intermingled with pure pine forests and mixed pine-hardwood forests in varying stages of forest succession.

On dry upland sites the oak-hickory climax forest supersedes the pine with such species as white oak, southern red oak, and mockernut hickory. On the middle slopes and moist bottomland sites a rich variety of species occur. Yellow poplar, sweet gum, red maple, white oak, white ash, elm, swamp chestnut oak, sycamore, beech, black walnut, and many other species flourish. Thus, the "middle grounds" develop into a wide variety of complex climax forest types. The very wet sites and swamps find species such as the bald cypress, water tupelo, and swamp tupelo in climax forest conditions.

Native Tidewater area grasses include the marsh, wire, crab, and blue grasses. Shrubs frequently found there are blueberry, huckleberry, mountain laurel, swamp bay, red bay, and wax myrtle. Hundreds of species of ferns and wild flowers are also native to the area. In the lowland woods and fields are found blue lobelia, blue lupine, morning glory, rue anemone, laurel, yellow dogtooth, and woods violets. Vegetation commonly associated with farm ponds includes cattails, rushes, sedges, duck weeds, and pondweeds.

7. Wildlife

While many animal populations have suffered from increased development within the Tidewater area, some of the smaller animals, such as gray fox, rabbit, squirrel, raccoon, opossum, skunk, and groundhog have adapted their ways sufficiently to survive and prosper. Deer declined under man's influence until the 1930's, but since then have adapted sufficiently to man's environment to maintain a thriving population.

An extensive conservation program has kept the number of game birds high. The wild turkey, mourning dove, and woodcock may still be found, and the bobwhite is widely distributed. Canvasbacks, black ducks, mallards, redheads, and other migrating ducks stop over, and Canada geese and brant are found in coastal feeding areas. Herons, gulls, and bitterns inhabit the tidal waters and marshes as well as other parts of Tidewater. Songbirds abound, with sparrows being most plentiful near inhabited areas. Robins, mockingbirds, cardinals, red-winged blackbirds, grackles, and starlings are also numerous.

The southern bald eagle, red cockaded woodpecker, and DelMarVa Fox squirrel, are endangered species of vertebrates found in coastal Virginia. Two others, the brown pelican and peregrine falcon, may be seen occasionally as migrants, but do not normally live or nest here. The eagle and its relative, the osprey, are discussed in somewhat greater detail later under "Living Resources."

8. Population Distribution

During the 1960's Tidewater Virginia's population as a percentage of the total state population jumped from 53 to 61 percent. Slightly more than 98 percent of this total population increase (602,003) in Tidewater occurred in the metropolitan areas. Between 1974 and 1981, the population of Tidewater rose from 2,978,000 to 3,156,400 or 58 percent of the total state population. Between 1984 and 2000, Tidewater will absorb 62 percent of the total state population increase. Significantly, the more rural areas--planning districts 16, 17, 18 and 22--have shown a combined population increase from 226,146 in 1974 to 269,800 in 1981.

The more densely settled metropolitan areas of Tidewater Virginia are Northern Virginia and Newport News-Hampton. In 1981, the Northern Virginia area had a population density of approximately 870 persons per square mile. Other heavily settled areas in Tidewater Virginia include the Norfolk-Virginia Beach-Portsmouth Metropolitan area, which in 1981 had a density of 425 persons, and the Richmond Metropolitan area, with a density of 300 persons per square mile.

The most sparsely settled area, by contrast, is the area of the Middle Peninsula, which had a population density of less than 50 persons per square mile. Among the other thinly settled areas of Tidewater Virginia are the Fredericksburg, Northern Neck, and Eastern Shore areas, which in 1981 had population densities of 55-87 persons per square mile.[1]

9. Commercial and Industrial Development

Major commercial and industrial development in Tidewater is located in Northern Virginia, the Richmond area, the Hampton Roads area, and the Petersburg-Colonial Heights-Hopewell area. All are large centers of population where rail and highway networks are present.

The availability of good transportation facilities is of prime importance to the concentration of commercial development in the Tidewater area due to the bulk quantities often involved in the shipping of retail and wholesale goods. Northern Virginia, Richmond, and Norfolk have dominated the bulk of the wholesale market.

10. Transportation

Tidewater Virginia's well-developed land transportation network facilitating the movement of people and goods has been a major factor in its rapid growth. Air, highway, and rail facilities as well as waterborne commerce facilities have combined to shape the development patterns of this area. Two interstate highways (I-95 and I-64) and six arterial highways (U.S. Routes 58, 460, 17, 13, 360, and 301) provide excellent accessibility to areas both within and outside the area.

Both commercial activity and transportation which depend on the Bay and rivers are discussed later as waterborne commerce in "The Water" section of this chapter.

11. Agriculture

Agriculture is the largest industry in Virginia and contributes significantly to economic and social well-being. The need for an efficient agricultural economy is perhaps more important today in Virginia than in years past.

While farm numbers and persons employed in agriculture have shown decreases over the past years, farm production and farm incomes are on the rise--a sign of efficiency. Tidewater, though more urban in character than many parts of Virginia, remains a principal producer of agricultural goods and services and contributes greatly to Virginia's economic wealth. In 1976, over 11,000 of Virginia's 72,000 farms were in Tidewater. These farms produce approximately one-half of the total value of crops in the state and over 14 percent of the total value of livestock and livestock products.

Overall though, only 20 percent of Virginia's farmland is in Tidewater--2.2 million out of 11 million acres; 30 percent of total agricultural cash receipts in Virginia are from this region. At the farm level alone in this region, cash receipts from the sale of crops and livestock exceed $320 million. The total economic value resulting from this amount could easily exceed $1 billion.

12. Forestry

Forestlands are important to the preservation of natural and scenic resources of the Tidewater area because they protect watersheds, reduce soil erosion, and shelter wildlife. Forestland, amounting to approximately 3,950,000 acres or 61 percent of the land in the Tidewater area, constitutes the largest land use in Tidewater. Of this total, about 3,846,000 acres are commercial forest, 2,700 acres are commercially unproductive forest, and 100,000 acres are productive forest that have been reserved for uses other than timber production.

Loblolly pine is the most important single commercial species. It occupies 31 percent of the commercial forest acreage. In addition, loblolly pine is found in a mixture with the oaks and other hardwoods on 16 percent of the commercial forest acreage. Oak-hickory forest type groups account for 42 percent of the acreage. The remaining acreage is occupied by oak, gum, cypress, elm, and ash.

The rich, sandy soils, favorable climate, and long growing season combine to make this a most productive region. Also, there is a great mix in Tidewater's agriculture. Tidewater produces approximately 50 percent of the hogs in the state, and contributes significant poultry, vegetable, fruit, ornamental, and greenhouse products to the state total.

There are over 130 large wood-related industries in the area concerned directly with the primary processing of timber products. These forest industries annually harvest about 398 million board feet of sawtimber and 3 million cords of plywood, which amounts to payments to Tidewater's forest landowners of $21 million for sawtimber and $7 million for pulpwood as it stands in the woods. When cut and processed by the forest industry, these products in 1975 had a value-added worth of $730 million.

13. Historic Sites

The Commonwealth of Virginia has an abundance of historic sites and structures, and the Tidewater region is especially rich in these cultural resources. The presence of this remarkable heritage in our cities, towns, and in the countryside enriches the daily lives of all Virginians and offers numerous opportunities for tourism, a major coastal resource.

To encourage the preservation of these places, the Virginia Historic Landmarks Commission has been conducting an inventory of sites and structures across the state and registering the most significant of them. To date, this survey has resulted in data files on more than 5,000 places in Tidewater alone, and the Commission has listed 43 historic districts and 448 individual properties on the Virginia Landmarks Register. The use of this information by planners and other public officials who prepare land use studies and environmental impact statements is a significant step in the protection of historic properties from needless demolition and encroachment by incompatible development.

B. THE COASTAL EDGES

Coastal "edges" are those areas where the land, tidal wetlands, and tidal waters meet. They include buffers, dunes, beaches, wetlands (both vegetated and non-vegetated), nearshore shallows and barrier islands. The edges are often areas of intensive human use and are productive habitats which support the marine resources of the Chesapeake Bay and Atlantic Ocean fisheries. While the components of the edges are discussed separately below, they function as an integrated system and must be so regarded in order to promote the important functions they serve.

1. Bluffs

Bluffs occur along the Chesapeake Bay and its tributaries. Major bluffs, those over twenty feet in height, occur primarily in the tributaries. There are isolated bluffs on the Eastern Shore, but these are usually less than twenty feet in elevation. Bluffs protect inland areas from flooding, as do other natural features along the shoreland. Bluffs are likely development sites because of the vistas afforded by their elevation.

Bluffs are eroded by both natural events and by man's activities. Seepage of water between layers of soil composing a bluff as well as the natural tidal movement causes bluffs to weather and sometimes erode significantly. Rainfall runoff also contributes to this process. The boat wakes of river traffic have an influence on bluff erosion, but it is minor unless the wakes are constant and significant. Bluffs are changing natural features and break down with or without the presence of human activity. However, unlike dunes and beaches, they do not reform, and their erosion represents a constant retreat of the shoreline. The Chesapeake Bay side of Northampton County near Kiptopeke is an excellent example of how bluffs have receded from erosion.

Although bluff erosion occurs as a natural process, development can accelerate it. High density development increases the volume of rainfall runoff. Access routes may also contribute to the erosion process. Sediment from this erosion degrades water quality and endangers aquatic life. Furthermore, development too close to the edges of bluffs can be hazardous, result in property losses, and require the expenditure of public funds.

2. Dune Systems and Beaches

Sandy beaches and dune systems are found along the Virginia coast from Assateague Island on the Virginia-Maryland boundary to False Cape State Park on the Virginia-North Carolina line. Approximately 196 of the Commonwealth's 5,000 miles of shoreline are bordered by sandy beaches with dunes. Significant dunes border the Eastern Shore and Virginia Beach. Beaches are prominent in these areas as well as along particular shoreline areas of the James and Rappahannock Rivers and the Northern Neck and Middle Peninsula.

Sandy beaches and dune systems are often not recognized as being unstable and subject to the high-energy forces of wind and waves. The character of beaches changes from season to season; the beach in winter usually loses sand to offshore bars and has a steep slope. This sand is usually returned in the summer resulting in a more gentle beach slope. Dunes migrate and shift position frequently through continuous wind erosion with a sand build up on the leeward side. The migration and erosion of dunes may be accelerated if the fragile plant communities which anchor the dunes are destroyed. Storms cause sudden changes in dune systems as well as in beaches, sometimes radically altering their character and extent.

Sandy beaches and dunes constitute a natural buffer between the open ocean or estuary and the adjoining coastal lands. Their ability to change, migrate, and bear the forces of day-to-day erosion and more destructive storms provides a valuable measure of safety for coastal communities. See Table 1 for extent of eroding shoreline.

The natural attributes of dunes and sandy beaches are not always recognized and, in some cases, are ignored because of their obvious desirability for development. They are highly susceptible to damage from manmade alterations. Construction on dunes and beaches destroys vegetation, thus allowing winds to blow the dunes away, and it interrupts wind and water currents that replenish sand. The longterm results of development on beaches and dunes often include increased erosion, flooding, structural damage, increased expenditures of public funds, loss of public or private open space, and loss of wildlife habitat. Virginia's Coastal Primary Sand Dunes Protection Act was passed in 1980 to address this situation.

3. Tidal Wetlands

Though tidal wetlands are often regarded as marshes, non-vegetated areas in the tidal zone are also wetlands. While non-vegetated wetland values are not as visible as those of marshes, they are a highly productive and integral part of the edges system. The discussion below separates the two types of wetlands to highlight some of their individual characteristics.

Vegetated wetlands are those coastal areas periodically inundated by natural tidal flow and upon which certain vegetation grows. They are formed over a long period of time (3,000 to 5,000 years) through the deposition of sediment and nutrients along the shoreline. There is a subsequent build-up of wet-soil plants which usually exhibit some degree of salt-tolerance, though wetlands are found throughout the full range of Tidewater, including the freshwater rivers. They are often called marshes.

The Virginia Wetlands Act defines wetlands as consisting of vegetated and non-vegetated wetlands. The vegetated wetlands are defined as "all land lying contiguous to mean low water and which land is between mean low water and mean high water not otherwise included in the term 'vegetated wetlands'".

Wetlands are a transition zone between land and water and, as such, provide often unrecognized benefits for both the human community and the natural ecosystem. In passing the Wetlands Act, the General Assembly formally recognized Virginia's wetlands as an essential part of our marine environment. Marshes, as a natural asset, are especially significant in erosion control, flood buffering, water quality maintenance, fish and shellfish production and as areas of wildlife habitat and human recreational activity.

a. Vegetated Wetlands

Vegetation is crucial to nearly all aspects of the dynamics of marshes. The production of vegetation equals or exceeds that of many agricultural crops on a per acre basis. Vegetation, as it decays, provides the basic nutrients is the estuarine food web by supplying food to bacteria and small animals which, in turn, become food for larger animals. Because of their importance as a food source, wetlands are crucial in supporting the estuaries as spawning and nursery areas where juvenile fish can take advantage of the abundant food. Young fish can also find protection from predators in the marsh environment. More than 90 percent of all fish landed in Virginia are dependent upon wetlands at some point in their life cycle.

While values of wetlands to the marine environment only recently have been defined and are still being studied, their values to wildlife and fur-bearing animals have been known for years. Virginia's marshes are an important feature of the Eastern Flyway in providing wintering and stop-over points for migratory wildfowl because of both the food and habitat they provide.

In addition to sustaining estuarine biological productivity, vegetated wetlands protect inland areas from storm damage and the daily erosive action of waves. By both slowing and absorbing the surge of flood waters, they can reduce not only shore erosion, but flood damage to upland structures. Some marshes which contain deep layers of peat also absorb large amounts of coastal flood waters.

Another value of vegetated wetlands not often recognized is their ability to act as pollution filters, thereby removing contaminants from water flowing through them. Sediment, excess nutrients, and some toxic materials are mechanically and chemically removed from the water, reducing the pollutant load entering coastal waters. This capacity, however, has limits, and marshes may become overloaded by constant and heavy pollutant discharges.

As sediment traps, the approximately 25,390 acres of vegetated wetlands and creeks on the James River between Richmond and Chesapeake Bay have been estimated to trap about 76,200 tons of sediment each year, or about 6 percent of the total sediment in the river. In rivers having smaller watersheds and greater marsh areas, such as the York and Rappahannock, the percentage of sediment trapped by the wetlands is even greater.

Before the Wetlands Act became law and initiated the wetlands regulatory system, approximately 400-600 acres of vegetated wetlands were being lost annually through alteration and development. Since then, known destruction of vegetated wetlands has dropped to substantially less than 20 acres per year. While the cost of fastland lost to erosion can be estimated, the loss to the fisheries from wetlands destruction is much more difficult, if not impossible, to estimate. It is nevertheless assumed to be significant.

The natural productive and protective functions of wetlands may be diminished or lost when wetlands are altered for waterfront development. Outright filling destroys them entirely. Channel dredging and partial filling alters and restricts natural drainage and tidal flushing patterns. Upland erosion may cause sedimentation which destroys wetlands, and pollutant runoff may destroy the marsh grasses and contaminate the marine food chain. Bulkheading seaward of wetlands will destroy them.

b. Non-vegetated Wetlands

Non-vegetated wetlands are the intertidal flats located on the immediate foreshore between mean low water (MLW) and mean high water (MHW). Sand flats and mudflats are the two types of non-vegetated wetlands, the latter being the most biologically productive. They are nearly level expanses and appear largely barren. The flats come to life when inundated by tides, but only the larger and more conspicuous species are visible on the surface. The major portion of the inhabitants of these areas are small burrowers and tube dwellers which live primarily beneath the surface.

Non-vegetated wetlands are most predominant in Tidewater areas that have a greater tidal range and are protected against erosive wave action. Along the seaside bays of Virginia's Eastern Shore, non-vegetated wetlands, particularly mudflats, are at least as extensive as vegetated wetlands. The algal mats which form on many flats may rival marsh plants in terms of the quantity of plant matter produced and passed along to the estuarine and marine food web. Mudflats store and cycle nutrients and help maintain water quality.

Non-vegetated wetlands are also habitats of important small plants and animals which are part of the food web. Large populations of polychaete and nematode worms, molluscs, and crustaceans live in the sediments, while snails and small crabs live on the surface. At high tide, mud and sand flats are feeding grounds for adult and juvenile fish and crabs. At low tide, they are frequented by feeding waterfowl and wading birds.

The destruction of non-vegetated wetlands interrupts the estuarine food web. Waterfront development and associated wetlands alterations, and pollutants carried by upland runoff and other discharges will reduce their biological productivity, just as they reduce that of vegetated wetlands.

4. Nearshore Shallows

The nearshore shallow water environment is important because it provides essential habitat for finfish, shellfish, and crabs. Nearshore shallows are submerged land and water areas extending seaward from mean low water to a water depth of approximately six feet. Nearshore shallows can be considered as vegetated shallows (grassbeds) and non-vegetated shallows.

Grassbeds are important, in terms of their role as habitat and a source of food for estuarine and marine animals. They have high rates of production, and virtually 100 percent of the plant matter produced enters the food web. Because of the protection afforded by the vegetation, grassbeds are important nursery areas for many species of fish and the blue crab. Waterfowl also utilize grassbeds heavily as a feeding ground.

Submerged grasses also function in the cycling of nutrients and the maintenance of water quality (through the uptake of carbon dioxide and release of oxygen into the water). Trapping and stabilization of sediments on the bottom and buffering of adjacent shorelines from erosion are other attributes of submerged grassbeds.

Grassbeds are particularly sensitive to human activities and natural disturbances. Pollution of all types, particularly thermal discharges and nonpoint runoff containing herbicides, may produce severe impacts on grassbeds. Because sunlight is essential to the health of grassbeds, murky waters caused by sedimentation or heavy algal growth can adversely affect their growth. Siltation by fine mud sediments may smother bottoms and make them unsuitable for new growth.

Non-vegetated shallows, particularly those with hard or semihard bottoms, are prime areas for clams and oysters. Those with soft bottoms generally contain various forms of marine worms and other animals which are fed upon by finfish. Because most of the aquatic life that dwells in or on these bottoms is relatively immobile, it is particularly susceptible to dredging operations and to siltation.

While these edge communities do not receive as many use pressures or direct impacts from human use, their proximity to shorelands makes them vulnerable to indirect impacts created by land or water uses which generate sediment and consequent siltation in the water column.

5. Barrier Islands

Virginia's 60-mile barrier island chain is located exclusively on the seaward flank of the Eastern Shore. This 18-island chain is the last undisturbed remnant of the thin, green line of wetlands which once protected the Eastern Seaboard from Atlantic storms. The physiographic features of the barrier island chain include beaches, sand dunes, salt marsh communities, grass lands, maritime forests, and thickets. Approximately 33,371 acres on 13 of the islands are owned by The Nature Conservancy and are known as the Virginia Coast Reserve. The barrier islands of the Reserve are Metomkin, Cedar, Parramore, Hob, Cobb, Ship Shoal, Myrtle and Smith. The Reserve's Revel and Rogue Islands are inner islands which do not front the Atlantic Ocean. Sandy, Godwin and Mink Islands are salt marsh components of the system. The Conservancy owns these islands with the exception of major portions of Cedar Island and small parts of Hog and Smith Islands. Of the five islands not in the Reserve, three are federally owned and managed (Assateague, Wallops and Fisherman), one is state-owned (Wreck), and the other is privately owned (Assawoman). See Table 2.

As with beaches and dunes, barrier islands are ever-changing and fluctuating in response to changes in sea level, local currents and tides, sediment supplies, wind conditions, wave action, and storm flooding. These changes almost always involve patterns of erosion and accretion which serve to continuously alter the shape and location of the islands. However, to the extent that these are natural conditions, they are desirable.

Inlets between the barrier islands connect the sea with the extensive lagoon system westward of the chain. The tidal range along the oceanfront of the islands normally averages 4.2 feet, but may reach nine feet or more during extraordinary storm surges. The extensive marshes behind the barrier islands are interlaced with tidal creeks and are well flushed by tidal action. Brackish and fresh waters occur in the interior of the larger islands at the head of their upland drainages or as small ponds.

Biological communities of the islands are controlled by the islands' dynamic nature. The sandy soil of the islands is in a constant state of flux, subjected to the influences of wind, tidal currents, and high energy waves on the ocean front, with only temporary stabilization by vegetation. The vast and well-flushed marshes provide large quantities of organic materials which support a wide diversity of aquatic and terrestrial life.

The expanses of wetlands behindthe islands are controlled by the islands, the natural protection they afford the mainland, and their habitat are some of their attributes. Their value as a natural system however, transcends each of these.

Man's actions on the island have had little long term effect on their natural systems. Their resiliency, isolation, inaccessibility, and now their reserve status protect them from direct influences or alteration by man. Construction or development of any sort would cause problems similar to those elsewhere. Construction activities on the islands would be very hazardous because of their dynamic nature.

There are no apparent problems with respect to protection of the barrier islands at this time. The Nature Conservancy intends to keep its holdings in their natural state, and the four other islands under public ownership.

C. THE WATER

Coastal waters have always been the lifeblood of Tidewater, providing routes for exploration and settlement, and later for commerce. An abundant source of food exists in the fish and shellfish found there. Colonial development of Virginia's land was so intimately linked to the waters of the region that settlement first occurred in a narrow "fringe" along the tidal rivers and creeks, leaving much of the interior to remain a wilderness until many years later. The development of Virginia's largest population center, the Hampton Roads area, was based on its relation to coastal waters and the commerce that takes place on them. The fisheries of those waters were the primary sustenance of many of the Indian villages along their banks and are still a major element in the Commonwealth's food economy. Additionally, the Chesapeake Bay plays a vital role in the total MidAtlantic fishery, and thus may be considered a national or even an international resource.

The waters are Virginia's primary coastal resource, and it is their influence that makes this region different from any other.

1. Natural Characteristics

Virginia's coastal waters include 2,300 square miles, including the Territorial Sea, Chesapeake Bay, the James, York, Rappahannock, and Potomac estuaries, and numerous tidal creeks and tributaries. As extensive as these waters are with 5,000 miles of shoreline, their multitude of living organisms and their variety of uses, they are but a portion of a yet larger physiographic system. Although this discussion focuses primarily on the waters within the bounds of our Commonwealth, acknowledgement, at least, is required of that larger system and its contribution to the physical nature of our waters. The Chesapeake Bay drainage system includes a large portion of the eastern United States, covering over 42 million acres in Virginia, Maryland, Delaware, West Virginia, Pennsylvania, and New York. Of this area, the watershed basin of the Susquehanna River is by far the largest, contributing 49 percent of the fresh water to the Bay, followed

by the basins of the Potomac (18 percent), James (16 percent), Rappahannock, and York Rivers, respectively. Numerous small coastal drainage areas round out the Chesapeake watershed area. In addition, Virginia's coast contains some small basins which drain directly into the Atlantic and a small basin in the southeastern part of the state which drains into the Albermarle Sound system of North Carolina.

2. Origin and Formation

Commensurate with its proportion of the Bay's drainage area, the Susquehanna also bears primary responsibility for the geologic process which results in the Bay's formation. Prior to 15,000 years ago, the Susquehanna was the largest of the East Coast rivers, just as it remains today. Then, however, its valley extended through what was to become the Chesapeake Bay and, joined by its tributaries the Potomac and James, flowed to the sea some 70 miles to the east of the present coastline. By that time, it had created a wide and deep valley. Between 15,000 and 12,000 years ago, with the gradual warming that brought an end to the last ice age, the worldwide melting of snow and ice raised the level of the sea to near what it is at present. A major result was the flooding of numerous river valleys creating the coastal estuaries we have today. The Chesapeake Bay is the largest of these estuaries in the United States. With its numerous small bays and creeks, as well as the major tributaries, Virginia's portion of the shoreline of the whole estuarine system is 4,100 miles, about half of the total for the Bay.

3. Depths

Being an inundated river valley, the old river bed is naturally the deepest part of the Bay, with depths in that channel over 100 feet in some places.* Overall, however, the Bay is relatively shallow, with an average depth of 30 feet or 20 feet if the tidal tributaries are included. This shallowness is due, in part, to the Bay's function as a sediment trap. Virginia's marginal sea is relatively shallow as well, with soundings between 20 and 40 feet common at the three-mile territorial limit.

4. Salinity

The salinity of Virginia's coastal waters varies from seawater at 35 parts of salt per thousand parts of water (ppt) to freshwater (little measurable salt content) at the upper limits of tidal influence on the tributary rivers. The salinity values can vary with differing natural conditions, especially upland rainfall and the tides, which may dilute the seawater portion of the estuary to a greater or lesser degree. In spring, the season of greatest average freshwater inflow, salinity values do not extend as far up the tributary rivers as they would in autumn, a time of lower average freshwater inflow rates. While these normal seasonal variations in salinity are a vital factor in the life cycles of many of the estuary's life forms, extreme variations can apply such significant

*The Bay's greatest depth is reported to be 174' near Kent Island, Maryland.

stress to their environment. Illustrative of such an extreme situation were the effects of Tropical Storm Agnes on the Bay, during which freshwater input to the estuary was about 15 times higher than normal for that time of year (June). Low flows as well can seriously affect the Bay's environment, allowing water of much higher salinity than normal to reach far upstream.

Salinity values also vary from east to west across the Bay, with the denser, higher salinity water extending farther up the Bay along Virginia's Eastern Shore, due primarily to the effect of the earth's rotation known as the Coriolis force. Vertically, the difference in desities leads to layering, and can effect the biological productivity of estuarine waters.

Tides

A semi-diurnal (twice daily) tide can cause the rise and fall of Virginia's coastal waters. In very simplified terms, this has the effect of a slow but massive "sloshing back and forth" of water in the Bay and its tributary tidal wetlands and mudflats and often acting in an erosive manner on the shoreline. Tidal heights in Virginia waters are generally in the two or three foot range.

Uses

Virginia's coastal waters are used in a variety of ways and are of irreplaceable value to the citizens of the entire state in terms of commerce, food production, recreation, aesthetics, and as a habitat for living organisms. The biological productivity of the marine and estuarine waters forms the base of large commercial and recreational fishing industries and is a source of pleasure to a large number of Virginians and visitors.

Transportation

Commercial transportation as a use of Virginia's waters is significant to the national as well as to the state economy. In 1982, more than 68 million tons of foreign trade moved through Virginia ports, primarily the Port of Hampton Roads. In that year, Hampton Roads led all ports in the nation in volume of total foreign trade tonnage. Combined, Virginia ports account for approximately 7.1 percent of the nation's foreign trade tonnage. Coal was the largest export commodity; residual fuel oils were the largest import commodity.

Virginia's port complex includes one of the finest natural harbors in the world and two inland river ports. The Hampton Roads harbor and shipping center consists of marine terminals in Newport News, Norfolk, Portsmouth and Chesapeake, and is served by an artificially-maintained 45-foot deepwater channel. The river ports are Alexandria on the Potomac, served by a 25-foot channel, and Richmond on the James, with an artificially-maintained channel of 25 feet to the Deepwater Terminal and 18 feet to the barge terminal just below the falls. In addition, a number of individual industries send and receive commodities by water using their own docks. These include Allied Chemical Corporation of Hopewell (chemicals shipped by barge), Chesapeake Corporation at West Point on the York (pulpwood), and the Amoco Refinery at Yorktown (oil), among others.

In 1974, direct port-related employment in Virginia accounted for 108,000 persons. With the addition of those persons whose employment related indirectly to ports, total wages amounted to over $1.3 billion.

In addition to the waterborne commerce associated with Virginia ports, Virginia's waters provide passage to the Port of Baltimore, the nation's fifth largest in total tonnage in 1982 with a 42-foot channel, artificially maintained.

National Defense

Another significant user of Virginia waters is the U.S. military with several naval facilities in the Hampton Roads area. These water-dependent bases are accompanied by a number of related facilities such as the two naval air stations. The total military establishment in Tidewater, which is located there either directly or indirectly because of the waterfront location, contributes over $2.1 billion to Virginia's economy and employs an estimated 180,000 civilians.

Both commercial shipping and defense-related use of Virginia's waterways require the maintenance of certain minimum depths in the major channels which entail either constant or periodic dredging, depending on the rate at which they fill. In addition, dredging to facilitate recreational boating involves the removal of thousands of cubic yards of bottom annually.

Commercial transportation, fishing, and recreational boating uses of coastal waters are restricted by the natural shoaling of waterways and may be aggravated by man's onshore activities which create sediment. Land disturbances which accompany farming or precede construction onshore may result in an increase in sediment deposited in coastal waters, often hastening the filling in of navigable channels. Shoreline and bottomland alterations may disrupt or alter natural sediment transport patterns and may hasten channel filling. Because of competing shoreline uses and the environmental problems caused by contaminated spoil, the availability of suitable sites for dredge spoil disposal is rapidly diminishing.

Recreation and Tourism

Recreation is probably the most significant use of Virginia's coastal waters in terms of numbers of persons involved. Each year millions of people from all parts of the Commonwealth and from out-of-state travel to the water's edge to enjoy such activities as swimming, boating, fishing, surfing, picnicking and camping. Many others who live along the shores enjoy the same activities but do not travel to enjoy them and, thus, do not appear in travel statistics. With the addition of the thousands of Virginians employed in tourism and recreation related businesses, the impact coastal recreation has on the state's economy as well as the enjoyment of its citizens is great.

Facilities associated with recreational use of Virginia's coastal waters are widespread and include at least 34 fishing piers, 830 acres of beaches on the Atlantic or Bay, and more than 18,000 public and private campsites. Boating accounts for the greatest number of developed facilities with over 160 public boat launching ramps and over 290 marinas in addition to those numbered above. Estimates of use are difficult to determine with any degree of accuracy because of the large number and dispersed

nature of the facilities. Most do not maintain records of numbers of users. Estimates of Virginia saltwater sport fisherman are over 800,000.

Statewide, tourism accounts for one of every six persons employed in private commerce. In tidewater counties and cities, expeditures by travelers amounted to over $1.9 billion in 1982. The city of Virginia Beach, for example, had travel-related businesses employing over 6100 people in 1982. Expenditures by travelers in that city alone amounted to over $206 million.

Surface and Groundwater Use

Several basic problems exist in the use of surface and groundwater resources in Virginia's coastal area. They include saltwater intrusion, depression of groundwater levels, and land subsidence. The flat nature of the coastal in the Piedmont, for example. This stems primarily from higher costs for larger amounts of land needed and greater evaporation from the higher surface to volume ratio. Of greatest significance in terms of avilability, however, is the fact that much of Tidewater has already developed its water supplies to their greatest potential. Continued increases in water demand may require the transfer of water from other jurisdictions and even from other basins, and may lead to the consideration of desalinization of seawater and the recycling of used water.

Depletion of ground and surface water supplies may threaten future and existing activities that depend on freshwater. Levels of surface water use in excess of available supply may restrict future growth of the area's industrial base and population, necessitate rationing of water, or necessitate further inter-jurisdictional and inter-basin transfers of water. Excessive withdrawal of groundwater may limit availability to other uses, by depressing water tables to levels below nearby well depths, and by allowing saline water to intrude into aquifers and to contaminate wells.

Water Disposal

Among all the uses to which Virginia's coastal waters are put, the most degrading to water quality is their use as a means of transporting, diluting, and disposing of the waste products of man's activities.

Two types of activities are primarily associated with this use of our waters--industrial processes and domestic activities. In the former case, wastewater from industrial processes may be discharged into local municipal sewage treatment systems, but is more often discharged directly into the receiving waters after being treated. Domestic activities include, the wastewater from the homes of Tidewater citizens (as well as from businesses) which enters private or municipal sewer systems, is treated to varying degrees, and is discharged into rivers or streams.

The basic result of such use is the degradation of the quality of the waters receiving the waste discharges. The forms such degradation can take include:

- bacterial contamination - concentrations of bacteria from human waste are potential transmitters of disease through public water supplies, water contact recreation, and shellfish beds.

- reduction in dissolved oxygen - the oxidation of organic materials in municipal and some industrial wastes can reduce the levels of dissolved oxygen in the water to a point below that necessary for aquatic life. In addition, nutrients such as nitrates and phosphates can cause algal "blooms," further reducing dissolved oxygen.

- presence of heavy metals and other toxic material - metals such as mercury, lead, zinc, chromium, cadmium, and arsenic may be present in industrial wastewater and in runoff containing pesticide residues. These are harmful to fish and shellfish, and, when concentrated in them, may present a hazard to human consumers of seafood. Other potentially toxic or carcinogenic substances such as chlorinated biphenyls and hydrocarbons may present similar problems.

The quality of Virginia's coastal waters varies from one river basin to another and even among different stretches of the same river. Described below are water quality conditions for the various basins which drain into Virginia's coastal waters. Also noted are particular problem areas which result from a number of land and water sources, including municipal and industrial waste discharges, urban stormwater runoff, agricultural runoff, individual dwelling septic systems (or the lack thereof), and heavy boating and marina activity.

1. Potomac River Basin

The Potomac River Basin about 14,670 square miles in area, encompasses the District of Columbia and portions of Maryland, Pennsylvania, Virginia, and West Virginia. The tidal portion of the Potomac River extends 112 miles from its mouth on the Chesapeake Bay to Chain Bridge in Washington, D. C. A long history of water quality problems in the Potomac River Basin is manifested in the range of current water quality conditions in the estuary portion of the Potomac. Water quality status generally improves as one nears the mouth of the river. The major problem is centered in the Washington, D. C., metropolitan area and is due to large effluent volumes from the District of Columbia Blue Plains sewage treatment plant and from Virginia, the City of Alexandria and the Counties of Arlington and Fairfax. Aside from day-to-day discharges from these localities, stream degradation from urban runoff is a problem in Virginia. Urban runoff has caused specific problems in both Four Mile Run and the Occoquan Reservoir where there has been an increased growth of algal material, thereby decreasing available dissolved oxygen levels significantly. Heavy metals and pesticides, though not thoroughly studied, have been found in sediments of the Potomac estuary.

2. Rappahannock River Basin

The Rappahannock River Basin covers approximately 2,715 square miles of northeastern Virginia and is one of the major Virginia rivers which flows into the Chesapeake Bay. Water quality in the

Rappahannock is generally good. A problem occurs downstream from Fredericksburg, however, in late summer when inflow is overcome by tidal effects. Wastes accumulate in the estuary creating degraded bacterial and oxygen conditions. Most of the remainder of the river meets both bacteria and dissolved oxygen standards. Only a small percentage of the shellfish beds in the estuary have been closed. Concentrations of nutrients and pesticides are low, and heavy metals have usually been below detectable levels. There are, however, several other areas of local water quality problems resulting from heavy boating and marina activity, industrial discharges, raw sewage discharges, and animal waste runoff. These local problem areas include the Windmill Point area, Hoskins Creek and Totusky Creek. Water quality degradation in these areas takes the form of low dissolved oxygen, high bacteria counts, or high nutrient levels.

3. York River Basin

The York River Basin, located in the central and eastern section of Virginia, drains 2,661 square miles and is primarily of a rural character. The York River is formed from two major tributaries, the Pamunkey and the Mattaponi Rivers. While the western headwaters of the York River Basin are of excellent water quality, the Pamunkey, Mattaponi, and York Rivers, especially in the vicinity of their confluence at the town of West Point, are experiencing water quality problems involving dissolved oxygen, bacteria, and pH. The Pamunkey violations stem from natural swamp runoff and a major industrial discharge. On the other hand, the water quality problems of the Mattaponi are caused by a larger number of sources, including agricultural and wetlands runoff, urban and landfill runoff, organic swamp drainage, and municipal waste treatment discharges.

The water quality problems of the Mattaponi and the Pamunkey become the water quality problems of the York. In addition, unknown sources, probably individual dwellings with inadequate sanitary facilities and animal wastes, contribute to the low levels of dissolved oxygen, high levels of bacteria, and the pH imbalance.

4. James River Basin

The James River is the most important river system in Virginia, especially in terms of its flow into the Chesapeake Bay. Of Virginia's total land area of approximately 40,000 square miles, the James River Basin contains 10,102 square miles of drainage area or just over 25 percent of the total surface area of the state. As a result of concentrated population centers with a high density of residential and industrial development, there are presently many water quality problems, some of them very severe, along the James River and its tributaries. The tributaries in the estuarine portion of the basin include the Appomattox, Chickahominy, Nansemond, and Elizabeth Rivers. Water quality, in general, is quite good in the James River Basin, with the exception of certain notable water quality problem areas.

The most severe problems and the largest discharges in the James River Basin are located in the tidal area, and are centered around the

Petersburg/Colonial Heights/Hopewell and the Hampton/Newport News/Portsmouth complexes. The major problem areas include portions of the Middle James River, Lower James River, Appomattox River, Elizabeth River Complex, Lafayette River, Nansemond River, and the Pagan River. Within these problem areas are found a wide range of water quality degradation problems. For instance, the Middle James experiences problems with urban stormwater runoff; localized, extensive sludge deposits; and Kepone in bottom sediment. Heavy metals accumulation and bacterial contamination are additional problems in the Lower James.

Other water quality problem areas experience some similar conditions including urban runoff and high levels of organics in municipal and industrial discharges. These conditions cause the water quality problems of low dissolved oxygen levels, bacterial contamination, and high nutrient levels.

The Elizabeth River, a tributary of the James, is used extensively for waste disposal. Sewage treatment plants, frequent overflows of untreated sewage, toxic industrial wastes, and frequent spills and discharges from ships and docking facilities combine to cause poor water quality conditions. Lack of freshwater inflow and sluggish tidal cycles cause a stagnated condition and excesses of all measured parameters: bacteria, toxic industrial wastes, nutrients, and heavy metals (especially mercury, zinc, lead and copper).

In spite of these problem areas, the tidal portion of the James shows good water quality as far as most indicators are concerned.

5. Small Coastal Basins and Chesapeake Bay

The Small Coastal Basins and Chesapeake Bay include all of Eastern Virginia that drains into the ocean or Chesapeake Bay. The "mainland" coastal areas are bounded by the Potomac, Rappahannock, York, James and Chowan Rivers - Dismal Swamp Basins. The Eastern Shore is bounded on the east by the Atlantic Ocean, the west by Chesapeake Bay, and on the north by Maryland.

There are 1,588 square miles of drainage area in the Small Coastal Basins which include marshlands and island groups with their bays. This area includes all of Accomack, Northampton, and Mathews Counties and the City of Poquoson. It also includes portions of Northumberland, Lancaster, Middlesex, Gloucester, and York Counties and portions of the cities of Norfolk, Virginia Beach, Hampton, and Newport News.

The major tributaries flowing into the Chesapeake Bay from the mainland include the Great Wicomico, Piankatank, North Poquoson, and Lynnhaven Rivers. Major streams on Virginia's Eastern Shore draining into the Chesapeake Bay are the Pocomoke River and the Pungoteague, Occohannock, and Nassawadox Creeks. A major Eastern Shore tributary to the Atlantic Ocean is the Machipongo River.

Generally, the waters in the entire Small Coastal Basins and Chesapeake Bay are of very good quality, with the exception of certain notable, local problem areas caused by leachate from faulty septic systems, or from other inadequate or nonexistent sanitary waste treatment facilities, urban and agricultural runoff, or heavy boating and marina activities.

These pollution sources have resulted in high bacteria counts, high levels of nutrients, and low levels of dissolved oxygen. Probably the

most visible result of this water pollution is the closure of shellfish beds for the purpose of direct marketing. Closure results from either high bacteria counts or the lack of an adequate buffer from a pollution source.

Water quality problem areas include tributaries located between the Potomac and Rappahannock Rivers and between the Rappahannock and York Rivers, Back River, Little Creek, the Lynnhaven Complex, Chincoteague/Assateague Bays, Parker Creek, Chesapeake Bay side of Eastern Shore, Holdens Creek, Pitts Creek, Messongol Creek, Warehouse Creek, Nassawadox Creek, Parting Creek, and Cape Charles Harbor.

D. LIVING RESOURCES

The coastal features described above, although listed by geographic area for discussion purposes, are of special significance in the way they interact with each other. The essence of the coastal area's vitality is derived from the interaction between land and water and the activities that take place in and on both. In Virginia's coastal area, the land and water meet to form an estuary. There are, of course, purely terrestrial as well as open ocean environments within Virginia's coastal area, but it is the estuarine environment that is most clearly a function of this land-water interrelationship. It is here that physical features such as shape, depth, tidal influence, edge type, circulation, freshwater inflows, and salinity combine under natural conditions to provide an environment for a diversity of life forms in such abundance that a fourth, and perhaps most important, category of coastal resources results--the biological productivity of coastal lands and waters--the living resources.

The interrelationships among physical aspects of an area which create a particular physical environment and the interactions among the life forms within that environment are described in terms of ecosystems. The Chesapeake Bay and its tributary rivers rank high among the world's most biologically productive ecosystems.

Many factors combine in a complex set of interrelationships to create this highly productive system, but several factors can explain it in very simplified terms. An estuary, by being a recipient of all the minerals and nutrients washed down from the land in the watershed above, becomes a "sink" or "trap" for these chemical and organic compounds. Some of these are harmful, and some are a beneficial stimulus to the growth of marine life. In the absence of excessive inflows, the Bay system maintains its health through the constant mixing and circulating of its nutrient-rich waters. Twice daily, tidal surges travel up the Bay and its tributaries, creating currents as they pass by points, around islands, over shoals, and into the mouths of the sub-estuaries. Rivers are continually supplying freshwater to the system, adding further to the mixing. The difference in density between fresh and saltwater results in layering, especially in the sub-estuaries in which the denser seawater flows upstream along the bottom, while the lighter freshwater flows downstream over it, adding a vertical dimension to the unique mixing in estuarine waters. Estuaries, while having a lower diversity of species than other more stable regimes, are known for their high levels of productivity of those species which have adapted to this rigorous environment. In estuaries, there is the added factor that many species from one environment (fresh or marine) are biologically required to move to the other at some stage in their life cycles.

Estuarine systems have their own edges where the terrestrial and aquatic environments meet. These areas, such as marshes and mudflats discussed in greater detail above, also contribute to the productivity of the system by releasing organic material (detritus). These break down through microbial action and are dispered through tidal flushing to become part of the great circulating mix of estuarine nutrients. The edges also provide conditions necessary for spawning and growth of numerous animals. The end result is a unique and complex ecosystem of high biological productivity.

Of special significance to man is that this biological productivity is translated, at various stages in the food web, into a variety of humanly edible forms rich in protein and considered by many to be among the tastiest of foods. Commercially in Virginia, this productivity resulted in a total landed quantity of seafood of 128 million pounds in 1982, with a dockside value of over $44 million. Adding to this are the personal incomes of over 8,200 persons employed in harvesting and 5,600 persons employed in processing.

Recreational saltwater fishing and wetlands hunting are uses of the coastal area's biological productivity which can also be measured in terms of economic impact. Total economic impact for saltwater sport fishing in Virginia was estimated to be between $128 million and $285 million in 1979, with hunting in wetlands at almost $14 million in 1970. Since many people travel from other states and other parts of Virginia to hunt and fish, these activities undoubtedly also contribute to the tourism industry.

Three major groups of animal species of particular value to man are described in the following text.

1. Shellfish and Crabs

A number of species of molluscs and crustaceans, primarily oysters, clams, and crabs, are of special significance to Virginians for their commercial and recreational value. Other species, although not harvested themselves, occupy vital places in the estuarine food web and provide food for man indirectly through other species that feed on them.

a. Oysters

The American oyster (Crassostrea virginica) is an irregularly shaped bivalve (two shells) native to the saline water and estuaries of the Atlantic and Gulf Coasts. Its range covers the entire Virginia portion of the Bay, the coastal sounds and inlets of the Eastern Shore, and the tidal rivers to the limits of approximately 7 parts per thousand (ppt) salinity. The oyster requires a certain combination of features in order to thrive. It must have hard bottoms on which to attach, relatively shallow waters and adequate currents, but a minimum of exposure to excessive scouring by currents. Concentrations of oysters are called oyster beds or "rocks." In 1892, the Baylor Survey identified 210,000 acres of natural oyster rock.

The General Assembly, later adding 30,000 acres more, set aside these "Baylor Grounds" for public oystering only. Today, there are still approximately 240,000 acres of Baylor Grounds.

Other areas are leased by the state to private interests. These leased areas are sometimes more productive because of the more intensive management (including reseeding) they receive by the commercial oystermen trying to maximize their yields. Today there are approximately 107,000 acres of private oyster leases in Virginia, comprising 31 percent of the state's total oyster grounds. The State produces in total about 5.4 million pounds of oysters annually (1982).

The oyster production of the Chesapeake Bay (both Virginia and Maryland) accounts for approximately 25 percent of the total U.S. harvest per year. In Virginia, oysters make up 15-20 percent of the catch value of all seafood, although they contribute less than 5 percent by weight. Oyster harvesting is strictly regulated by the Marine Resources Commission according to harvesting methods and season.

Oyster production in the lower Bay has trended downward since the 1980's, when production was at an all time high of 7 million bushels annually. The reasons for the decline are complex and interrelated. Natural disasters (Hurricane Agnes), some habitat losses, and natural enemies (oyster drills and an oyster disease called "MSX") are partially responsible. In 1960 MSX entered the Bay and killed oysters in the higher salinity areas. It caused not only a direct loss in production, but eliminated the large mature oysters in the lower James River. This population was thought to be the source of larvae setting in the upper James seed area, which produces over 75 percent of the seed oysters planted in leased grounds throughout coastal Virginia. As a result of lowered densities of larvae and, possibly, mortalities associated with the pollutants, setting rate declined about 90 percent in the seed area.

Another significant factor in the decline of the industry is the closure of shellfish grounds to direct marketing of oysters for public health reasons. Oysters and other bivalve shellfish that filter water for particular nutrients tend to accumulate bacteria and other contaminants hazardous to human health. Chronic bacterial contamination, often caused by malfunctioning or inadequate septic systems, and the establishment of buffer zones to protect against periodic system bypasses and occasional system failures, are largely responsible for the present closure of 90,348 acres of classified (productive) shellfish grounds.

Though the Virginia harvest of oysters is about 700,000 bushels of oysters per year, Virginia shucks 3.2 million bushels annually. Thus Virginia controls about 55% of the national oyster market, yet only supplies about 8% of the national market from its waters. To maintain this advantage in oyster shucking, Virginia must maintain the size of its own catch, so it can out-compete other states that try to enter the shucking industry by using their own oysters.

Small amounts of shells, byproducts of oyster production, are ground for chicken feed, pet food, and livestock feed supplements. They

ground for chicken feed, pet food and livestock feed supplements. They are also used in cement, as roadbuilding material, and in construction blocks as a gravel replacement. The majority of empty shells are returned to oyster grounds as "cultch" material which provides suitable attachment surfaces for larval oysters.

b. Clams

Three major commercial species of clams, the soft clam, hard clam and surf clam, are found in Virginia waters. Each occupies a distinct niche in the Bay and coastal waters.

The soft clam (Mya arenaria) is found along the coast of the Middle Atlantic states north to Canada. The soft clam inhabits the less saline waters of the tributary rivers, and burrows in sand or mudsand bottoms in less than 20 feet of water. Once the clam reaches about one inch in size, it establishes a permanent burrow. Growth may reach two inches after two years under favorable conditions in the Bay.

In the lower Bay, soft clams are widely distributed in the intertidal zone, but the species occurs in commercial concentrations only in scattered areas of the lower James, upper Rappahannock, and Pocomoke Sound. In 1972, Tropical Storm Agnes killed most of the population in Pocomoke Sound and the Rappahannock River. Recovery has been slow, and production is not expected to increase significantly because Virginia is at the southern limit of the clams' range, and the species is vulnerable to predation by blue crabs.

Hard clams (Mercenaria mercenaria), locally known as little necks, cherrystones, or chowders, depending on size, occur all along the Atlantic and Gulf Coasts. They may occur in the open reaches of the estuary to depths of 50 feet, but also inhabit the sheltered edges of the estuary, and are commonly found in marshes and along the edges of tributary rivers at salinities of 18-26 ppt. The hard clam burrows in sand or sandy clay.

While hard clams are widely distributed, a recent survey by Virginia Institute of Marine Sciences (VIMS) showed that commercial quantities (available to patent tongers) exist only in limited areas. These are located in the lower James, the lower York, and along the shore between these two systems. In Virginia, hard clam landings have fluctuated between about 700,000 and 2,500,000 pounds annually. The industry is probably operating near the point of maximum sustained yield.

Hard clams are fished commercially on the continental shelf and in the Bay and its tributaries. About 50 boats in Virginia dredge for the clams, employing several hundred watermen. Most of the clamming is done in the winter, and the same boats harvest crabs in the summer.

The surf clam (Spisula solidissima) is an oceanic species, found to depths of 150 feet. The densest beds in Virginia occur at 50-60 feet. Like other clams, the surf clam is eaten in chowders, clam strips, or fritters. Surf clams are dredged commercially. In 1982, 10.3 million pounds of meats were landed, representing a dockside value of $6.2 million.

At first underutilized, the resource has been heavily fished in recent years by both Virginians and out-of-state fishermen. The resource is now at the point of maximum sustained yield and is being closely controlled through management plans by the Mid-Atlantic Regional Fisheries Management Council.

As with oysters, clams obtain their food by "filter-feeding", and consequently have the same tendency to accumulate contaminants from the water in which they live. Waters closed to the direct marketing of oysters due to pollution are also closed to clamming.

c. Blue Crabs

The blue crab (Callinectes sapidus) is a crustacean native to the entire Atlantic and Gulf Coasts and can be found in many other parts of the world as well. Blue crabs are, however, more abundant in the Chesapeake Bay than elsewhere. Its dependence on and tolerance of various salinity levels from seawater (35 ppt) to freshwater make it a common inhabitant of all of Virginia's coastal waters from the upper reaches of the tidal rivers to the three-mile-limit off Virginia's Atlantic Coast. Males and juvenile females usually inhabit waters of lower salinity (less than 22 ppt) and congregate in the upper estuaries. Males are found farther upstream, occasionally in freshwater. Females spend most of their time in higher salinity waters (more than 20 ppt). Mating takes place in the mid-summer. Having once mated, adult females then migrate to the higher salinity waters of the mid-Bay and the mouths of the southern rivers where spawning occurs. Larvae hatch only in the high salinity waters of the marginal sea or mouth of the Bay. Post-larval stages are carried by currents and swim to nursery waters of less than 20 ppt. Temperature also plays an important role in the blue crab's life cycle, with growth occurring primarily at water temperatures over 60°F. As temperatures drop to 40-50°F., the crab begins a semi-hibernation stage, with females in the deeper waters of the Bay mouth and males in the mud of the deeper channels upstream. Growth involves a series of molts or "sheds" as nongrowing shells become too small for the crab's body. Maturity is attained in 12-16 months in Virginia's climate, and crabs may live 3 years or more, although 2 years is more common.

Commercial crabbing is the fourth most valuable of all U.S. seafood industries (behind shrimp, salmon, and tuna), and the Chesapeake Bay is the largest producer with 93 million pounds in 1982 and a value of nearly $23 million. Virginia accounts for a large portion of the East Coast crab industry, having produced over 40 million pounds in 1970 and over 44 million pounds in 1982. Fluctuations in catch are common and result primarily from natural phenomena.

Harvesting is done by wire mesh traps called "pots" in warm months and in the winter by dredging dormat crabs from the bottom. Soft-shell crabs are individuals that have just gone through a "shed" and whose new shells have not yet hardened. These delicacies are obtained by keeping crabs showing signs of an approaching molt ("peelers") in semi-submerged "liveboxes" until they shed their old shells. Virtually all soft-shell crabs are harvested in this manner in Virginia and Maryland.

The blue crab provides a basis for much recreational activity, in addition to the commercial crab industry, as countless thousands of vacationers, waterfront homeowners, and others catch significant numbers each year in individual pots (no license required), with dip nets, and on hand lines using chicken necks and other scrap meat as bait.

Crabs, being scavengers and carnivores, are not filter-feeders like the bivalves described above. They can become contaminated, especially by toxic material in the water (e.g. Kepone), and they may accumulate and concentrate pollutants in their bodies. Because they are not eaten raw however, crabs are not subject to the restrictions applied to shellfish areas condemned as a result of bacterial contamination. Also, being mobile, crabs do not spend their entire adult lives in the same location and can move out of contaminated areas. The crab industry has not suffered to nearly the extent from pollution that clam and oyster fisheries have. Thus far, its primary threat has come from the loss of wetlands, sea grass beds, and other nursery areas vital to the larval and immature stages of the animal.

d. Rock Crabs

The rock crab (Cancer irroratus) is an edible crab found only in the western Atlantic from Labrador to South Carolina. Although more common in New England marine waters, rock crabs are found in the southern waters of the Chesapeake Bay and the seaside bays of the Eastern Shore from November through March. They are often caught along with blue crabs in pots and during winter dredging operations, where they have historically been culled and discarded.

With a flavor comparable to that of a blue crab, rock crabs contain a large quantity of meat and represent a potentially important resource in the Chesapeake Bay. They can be used as picked crab meat; as whole, fresh, or steamed hard crabs; as peeler crabs for fishing bait; and as peeler crabs to shed into soft-shell crabs during the winter. The rock crab's commercial potential has not yet been realized.

2. Finfish

More than 200 species of fish have been reported in the Chesapeake Bay. About a quarter of these inhabit fresh or brackish water; the rest are more or less limited to water of a salinity greater than 12 ppt. Because of the peculiarity of the salinity pattern, marine fish tend to go farther north in the Bay along the eastern shore and to be more numerous there than along the western shore. But tolerance of ranges of salinity, like that of temperature, varies from one species to another, and for any given species, from one age to another.

Anadromous (e.g. shad) and most other marine fishes are seasonal migrants, arriving in the Chesapeake Bay during the spring and leaving in the fall. A few species, however, reside in the Bay the year round.

Fish have various ways of surviving the winter. Some descend into deeper water in the Bay and hibernate (e.g. eels); others move out of the Bay to varying distances offshore, some as far as the edge of the continental

shelf (e.g. northern fluke, scup, black sea bass, spot, Atlantic croaker); and others travel southward along the continental shelf to warmer areas (e.g. bluefish, gray sea trout).

Chesapeake Bay marks the southern geographic limit of the ranges for about a dozen typically northern fishes, such as yellowtail flounder, squirrel hake, and cunner. It is the northern limit for 25 or so southern species, such as tongue sole, horse-eye jack, southern kingfish, and sand drum. Fewer than half a dozen species are found exclusively in the Bay. Fishes that are more abundant in the Bay than in other sections of the Atlantic Coast are alewife, striped bass, and white perch. Some of the most important finfish resources are described below.

a. Herrings

Three species of herrings of the genus Alosa, the alewife (Alosa pseudoharengus), blueback herring (Alosa aestivalis), and American shad (Alosa sapidissima) are anadromous fish found in the Chesapeake Bay. When spawning in the spring, these fish may be found as far upstream as the headwaters of the numerous creeks and tributaries of the tidal rivers where some are caught using hand nets (wire baskets) or gill nets. The major catches of these species are made in brackish waters.

Shad make their spawning runs from February to April, with adults returning to the sea by June. Young shad may return to the sea in the fall or may spend the winter in the Bay. After three to six years at sea, mature shad will be ready to begin their own spawning trips to the same location where their parents spawned.

Alewife and blueback runs take place in March-April and April-May respectively. They follow patterns similar to the shad, but generally stay longer in estuarine waters, with some adults wintering in deeper Bay waters.

b. Atlantic Menhaden

The Atlantic menhaden (Brevoortia tyrannus) is a close relative of the herring and similar in appearance, but is not anadromous, spawning instead at sea. While it spends winter months at sea or in deeper Bay waters, its tendency is to congregate in large numbers in the Bay's shallower waters while feeding in summer. This dense schooling makes menhaden especially susceptible to commercial fishing operations using purse seines. Menhaden constitute the major portion of Virginia's annual finfish catch, accounting for 36.7 million pounds in 1982, or 60 percent of the total catch by weight and 15 percent by value. Almost all of this catch was taken from the Bay. Chesapeake Bay is the major commercial menhaden center on the East Coast, accounting for over half of the total East Coast landings.

The menhaden is not an edible fish, but is processed into meal, oil, and condensed soluble proteins. The meal and condensed solubles are rich in protein and make an excellent food supplement for poultry, swine, and cattle. The oil is used industrially in paints, soaps, and lubricants.

c. Spot, Croaker, Sea Trout

Spot, croaker and sea trout are closely related to each other. They provide good eating to the recreational angler, and are caught commercially and sold in markets as pan fish as well. Spawning occurs at sea near the mouth of the Bay. Larvae then move to the less saline waters of the tributaries, spend their first year there, and gradually return to more saline water as they grow older. Adults spend winters in the ocean and summers in shallower waters. They can be caught by bottom-fishing throughout most of the Bay and in the ocean surf at various times of the season.

Spot (Leiostomus xanthurus) is currently abundant and considered one of the most flavorful and most sought after of the common finfish. Adult spot average 1/4 - 1/2 of a pound and may reach 2-1/2 pounds. Heaviest runs occur from August to November.

Croaker (Micropogon undulatus) has made somewhat of a comeback from scarcity. Runs of adults averaging 1-1/4 pounds are heaviest in mid-summer and extend as late as December.

Sea trout (Cynoscion regalis), also called weakfish and gray trout, vary in abundance from year to year. Peak spawning occurs in early to mid-summer with the best fishing being in early fall. Adults average 1-1/2 to 2 pounds.

d. Flounders

Two major species of these bottom-dwelling flatfish are found in Virginia waters. Although similar in appearance, the two have decidedly different life cycles. Both are predatory bottom-dwellers, feeding on smaller fish, squid, shrimp, small crabs, and worms. They both have firm, tasty flesh and are often sold for fillets and are a common restaurant menu item.

The summer flounder (Paralichtys dentatus), also called fluke, is the larger of the two types and follows the general migratory pattern of spending the summer in the shallower nearshore areas, returning to deeper waters in cold weather. Summer flounder average 2 pounds.

The winter flounder (Pseudopleuronectes americanus), which averages 1/3 - 2/3 of a pound, spends the winter months in the Bay's shallower waters, but cannot tolerate the summer temperatures retreating instead to the deeper waters of the continental shelf from June through October.

e. White Perch

The white perch (Morone americanus), while fished commercially, is recognized more as a sport fish. The average size of white perch is 1/3 to 1/2 of a pound, with 4-3/4 pounds being the largest recorded. They can be found in fresh, brackish, and saltwater, but remain in the tributaries of the

found in fresh, brackish, and saltwater, but remain in the tributaries of the Bay. In the spring, the adults move upstream to spawn, then move farther down stream in warmer weather. During winter, they retreat to deeper waters of the river where the water remains warmer. The white perch is an example of a finfish which spend its entire life cycle in Virginia waters and can be managed solely by Virginia as the need arises, as opposed to some other types of finfish which require interstate agreements for management purposes.

f. Striped Bass

The striped bass (Morone saxatilis), also called rockfish around the Bay area, is an andromous sea bass which travels as far inland as the Fall Line in the spring to spawn in freshwater, then returns to the Bay by summer. Larger adults may migrate as far north as Nova Scotia in the winter. Adults average 2 pounds, but individuals up to 125 pounds have been recorded. The striped bass has been valued as a commercial food catch since colonial times and, more recently, as a sportfish due to its predatory feeding habits and vigorous fighting ability.

g. Bluefish

Bluefish (Pomatomus saltatrix) are migratory marine fish which average 2 pounds, but can grow to over 30 pounds. Traveling near the surface in large schools, blues enter the Bay in the spring and summer, feed on smaller fish there, and usually leave for warmer marine waters in November. Their voracious feeding habits and sharp-toothed jaws have earned them the nickname "choppers." Bluefish are caught commercially and recreationally in large numbers in the Bay, offshore, and in the surf.

3. Subaqueous Vegetation

a. Eelgrass

Eelgrass (Zostera marina) is a true flowering plant that has adapted to a subaqueous habitat. Forming extensive meadows within the lower Chesapeake Bay, eelgrass performs many functions in the Bay ecosystem.

It supports one of the densest and most diverse benthic communities in the Bay, primarily serving as a substrate for many forms of invertebrates. Blue crabs and spot use eelgrass beds as nursery grounds, and their presence makes the beds a well-stocked feeding ground for larger finfish and crabs. The eelgrass plants serve as a basis for the detritus food chain. Unlike wetlands, which retain most plant-derived material within the system, eelgrass releases all its nutrients to the currents and tides. Like wetlands, eelgrass beds play a vital role in reducing shoreline erosion and stabilizing bottom sediments.

b. Others

There are other, less abundant, but locally important species of submerged aquatic vegetation. Widgeon grass (Ruppia maritima) is found in brackish waters. In fresh or very low salinity waters Eurasian milfoil (Myriophyllum spicatum) often becomes a noxious weed by invading the shallows. In time, great masses of this plant may out compete other natural submerged aquatics and, in some cases, completely dominate the water column. Back Bay is particularly plagued with this weed.

4. Terrestrial Wildlife

Virginia's coastal area provides habitat for hundreds of species of mammals, birds, reptiles, and amphibians in addition to the creatures of its waters. Many of these are found only in coastal plain locations in Virginia and neighboring states, and a few are found only in specific locations in Virginia. A complete inventory of the species limited to coastal areas would be lengthy and duplicative of descriptions published elsewhere. For purposes of this description of Virginia's coastal resources, coverage is limited to two types of birds whose habitats are closely and directly dependent on coastal waters and which may be considered resources of value to man--in a material sense in the case of waterfowl and in an aesthetic sense in the case of the large birds-of-prey.

a. Waterfowl

Virginia's coastal waterfowl include many species of ducks, two species of geese, and one species of swan. Surface feeding ducks, also called dabblers, congregate in shallower fresh and brackish waters. Many live in the Bay area year round; others migrate from farther north to overwinter there. Surface feeding ducks are distinguished by irredescent bars on either wing. Predominant species include the mallard (Anas phlatyrhynchos), the most common North American duck; black duck (Anas rubripes); wood duck (Aix spousa), a beautiful colored duck with a crested head; and American widgeon (Mareca americana). Diving ducks gather in large flocks and prefer deeper waters in which they search for food. They lack the bright wing colors of the dabblers. Common diving ducks are the canvasback (Nyroca valisinera), red head (Aythya americana), and scaup (Aytha affinia).

The Canada goose (Branta canadensis) is Virginia's most prominent goose, migrating from summer breeding grounds in Canada in large numbers, flying in the familiar V-formation. Canada geese feed mainly on grain left after harvest in fields along the Bay and rivers. They can be seen by the thousands in the various refuge areas such as Hog Island on the James River, their large size (sixfoot wingspan) and bold black and white markings making them easily recognizable. Other goose family members common in Virginia, but not hunted like the Canada goose, include the greater snow goose (Anser caerulescens atlanticus) and the whistling swan (Olor columbianus).

Waterfowl population numbers tend to rise and fall in response to a variety of factors, a major one being habitat destruction. Due to waterfowl's migratory nature, much of the destruction of their habitat occurs outside the jurisdiction of any one state. In Virginia large areas of habitat are protected for the use of both resident and migratory waterfowl. Hunting of these birds is a popular sport, regulated by state law as well as by federal law in response to international migratory waterfowl protection treaties. For hunting to continue or increase, special attention must be paid to the existence of sufficient protected habitat areas.

b. Bald Eagle, Osprey

About 75 pairs of southern bald eagles (Haliaeetus leucocephalus) are known to nest in Virginia, mostly along the Bay, tidal rivers, and

creeks. As an endangered species, the protection of the southern bald eagle is a matter of national interest. Pesticide contamination of its main food supply, fish, causes a thinning of the eggshell. These thin eggshells break easily, and have resulted in a less than 50 percent success in hatching, a major factor in the eagle's decline. However, the species may be recovering somewhat from previously depressed population levels.

The osprey (Pandion haliaetus), also a fish-eating bird-of-prey, has suffered eggshell thinning and high egg mortality, though not to nearly the extent that the bald eagle has. Also called the fishhawk, it is smaller than the eagle and not as easily disturbed by human encroachment of its habitat. The osprey population appears to be recovering quite well from its previously depressed population level.

PART V - PROBABLE IMPACTS OF THE PROPOSED ACTION ON THE ENVIRONMENT

PART V: PROBABLE IMPACTS OF THE PROPOSED ACTION ON THE ENVIRONMENT

The intent of the CZMA is to promote the wise use of the Nation's coasts. The CZMA encourages states to achieve this goal through better coordination of government actions, explicit recognition of long-term implications of development decisions, and the institution of a more rational decision-making process in concert with the overall CZMA policies. This process, which could affect much of the future activity in the coastal zone, will have a substantial environmental impact.

Both beneficial and adverse environmental and socio-economic effects will result from Federal approval and Commonwealth implementation of the VCRMP. The fundamental criterion for assessing these impacts should be the CZMA's declaration of policy "to achieve wise use of land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and aesthetic values as well as to needs for economic development". Full consideration implies that coastal decisionmakers should weigh all factors among the often diverse values between resource development and protection. Consequently, a balance can be achieved which allows or even encourages development while protecting a critical resource. The VCRMP policy on dunes management illustrates this principle:

> "It is declared to be the public policy of the Commonwealth whenever reasonably necessary to preserve and protect coastal primary sand dunes and to prevent their despoliation and destruction and whenever practical to accommodate necessary economic development in a manner consistent with the protection of such features." (see discussion p. III-9 and 10.)

Protection of the coastal zone may be viewed as beneficial to the environment and to the public welfare for many reasons, but it also may have adverse socio-economic effects on property owners and would-be property owners whose plans are limited or curbed by the program. This, of course, happens on a day-to-day basis even without coastal management programs as permits for development are denied or modified.

One of the purposes of this EIS is to determine if implementation of the VCRMP processes as described in Part II, can reasonably meet the goals and objectives the Commonwealth as set forth, and which in turn will further the aims of the broader national CZMA goals. The impacts of achieving these goals overall are positive.

Impacts associated with the Federal approval of the VCRMP fall into two categories: (1) impacts due to a direct increase of funds and funding options to the Commonwealth and local governments, and (2) impacts from the implementation of the CZMA.

Although the basic aspects of the VCRMP are being implemented without Federal approval, Federal approval offers several advantages to Virginia.

A. IMPACTS ASSOCIATED WITH PROGRAM FUNDING

Federal approval will allow the OCRM to award Section 306 (Program Administration) grants to Virginia. Under Section 306, Virginia is scheduled to receive $1,000,000 upon approval of its program. Virginia would receive additional funds if the Congress decided to reauthorize Section 306 funding under the CZMA and if the Congress appropriates new Section 306 funds.

The Virginia Council on the Environment (the State CZM lead agency) anticipates that half of available 306 funds will be passed on to local governments and coastal Planning District Commissions for various functions relating to achieving the coastal goals and policies.

Additional funding under Section 306A (Resource Management Improvement Grants); Section 308 (Coastal Energy Impact Program); Section 309 (Interstate Grants); and Section 315 (Estuarine Sanctuaries and Island Preservation) also may be made available at a later date if Federal funds for these purposes under the CZMA are reauthorized and appropriated by the Congress.

One of the primary purposes of Virginia's Coastal Resources Management Program is to provide both financial and technical assistance to those governmental units having jurisdiction over state waters, subaqueous lands, wetlands, barrier islands, and sand dunes. Several agencies of state government as well as a number of the planning district commissions have the technical staff capability to assist the state and local governments in the preparation of special studies or plans and the coastal resources management implementation measures.

Examples of types of assistance, projects, and activities which may be funded with CZM funds include:

- Projects designed to improve the coordination of governmental agencies on priority coastal resource management issues.
- Projects designed to strengthen local government expertise in coastal resources management.
- Projects designed to improve the implementation and enforcement of existing regulatory and management policies and programs related to coastal resources management.
- Projects which are directed toward resolving national interest and coastal problems issues and conflicts.
- Local hiring of the skilled people needed to administer programs already mandated by the state and important to the management of coastal resources (for example, erosion and sediment control, subdivision plat reviews, wetlands protection).

- Technical Assistance to applicants who need permits for construction in the shorelands and to shorefront property owners who need advice on erosion abatement techniques.

- Local preparation of site plans for recreational, commercial, and industrial development.

- Inventories of the causes and effects of shoreline erosion, and mapping of land uses based upon high altitude photography.

- Training of local elected, appointed, and administrative officials in the techniques of coastal management activities, federal and state regulatory procedures, the economic and ecological value of coastal resources, and proper land planning and management.

- Preparation of basic information and plans which local officials and private citizens have suggested as essential to local and state decision-makers, including subject areas as:

  - Shoreline erosion rates, causes and effects.
  - Location of spawning and nursery grounds.
  - Mapping of oyster grounds and leases.
  - Transportation and location of hazardous materials in Tidewater, Virginia.
  - Port development plans.
  - Possible sites for oil and gas pipelines in nearshore waters.
  - Fisheries protection and restoration.

B. IMPACTS RESULTING FROM IMPLEMENTATION OF THE CZMA

1. Federal Consistency Provisions

Federal approval and implementation of the VCRMP will have implications for Federal agency actions. Approval of the Commonwealth program will lead to activation of the Federal consistency provisions of the CZMA (Section 307). These provisions and the manner in which Virginia intends to implement them are described in Part II, Chapter X.

The overall purpose of the Federal consistency provisions is to provide for closer cooperation and coordination among Federal, state (Commonwealth), and local government agencies involved in coastal related activities and management. This is considered to be a desirable impact and is one of the principal objectives of the CZMA.

The VCRMP has evolved with the assistance and input of numerous Federal agencies with responsibility for activities in or affecting the coastal zone. Because of this opportunity for coordination during the program planning stage, it is not anticipated that many conflicts will arise between the Commonwealth's substantive policies and federally licensed or conducted activities. No activities of relevant Federal agencies are excluded from locating in the coastal zone although these activities may have to meet environmentally protective policies to obtain coastal sites and/or be located outside the coastal zone if adverse environmental effects cannot be sufficiently mitigated.

Certain safeguards are built into Section 307 of the CZMA to prevent unreasonable use of Federal consistency provision to block activities which are necessary in the interest of national security, or otherwise consistent with the CZMA.

When Federal agencies are undertaking activities including development projects directly affecting the Commonwealth's coastal zone, they must notify the Commonwealth of the proposed action and the parties will then have an opportunity to consult with one another in order to ensure that the proposed action not only meets Federal requirements, but also is consistent, to the maximum extent practicable, with the Commonwealth's management program. In the event of a serious disagreement between the Commonwealth and a Federal agency, either party may seek Secretarial mediation services to assist in resolving the disagreement. By virtue of the availability of early Federal-State (Commonwealth) consultation and the mediation services of the Secretary of Commerce, the potential for conflict resolution is enhanced. These procedures will provide all parties with an opportunity to balance environmental concerns along with other National, State (Commonwealth) and local interests.

In cases where the State (Commonwealth) judges that proposed Federal license, permit or assistance activities affecting its coastal zone are inconsistent with their federally approved coastal program, the Federal agency may not approve such activities. Commonwealth objections must be based upon the substantive requirements of the management program which include consideration of issues such as air and water quality protection, prevention of shoreline erosion, protection of valuable wetlands and other environmentally related objectives. Accordingly, Commonwealth objections will often result in protection of the environmental quality of coastal resources.

In certain instances, the Commonwealth's objection to a proposed federally licensed or assisted activity may be set aside by the Secretary of Commerce if the proposed activity is consistent with the objectives of the CZMA or is in the interest of National security. In the former case, the Secretary must find that (a) the activity furthers one or more of the competing national objectives or purposes contained in Sections 302 or 303 of the CZMA; (b) when performed separately or when its cumulative effects are considered, the activity will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest; (c) the activity

will not violate any requirements of the Clean Air Act, as amended, or the Clean Water Act, as amended; and (d) there is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the state management program. In the latter case, the Secretary must find that a national security interest would be significantly impaired if the activity were not permitted to go forward as proposed.

Where the Commonwealth finds that a proposed federally regulated or assisted project is consistent with the requirements of the management program, the Federal agency may approve the project and the result is that the project will be in conformance with the Commonwealth's management program requirements including those related to environmental protection. Notwithstanding, State approval for the project, the Federal agency is not required to approve the license, permit or assistance application. The proposed project may still require Federal Government disapproval based upon overriding national interest grounds when Federal criteria are more stringent than the Commonwealth's management program requirements. Accordingly, as between Federal and State environmental requirements for the coastal zone, the more stringent ones would apply, thereby fulfilling NEPA's objectives to administer Federal programs in a manner which enhances the quality of the environment.

2. National Interest

Federal approval of the Commonwealth's program will also signify that the VCRMP has an acceptable procedure to insure the adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature. Such facilities include energy production and transmission; recreation; transportation and national defense. This policy requirement of the CZMA is intended to assure that national concerns over facility siting are expressed and dealt with in the development and implementation of state coastal management programs. The requirement should not be construed as compelling the states to propose a program which accommodates certain types of facilities, but only to assure that such national concerns are not arbitrarily excluded or unreasonably restricted in the management program.

Virginia's CRMP will account for national interests in a number of ways. First, the goals and objectives of the program explicitly include consideration of national interests in the coastal resources decision-making process. Secondly, the "areas of particular concern" program to be implemented through State and local planning and regulation contains selection criteria specifically directed toward identifying areas suitable for marine-related development. The identification and designation of such areas through proper planning could lead to less resistance to facilities which are of national interest along the permitting route.

During implementation, Virginia will take into consideration the following Federal policy information, in addition to Federal/State consultation.

- Presidential policy statements and executive orders relating to energy, the environment, commerce, and recreation;
- Future Federal laws and regulations;
- Future statements from Federal agencies regarding national interests;
- Plans, reports and research studies from Federal and interstate groups, (e.g., interstate energy plans, river basin plans); and
- Testimony from Federal officials at public hearings.

C. ACHIEVEMENT OF PROGRAM GOALS AND IMPLEMENTATION OF THE CORE REGULATORY PROGRAMS

1. Impacts of Program Goals

It is likely that with the approval of the VCRMP (which includes the Governor's Executive Order directing all State agencies to carry out their legally established duties in a manner consistent with and supportive of the Program) and with the additional impetus of Federal financial assistance, the Program will assist in achieving the twenty-five goals (see Part II of this EIS) which provide for overall management direction. The overall impact of achieving program goals and implementing the eight core regulatory programs will be beneficial to Virginia's coastal environment and its citizens because of improved and more focused management while accommodating/promoting economic development.

2. Impacts of Core Regulations

The heart of the VCRMP is a core of eight regulatory programs through which critical land and water uses and activities are subject to control of the Commonwealth (see Part II, Chapter III). This section describes the impacts of the past implementation of three of the core programs dealing with the following resources: subaqueous lands, wetlands and dunes.

a. Subaqueous Lands Management

The Commonwealth of Virginia is endowed with over 5,000 miles of tidal shoreline encompassing 2,300 square miles of water surface covering 1,472,000 acres of State-owned bottomlands. These submerged lands, greater in area than the State of Delaware, harbor some 21,000 acres of Bay grasses, 240,000 acres of public oyster grounds, and 107,307 acres of oyster grounds under private

lease. These lands are a public resource and an essential habitat for valuable shellfish, crabs and finfish. Along the fringes of the myriad coves, creeks, great rivers and bays of the Chesapeake estuary grow some 225,000 acres of vegetated tidal wetlands. These vegetated areas, particularly the salt marshes, constitute a vital spawning and nursery area and are an important element of the marine food webs for many of the commercially valuable marine resources of the Commonwealth.

Much of the responsibility for ensuring these resources are responsibly utilized rests with the Marine Resources Commission's Environmental Division operating under the mandates of Virginia's Wetlands and Subaqueous Laws. The Code of Virginia vests ownership of "all the beds of the bays, rivers, creeks, and shores of the sea in the Commonwealth to be used as a common by all people of Virginia." Permits are required from the Marine Resources Commission to encroach upon or over State-owned bottomlands. The Division receives and reviews these applications, solicits public comment on them, applies public interest factors in assessing them and then prepares a recommendation to the Commissioner or Commission for a decision.

Table 1 below provides a summary of permit actions from fiscal years 1971-72 through 1984-85.

SUBAQUEOUS PERMIT APPLICATIONS (TABLE 1)

Fiscal Year	Total	Approved	Denied	Inactive/ Withdrawn	No Permit Required	*Pending
1971-72	182	85	2	12	83	0
1972-73	519	202	10	38	269	0
1973-74	633	209	0	49	375	0
1974-75	539	154	3	40	342	0
1975-76	578	172	1	29	376	0
1976-77	575	183	1	22	369	0
1977-78	678	201	2	38	437	0
1978-79	831	247	12	42	530	0
1979-80	725	194	2	26	463	0
1980-81	775	223	3	21	528	0
1981-82	795	227	3	5	513	47
1982-83	942	292	7	2	614	92
1983-84	1200	282	5	9	799	295
1984-85	1237	361	5	21	727	-

Environmental Division personnel have endeavored to decrease the number of projects which are not in the public interest by ensuring that projects are necessary, that there are no reasonable alternatives requiring less environmental disruption, and that adverse effects do not unreasonably interfere with other private and public rights to the use of waterways and total bottomlands. Particular emphasis in this regard has been applied to the reduction of unnecessary filling of State bottom, the minimization of obstructions or hazards to navigation and the prevention of structures encroaching into neighboring riparian areas. Utilization of these project evaluation criteria at an early stage has hastened project modifications, reduced conflicts between property owners and, of course, protected intertidal habitats and navigation.

The evaluation of proposed shoreline projects requires the balanced considerations of often complex environmental, social and economic factors. Perhaps nowhere else have the Commission's decisions been more difficult during this period than in the area of marina development. The issue of new marinas, particularly in localities without local zoning, continued to conflict with shellfish growing area closures. (Source: Marine Resource Commission Biennial Report.)

b. Wetlands Management

Virginia's 225,000 acres of tidal wetlands vegetation change from freshwater swamp forests, characteristic of the uppermost regions of tidal waters, to the broad expanses of high salinity salt marshes which predominate behind the Barrier Islands of the Eastern Shore. Virginia's wetlands constitute a vital spawning and nursery area for juvenile fishes and are essential elements in the marine food web supporting the major commercial fisheries of the State. It has been estimated that 85% of Virginia's commercially harvestable fin and shellfish live in the estuarine areas, a significant portion of whose nutrient supply comes from the decay of such wetlands. These wetlands also perform other valuable functions such as erosion control, flood buffering, the provision of habitat for coastal and shore fauna and the absorption of silt and pollutants.

The ecological and economic value of this resource was recognized in 1972 with the adoption by the General Assembly of legislation creating a program for controlling the use and development of wetlands. The Virginia Wetlands Act defines wetlands as certain species of vegetation lying within one and one-half times the tide range. The Act was later amended in 1982 to include non-vegetated wetlands. The control mechanism is through a public interest review procedure triggered by a permit requirement. The opportunity to administer this system is offered to all political subdivisions in "Tidewater Virginia", as defined in the law, through the adoption of a specified ordinance creating a local wetlands board. Decisionmaking requires the conduct of a public hearing and the application of state standards and guidelines in determining whether a proposal is in the public interest. All local decisions are reviewed by the Marine Resources Commission for consistency with State standards and guidelines. Appeals of local decisions may be made by certain parties within a ten-day period to the Marine Resources Commission which reviews the decision and can modify, reverse, remand or uphold it. Further appeals are through the Courts.

The Virginia Institute of Marine Science provides technical and scientific advice to local wetlands boards and state agencies on a day-to-day basis.

The Virginia Wetlands Statute tasks the Marine Resources Commission to administer the permit program in those localities which have not adopted a wetlands ordinance. The law also specifically authorizes certain activities which may be conducted without a permit. Notable among these exempted uses are the construction of private, open pile piers, governmental activity on wetlands owned or leased by the State or a locality, and certain maintenance activities.

The Virginia Wetlands Act has proven to be an effective and durable instrument of environmental control. Since its passage, 28 of 52 eligible political jurisdictions in Tidewater Virginia have adopted the specified ordinance and formed citizen's wetlands boards. These boards administer local permit programs controlling activities in over 85% of Virginia's coastal wetlands. The remaining 15%, located in localities which have not adopted the ordinance, are under the direct jurisdiction of the Commission.

The Virginia Wetlands Act, in conjunction with Federal statutes, has reduced substantially the indiscriminate destruction of wetlands resources. Prior to 1972, it was estimated that wetlands were being destroyed at a rate of about 600-800 acres annually. A review of the first several years of the Act's implementation revealed that this rate had dropped substantially to less than 25 acres per year or about 1 acre lost for every 10,000 acres of tidal wetlands in Virginia. Equally as important as the reduction in the loss of wetlands, however, has been the notable success of the experiment of local implementation of an environmental control program based upon State standards and the sense of local involvement with environmental management that the program has fostered. Unique among wetlands programs for its time, the 1972 statute sought to establish a program which effectively protected a resource of State-wide significance but recognized long-standing local prerogatives in the area of land use control. The operation of these local boards and their continuing dedication and effectiveness in carrying out the requirements of the Act, has confirmed the wisdom of this approach. Working with friends and neighbors, local board members have been instrumental not only in enforcing their ordinances but also in educating the public to the value of wetland and fostering methods of shoreline construction which minimize impact on wetlands. Accordingly, the Virginia Wetlands Act has not only been effective in achieving its goal of preserving and protecting wetlands, consistent with necessary economic developments, but also has proven to be an example of how local and State interests can work together successfully.

Table 2 below shows the total number of wetland permit applications submitted on a yearly basis and their status. (Source: Marine Resources Commission Biennial Report.)

WETLANDS PERMIT APPLICATIONS (TABLE 2)

Fiscal Year	Total	Approved	Denied	Inactive/ Withdrawn	Grand-fathered	Other/No Permit Required	Pending
1972-73	147	112	23	5	5	2	0
1973-74	193	112	15	15	14	37	0
1974-75	134	78	12	8	7	29	0
1975-76	118	95	8	2	1	12	0
1976-77	127	69	5	1	2	50	0
1977-78	301	135	6	7	2	151	0
1978-79	267	94	7	4	3	159	0
1979-80	270	80	1	0	1	188	0
1980-81	384	111	7	2	1	263	0
1981-82	313	98	7	1	1	206	0
1982-83	599	219	20	9	6	345	0
1983-84	601	176	21	7	2	379	16
1984-85	1036	450	18	2	0	603	-

c. Coastal Primary Sand Dune Protection

Along Virginia's shorelines are found 126 miles of coastal primary sand dunes in both rural and urban areas. The dunes are unique physiographic features ranging in height from relatively low dunes found along the western shore of the Chesapeake Bay to much higher and broader dunes predominating along the Atlantic Shore. In their natural state, these features serve as protective barriers from the effects of flooding and erosion caused by coastal storms, thereby protecting life and property, and provide an essential source of natural sand replenishment for beaches as well as an important natural habitat for coastal fauna. They are also important to the overall scenic and recreational attractiveness of Virginia's coastal area.

During its 1980 session, the Virginia General Assembly recognized the value of these features and expressed its concern that activities which do not take into account the essentially dynamic nature of coastal dunes can compromise their special values. Such development may lead to increased shoreline erosion, flood damage to fixed structures, loss of public and private open space and wildlife habitat, and the increased expenditure of public funds. Therefore, the General Assembly established the policy of preserving and protecting, whenever necessary and practical, coastal primary sand dunes in a manner which accommodates necessary economic development. Building upon the successful structure of the Virginia Wetlands Act, the General Assembly chose to offer selected localities having coastal primary sand dunes the opportunity to adopt a specified ordinance to control development in these dunes through local wetlands boards already in existence. In order to simplify the task of administering both the wetlands and dunes permit programs, the legislators chose to standardize procedures for the administration of the two programs. Thus the administrative procedures, including the conduct of public hearings and review and appellate procedures in the dunes program, are virtually identical to those for wetlands. As with the wetlands system, the Marine Resources Commission administers the permit program where no local board has been established.

Guidelines were prepared which provide criteria for evaluating alterations of sand dunes (Appendix III-5). As Table 3 shows, all permit applications to date have been in the Virginia Beach and Norfolk areas, which are areas of intense growth and recreation. The data indicates that over the last four years there has been an increase in the number of dune applications which require a permit.

COASTAL PRIMARY SAND DUNE APPLICATIONS (TABLE 3)

Fiscal Year	Location	Total	Denied	Approved	No Permit Required	Inactive/ Withdrawn	Appealed
1980-81	VA Beach	25	1	7	16	1	5
	Norfolk	10	0	9	1	0	0
1981-82	VA Beach	37	4	10	21	2	6
	Norfolk	24	0	6	17	1	0
1982-83	VA Beach	29	11	14	2	2	9
	Norfolk	7	1	6	0	0	1
1983-84	VA Beach	29	5	21	0	3	6
	Norfolk	14	3	10	0	1	1
1984-85	VA Beach	17	2	9	0	0	4
	Norfolk	13	0	12	12	1	0

(Source: Marine Resources Commission)

D. OTHER BENEFITS AND IMPACTS

1. Time and Cost Savings in Shoreline Permitting

Since 1976, Virginia has worked with the Norfolk District U.S. Army Corps of Engineers towards streamlining some of the permitting procedures for minor shoreline projects, such as bulkheading and minor dredging. Streamlined permit procedures mean savings in tax dollars. These savings result from administrative improvements such as use of a single permit application for uses of wetlands, instead of three applications. They also accrue from improved advisory services that can be provided by local governments. Local staff can help applicants plan a project correctly the first time, avoiding Federal or State site visits, correspondence, and perhaps even an appeals procedure. The applicant for a small project in a locality could rely on a single source of basic information on permit requirements. He could also expect to deal with a group of local citizens knowledgeable of both environmental concerns, and to receive a decision within a reasonable amount of time. Streamlining has also helped the permit applicant save money. For example, on October 1, 1980, a joint State/Federal Public Notice Procedure was placed in operation resulting in the virtual elimination of costly newspaper advertisements which were formerly paid by the applicant. Additional funds provided by approval of the VCRMP will further assist the state in these efforts.

2. Benefits to Fisneries Industries

Commercial and recreational fisneries are an important contributor to Virginia's economy. Tne dockside value of finfish and shellfish alone was $85 million in 1983. Figures 1, 2 and 3 graphically depict tne economic importance of Virginia's fisheries.

Tne importance of recreational fishing is shown by tne fact that in 1980 tnere were 1,720,000 residential recreational fishermen and 1,118,000 non-residential fisherman in Virginia. In 1977 tne 160 marinas in Tidewater grossed $25 million. The U.S. Fish and Wildlife Service estimated that the value of the recreational fisneries industry in Virginia in 1977 was $200 million.

Tne VCRMP represents a direct economic benefit to the fisheries industry by protecting wetlands, nearshore shallows, and other fragile segments in the marine food chain. This will preserve both the commercial and recreational fisheries, which depend on a nealthy, productive habitat.

If the VCRMP is approved, monies may be available for fisheries management. An example of the possible benefits is the funding which was provided to the Virginia Marine Resources Commission in 1979 by OCZM to resurvey and remap oyster grounds in order to improve oyster ground leasing operations.

3. New Development and Land Values

Management by local governments of sensitive environmental areas such as primary sand dunes and wetlands will enhance tne desirability of some coastal areas for future development while limiting the use of other land for development. A possible negative social impact of this or any type of coastal management system would be the prescribed infringement on private property rights brought about by governmental efforts to regulate activities and land and water uses in certain coastal resource areas.

Long-term effects on property values are hard to predict. Property owners with land zoned for development and which is also located adjacent to protected areas such as wetlands, recreation areas and historic places will realize an increase on the value of their property. Values of property in areas designated for preservation may decline initially, but may later rise on selected parcels because of increased tourism or because acceptable development techniques may become economically feasible.

4. Compliance With Archaeological and Historic Preservation Act

The purpose of this section is to show compliance with requirements of Section 106 of the National Historic Preservation Act of 1966. The first is the approval of the VCRMP and the second deals with the expenditure of future Federal funds disbursed to Virginia for CZM activities related to the implementation of their program.

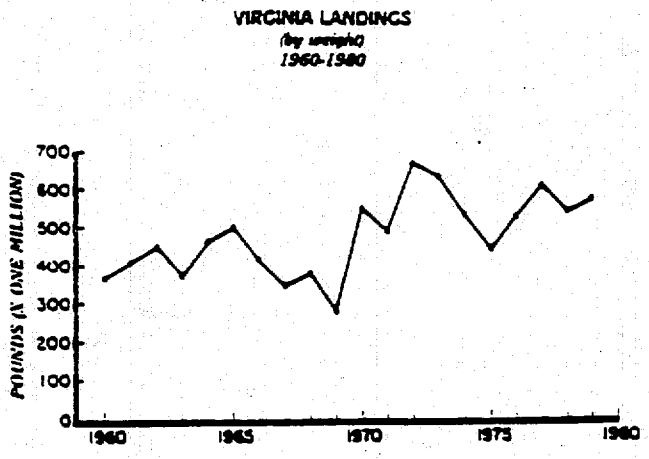


Figure 1

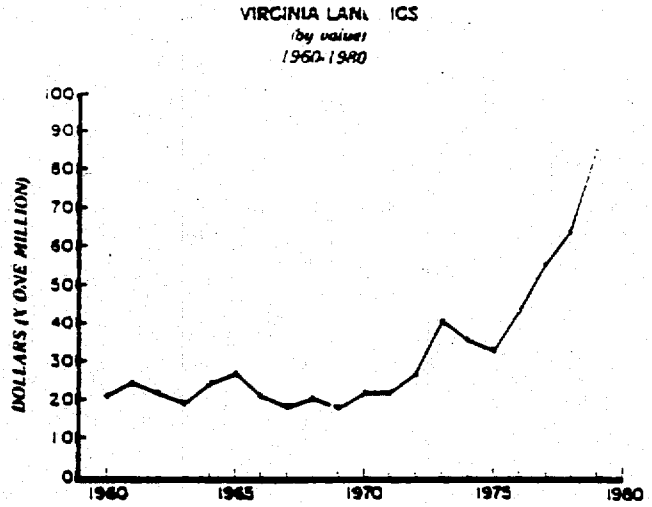
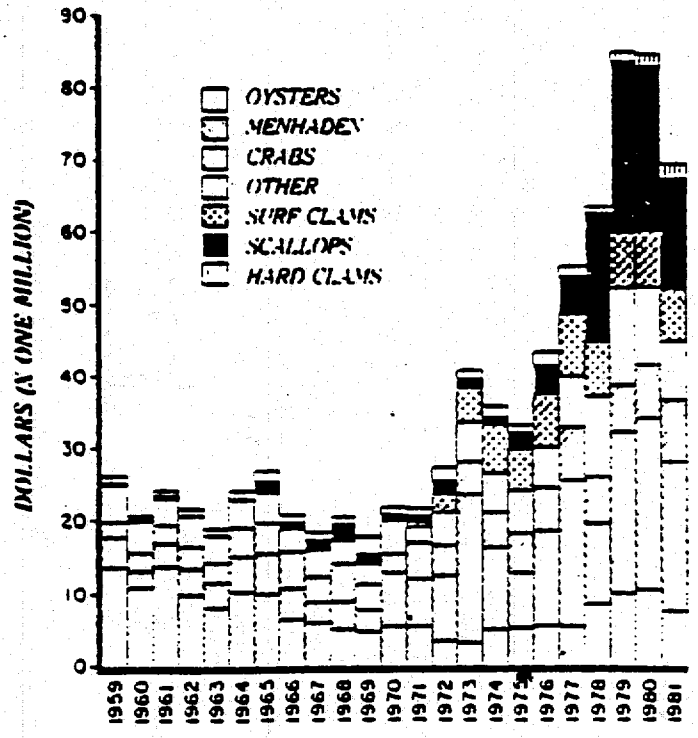


Figure 2



Source: Virginia Marine Resources Commission

a. Approval of the VCRMP

OCRM approval of the VCRMP will have "no adverse effect" on the archaeological and historic resources of Virginia as defined in the 36 CFR Part 800. The VCRMP is a description of the way Virginia currently manages its coastal resources. It is a program which reacts to outside applications for development (e.g. through wetlands and dunes permits) and attempts to balance coastal development with the protection of coastal resources which may include historic buildings and archaeological sites. The program outlines how underwater historic property is to be preserved and protected and managed through the Virginia Marine Resources Commission (Part II, Chapter V-17). It is unlawful for any person, firm or corporation to conduct any type of recovery operations involving the removal, destruction or in any way disturbing any underwater historic property without first applying for and receiving a state permit.

The VCRMP also briefly outlines the responsibilities of the Virginia Historic Landmarks Commission (VHLC) (Part II, Chapter VI-9). The primary role of the VHLC is to identify and encourage the preservation of Virginia's great wealth of historic, architectural, and archaeological resources. The Commission:

- Reviews and comments on the plans of state agencies proposing alterations to registered landmarks under the terms of the Virginia Environmental Reports Act and the Virginia Antiquities Act;
- Reviews and comments upon any federally funded, licensed, or sponsored project that may threaten a historic building or archaeological site; and,
- Prepares a comprehensive statewide preservation plan to provide a framework for preservation activities and a guide to land-use planners.

In Virginia there are two registers for landmarks: the Virginia Landmark Register established by State law and maintained by the VHLC; and the National Register of Historic Places established by Federal law and maintained by the National Park Service of the Department of the Interior. As a matter of policy, the VHLC nominates all properties placed on the Virginia Landmarks Register for listing on the National Register. Because the National Park Service has consistently approved the Commission's nominations, the State register and the Virginia section of the National Register are virtually the same.

Statewide, the VHLC has surveyed and assessed more than 20,000 structures and more than 11,000 archaeological sites. There are more than 5,000 places in Tidewater alone with 43 historic districts and 448 individual properties listed on the state register. The use of this information by planners and other public officials who prepare land use studies and environmental impact statements is a significant step in the protection of historic properties from needless demolition and encroachment by incompatible development.

Placement on the Virginia Landmarks Register and the National Register imposes no architectural controls and carries no prohibition on the private property owner using private funds. Registration is rather an official recognition that is designed to educate citizens of the value of the resources around them. Viewed in this light, the States's register program has proved remarkably effective: of nearly 950 individual buildings and sites registered by the VHLC since 1967, only nine buildings are no longer standing and three of those were destroyed by fire. (Source: Virginia Historic Landmarks Commission).

b. Expenditure of CZM Funds

Approved state CZM programs receive Federal funds to implement their programs. Types of activities funded are diverse and generally submitted as a work program on an annual basis to OCRM. With each grant, OCRM reviews all work elements and proposals and contractually ensures that if cultural resources may be impacted (either by construction projects or nonconstruction proposals) that the applicant will assist OCRM in meeting the Section 106 requirements.

5. Unavoidable Adverse Environmental Effects

Federal approval and implementation of the VCRMP along with the expenditure of Federal CZM funds is not expected to have any unavoidable adverse environmental effects.

6. Irreversible and Irretrievable Commitments of Resources

Federal approval of the VCRMP will not in and of itself lead to critical losses of coastal resources. As has been the case in the past, the implementation of coastal management policies and regulations affects the actions of Commonwealth agencies and participating local governments in the coastal area may result in irreversible and irretrievable commitments of resources as coastal policies permit development of coastal resources as well as protect them.

PART VI - COMMENTS RECEIVED ON THE DRAFT VIRGINIA COASTAL RESOURCES MANAGEMENT PROGRAM AND THE OCRM/COMMONWEALTH RESPONSES

PART VI

LIST OF AGENCIES, ORGANIZATIONS AND INDIVIDUALS THAT COMMENTED ON THE DEIS:

FEDERAL AGENCIES

Advisory Council on Historic Preservation
Air Force
Army Corps of Engineers
Coast Guard - Fifth District (10/2/85)
Coast Guard Headquarters
Department of Interior (10/11/85)
Department of Interior (11/11/85)
Environmental Protection Agency - Region III
Housing and Urban Development
Federal Emergency Management Agency
National Marine Fisheries Service (6/21/86)
National Marine Fisheries Service (3/20/86)
U.S. Department of the Navy

STATE AND LOCAL AGENCIES:

City of Hampton - Thomas D. Schrack
Fairfax County
Maryland Department of Natural Resources
Northern Virginia Planning District Commission
Southeastern Virginia Planning District Commission
State Water Control Board
Virginia Conservation and Historic Resources (9/11/85)
Virginia Conservation and Historic Resources (9/16/85)
Virginia Department of Agriculture and Consumer Services
Virginia Department of Health
Virginia Emergency Services
Virginia Game and Inland Fisheries
Virginia Highway and Transportation
Virginia Institute of Marine Sciences
Virginia Marine Resources Commission
Virginia Port Authority

ORGANIZATIONS AND INDIVIDUALS:

Ann Flippi
Bob Hume
Glenn Mattnews
National Marine Manufactors Association
Kathleen Schumacher
Calvert Seybolt
Jon Shay
Ron Schmidt (ODU Student)
Virginia Wildlife Federation - Carvel Blair

PART VI

FEDERAL AGENCIES

ADVISORY COUNCIL ON HISTORIC PRESERVATION, Chief, Eastern Division of Project Review, Don L. Klima, October 29, 1985.

1. Comment: With regard to the Office of Ocean and Coastal Resource Management's approval of the Virginia program, the Virginia Council on the Environment (Council) has no objection to the determination of no adverse effect.

Response: No response necessary.

2. Comment: The Council appreciates NOAA's commitment to ensure appropriate compliance with Section 106 of the National Historic Preservation Act. The Virginia State Historic Preservation Officer must be consulted on a case-by-case basis, as necessary if any historic or archeological properties may be affected.

Response: The Council on the Environment is responsible for coordinating the State's review process for all State funded development projects (excluding highways) above $100,000, and the State's participation in the NEPA process. The Virginia Department of Highways and Transportation works directly with the Virginia Division of Historic Landmarks. The Virginia Division of Historic Landmarks is notified in all cases where there is a possibility that a historic property may be involved.

U.S. AIR FORCE, Eastern Regional Civil Engineer, Environmental Planning Division Thomas D. Sims, Chief, October 4, 1985.

1. Comment: Pages II-4 and II-7, Table II-2, and Appendix II-1 adequately provide for the exclusion of Federal lands from Virginia's coastal zone. However, the following corrections should be made concerning Air Force properties in Table II-1:

1. Langley AFB acreage should be: owned - 2883.0, lesser int. - 269.0

2. Langley Family Housing Annex acreage should be: owned 284.0, lesser int. - 4.0. The locality should be Poquoson, not York.

3. Byrd Field acreage in Appendix Table II-1 should show no land owned, and 143.0 leased.

The following properties no longer belong to the Air Force and should be deleted from Appendix Table II-1:

Morrison Radio Beacon Annex
Cape Charles Communication Facility
Cape Charles Facility Annex
Langley Missile Site

The total acreage for Air Force lands in Table II-2, page II-7, should be changed to read: 3583.0.

Response: These changes have been included in the document in Volume I and in the errata for the Appendix volume of the VCRMP.

2. Comment: The VCRMP and DEIS adequately cover national defense as an important consideration in the national interest on pages IV-4 through IV-6 and in Appendix II-1.

Response: No response necessary.

3. Comment: The VCRMP and DEIS does not specifically mention the intergovernmental coordination process formerly under OMB Circular A-95, and now carried under Executive Order 12372. Under E.O. 12372, Section 2(a) we are required to use the state comment process through the state single point of contact for consistency notification and other coordination actions. The VCRMP indicates that while the Council on the Environment prefers notification of federal agency actions through the NEPA process, other federal processes will serve for notification. We take this to mean that the state coordination process as required under E.O. 12372 will be acceptable for filing consistency determinations. Thus, Air Force activities in the Virginia coastal zone will use the E.O. 12372 process for filing determinations. We suggest that a statement be inserted on page X-2, last paragraph to clarify the state's intention to use the E.O. 12372 process for coordination.

Response: Any Air Force action potentially affecting Virginia's coastal area will require consistency determinations by the Air Force. All Air Force consistency determinations must be submitted to the Council on the Environment for its review, except for those Air Force actions that now receive State review through the State's clearinghouse review process. The Virginia Department of Housing and Community Development is the single point of contact under Executive Order 12372. During initial stages of program implementation the Council on the Environment will develop an administrative procedure for facilitating the transfer of information to the Council from the Department of Housing and Community Development.

4. Comment: Page X-2, paragraph three states that where "...a consistency determination is not required...the federal agency shall provide the Council on the Environment with a notification...briefly setting forth the reasons for its negative determination." The Air Force currently participates in 16 state coastal management programs in eastern United States and we have not been required to furnish a negative declaration on a possible consistency determination by any of these states. Joe Uravitch of OCRM confirmed that negative declarations would not be required on actions where the Air Force determines that there will be no impact on the coastal zone.

Response: The following has been added to the text:

> "Notification that a consistency determination is not required must be given only in the limited situations detailed in 15 CFR 930.35(d). Notification of this negative determination must be given only for:
>
> (1) a Federal activity identified by a State agency on its list or through case-by-case monitoring;

(2) a Federal activity which is the same as or similar to activities for which consistency determinations have been prepared in the past; or

(3) Federal activities for which the Federal agency undertook a thorough consistency assessment and developed initial findings on the effects of the activity on the coastal zone.

Therefore, in many circumstances, a notice of negative determination is not required.

DEPARTMENT OF THE ARMY, Office of the Chief of Engineers, Army Environmental Office, Thomas H. Magness III, Chief, October 7, 1985.

1. Comment: Under the proposed VCRMP, the Army, as a Federal agency, will be directly responsible for determining whether its activities directly affect the coastal zone and whether those activities are consistent to the maximum extent practicable with the program. The proposed process of submitting a "consistency determination" to the state will lengthen an already costly and time consuming process established under the CZMA and could possibly delay national defense activities at Army installations in Virginia without providing additional protection to coastal resources.

Response: The CZMA requires consistency determinations for Federal agency activities directly affecting the coastal zone. Virginia is determined to work with Federal agencies to avoid unnecessary delays in implementing this procedure. In cases where a Federal agency will be performing repeated activities, other than development projects which cumulatively have a direct effect upon the coastal zone, the agency may develop a general consistency determination in cooperation with the State, thereby avoiding the necessity of issuing separate consistency determinations for each incremental action. 15 CFR 930.37.

The State also has the option of working with the Federal agency to develop a Memorandum of Understanding detailing how the consistency procedure will work vis-a-vis the activities of that particular agency.

2. Comment: The proposed program requires the submission of all applicable NEPA documents for the Council's review of the agency's consistency determination. Will the Council now require submission of environmental documentation such as Records of Environmental Consideration and Environmental Assessments for proposed actions with no significant environmental impact or actions that are categorically excluded?

Response: In the review of consistency determinations, the Council on the Environment may require the submission of Environmental Assessments, Draft Environmental Impact Statements and any related supplements. In the case of projects where a Record of Environmental Consideration is prepared instead of an Environmental Assessment the Corps may be required to submit such records.

3. Comment: Under the proposed Coastal Primary Sand Dune Guidelines, activities in primary sand dunes will now require prior authorization, through the existing joint permit application process presently used for obtaining authorization

of activities in tidal zone, wetlands or navigable waters. Will this new requirement be retroactive and applicable to previously proposed activities in primary sand dunes that have already undergone review in accordance with NEPA?

Response: Adoption of the VCRMP by the Commonwealth and subsequent approval by the Federal government will not require new permits under any existing statutes for those activities already permitted and/or reviewed. However, a consistency determination will be required for ongoing Federal activities, other than development projects, under which the Federal agency retains discretion to reassess and modify the activity. 15 CFR 930.38(a).

4. Comment: Under the proposed VCRMP the local community would acquire permitting authority over activities affecting coastal resources. A single contact should be established at the state level for federal agencies rather than imposing coordination with local committees. A single centralized permitting authority established at the state level would enable Federal activities to standardize their approach to coordinating with the Commonwealth and would ensure uniform evaluations devoid of influence from the local political climate.

Response: The Council on the Environment is the State agency responsible for reviewing all Federal consistency certifications and determinations. No new state laws or regulations are being created as a part of the program. Except for the Federal consistency review process conducted by the Council, there will be no change in the existing working relationships among the Federal, state and local governments.

U.S. COAST GUARD, Fifth District Office, Marvin H. Barnes, Jr. October 2, 1985.

Comment: Volume I, paragraph 2 on page X-1 and paragraph 1 on page 173 state that the Virginia Council on the Environment will determine whether a Federal activity as proposed will be consistent or inconsistent with the management program. In accordance with 15 CFR 930.34(a), however, federal agencies are responsible for determining whether an activity will affect the coastal zone and whether those activities are consistent with the state's approved program.

Response: The text has been revised to reflect these comments. The Federal agency is the entity that makes the "consistency determination". The Council will review these consistency determinations to ensure that the proposed activity is consistent with the VCRMP. If the Council and a Federal agency cannot come to an agreement that the proposed activity is consistent with the VCRMP to the maximum extent practicable, the parties may request mediation by the Secretary of Commerce.

U.S. COAST GUARD, Planning and Evaluation Staff, Captain J. G. Schmidtman, October 4, 1985 and March 24, 1986.

1. Comment: Since the Underwater Historic Property statute is to be a part of the VCRMP, it is recommended that the following language be included: "Nothing in Section 10-262 of the Virginia Code may be construed to divest the United States of any property interest in submerged property owned by the United States, nor may it restrict the right of the United States to engage in salvage of any such property".

Response: At a meeting held on January 24, 1986, the Office of Ocean and Coastal Resource Management, the United States Coast Guard and the United States Navy discussed this issue. This meeting was followed-up with letters and further negotiations. Ultimately, it was agreed that Page V-17, Paragraph h.(2) of the DEIS would be revised as follows: (the new text is underlined.)

> " The Virginia Marine Resources Commission (MRC) has specific statutory authority over the taking of underwater historic property (§62.1-3 and §10-262 in Appendix III-2), as limited by the Supremacy Clause of the U.S. Constitution, and when the Federal government has affirmatively disclaimed title to the property. Underwater historic property is defined as any submerged shipwreck, vessel, cargo, tackle or refuse sites or submerged sites of former habitation, that has remained unclaimed on the state-owned subaqueous bottom and has historic value as determined by the Virginia Historic Landmarks Commission."

U.S. DEPARTMENT OF THE INTERIOR, Mid-Atlantic Region, Anita J. Miller, October 11, 1985.

1. Comment: The program is in consonance with the objectives of the Minerals Management Service (MMS) mission and the activities of that Services's Atlantic OCS Region.

Response: Thank you for your review and comments.

2. Comment: The following revision of Chapter X, part C. (pages X-4 and X-5) is recommended. Presumably, the term "OCS Plans" excludes OCS lease sales in accordance with the Supreme Court's 1984 decision (Secretary of the Interior et al. v. California et al.) and recent NOAA regulations (15CFR 923 and 30). The language in the Program document does not explicitly state this distinction, however. For the purposes of clarification and to avoid confusion, such a distinction should be included in the document.

Response: You are correct. The document has been revised on page X-4.

3. Comment: Volume I, page X-5, first paragraph, line 13, states that, in the event of a State objection to the consistency certification of an exploration plan, the Federal Agency "may not approve the plan or issue any license or permit.." In conformance with regulations found at 30 CFR 250.34-1 (e)(2), the Director of MMS must take action (i.e., approval, modification, or disapproval) on a proposed exploration plan which enclosed consistency certifications, within 30 days of submission. The State review period for exploration plans and related applications is 90 days. As a result, it is possible for a State to object to an Atlantic lessee's exploration plan consistency certification after the plan itself has received approval. However, in accordance with regulations found at 30 CFR 250.34-1(l), no license or permit (e.g., permit to drill) shall be issued until such time that States with approved coastal zone management programs have "concurred" or have been conclusively presumed to concur, with the lessee's (i.e., applicant's) coastal zone consistency certification accompanying an exploration plan. According to regulations found at 250.34-1(g), in the case of an objection, the "approved" plan shall be returned to the lessee for modification to accommodate the State's

objection. Alternatively, the objection can be appealed to the Secretary of Commerce pursuant to the procedures described in Section 307 of the CZMA and the implementing regulations. In no case will a permit or license be granted until the Secretary of Commerce has taken action on the consistency objection.

Response: The document has been revised on page X-5.

4. Comment: The list of Federal activities involving Federal assistance to State and local governments (Chapter X) and subject to consistency review under the VCRMP, should reference title and source. Two such programs administered by the National Park Service are the Land and Water Conservation Fund and the National Historic Preservation Fund. (The letter contained a description of the two programs and responsible officials.)

Response: The two programs have been added to the list.

5. Comment: Two additional programs for consideration under Chapter VI, Shorefront Access Planning and Protection, are the National Trails System and the National Wild and Scenic Rivers System. (The letter contained a description of the systems and responsible officials.)

Response: The State is aware of these programs and considers them in its planning and management processes.

6. Comment: Although they have not identified any significant fish and wildlife issues at this time, they intend to provide additional comments by early November.

Response: The Department of the Interior submitted further comments dated November 14, 1985, after the close of the extended comment period which are summarized below and addressed in this FEIS.

7. Comment: With the exception of revisions to Chapter X to address the OCS issues discussed above, the U.S. Department of the Interior notes no significant conflicts of the proposed VCRMP with Department of the Interior programs, and finds that the draft environmental impact statement adequately addresses their concerns.

Response: Thank you for your review and comments.

U.S. DEPARTMENT OF THE INTERIOR, Anita J. Miller, Regional Environmental Officer, Mid-Atlantic Region, November 14, 1985.

1. Comment: The U.S. Fish and Wildlife Service's responsibilities and operations, as mandated by Congress, will remain unchanged by implementation of the Commonwealth's program. (Note: additional information concerning the FWS's responsibilities was also provided.)

Response: We agree. Of course, FWS, as well as all Federal agencies, are required to comply with the consistency provisions of the CZMA.

2. Comment: The State legislature recently granted an exemption from the Coastal Primary Sand Dune Protection Act after permit applications for the activity had been denied by both the Local Wetlands Board and the VMRC. In the event this

becomes a frequent occurrence, it would be difficult to maintain an effective coastal resources management program.

Response: If events such as this become a frequent occurrence, and the Virginia Council on the Environment finds that such actions are inconsistent with the Virginia Coastal Resources Program, the Council will work with the Legislature to resolve the issue. If actions occur in the Commonwealth that are not consistent with the Coastal Resources Program, the Office of Ocean and Coastal Resource Management will review such activities during continual monitoring and formal §312 Evaluation of the program and determine the program's continued eligibility for Federal approval and program implementation funds.

3. Comment: Some permits are currently being issued without compensation for the aquatic habitat being lost. The decline of the resources in the Chesapeake Bay is the result of many cumulative actions that are incompletely mitigated.

Response: As a result of the Virginia Wetlands Act, the loss of wetlands has been almost totally eliminated. Some loss, however, occurs in any regulatory system that must balance both protection of wetlands and accommodation of growth and development.

4. Comment: In addition to vegetated and non-vegetated tidal wetlands protection, non-tidal wetlands should be protected . These areas serve important ecological functions such as flood control, water quality improvement, food chain support and nutrient cycling and additionally serve socio-economic functions involving consumptive and non-consumptive uses. The program should also address the concepts of mitigation and compensation for unavoidable habitat losses.

Response: We agree that non-tidal wetlands are important. However, the State currently has no program that addresses non-tidal wetlands. Such a program is not required by the Coastal Zone Management Act, as amended. However, the Council is examining the State's wetlands with a view toward developing policy recommendations for their protection.

5. Comment: Since agricultural operations have the potential for significant contribution to erosion, sedimentation and water degradation, it would be appropriate to establish some type of control over such operations. The institution of Best Management Practices for agricultural activities would aid in reducing adverse environmental impacts.

Response: The State has an extensive program to assist farmers in the voluntary implementation of BMP's.

Note: A number of editorial comments were also submitted. These were all incorporated into the FEIS.

U.S. ENVIRONMENTAL PROTECTION AGENCY, Region III - Philadelphia, PA, Richard V. Pepino, Chief, NEPA Compliance Section, October 22, 1985.

1. Comment:
The DEIS is lacking in concise, descriptive information regarding Virginia's bountiful coastal resources and does not detail the particular problems and pressures

currently experienced in its coastal zone. For this reason, the Environmental Protection Agency has rated the VCRMP/DEIS "EC-2" - Environmental Concerns - Insufficient Information per EPA's rating system.

EPA's definition of "EC-2" is: "EPA has identified environmental impacts associated with the proposed action that should be corrected in order to fully protect the environment. The draft EIS does not contain sufficient information to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS which could reduce such environmental impacts of the action. The inadequate information, data, analyses, or discussion should be included in the final EIS."

Response: By their nature, the CZMA and the VCRMP both protect and manage the Virginia's coastal resources. The impacts associated with Federal approval of the Virginia Coastal Resources Management Program are limited due to the fact that the program was developed to enhance governance of Commonwealth coastal land and water uses according to the coastal policies and standards contained in existing statutes, authorities and rules.

The FEIS includes a comprehensive description of Virginia's coastal resources in Part IV of this document. This has been expanded slightly in response to EPA's comments. An attempt was made to provide reviewers with a concise description of Virginia's coastal resources. These descriptions include summaries of the following: 1. Geography, 2. Groundwater Geology, 3. Topography, 4. Soils, 5. Climate, 6. Vegetation, 7. Wildlife, 8. Population Distribution, 9. Commercial and Industrial Development, 10. Transportation, 11. Agriculture, 12. Forestry, 13. Historic Sites, 14. Bluffs, 15. Dune Systems and Beaches, 16. Tidal Wetlands, 17. Nearshore Shallows, 18. Barrier Islands, 19. Water Resources, including uses and quality, and a summary concerning major river basins and their problems.

Without comments concerning specific deficiencies in the program document, it is not possible for the document to be revised. Relative to concerns about the program not addressing the particular problems and pressures currently experienced in its coastal zone, please refer to Chapter III, which explains the eight core regulatory programs which address the major uses and activities in and affecting Virginia's coastal area. The Council on the Environment has determined that these regulatory programs address the particular problems and pressures experienced in the coastal zone. These programs include fisheries management, subaqueous lands management, wetlands management, dunes management, nonpoint source pollution control, point source water pollution control, shoreline sanitation, and finally, air pollution control.

2. Comment: It is unclear whether Virginia wishes to adopt the responsibility of complying with the entire Coastal Zone Management Act (CZMA) program factors or is limiting its plan solely to resource management. This distinction appears to be important in clearly defining the scope of the VCRMP as it relates to the CZMA. A more precise regulatory reference through which the Commonwealth intends to receive its funding should be provided.

Response: The responsibility of the Office of Ocean and Coastal Resource Management is to determine if the VCRMP addresses all aspects of the Coastal Zone

Management Act, as amended. We believe it does so. The Table, "Cross Reference to Program Requirements on pages 10 and 11 of the Program Document highlights which chapters of the document address all specific requirements and sections of the CZMA and its implementing regulations.

3. Comment: It will be difficult for Virginia to solve its coastal resource problems when over twenty different State agencies are relied upon to efficiently run the program. The Virginia plan relies upon oversight capabilities of the Virginia Council on the Environment to assure sound implementation. The EPA believes that the Virginia Council on the Environment is a good and logical choice for this role. Its successes will be governed by resource and funding levels and the authority the Council will be provided.

Response: The Commonwealth of Virginia maintains that its management of the Coastal Resources Management Program will be adequate. Indeed the function of the Council as lead agency for the VCRMP is to provide for the first time a coordination function for these numerous state agencies responsible for different aspects of coastal management of the VCRMP. Both day-to-day oversight of the VCRMP operations by OCRM's Coastal Programs Division and the Federal evaluations under Section 312 of the Coastal Zone Management Act will examine the Commonwealth's Coastal Resources Management Program and determine whether the Council's oversight is adequate and whether Commonwealth resource and funding levels and authority are adequate for continued approvability.

4. Comment: An improved environmental gain could be fashioned from a better designed coastal program which detailed specific coastal policy and use guidelines which would better manage those lands, wetlands, point and non-point source pollution, shoreline sanitation, dunes and air quality. An enforceable State coastal policy would mutually benefit both the enhancement of coastal resources and the environmental quality of the coastal zone.

Response: The VCRMP has a core of eight regulatory programs through which critical land and water uses and activities are subject to the control of the Commonwealth. The eight areas, fisheries management, subaqueous lands management, wetlands management, dunes management, nonpoint source pollution control, point source water pollution control, shoreline sanitation, and air pollution control, included in Chapter III, are the uses and activities covered by the Virginia Coastal Resources Management Program. The legal and institutional means (programs and authorities) by which they are controlled are also included in the VCRMP. All Commonwealth statutes and all agency regulations adopted pursuant to the statutes and all applicable Federal laws which apply to the operation of these core regulatory programs have been incorporated into the VCRMP. The Commonwealth Attorney General's office has reviewed the proposed VCRMP and certified the enforceability of each of the eight core regulatory programs (see Appendix III-1).

5. Comment: Direct Commonwealth review of actions subject to compliance with an enforceable coastal resource management program could also assist in the development of pollution abatement strategies which are needed along Virgina's developed waterfront areas and coastal industrial zones. For example, living marine resources and ecological systems in these areas could be guaranteed an improved environment through a CRMP-based toxics control strategy using CZMA funds to set up an interdisciplinary task force. This task force could inten-

sively study Virgina's most seriously degraded coastal areas and make recommendations for their improvement and future use. Although this method utilizes the "networking" concept already apparent in the CRMP, it effects a greater amount of focus on proper coastal resource management than the generic design contained in the DEIS.

Response: Under the Virginia Coastal Resources Management Program, the Administrator of the Council on the Environment, as program manager, is charged with monitoring State agency actions for consistency with the VCRMP. The Executive Order provides a mechanism for resolving possible conflicts. Further, the Commonwealth is involved in a multi-faceted approach to the toxics problem that is comprehensive and highly-coordinated. This program is housed in the State Water Control Board, an agency networked into the VCRMP. Regarding the use of CZMA funding for toxics or other projects, it is the position of the Administration that sufficient funds already exist at the state level to implement approved CZM programs.

6. Comment: The Council on the Environment must adequately monitor the myriad of coastal/state activities that undoubtedly occur and track those that are slated for funding. The Council's methods of monitoring, including the biennial review, the selective review of periodic reports, agency meeting agendas, newsletters, the media, and comments from interested parties, should be bolstered. Otherwise, the Council may be less than well informed, and may find itself ill-prepared to act as lead agency. The Council and the VCRMP would benefit from a more integrated and solid approach which should include an efficient tracking system and a firmly anchored management program that outlines the Council's clear input into the decisions of State entities affecting the coastal zone.

Response: The Council on the Environment has expanded its definition of program monitoring to include notices of applications for state environmental permits. Individual arrangements for receiving such information will be made by the Council on the Environment with appropriate state agencies during the first year of program implementation. OCRM program staff will provide technical assistance to the Commonwealth on this effort. The first formal Evaluation of the Virginia Coastal Resources Management Program, to be conducted under Section 312 of the Coastal Zone Management Act, as amended, will review the effectiveness of the Commonwealth's methods of monitoring and determine whether the Council's tracking system is sufficient. The evaluation also will review decisions made by the various Commonwealth entities affecting the coastal zone to determine whether the agencies are adhering to the policies of the Virginia Coastal Resources Management Program.

7. Comment: Every Geographic Area of Particular Concern should be afforded the same detailed descriptions in the Virginia Coastal Resources Management Program as was the "Spawning Nursery and Feeding Grounds" natural resource GAPC. The quality geographic accounts given this APC helped provide the reader a useful illustration to envision Virginia's special coastal resources.

Response: Each of the Areas of Particular Concern are described generally in the Description of the Environment on pages 139 through 168 of the Virginia Coastal Resources Management Program, and specifically either in Chapter V, "Geographic Areas of Particular Concern", such as for "barrier islands", or by reference to other State documents such as the State Comprehensive Outdoor Recreation Plan, or are detailed in other sections of the program document

such as Chapter VI - Shorefront Access and Chapter VIII - Shoreline Erosion Mitigation. We have attempted to reduce redundancy in such areas where there are overlays between special CZMA regulations and and GAPC's the State chose to include in the VCRMP. The text of State authorities protecting each of these Areas of Particular Concern are included in the Appendices for the Program. The laws governing each of these areas also provides a further description of the resources.

8. Comment: A more centralized management system should be incorporated into the VCRMP to significantly improve the recognition of priorities of uses in the APC. For instance, advanced identification of potential conflicts of use could be included in the formation and discussion of special areas. By providing a framework for action, anticipated conflicts could be resolved before they arose and/or became unwieldy.

Response: The Governor's Executive Order incorporated into the Virginia Coastal Resources Management Program directs the State agencies to act in accordance with the VCRMP and designated a centralized management body through designation of the Council on the Environment as the VCRMP lead agency. But, except where established in law, the priorities of use contained in the VCRMP are advisory in nature. However, they will be considered as policies of the VCRMP by State agencies, boards and commissions and the local wetlands boards as they carry out APC related regulatory responsibilities. Further, should the State identify areas of especially critical value, it has the option to pursue more detailed management strategies for advance identification such as Special Area Management Plans as authorized by the CZMA.

9. Comment: The DEIS should more fully describe the Waterfront Development APC due to tremendous importance these special areas exact in Virginia. The proper siting of waterfront dependent activities requires much greater consideration than was given in the DEIS to ensure environmental compatibility.

Response: The Program has been expanded to clearly define Waterfront Development Areas of Particular Concern, including examples of public benefit to be derived from designation as a Waterfront Development APC and a succinct criteria for designation of this APC. It is an intent of the Virginia Coastal Resources Management Program that development of these special areas will be carefully planned with full public involvement in the planning and development phases to allow proper management of these areas of great economic and social value to the Commonwealth and its people.

10. Comment: The first paragraph on page 4 of EPA's comments follows:

"In light of other approved state management programs that we are aware of and with regard to the intent of the CZMA, we suggest that the Virginia CRMP establish a centralized coastal program which operates on a more focused level program to carry out coastal zone initiatives are more effective. Nevertheless, Virginia has adopted a networking approach that relies upon the Virginia Council on the Environment to provide broad based leadership. Given this approach, EPA strongly suggests that the Council be given the resources and authority necessary to actively pursue coastal zone initiatives. Otherwise, federal monies may not effect an appreciable change since the program, made up entirely of existing programs, activities and offices that

are already established, would be unfocused and potentially ineffective".

Response: In the late 1970's the Commonwealth considered a centralized coastal program based on comprehensive coastal zone management legislation for the Commonwealth. This proposal met with opposition throughout the Commonwealth and failed to be passed by the Legislature. Therefore, when Virginia elected to resume program development in 1980, it chose to attempt development of a network based program. Using the Governor's Executive Order the Council on the Environment, as the lead agency, is prepared to use the networking process for linking existing Commonwealth programs, agencies, and laws into a system which the Commonwealth and OCRM believe will result in an effective program to manage the Commonwealth's coastal resources.

"Networking" is a program technique provided in 15 C.F.R. 923.43 of the CZMA regulations. There are a number of effective "networked" state coastal zone management programs throughout the country, including the States of Delaware, Florida, Hawaii, Massachusetts, New York and Pennsylvania.

The Office of Ocean and Coastal Resource Management has been working with the Council to develop their application for first year Federal program implementation funds set aside by the Congress to ensure that the adequate resources are allocated for focused and effective first year program implementation. Further, the OCRM will continually review Program activity and will formally evaluate the VCRMP at least once every other year pursuant to Section 312 of the Coastal Zone Management Act, as amended, to ensure continued program effectiveness.

11. Comment: The Office of Ocean and Coastal Resource Management should conduct a study of the approved state management programs that are currently in effect. This study would review the management aspects and rate the effectiveness of the programs on a 1) national level and on a 2) regional/ Delmarva level. Using both reviews, OCRM should prepare a comprehensive analysis of how the proposed VCRMP compares to the overall picture and how it specifically may enhance coastal resource management in the Delmarva/Chesapeake area. This analysis would not only be of the broad program comparisons but discuss in detail all of the singular methods by which coastal resource management is successfully conducted. The results of this comparison would be extremely useful to the Commonwealth of Virginia to inform them how the proposed CRMP fits in with respect to the national picture and whether or not it is comparable to its coastal neighbors. The strength of the comparison model could prove useful during evaluations and during program implementation changes.

Response: While this type of study might prove useful, the time necessary to conduct such a study would delay VCRMP implementation and the benefits such implementation would provide for Virginia and the Nation. However, as both a management tool and an academic exercise the study proposed has merit and will be considered by the OCRM when sufficient resources are available for such an undertaking.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT - REGION III, Regional Environmental Officer, Larry Levine, October 8, 1985.

1. Comment: As set forth in the VCRMP, the State's intergovernmental review agency will be the vehicle for consistency determinations. Grantees receiving HUD Community Development Block Grant funds are not required to comply with E.O. 12372 requirements unless they plan to use their CDBG funds for the planning or construction of water or sewer facilities. HUD does require compliance as applicable with CZM consistency requirements as part of its environmental review process. This will obviously require direct consultation with the Council on the Environment in those instances where the intergovernmental review process is not required.

Response: The Council on the Environment will work directly with HUD and NOAA to determine the types of projects that will be subject to the Federal consistency process during program implementation.

2. Comment: One aspect of the consistency review process which is of concern is the project coverage, and what is meant by a physical development project. Many projects and activities eligible under the CDBG program should have no affect on the coastal area. For NEPA purposes, many such projects have been designated categorically excluded. A similar exclusion of activities may prove applicable and workable in the case of coastal areas with respect to consistency determinations.

Response: Please refer to our response to your first comment.

3. Comment: The meaning of "alteration or expansion of physical development projects" could be more closely defined in the program to take into account situations where the project has, for all practical purposes, no affect by virtue of the character of work to be done. One approach to this could be the establishment of thresholds for alterations and expansion activities. The benefit of both recommendations we feel, could be a reduction in the burden to both the community as well as the State agency, while still being in keeping with the intent of the consistency review.

Response: Please refer to our responses to the Army Corps of Engineers' first and fourth comments.

FEDERAL EMERGENCY MANAGEMENT AGENCY - REGION III, Natural and Technological Hazards Division, Walter P. Pierson, Chief, September 18, 1985.

Comment: The VCRMP appears to be a positive approach to sound coastal floodplain management practices and corresponds with the National Flood Insurance Program (NFIP). The National and Technological Hazards Division offers technical

Response: Thank you for your review and comments.

U.S. DEPARTMENT OF COMMERCE, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, William F. Gordon, Assistant Administrator, June 21, 1985 and March 20, 1986 memoranda.

March 20, 1986 memorandum

1. Comment: While the NMFS continues to believe that its rationale for not including detailed fisheries laws and regulations in the Virginia Coastal Resources Management Program is valid, they recognize that the state has the right to include these laws and regulations as a part of the VCRMP. The NMFS does not believe that their objections should affect approval of the VCRMP.

Response: Thank you for your review and comments.

2. Comment: The NMFS pledges its best efforts to work with the Commonwealth of Virginia to ensure that fisheries management occurs in a complimentary and cooperative manner. The NMFS wishes the Commonwealth every success in the prudent application of Federal coastal resource funds to help solve some of the complex coastal ecological problems.

Response: Thank you for your review and comments.

June 21, 1985 memorandum

1. Comment: The National Marine Fisheries Service (NMFS) takes exception to the incorporation of Title 28 of the Laws of Virginia Relating to the Marine Resources of the Commonwealth as part of the Virginia Coastal Resources Management Program (VCRMP). In addition to providing certain statutory restrictions on the harvest of fish and shellfish from the marine waters of the Commonwealth, this also establishes a collegial body, the Marine Resources Commission (MRC), and vests that body with the authority to make such regulations as it deems necessary to promote the general welfare of the seafood industry and to promote the seafood and marine resources of the State, including regulations as to the taking of seafood. Moreover, §28.1-57 purports to reserve the privilege of commercial fishing within the State to State residents.

Response: Title 28 of the Laws of Virginia Relating to the Marine Resources of the Commonwealth was amended in 1983. The statute has been revised to allow non-residents the same fishing rights afforded residents of the Commonwealth of Virginia. Title 28, as amended, is included in the VCRMP. OCRM will review future statutes for incorporation as they are developed. This will provide the flexibility needed to coordinate Virginia's practices with fishery management plans that may be developed.

2. Comment: While the Goals and Policies of the VCRMP, (pages I-1 through I-3) represent progressive and laudable objectives, the inclusion of detailed laws and regulations concerning the harvest of marine resources is ill-advised. NMFS expects that Virginia's laws and regulations will change about as frequently as those the NMFS promulgates for the exclusive economic zone adjacent to the Virginia coastal zone. State-Federal relations have not been improved in instances where the Secretary of Commerce has approved the incorporation of fishery laws at the level of detail contained in the VCRMP. This level of

detail increases the administrative burden on both State and Federal agencies without any corresponding resources management benefit. Inclusion of such detailed regulations in other state coastal management programs has actually delayed the implementation of important conservation initiatives.

Response: See response above. The Virginia process provides the opportunity for coordination of state and Federal fishery laws. The detailed nature of the regulations provide predictability. The Federal agencies have the opportunity to object to specific regulations, and Federal Fishery Management Plans need only be consistent to the maximum extent practicable with the State program.

3. Comment: Virginia's efforts to reserve the privilege of fishing in her marine waters to Virginia residents is unconstitutional. (See Douglas v. Seacoast Products, 431 U.S. 265 (1977) and Tangier Sound Watermen's Association v. Douglas, 541 F. Supp. 1287 (1982)). Under no circumstances should the Secretary of Commerce approve the incorporation of Section 28.1-57 of the Virginia Code as part of the VCRMP.

Response: As mentioned in our response to the first comment, this statute has been amended to afford non-residents fishing rights identical to those of residents, and this revised statute has been incorporated into the VCRMP.

DEPARTMENT OF THE NAVY, Naval Facilities Engineering, Command P. W. Brennon, Assistant Cmdr. for Facilities Planning and Real Estate, October 28, 1985.

1. Comment: The Coastal Program and DEIS reflect a significant amount of intense planning and consideration of both Federal and state perspectives on coastal zone management. The overall product is well done and generally sensitive to issues of mutual concern. The Navy does have specific recommendations, detailed below, which upon inclusion in the state program, will clarify certain points and make future coordination easier.

Response: Thank you for your review and comments.

2. Comment: The terms "coastal zone" and "coastal area" are used interchangeably throughout the documents and particularly on page X-2 concerning federal activities. The exclusive use of "coastal zone" would preclude future confusion concerning separation of the coastal zone from excluded federal property, which in combination are often called the coastal area.

Response: The Commonwealth prefers to call the area within Tidewater their coastal area rather than their coastal zone. An attempt has been made to clearly identify this boundary throughout the Virginia Coastal Resources Management Program document. In the program, when the coastal area is referred to as the coastal zone, it is within quotes as a reference to either the Federal regulations or the Coastal Zone Management Act, as amended.

Pursuant to §304(1) of the CZMA, excluded from the Virginia's Coastal Area are those lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal government, its officers or agents.

Sizable land areas are therefore excluded from Virginia's coastal area and management by virtue of Federal ownership and/or jurisdiction. One of the single largest users of land in Tidewater Virginia is the Federal government. Maps and charts depicting federal lands have been developed with the cooperation of federal agencies which hold land in Tidewater Virginia. The Federal holdings lists and charts on pages II-6 and II-7 of the program document have been revised and revisions to pages 16-22 of the appendices have been addressed in the errata sheet for the appendices in an effort to keep the charts and lists comprehensive and up-to-date.

3. Comment: The list of federal activities subject to consistency review given on page X-7 and statements on negative determinations requirements given on page X-2 do not clearly reflect the Coastal Zone Management Act and implementing regulations. Navy activities, particularly new construction, expansion of existing buidlings, and acquisition/release of property, will be closely reviewed by the Navy for potential direct impacts on the coastal zone. Either a consistency determination or a negative determination will be submitted to the Virginia Council on the Environment for activities determined by Navy to have the potential for direct impacts on the coastal zone. No notification will be made for activities determined by Navy to have no potential for direct impacts on the coastal zone.

Response: Chapter X - Federal Consistency, has been revised to more clearly address the requirements of the Federal Coastal Zone Management Act, as amended and implementing regulations. We agree with your statement that either a consistency determination or a negative determination must be submitted to the Council on the Environment for activities determined by the Navy to have the potential for direct impacts on the coastal zone. Although the Navy is not required to submit notification for activities determined by the Navy to have no potential for direct impacts on the coastal zone, we anticipate that the Navy will provide notification to the Council in cases where there is a question as to possible impacts and will allow the Council an opportunity to review such proposed actions. Our experiences in other States has shown that close coordination and monitoring between the Navy and the Council during program implementation should result in adequate review and consideration of proposed activities impacting the Virginia's coastal area, without placing an undue burden on either party.

4. Comment: On page X-3 - Federally Licensed and Permitted Activities, a six-month state review period is referenced for consistency determinations associated with permit applications. 15 CFR 930.52 clearly excludes Federal agencies applying for Federal licenses or permits from requirements of 15 CFR 930, Subpart D, which allows a six-month review period. Federal agency activities requiring federal licenses or permits are subject to the Federal consistency requirements of 15 CFR 930 Subpart C. Thus, there will be a 45-day review period for Navy consistency determinations involving Federal permits.

Response: Federal agencies are excluded from the requirements of 15 CFR 930, Subpart D. However, pursuant to 15 CFR 930 Subpart C - §930.41: the Council on the Environment shall notify the Navy of its agreement or disagreement with a consistency determination made by the Navy at the earliest practicable time. If a final response has not been developed and issued within 45 days from receipt of

the Navy's consistency determination, the Council on the Environment should at that time inform the Navy of the status of the matter and the basis for further delay. The Navy may presume the Council's agreement if the Council fails to provide a response within 45 days from receipt of the Navy's notification.

Agreement by the Council on the Environment shall not be presumed by the Navy in cases where the Council, within the 45 day review period, requests an extension of the time to review the matter. The Navy is required to approve one request for an extension period of 15 days or less. Further, final Navy action may not be taken sooner than 90 days from the issuance of the consistency determination to the Council unless both the Navy and the Council agree to an alternate period (see §930.34(b)). Chapter X of the Virginia Coastal Resources Management Program has been revised to reflect this response to the Navy's concerns.

5. Comment: The Navy recommended revisions to Appendix II - Federal Holdings.

Response: Each of these recommended revisions has been incorporated into the errata sheet for the Appendices to the Virginia Coastal Resources Management Program.

CITY OF HAMPTON, VIRGINIA, Thomas D. Schrack, October 1, 1985 - Public Hearing Comment.

Comment: The Urban Waterfront Georgraphic Area of Particular Concern is glossed over in the program document. What does APC designation mean? Criteria for designation should be identified as much in advance as possible.

Response: The program document has been revised to reflect an expanded Waterfront Development Area of Particular Concern definition and description (see pages V-23 and V-24). Designation of an urban waterfront as a GAPC will allow the use of Federal Coastal Zone Management funds in the development and implementation of management plans for these areas.

FAIRFAX COUNTY, Office of Comprenensive Planning, Sidney R. Steele, Director, September 13, 1985.

1. Comment: This document is well organized and thoroughly prepared. The County concurs with the general findings and conclusions.

Response: Thank you for your review and comments.

2. Comment: It is not fully clear at this stage how local governments will participate in the implementation of the plan. Effective coordination between the State and local governments will be essential. It will be imperative for the Virginia Council on the Environment to have adequate staffs and to develop working liaisons with county and city personnel. The use of regional coordinating committees, composed of local, regional and state representatives which meet on a routine basis may be useful.

Response: Please see our response to the Northern Virginia Planning District Commission's third and fourth comments.

3. Comment: The existing wetlands inventory, conducted by the Virginia Institute of Marine Sciences in the 1970's, is outdated and, in some counties, incomplete. Although certain counties conduct their own inventories, not all localities have the staff or resources to do so. This effort should be a high program implementation priority and should be listed under "Impacts Associated with Program Funding" on page 170, Volume I of the DEIS.

Response: The Commonwealth considers this an important part of the Virginia Coastal Resources Management Program and will consider utilizing Federal funds to update and complete the wetlands inventory.

4. Comment: Fairfax County looks forward to working with the State on program implementation and urges speedy Federal approval.

5. Response: Thank you for your comments. It is anticipated that Federal program approval will occur before September 30, 1986.

STATE OF MARYLAND, Department of Natural Resources, Tidewater Administration, Coastal Resources Division, Jacob N. Lima, Director, September 19, 1985.

1. Comment: The Virginia Coastal Management Program meets the requirements for Federal program approval.

Response: No response necessary.

2. Comment: How will implementation of Virginia's Coastal Zone Management Program be coordinated with the implementation of Virginia's Chesapeake Bay Initiatives developed in response to the recommendation of the EPA Chesapeake Bay program?

Response: The Council on the Environment is responsible for implementing the VCRMP and coordinating implementation of the Chesapeake Bay Initiatives and the State's involvement in all aspects of the Chesapeake Bay Agreement of 1984.

3. Comment: The Maryland Coastal Zone Management Program staff looks forward to working with the Commonwealth of Virginia on matters of mutual coastal zone management concern.

Response: No response necessary.

NORTHERN VIRGINIA PLANNING DISTRICT COMMISSION, Vance Myers, Citizen Representative (on behalf of Chairman Patricia Ticer) September 30, 1985 - Fairfax Public Hearing.

NORTHERN VIRGINIA PLANNING DISTRICT COMMISSION, John W. Epling, Executive Director, September 30, 1985.

1. Comment: The Commission endorses the proposed program and urges its prompt approval by NOAA. In adopting resolution number 86-9 at its meeting of September 26, 1985, the Commission affirmed the need for a comprehensive and coordinated program to ensure the protection, preservation, and orderly development of the Commonwealth's valuable coastal resources.

Response: Thank you for your review and comments.

2. Comment: The Commission finds the draft environmental impact statement to conform to requirements of the Federal Coastal Zone Management Act of 1972 and Federal regulations issued pursuant to the act as well as the National Environmental Policy Act of 1969. The state's proposed program appears to be a good faith effort to meet the requirements for state participation in the Federal Coastal Zone Management Program.

Response: No response necessary.

3. Comment: There is a need for the state to more fully appreciate the need for continuous and reliable communications with local governments on matters related to implementation. This coordinative function, which Planning District Commissions would appear well positioned to facilitate, would go a long way

toward assuring uniform application of policies and consistent implementation at the local level.

Response: As lead agency for the VCRMP, the Council will maintain periodic contact with the coastal zone planning districts and, through them, the local governments with regard to VCRMP matters such as grant opportunities and proposed changes in the Federal and state coastal programs. Since the management core of the VCRMP is the set of eight existing state regulatory programs, the VCRMP places no new requirements or responsibilities on the planning districts or local units of government. Nevertheless, there is an opportunity to expand the level of communication and cooperation between the state and local governments and their planning districts in matters relating to coastal resources management.

Specifically, the State intends to use a portion of the available CZMA funds to support such communication and coordination. The total amount of funds that will be available to Virginia during the first year should its coastal program be approved is $1,000,000. Half of that amount will be allocated to the local governments and planning districts of the coastal area. It is the intent of the Council to allocate approximately one-third of that sum to local governments in the coastal zone for special projects directly related to the management of shoreline areas and the remaining two thirds to interested planning districts to help support staff positions that would be used to assist in coastal resources planning and management at the local and district level and to act as a liasion between the planning districts and the VCRMP agencies.

4. Comment: The Council on the Environment should expand on how it will coordinate with the Department of Housing and Community Development, the agency which administers the Commonwealth Intergovernmental Review Process. It is important to the functioning of this program that information on proposed Federal and State projects deserving of a consistency review be supplied on a routine basis to Planning District Commissions and local governments.

Response: Under the VCRMP local governments and planning districts have no direct role in the Federal consistency process itself. Monitoring Federal actions and responding to consistency determinations and certifications related to Federal actions is the responsibility of the Council. In determining how to respond to a given Federal action the Council may request assistance from a local government or planning district in obtaining necessary information.

Local governments and planning districts, however, already are part of an existing review network for several types of Federal and state actions. They receive notice of a variety of proposed Federal actions through the Commonwealth Intergovernmental Review Process (CIRP). Federal approval of the VCRMP will not change the State Intergovernmental Review Process at the regional and local levels. In addition, the Council coordinates the review of state and Federal actions requiring some type of formal environmental impact analysis, and localities and planning districts that might be affected are given an opportunity to review and comment on available environmental information.

The Commonwealth recently created eight river basin committees for the tributaries of the Chesapeake Bay, and local governments are well represented on those committees. As was mentioned above the Council also intends to offer a substantial portion of available funds to planning districts for support of

staff positions that, among other responsibilities, will provide a liasion between the planning districts and the VCRMP agencies. These new avenues of communication will allow additional opportunities for discussion of proposed Federal actions that might be of mutual interest to the State and coastal localities and planning districts.

The Council is the lead agency for the VCRMP, and the Council Administrator will be the program manager. The Administrator and the Council staff will be responsible for coordination among VCRMP agencies for program-related matters.

b. Comment: The Commission also recommends close coordination among state agencies that share regulatory and/or enforcement responsibilities in the environmental protection area. The Commission is particularly concerned with the need to protect coastal areas from the siting of toxic and hazardous waste generating, storage, treatment and disposal facilities.

Response: The Council on the Environment plans to submit the legislation creating the new Department of Waste Management and its related activities for formal inclusion in the Virginia Coastal Resources Management Program as a routine program activity or as a program amendment. It is expected that the new Waste Management Program will be submitted to the Office of Ocean and Coastal Resource Management for incorporation into the Virginia Coastal Resources Management Program during the first year of program implementation.

SOUTHEASTERN VIRGINIA PLANNING DISTRICT COMMISSION, John L. Rowe, Chairman, September 18, 1985.

Comment: The Southeastern Virginia Planning District Commission (SVPDC) has been involved in the development of this program since its inception in 1974. On September 18, 1985, the SVPDC acted to endorse the VCRMP and to urge expeditious Federal approval of the program. The Commission believes that the Program is reasonable and accommodates the needs of the Commonwealth. The Commission believes that Federal approval of the VCRMP with its attendant increased funding and Federal consistency provisions will augment and enhance the Commonwealth's capability to continue to effectively manage its coastal resources.

Response: Thank you very much for your review of the document and for your comments.

VIRGINIA STATE WATER CONTROL BOARD, Bernard Caton, October 3, 1985.

Comment: The only area of concern readily apparent was the draft Executive Order's Enforcement section. If there is any possibility that this language could be construed to imply that the Council or the Secretary could override decisions made by the State Water Control Board, the language should be revised. The citizen board has statutory, policy-related responsibilities for agency programs. Any diminution of this authority would seemingly contradict the

wishes of the General Assembly.

Response: Please refer to our response to the Virginia Marine Resources Commission's first and third comments.

VIRGINIA DEPARTMENT OF CONSERVATION AND HISTORIC RESOURCES, Bonnie S. Greenwood, September 11, 1985.

Comment: Volume I, page 143 should read: There are over 116 large wood related industries in the area concerned directly with the primary processing of timber products. These forest industries annually harvest about 389 million board feet of saw timber and 422 thousand cords of pulpwood. This harvest creates annual income to Tidewater forest landowners of $41 million for their timber as it stands in the woods. When cut and processed by the forest industry, these products in 1982 had a value added worth of $1.13 billion.

Response: Your comments have been addressed in the final Virginia Coastal Resources Management Program document.

VIRGINIA DEPARTMENT OF CONSERVATION AND HISTORIC RESOURCE, Bonnie S. Greenwood September 16, 1985.

1. Comment: On page V-18, the statistics concerning 30,000 acres and 300 acres per year are inaccurate. Bob Byrne or Scott Hardaway at the Virginia Institute of Marine Science should be contacted to discuss these statistics.

Response: Per Bob Byrne, a more correct approximation is 28,000 acres for a 100 year period. This change has been reflected in the final program document.

2. Comment: On page V-20, delete the last two sentences of the first paragraph. Development is occurring or has occurred along highly eroding shoreline.

Response: This change has been made.

3. Comment: On page V-21, delete the first two sentences in the first paragraph. The damage from Camille and Agnes was above the fall line.

Response: The document has been corrected.

4. Comment: On page VIII-1, in the third paragraph, change the eighth word from "localized" to "widespread".

Response: The document has been corrected.

5. Comment: On page VIII-3, the last word in the third paragraph should be changed from 275,000 to 260,000.

Response: For purposes of simplification, all budget data has been eliminated from the VCRMP.

VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, Office of Planning and Development, Earl A. Finch, September 12, 1985.

1. Comment: The Coastal Resources Management Program is a commendable program as set forth in the Draft Environmental Impact Statement (DEIS).

Response: Thank you for your review and comments.

2. Comment: The inland boundary of Virginia's coastal zone as defined in Item A, Chapter II of Volume I of the DEIS, includes about 29% of the State's total land area and about 20% of Virginia's farmland. Forestland is also important, accounting for 61% of land use in the Tidewater area. Much of the agricultural land in the management area is farmed within the shoreline areas of the bays and their tributaries. Preservation of this land for agricultural production is important to both current economic activities in localities of the area (and the state) and the agricultural production base for the future. A system presently being developed and placed into use in developing land use plans is the Virginia Land Evaluation and Site Assessment System (LESA). The LESA approach to land evaluation could be used as a tool to determine the best use classification of land in the coastal management area. Reference to this could be added to the List of Activities Which Contribute to the Management of Virginia's Coastal Resources, Appendix I-I of Volume II of the DEIS. (A paper explaining the LESA system was also provided for background information.)

Response: The List of Activities Which Contribute to the Management of Virginia's Coastal Resources has been amended to include a reference to the Virginia Land Evaluation and Site Assessment System. Please refer to the errata for the Appendices which has been distributed to all FEIS recipients.

VIRGINIA DEPARTMENT OF HEALTH, Division of Water Programs, Eric H. Bartsch, Director, October 8, 1985.

Comment: The staff of the Division of Water Programs has reviewed the VCRMP and concurs with the proposal.

Response: Thank you for your review of the document.

VIRGINIA DEPARTMENT OF EMERGENCY SERVICES, Plans Division, James M. Surratt, Director, September 4, 1985.

Comment: The Department is happy that Virginia has submitted its Coastal Resources Management Program for approval to participate in the Federal program.

Response: Thank you for your review and comment.

VIRGINIA COMMISSION OF GAME AND INLAND FISHERIES, Jack Randolph, September 24, 1985.

1. Comment: Overall, this is a thorough management plan with environmentally sound goals and objectives. The priorities stated for the geographic areas of

particular concern (GAPC) and overall program appear to be consistent and sound, although actual implementation and enactment of them could be affected by specific and local socio-economic factors so that they might change in the final run.

Response: No response necessary.

2. Comment: The program is lacking in that it addresses wildlife only in the GAPC section through wildlife management areas. A more realistic approach would be to treat the coastal zone as a unique ecosystem and manage it as a community, recognizing each integral part. It appears this has been done for the most part except for wildlife omission. The Commission's jurisdiction here reaches beyond fishing, boating, and hunting regulations to the endangered and threatened species and nongame protection. Although financial benefits are not as obvious for non-consumptive wildlife, there are far more users, recreation hours and expenditures. Therefore, the Commission's responsibility for conservation of all wildlife in the Commonwealth should somehow be incorporated throughout the program. The priorities of conservation and preservation should be paramount for the Commonwealth's extremely sensitive and productive coastal zone.

Response: The question of taking a comprehensive approach toward the management of the wildlife of the coastal ecosystem is one that can be addressed, in large part, within the framework of the new river basin planning process described in Chapter V - Organizational Structure, that is evolving in Virginia. As a participant in that process the Commission of Game and Inland Fisheries could take the initiative to see that consideration of specific wildlife values is incorporated into that state government process.

VIRGINIA DEPARTMENT OF HIGHWAYS AND TRANSPORTATION, J. S. Hodge, Director of Engineering, September 30, 1985.

Comment: The Department's main concern with the proposed program is in the area of potential delay required for a consistency determination with the provision for 45 days to inform the Federal agency of its agreement or disagreement with the consistency determination. They would urge that this procedure be considered on a system basis rather than a project-by-project basis since the volume of projects would naturally require a large amount of staff time which has already been applied to the existing process. It is hoped that procedures could be developed that would consider the present requirements of various agencies involved in the clearance of Highway projects.

Response: The CUE will work with the Department of Highways and Transportation to develop a streamlined administrative process during the first year of program implementation.

VIRGINIA INSTITUTE OF MARINE SCIENCES, Frank O. Perkins, Dean/Director. September 24, 1985.

1. Comment: This draft document presents Virginia's program in a fair and generally comprehensive manner. The following minor comments are submitted in an effort to provide a better picture of the program to a reader not regularly involved in coastal resources management in Virginia.

Response: Your comments are addressed below and in the final program document. Thank you for your review and comments.

2. Comment: The VIMS' day-to-day provision of technical and scientific advice to local wetlands boards and state regulatory agencies is mentioned on page V-6 and in Appendix I-1. This assistance should be mentioned whenever the program is discussed, but particularly in the summary (page 3) and on page 176 in paragraph 2 under the Wetlands Management heading.

Response: The information provided in this comment has been incorporated into the FEIS.

3. Comment: The steady annual rise in shoreline permit applications handled by the local wetlands boards has not been matched by increases in local financial or technical assistance. The importance of these volunteer boards to the Commonwealth's successful habitat protection program should be recognized by establishing a high priority for CRM funding to be passed to localities for their support.

Response: Please refer to our response to the Northern Virginia Planning District Commission's third and fourth comments.

4. Comment: This program can be strengthened and enhanced through closer working relationships with federal agencies as envisioned in the Coastal Zone Management Act. The Virginia Institute of Marine Science is looking forward to working with the Office of Ocean and Coastal Resource Management once again as part of the Commonwealth's Coastal Resources Management team.

Response: No response necessary.

VIRGINIA MARINE RESOURCES COMMISSION, Norman E. Larsen, Chief - Habitat Management, October 2, 1985.

1. Comment: It appears that the draft Executive Order would insert the staff of the Council on the Environment and the Secretary of Commerce and Resources directly into every aspect of every regulatory process. Such a tremendously broadened role appears to conflict with the citizen commission regulatory process and the legal authority of that decision mechanism. Under such an arrangement, a serious problem would likely emerge as special interests begin to demand that the Council staff and the Secretary exercise their prescribed conflict resolution responsibilities in nearly every regulatory action. The volume of such requests would quickly overwhelm both the current Council staff as well as the staff of the agencies themselves in preparing the Secretary to deal appropriately with the issues involved. To assemble a council staff capable of "monitoring all state actions which would affect coastal resources" would most likely exceed the federal funds which might accrue from approval of the plan. The VMRC is the only agency with experience in the administration of an oversight process under the wetlands program. The process has been carefully developed. The concept embodied in the in the draft Executive Order, superimposes an unstructured administrative process over legally mandated decision processes that are already subject to judicial review.

Response: Monitoring efforts such as those proposed for the VCRMP have been implemented successfully by CZM programs in a number of states. However, the Executive Order and Chapter IV of the program document, Organizational Structure, have been revised to more clearly define the relationship between the Council Administrator, as program manager, and the heads of the core regulatory agencies. The VCRMP relies on existing state laws, regulations and administrative procedures to carry out coastal resources management activities. Under the VCRMP the program manager is responsible for monitoring the core regulatory programs and for looking into any situation where, in the judgment of the program manager, an agency is ready to act in a manner that appears to be inconsistent with or has established a pattern of actions that appears to be inconsistent with the Program. When and if such a situation arises the Administrator will meet with the agency head to determine if, in fact, a consistency problem exists.

If, after discussion, the agency head and the Administrator cannot agree on the existence of a consistency issue the Administrator will advise the Secretary of Natural Resources that a consistency disagreement exists. If it is determined that a consistency problem does exist the agency head will attempt its resolution. If the agency head cannot resolve the consistency problem the Administrator will advise the Secretary of Natural Resources that a state consistency problem exists. The Secretary will review the situation, determine how it might best be resolved, effect such resolution as possible within the Secretariat of Natural Resources, or consult with other cabinet officers to resolve consistency problems for agencies not within that Secretariat. If unable to so resolve the problem, the Secretary of Natural Resources will report to the Governor with recommendations for any needed action. Any remedy to a consistency problem that might be considered at any level of state government necessarily would have to be in accordance with existing state laws, regulations and administrative procedures.

2. Comment: The simple act of prioritizing uses of geographic areas of particular concern may well interfere with the legal responsibilities of local boards and VMRC to weigh all factors involved in a decision and select the alternative offering the greater overall public value.

Response: No interference by the Council on the Environment on behalf of the Virginia Coastal Resources Management Program is expected since the "priorities of use" of the various Geographic Areas of Particular Concern are, when not based on existing authority, advisory in nature. They are meant to assist Commonwealth agencies, board and Commissions as well as local wetlands boards in their efforts to determine the public interest in any given instance.

3. Comment: By giving the authority for federal consistency determinations to the Council on the Environment, a potential veto is superimposed over existing state and federal decisions if the opportunity offered is exercised.

Response: The objective of the Federal consistency provision of the CZMA is to give a participating state an opportunity to review Federal actions that might directly affect the coastal zone and to object to any proposed Federal action that might not be consistent with the State's coastal program. The empnasis in the Federal CZMA regulations is on negotiated modifications of

Federal actions rather than on preventing such actions. The consistency provision, however, ultimately does allow a state to prevent a Federal-permitted activity, unless the State's objection is overriden by the U.S. Secretary of Commerce. Any federally approved coastal program must have a Federal consistency element and the capacity to exercise that provision. The Federal consistency provision does not apply to actions taken by state agencies acting under state law. It does apply to programs delegated to state agencies by the Federal government. However, since the VCRMP and its enforceable policies are based on Virginia authorities, if a VCRMP agency acts in a manner consistent with its own laws, regulations, administrative procedures and the Executive Order, its actions will be consistent with the VCRMP.

4. Comment: The responsibility and authority of the Council staff must be more narrowly defined if the Administrator is to avoid becoming the de facto czar of all coastal decision processes.

Response: See response above.

VIRGINIA PORT AUTHORITY, R. Todd Coyle, Director of Planning, September 16, 1985.

Comment: Pages 152 and 153 of the program document were submitted with proposed editorial changes which are included in the compendium of comments.

Response: These changes have been incorporated into the final program.

ANN B. FLIPPI, Williamsbury, Virginia. (undated)

Comment: Many people who own and rent cottages at Sandbridge live all over the United States and Canada and would not see the small article in the Virginia Beach Beacon. The article in the paper on Sunday, with comments due on Monday, shows a lack of interest on the part of the Commonwealth and the Federal government in the beach at Sandbridge. Doesn't anyone realize that there isn't any more beach being made and the population is growing rapidly? It is unclear whether bulkheading is the answer for Sandbridge, but at least it makes people think.

Response: The article which you read in the Beacon discussed one of the four public hearings which the U.S. Department of Commerce and the Virginia Council on the Environment held on the proposed Virginia Coastal Resources Management Program. These hearings were held for the purpose of receiving comments on the proposed Virginia Coastal Resources Management Program and Federal Draft Environmental Impact Statement. The document was distributed to interested Federal, Commonwealth, and local agencies and interested parties in early August with public notice of its availability. A number of advertisements were placed in eight newspapers throughout the Commonwealth informing interested parties of the availability of the document as well as the public hearings. The Federal government and the Commonwealth government are interested in the issues facing the Sandbridge area as well as the rest of the coastal area of the Commonwealth of Virginia. We look forward to working with all interested parties during implementation of the Virginia Coastal Resources Management Program.

BOB HUME, Virginia Beach Resident, October 7, 1985.

1. Comment: Virginia should adopt a strong coastal resource policy and, all things being equal, Mr. Hume would rather the program be assisted by Federal grant money than not. However, he is opposed to the inevitable increase in the Federal deficit unless the grant money is used to provide additional management and protection of Virginia's coastal resources, instead of merely freeing up State money currently used to provide the same services.

Response: It is the intent of the Commonwealth that CZMA funds be used to 1) assist coastal area local governments and planning districts to carry out coastal resources related activities and 2) to augment rather than replace funding for state CRM activities.

2. Comment: Page II-1 - Would all water-related projects in all of those listed counties be controlled by the VCRMP, or only those waters which flow into the tidal waters of Virginia? (e.g. projects in Prince George, Surry, Isle of Wright Counties and Suffolk located in waters which drain into the Blackwater River?)

Response: The State coastal zone as described in the VCRMP is delineated along local government boundaries. The definition of the State coastal zone does not distinguish between those surface waters that flow into North Carolina's surface waters and those that flow into the Chesapeake Bay.

3. Comment: Page III-1 - Fisheries Management - When commenting on a proposed oil refinery in Portsmouth, a former MRC Commissioner specified that MRC could only comment on those portions of the project over which MRC had legal jurisdiction, i.e. pier construction and dredging, but no consideration of oil spills. The Water and Air Pollution Control Boards made similar, narrowly-focused reviews and all three agencies issued permits. The then acting Administrator of the Virginia Council on the Environment acknowledged deep concern over potential adverse impacts to the coastal marine environment, but pointed to the fact that the refinery had obtained all required State and local permits, and so endorsed the project. If each permitting agency can only look at one small part of a project, and if the Council is going to rely on the permitting agencies' reviews, who in the State is going to give the comprehensive review of a project as required by the CZMA? How can MRC fulfill the policy goal "to conserve and enhance finfish and shellfish resources" if they are, indeed, precluded from considering a project's secondary and indirect impacts? Was MRC's position at that time regarding secondary impacts the same as it is now? Who, if not MRC, could consider the potential impacts of oil spills resulting from construction of an oil refinery? This would have obvious implications to finfish and shellfish resources.

Response: Pursuant to the Governor's Executive Order, the Council on the Environment will be the lead agency for the VCRMP and will have the responsibility for maintaining a comprehensive overview of coastal resources issues, programs and projects.

4. Comment: Page III-11 - Isn't it true that "The Department can insure land disturbing activities are controlled..." but that in practice, enforcement is left to the localities? Doesn't this result in a program which is applied differently and with varying enthusiasm in each county and city?

Response: The State's Erosion and Sediment Control Act is implemented by local governments. The Soil and Water Conservation Commission, assisted by the Department of Conservation and Historic Resources, has the responsibility for periodically reviewing local administration of the State law and can seek a legal remedy to ensure adequate local administration of the State law.

5. Comment: Page III-12 - Isn't it SWCB's policy to allow NPDES violations to continue if a company is making progress toward correcting the situation? How many discharges has the SWCB actually halted because of NPDES violations?

Response: It is the basic policy of the Virginia Water Control Board (VWCB) to work with permit holders to correct NPDES violations. In some few instances the SWCB has found it necessary to shut down an operation because there has been an acute environmental problem that demanded an immediate resolution. For the most part, the permit holder and the SWCB arrive at an agreement on a voluntary consent order that specifies how and when the NPDES violation is to be corrected. Where agreement cannot be reached after negotiations, the SWCB uses the involuntary approach of a special order to bring an operation into compliance with the NPDES Permit.

6. Comment: Page IV-1 - The Secretary of Natural Resources is given overall review of the VCRMP but, according to Table IV-1, the Department of Health (which on page III-15 is given charge of shoreline sanitation) is under the

Secertary of Human Resources.

Response: The new VCRMP Executive Order provides for cabinet-level coordination by the Secretary of Natural Resources for matters relating to the Program.

GLENN A. MATTHEWS, Belvedere Farm, Inc., December 19, 1985.

Comment: Page 156 at the top starts off: "front urban runoff", this sentence is incomplete. On page 160, the American oyster name, Crassostrea virginica, should be underlined and bivalve at the bottom of the page is spelled incorrectly. References for tables (ex. 177 - Table 2) and figures (ex. page 181 - Figures 1, 2, and 3) should be provided. Other tables and figures throughout the draft should be referenced.

Response: Thank you for your review and comments. The document has been revised to reflect your comments.

NATIONAL MARINE MANUFACTURERS ASSOCIATION, Lars Granholm, Director of Technical Services, September 19, 1985.

Comment: The document is very interesting. Future mailings should be addressed to Mr. Granholm.

Response: Thank you for your review. Future documents will be forwarded to you directly.

MRS. KATHLEEN M. SCHUMACHER, Virginia Beach, Virginia, October 7, 1985.

Comment: As a homeowner on the Sandbridge oceanfront, Mrs. Schumacher does her best to protect the dune by planting, fertilizing, fencing and by keeping people off the dunes. No one seems to know where the primary sand dune starts and ends. Beyond this, property owners are unsure about their rights concerning walkways, septic tanks, etc.

Mrs. Schumacher would appreciate some guidance concerning what is a primary sand dune and what her property rights are.

Response: The City of Virginia Beach has a Wetlands Board and associated staff who can provide citizens with information on the primary sand dunes. The Virginia Marine Resources Commission and the Virginia Institute of Marine Sciences are also available to provide technical assistance to landowners.

CALVERT H. SEYBOLT, Boston, Massachusetts, October 23, 1985.

1. Comment: The Seybolt family, which owns Assawoman Island and part of the Metomkin Island known as Garyathy Beach, did not have knowledge of the proposed program during its development. The Nature Conservancy and the land owners should have been made aware of the proposed Virginia Coastal Resources Management

Program since the Conservancy and the Seybolt family together are the holders of 14 of Virginia's 18 barrier islands.

Response: The Nature Conservancy was sent a copy of the August 1985 Draft Virginia Coastal Resources Management Program and Environmental Impact Statement, as well as the Commonwealth's 1984 draft public review document. Public hearings were held on the State's draft document in the fall of 1984 and the 1985 draft program and environmental impact statement in the fall of 1985. Every attempt was made to have adequate public involvement and review of these documents. We apologize for overlooking the Seybolt family.

2. Comment: The highest priority of use of the Barrier Island Geographic Area of Particular Concern is preservation and the uses of lower priority are fishing, fowling and hunting. Fishing, fowling, and hunting are highly important to the history of the Barrier Islands. It must be remembered that historically the Barrier Islands had fishing, fowling and hunting communities and most of these islands are less developed now than they were previously.

Response: The priorities of use are advisory and do not automatically exclude any activities. Rather, they are given as guidelines for considering the use of a Geographic Area of Particular Concern.

3. Comment: On Page VI-7 (E) there is a discussion of the Virginia Supreme Court case, Bradford vs The Nature Conservancy, 1982. This discusses the existence of certain common lands that provide access for public fishing, fowling, and hunting on certain wetlands and intertidal zones. The program document should mention that it was shown that marshland granted prior to 1830 and intertidal strips granted prior to 1770 are exempted from common access.

Response: The document has been revised to reflect your comments.

4. Comment: Pages 148 and 149 of the program document should be revised to reflect the fact that the northern 1/2 mile of Metomkin Island, known as Garyathy Beach, is held by the owner of Assawoman Island.

Response: The document has been revised to reflect your comment.

Jon V. Snay and 33 Concerned Virginia Beach Residents, October 7, 1985.

Comment: The City of Virginia Beach's Wetlands Board, Wetlands Engineering Department, Planning Commission, the Virginia Marine Resources Commission and the State's General Assembly cannot/will not properly enforce the regulations of the Coastal Primary Sand Dune Act. It is a proven fact that tearing into dunes to build an oceanfront home is not smart. There is a law against it. Why are builders still bulldozing the dunes and putting up houses? If the current Coastal Primary Sand Dune Act is not practical - let's change it. It is a wise piece of legislation and the Government agencies should enforce it to the letter. Federal Coastal Management Grants for the State of Virginia should be withheld until the various governing bodies can live by the rules or the provisions of the Coastal Primary Sand Dune Act are changed.

Response: At this point NOAA has no indication that the Coastal Primary

Sand Dune Act is not being implemented. The enforcement of this act will be closely monitored by the Office of Ocean and Coastal Resource Management. Enforcement activities will be addressed in the first evaluation of the Virginia Coastal Resources Management Program under Section 312 of the Coastal Zone Management Act, as amended.

Note: Additional copies of the Final Virginia Coastal Resources Management Program and Final Environmental Impact Statement will be available to each resident who signed the letter/petition. Copies cannot be mailed because addresses were not provided.

RON SCHMIDT, Norfolk, Virginia, October 1, 1985 - Public Hearing Comment.

Comment: Mr. Schmidt would like sanctions to prevent another Sandbridge. (See comments submitted by the Virginia Wildlife Federation). The wetlands board members are appointed by the County Council members who are "owned" by the developers (ex. R. G. Moore). As a citizen, he wants to be protected from the wetlands boards.

Response: Please refer to our responses to the Virginia Wildlife Federation's comments.

VIRGINIA WILDLIFE FEDERATION, Carvel Blair, Chairman, Coastal Zone/Marine Resource Cmte. (undated).

1. Comment: Dr. Blair's comments were submitted on Virginia Wildlife Federation letterhead, and represent his comments on behalf of the Federation as well as himself as a citizen, professional oceanographer, and Chairman of the Norfolk Wetlands Board.

Response: Thank you for your review and comments.

2. Comment: General Assembly House Bill 1769 which was passed earlier this year amended the Coastal Primary Sand Dune Protection Act in Chapter 62 of Virginia's code. This bill dealt a with a small area of the Sandbridge Beach Subdivision in the City of Virginia Beach. It stated that the Wetlands Board was not to pronibit the owners of lots in that subdivision from "erecting and maintaining protective bulkheads". In July, Delegate A. Victor Thomas, Chairman of the House Committee on Conservation and Natural Resources, convened a special subcommittee to study the impact of House Bill 1769. Delegate Thomas stated that the General Assembly "still must address the issue of what is an appropriate balance between the rights of property owners and the preservation of Virginia's wetlands areas." The General Assembly may reopen the question of sand dune zoning when they meet early next year. There is a definite danger that the protective provisions of the Act will be weakened. NOAA should withhold approval of the VCRMP until it has been determined whether the Coastal Primary Sand Dune Act will remain in effect as it stands now or whether it will be unacceptably weakened by next year's General Assembly. If the General Assembly significantly weakens the Sand Dunes Management Law, the plan should not be approved until this serious deficiency is rectified.

Response: In House Bill 1769, the General Assembly allowed the construction of approved bulkheads in a limited area where erosion constitutes an imminent threat to existing structures. The General Assembly recognized the hardship imposed on those who built structures before the passage of the Coastal Primary Sand Dunes Act and whose properties were now threatened with serious erosion and destruction.

After the General Assembly passed this emergency legislation in its last session, a House Committee began looking at the larger issue of "...what is an appropriate balance between the rights of property owners and the preservation of Virginia's wetlands areas." It is expected that a resolution calling for a formal legislative study of the issue will be introduced in the next session of the legislature. If the General Assembly decides to take action as a result of that study, normal legislative procedure would have any change in those laws take place no sooner than July 1, 1987.

The Office of Ocean and Coastal Resource Management believes the VCRMP presently contains sufficient authority to receive Federal approval, and withholding Federal approval for a possible action would deprive Virginia and the Nation of the benefits of this Coastal Resources Management Program. However, any new legislation that is adopted in Virginia related to the coastal area, including revisions to the Coastal Primary Sand Dune Protection Act, must be submitted to the Office of Ocean and Coastal Resource Management for incorporation into the Virginia Coastal Resources Management Program. OCRM would then evaluate the VCRMP to determine whether the program as revised still contains sufficient authority for continued Federal approval. The established procedures for revising a Federally approved State coastal management program as a program amendment or routine program implementation activity require review of proposed changes by relevant State and Federal agencies and interested parties, as described in 15 CFR 934.80 of the regulations.

PART VII - DISTRIBUTION LIST

State Distribution

Bristol-Herald Courier/ Virginia-Tennessean
Smith County News
The Southwest Virginia Enterprise
The Coalfield Progress
The Richlands News-Press
The Lebannon News
The Free-Lance Star
The Globe Newspapers
The Journal Newspapers
The Loudoun Times-Mirror
The Fauquier Democrat
The Daily Press/The Times-Herald
The Virginian-Pilot/The Ledger-Star
The Chesapeake Post
The Suffolk News-Herald
The Virginia Beach Sun
The Danville Bee
Martinsville Bulletin
The Star-Tribune
The Potomac News
Westmoreland News
The Northern Neck News
The Northumberland Echo
The Rappanannock Record
Southside Sentinel
The Tidewater River
The Gazette-Journal
The Virginia Gazette
The York Town Crier
Spotsylvania Citizen
The Rappanannock Times
The Hopewell News
The Daily Advance News
The Roanoke Times and World News
Virginia House of Delegates
Senate of Virginia
Secretary of Commerce and Resources
Virginia House of Delegates
General Assembly Staff
Secretary of Commerce and Resources
Marine Resources Commission
Commission of Game and Inland Fisheries
Soil and Water Conservation Commission
State Water Control Board
Department of Health
Department of Conservation and Economic Development
Division of Parks and Recreation
The Progress-Index
Richmond Times-Dispatch
Richmond NewsLeader
State Air Pollution Control Board
State Corporation Commission
Division of Mined Land Reclamation
Virginia Institute of Marine Science
Public Beach Commission
Assistant Attorney General
Chesapeake Bay Commission
Agricultural Experiment Station VPI&SU
Old Dominion University
University of Virginia
Alexandria City Manager
Chesapeake City Manager
Colonial Heights City Manager
Hampton City Manager
Hopewell City Manager
Newport News City Manager
Norfolk City Manager
Petersburg City Manager
Portsmouth City Manager
Poquoson City Manager
Richmond City Manager
Suffolk City Manager
Senate Finance Committee
Virginia Liaison Office/Washington,D.C.
King William County Board of Supervisors
Lancaster County Board of Supervisors
Mathews County Board of Supervisors
Middlesex County Board of Supervisors
New Kent Board of Supervisors
Gloucester County Board of Supervisors
Hanover County Board of Supervisors
Stafford County Board of Supervisors
Northampton County Board of Supervisors
Northumberland County Board of Supervisors
Prince George's County Board of Supervisors
Prince William County Board of Supervisors
Richmond County Board of Supervisors
Spotsylvania County Board of Supervisors
Virginia Beach City Manager
Williamsburg City Manager
Accamack County Board of Supervisors
Arlington Court House
Caroline County Board of Supervisors
Charles City County Board of Supervisors
Chesterfield County Board of Supervisors
Essex County Board of Supervisors

PART VII. LIST OF AGENCIES, ORGANIZATIONS, AND PERSONS RECEIVING THE DEIS DOCUMENT

Federal Agencies

Advisory Council on Historic Preservation
Department of Agriculture
Department of Commerce
Department of Defense
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of Interior
Department of Justice
Department of Transportation
Environmental Protection Agency
Federal Energy Regulatory Commission
General Services Administration
Marine Mammal Commission
Nuclear Regulatory Commission
Federal Emergency Management Agency

National Interest Group

American Association of Port Authorities
American Bureau of Shipping
American Fisheries Society
American Gas Association
American Petroleum Institute
American Shore and Beach Preservation Association
American Society of Civil Engineers
American Society of Landscape Architects, Inc.
American Waterways Operators
Amoco Production Company
Atlantic Richfield Company
Atlantic States Marine Fisheries Commission
Boating Industry Association
Bureau of Marine Resources
Center for Law and Social Policy
Center for Urban Affairs
Center for Urban and Regional Resources
Chamber of Commerce of the United States
Chevron U.S.A., Inc.
Cities Service Company
Conservation Foundation
Continental Oil Company
Council of State Planning Agencies
The Cousteau Society
CZM Newsletter
Environmental Policy Center
Environmental Defense Fund, Inc.
Environmental Law Institute
EXXON Company, U.S.A.
Friends of the Earth
Gulf Oil Exploration and Production Co.
Gulf Refining Company
Institute for the Human Environment
Interstate Natural Gas Association of America
League of Women Voters Education Fund
Marathon Oil Company
Marine Technology Society
Mobile Oil Corporation
Mobil Exploration and Producing, Inc.
Murphy Oil Company
National Association of Conservation Distric
National Association of Realtors
National Audubon Society
National Coalition for Marine Conservation
National Fisheries Institute
National Forest Products Association
National Marine Manufacturers Association
National Ocean Industries Association
National Recreation and Parks Association
National Waterways Conference
National Wildlife Federation
Natural Resources Defense Council
Nature Conservancy
Shell Oil Company
Sierra Club
Soil Conservation Society of America
Sport Fishing Institute
Standard Oil Company of Ohio
Sun Company, Inc.
Tenneco Oil Company
Texaco, Inc.
United Mobile Sport Fishermen
Urban Research and Development Association, Inc.
Western Oil and Gas Association
Wildlife Management Institute

State Distribution (continued)

Surry County Board of Supervisors
Westmorland County Board of Supervisors
York County Board of Supervisors

Community Colleges

Blue Ridge
Central Virginia
Dabney S. Lancaster
Danville
Eastern Shore
J. Sargeant Reynolds
John Tyler
Lord Fairfax
Mountain Empire
New River
Northern Virginia
Patrick Henry
Paul D. Camp
Piedmont Virginia
Rappahannock
Southside Virginia
Southwest Virginia
Thomas Nelson
Tidewater
Virginia Highlands
Virginia Western
Wytheville

Public Interest Groups and Organizations

Virginia Environmental Endowment
Virginia Farm Bureau Federation
Virginia Forestry Association
Virginia Petroleum Council
Virginia Travel Council
State Chamber of Commerce
Virginia Manufacturers Association
Rural, Inc.
Northern Virginia Conservation Council
Piedmont Environmental Council
Sierra Club/ Old Dominion Chapter
Sierra Club/ Falls of the James Chapter
Trout Unlimited
Virginia Agribusiness Council
Virginia Association of Counties
Virginia Association of Marine Industries
Virginia Association of Soil and Water Conservation Districts
Virginia B.A.S.S. Federation
Virginia Municipal League
Chesapeake Bay Foundation
Citizens Program for the Chesapeake Bay
Conservation Council of Virginia
Environmental Defense Fund
Virginia Federation of Garden Clubs
Float Fishermen of Virginia
Garden Club of Virginia
Izaak Walton League, Virginia Chapter
League of Women Voters, Virginia Chapter
Virginia Wildlife Federation
Nature Conservancy, Virginia Chapter
CARE
Ducks Unlimited
Lower James River Association
Rappahannock League for Environmental Protection
Save the Old Piankatank
Tidewater Marine Trade Association
Virginia Seafood Council
Virginia Waterman's Association
Virginia Working Waterman's Association
Virginia Association of Realtors
Virginia Homebuilders Association

Planning District Commissions

Lenowisco
Cumberland Plateau
Mount Rogers
New River Valley
Fifth

Central Shenandoah
Lord Fairfax
Thomas Jefferson
Central Virginia
West Piedmont
Southside
Piedmont
Richmond Regional
Rappahannock-Rapidan
RADCO
Northern Virginia
Northern Neck
Middle Peninsula
Crater
Southeastern Virginia
Peninsula
Accomack-Northampton

PART VIII - DOCUMENT PREPARERS

PART VIII: LIST OF DOCUMENT PREPARERS

Joseph A. Uravitch, Great Lakes and South Atlantic Regional Manager, Office of Ocean and Coastal Resource Management

Degrees:	B.A.	-	Case Western Reserve University, 1970 Political Science
	M.U.R.P.	-	George Washington University, 1977 Urban and Regional Planning
Experience:	9 years	-	NOAA, Office of Ocean and Coastal Resource Management
	2 years	-	Other professional planning experience at the U.S. Dept. of Navy

Richard B. Mieremet, Coastal Hazards and Technical Assistance Coordinator, Office of Ocean and Coastal Resource Management

Degrees:	B.S.	-	University of Maryland, 1972 Conservation and Resource Development
	M.S.	-	University of Michigan, 1974 Water Resource Management
	M.A.	-	Salve Regina College, 1984 International Relations
Experience:	12 years	-	Environmental Assessment and EIS Preparation CZM issues and program approval

Keith J. Buttleman, Administrator, Council on the Environment, Commonwealth of Virginia

Degrees:	B.A.	-	University of Virginia, 1968 Political Science
	M.A.	-	University of Virginia, 1973 Urban and Regional Planning
Experience:	8 years	-	Virginia Council on the Environment

	2 years	-	Virginia Office of the Secretary of Commerce and Resources
	3 years	-	Virginia Division of State Planning and Community Affairs

Larry D. Minock, Senior Environmental Program Analyst, Council on the Environment Commonwealth of Virginia

Degrees:	B.A.	-	University of Michigan, 1958 History
	M.A.		University of Michigan, 1966 Geography
Experience:	7 years	-	Commonwealth of Virginia Council on the Environment
	2 years	-	Virginia Office of the Secretary of Commerce and Resources
	3 yrs.	-	Richmond Regional Planning District Commission

Janice M. Carter-Lovejoy, Environmental Programs Supervisor, Council on the Environment, Commonwealth of Virginia

Degrees:	B. Ph.	-	Grand Valley State College, 1979 Environmental Studies and Elementary Education
	M.S.	-	Florida State University, 1983 Urban and Regional Planning
Experience:	2 years	-	Commonwealth of Virginia Council on the Environment
	1 year	-	City of Richmond

PART IX - COMPENDIUM OF COMMENTS RECEIVED ON THE DEIS/VCRMP

Act and in the amendment of it. It is my opinion, shared by many others, that the General Assembly will reopen the question of sand dune zoning when they meet early next year. There is a definite danger that the protective provisions of the Act will be weakened.

I recommend that NOAA withhold approval of the Coastal Resources Management Program until it has been determined whether the Coastal Primary Sand Dune Act will remain in effect as it now stands or whether it will be unacceptably weakened by next year's General Assembly. I fully recognize the advantages to Virginia, and to the federal government as well, of having an approved coastal zone management plan. There is strong evidence, however, as cited above, that the plan rests on shaky ground. For that reason I urge that you wait until the issue of sand dune management is clarified. If the Assembly leaves the present management system intact, the Commonwealth program should be approved. If the Assembly significantly weakens the Sand Dunes Management Law, however, the plan should not be approved until this serious deficiency is rectified.

Yours truly,

Carvel Blair, Ph.D.
Chairman, Coastal Zone/
Marine Resource Committee

CB:pt

19 October 1985

Jon V. Shay
649 South Atalntic Ave
Virginia Beach, Va.
23451

Regional Manager Great Lakes and
South Atlantic Regions,
Office of Ocean and Coastal
Resource Management,
Attn: Joseph A. Uravich
3300 Whithaven St. N.W.
Washington, D.C. 20235

Received 10/21/85

From: Mr. Jon V. Shay
To: Mr. Joseph A. Uravich

Subj: ADDITIONAL INFORMATION REGARDING IRREGULAR/QUESTIONABLE PROCEDURES BY STATE OF VIRGINA AGENCIES IN THE ENFORCEMENT OF THE PRIMARY DUNE OCT OF 1982 AND THE 1972 WETLANDS OCT.

Ref: (a) My letter to you of 7 Oct, 1985

Encl: (1) Virginia Pilot/Ledger Star article of 6 Oct, 1985
(2) Virginia Pilot/Ledger Star article of 16 Oct, 1985
(3) Virginia Pilot/Ledger Star article of 18 Oct, 1985

Good Day Sir. As I stated in ref (a), I regard the performance of Virginia's various agencies tasked with enforceing the laws designed to protect our wetlands and coastal dunes UNSATISFACTORY. Enclosures (1-3) illustrate why I strongly feel Federal Intervention is necessary in order to correctly regulate the preservation of Virginia's dunes and wetlands.

Please take the time to read Enclosures (1-3). It appears the politically appointed Virginia Marine Resource Commission cannot comply with Virginia's statutes as they rule on cases before them. Additionally, I feel the VMRC has dictated policy to the Norfolk and Virginia Beach Wetlands Boards which is unjust and not in keeping with the spirit/intent of the Wetlands Act of 1972 and the Primary Sand Dune Act of 1982.

I appeal to you for action. Please advise our governor that his state must enforce these laws or change them. Continued disregard of Ordinances on the books will result in the withholding of Federal Coastal Management Grants for the state of Virginia.

Thank you for your time in considering these points. Your cooperation, action and reply is most greatly appreciated.

Respectfully,

Jon V. Shay
Croatan Beach Resident

VIRGINIA WILDLIFE FEDERATION

Virginia's Conservationists

C/O Department of Oceanography
Old Dominion University
Norfolk, VA 23508

Mr. Joseph A. Uravich
Office of Ocean and Coastal
Resource Management, NOAA
3300 Whitehaven Street, N.W.
Washington, DC 20235

Dear Mr. Uravich:

On the first of October I testified at the public hearing held in Norfolk on the Commonwealth of Virginia Coastal Resources Management Program and draft Environmental Impact Statement. This letter further documents the opinions I stated at the hearing. I am writing not only as a citizen and a professional oceanographer, but also as Chairman of the Norfolk Wetlands Board and Chairman of the Coastal Zone/Marine Resources Committee of the Virginia Wildlife Federation.

My concern is for management of Virginia's sand dunes. As you know one of the core regulatory programs on which the program is based is the Coastal Primary Sand Dune Protection Act in Chapter 62 of Virginia's code. This law passed in 1980 gives regulatory authority over all encroachments in the coastal primary sand dunes to the Marine Resources Commission. The Commission in most cases has delegated this authority to the cities and counties, including both Norfolk and Virginia Beach. In my opinion the program worked very well from its inception until early this year when the Act was amended by General Assembly House Bill 1769. This bill dealt with a small area of the Sandbridge Beach Subdivision in the City of Virginia Beach. It stated that the Wetlands Board was not to prohibit the owners of lots in that subdivision from "erecting and maintaining protective bulkheads". The bill was passed by large majorities in both houses and approved by Governor Robb. Thus the law now exempts one small area from provisions of the law that governs every other ocean front owner in the Commonwealth. In July, Delegate A. Victor Thomas, Chairman of the House Committee on Conservation and Natural Resources, convened a special subcommittee to study the impact of House Bill 1769. Delegate Thomas stated that the General Assembly "still must address the issue of what is an appropriate balance between the rights of property owners and the preservation of Virginia's wetland areas."

The subcommittee toured Sandbridge and held a hearing. There was and remains considerable public interest both pro and con in the Sand Dune

Calvert H. Seybolt
Fenway Studios Apt. 401
30 Ipswich St.
Boston, Massachusetts 02215

Volume I V1-7 (E) Waterfront Recreation and Land Acquisition

In this they discuss the Virginia Supreme Court in Bradford vs. Natures Conservancy 1982. This discusses the existence of certain common lands that provide access for public fishing, fowling, and hunting on certain wetlands and intertidal zones. I think the report should mention that it was shown that marshland granted prior to 1830 and intertidal strips granted prior to 1770 are exempted from common access.

Volume I page 148 and 149 Barrier Islands

In this they correctly state that Assawoman Island is 100 percent privately owned. However it should be added that the Northern 1/2 mile of Metomkin Island is also held by the owner of Assawoman Island.

These are just a few comments after going through the report. I hope to attend your hearing in January.

Sincerely,

Calvert Seybolt

Jon V. Shay
649 South Atlantic Ave
Virginia Beach, Va.
23451

7 October, 85

Joseph A. Uravich
Regional Manager Great Lakes and
South Atlantic Regions,
Office of Ocean and Coastal
Resource Management,
3300 Whithaven St. N.W.
Washington, D.C. 20235

Sir,

I am very pleased to see the question of protecting Virginia's coastal reaches (dunes in particular) being referred to the Federal level. I reached the conclusion long ago that the City of Virginia Beach's Wetlands Board, Wetlands Engineering Department, Planning Commission, the Virginia Marine Resources Commission and the state's General Assembly cannot/will not properly enforce the regulations of the Coastal Primary Sand Dune Act. My reaction to the consistant disregard of this statute the above agencies have exhibited in allowing building to progress in the dune line at Croatan Beach is one of remorse and disillusionment:

> "It is a proven fact that tearing into dunes to build an oceanfront home is not smart. There is a law against it - Why are builders still bulldozing the dunes and putting up houses?"

If our current law is not practical - let's change it. I believe the Coastal Primary Sand Dune Act is a wise piece of legislature...We should ensure our government agencies enforce it to the letter.

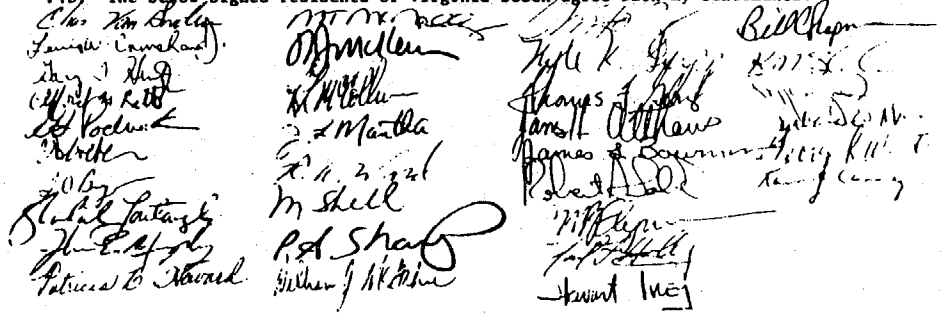
I strongly encourage you to withold Federal Coastal Management Grants for the state of Virginia until our various governing bodies can live by the rules or the provisions of the Coastal Primary Sand Dune Act are changed.

Very Respectfully,

Jon V Shay

Jon V. Shay
Croatan Beach Resident

P.S. The below signed residents of Virginia Beach agree with my sentiments:



33

October 7, 1985

Mrs. Kathleen M. Schumacher
2552 S. Sandfiddler Road
Virginia Beach, Virginia 23456

Mr. Joseph A. Uravich, Regional Manager
Great Lakes and South Atlantic Regions
Office of Ocean and Coastal Resource Management
3300 Whitnaven Street, N.W.
Washington, D.C. 20235

Dear Mr. Uravich,

As a homeowner on the ocean front in Sandbridge, Virginia Beach, Virginia, I along with my neighbors share your concerns for dune protection. While living on a dune we do our best to protect the dune by planting, fertilizing, fencing and requesting beach visitors to stay off the dunes, which children especially find so tempting.

Our home was built (approximately) in 1955 and my husband bought it in 1970, eight years after the "Ash Wednesday" storm in 1962. The point being that the "dune" has changed drastically throughout the years and throughout many storms.

The dilemma now is that we do not know where the primary dune starts and ends, and quite frankly, no one seems to know or have the same opinion. Beyond this, we really don't know what we can and cannot do with our property, ie shoveling sand off driveways, walkways, septic tanks and etc. We have been told previously by the Virginia Beach officals that this is not permitted, which defies all logic. While wanting to respect and stay within the laws, where else but the dune would you put sand from a storms' surge?

As Regional Manager of the Sandbridge area for the Federal government, it would be greatly appreciated if you would send me your written opinion of what is a primary coastal dune, where does it begin and end and what are the property rights when living on a dune?

Thanking you in advance for your kind attention and assistance, I remain

Sincerely yours,

Kathleen M. Schumacher

Kathleen M. Schumacher

Calvert H. Seybolt
Fenway Studios Apt. 401
30 Ipswich St.
Boston, Massachusetts 02215

RECEIVED
25 1985
P.S.

October 23, 1985

U.S. Dept. of Commerce
National Oceanic and Atmospheric Administration
Office of Ocean & Coastal Resource Management
3300 Whitehaven Street
Washington, D.C. 20235

Attn. Ms. Cradick

Dear Ms. Cradick:

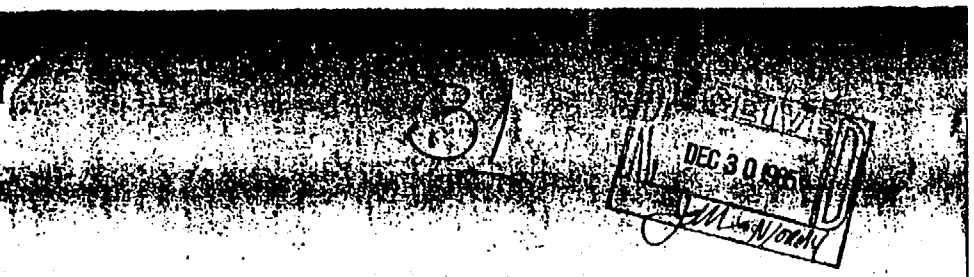
I believe that this is a few days beyond the comment deadline but I hope it will be looked at and reviewed. First, let me state I am writing as a landowner. My family is the owner of Assawoman Island and part of Metomkin Island known as Gargathy Beach.

I have a few comments concerning the Commonwealth of Virginia's Coastal Resources Management Program and Draft Environmental Impact Statement.

First a general comment that as out of state landowners, we did not have knowledge or an opportunity to work with the people from the Virginia State Office during the period they were putting this exhaustive report together. It would have been easier if they had approached the Natures Conservancy and ourselves directly as as a group, we are the holders of 14 out of the 18 islands. I have the following specific comments concerning the report.

Volume I V-12 (3) Priority of Use

In it they state that the highest priority of use of the Barrier Island is Preservation and uses of lower priority are fishing, fowling, and hunting. I feel that fishing, fowling, and hunting are also highly important to the history of the Barrier Island. It must be remembered that the Barrier Islands supplies fishing, fowling, and hunting communities. Most of these islands are less developed now than they were previously.



2346 Hunter Mill Rd.
Vienna, VA 22180
December 19, 1985

Mr. Joseph A. Uravitch
Great Lakes and South Atlantic Regional Manager
Office of Ocean and Coastal Resource Management
3300 Whitehaven Street, N. W.
Washington, D. C. 20235

Dear Mr. Uravitch:

I have read your Draft Environmental Impact Statement on the Commonwealth of Virginia Coastal Resources Management Program and found it to be quite good.

My few comments are as follows: page 156 at the top starts off from urban runoff--this sentence is incomplete; page 160, the American oyster name Crassostrea virginica should be underlined and bivalve at the bottom of the page should be spelled correctly; don't forget the necessary appendices in the back and put the references for tables (i.e. page 177 - Table 2) and figures (i.e. page 181 - Figures 1, 2 and 3) where needed. Also other tables and figures should be referenced throughout the draft.

Sincerely yours,

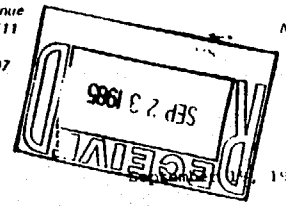
Glenn A. Matthews

Glenn A. Matthews
Belvedere Farm, Inc.

National Marine Manufacturers Association

401 N. Michigan Avenue
Chicago, Illinois 60611
(312) 836-4747
Twix: (910) 333-4107

353 Lexington Avenue
New York, New York 10016
(212) 684-6622
Telex 649041



September 19, 1985

Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration
Department of Commerce
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Gentlemen:

I have reviewed your August 1985 publications on "Draft and Final Environmental Impact Statement and the Virginia Coastal Resources Management Program" and had found it very interesting. I note that we presently are on your mailing list, but to make sure that your publications reach me, I would like to be sure that your mailings are addressed to me.

Sincerely,

Lars Granholm
Director, of Technical Services

LG/cc/CC2

Reply to
Chicago
Washington

COMMONWEALTH of VIRGINIA

Department of Emergency Services

310 Turner Road
Richmond, Virginia 23225-6491
(804) 323-2899

September 4, 1985

MEMORANDUM

TO: Keith J. Buttleman
Council on the Environment

FROM: James M. Surratt
Director, Plans Division

SUBJECT: Review of Virginia Coastal Resources Management Program and Associated DEIS

Subject document was reviewed, and our Department has no comments to offer other than to say we are happy that Virginia has submitted its Coastal Resources Management Program for approval to participate in the Federal program.

JMS/WAK/jgl

Bob Hume
715 Garfield Ave.
Virginia Beach, Va. 23452
October 7, 1985

Mr. Joseph A. Uravitch
Office of Ocean and Coastal Resources Management
NOAA
1300 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Mr. Uravitch:

The following comments pertain to the DEIS for Virginia's Coastal Resources Management Program. I note that a few of my comments which I submitted to you last January on the Public Review Document were addressed in the DEIS, but most were not. I presume that this will be explained in the FEIS. I would like to preface my comments by stating that I would like for Virginia to adopt a strong coastal resource policy and, all things being equal, I would rather the program be assisted by Federal grant money than not. I am opposed, though, to the inevitable increase in the Federal deficit unless the grant money is used to provide additional management and protection of our coastal resources, instead of merely freeing up State money currently used to provide the same services.

Page II-1: Would all water-related projects in all of those listed counties be controlled by the CRMP, or only in those waters which flow into the tidal waters of Virginia? (eg. projects in Prince George, Surry, Isle of Wight Counties and Suffolk located in waters which drain into the Blackwater River?)

Page III-1: Fisheries Management - When commenting on a proposed oil refinery in Portsmouth, a former MRC Commissioner specified that MRC could only comment upon those portions of the project over which MRC had legal jurisdiction, i.e. pier construction and dredging, but no consideration of oil spills. The Water and Air Pollution Control Boards made similar, narrowly-focused reviews and all three agencies issued permits. The then acting Administrator of the Virginia Council on the Environment acknowledged deep concern o potential adverse impacts to the coastal marine environment, but pointed to the fact that the refinery had obtained all required State and local permits, and so endorsed the project. If each permitting agency can only look at one small part of a project, and if the Council is going to rely on the permitting agencies' reviews, who in the State is going to give the comprehensive review of a project as required by the CZMA? Who in the State can look at the forest and not just the trees? How can MRC fulfill the policy goal "to conserve and enhance finfish and shellfish resources" if they are, indeed, precluded from considering a project's secondary and indirect impacts? Was MRC's position at that time (regarding secondary impacts) the same as it is now? Who, if not MRC, could consider the potential impacts of oil spills resulting from construction of an oil refinery? This would have obvious implications to finfish and shellfish resources.

Page III-11: Isn't it true that The Department can insure land disturbing activities are controlled.", but that in practice, enforcement is left to the localities? Doesn't this result in a program which is applied differently and with varying enthusiasm in each county and city?

Page III-12: Isn't it SWCB's policy to allow NPDES violations to continue if a company is making progress toward correcting the situation? How many discharges have SWCB actually halted because of NPDES violations?

Page IV-1: The Secretary of Commerce & Resources is given overall review of the CRMP but, according to Table IV-1, the Department of Health (which on page III-15 is given charge of shoreline sanitation) is under the Secretary of Human Resources.

Sincerely,
Bob Hume

NOAA,

Being you printed a comment in Sundays paper + expect a reply by Monday is showing your lack of Intrest in the beach at Sandbridge Many people who own + rent those chattages live all [illegible] the [illegible] and would not see [illegible] small page in the Chesapeake Beach Beacon [illegible] percent of occupancy is very high for 12 weeks It is a great place to go for [illegible] for middle [illegible] family, + [illegible] who cant afford to fly the whole family to the tropics After the Ash Wednesday Storm 20 years ago the built up to beach so as to sell lots + make revenue now that there is revenue it is not appreciated. If it were a get to it would be fixed up. Doesn't any one realize the there isn't no more beach being made around here & this area is growing with population rapidly. I don't know wether or not the bulkhead is the answer over

but a least it makes people think which is more action than has been shown. They the General (Assembly) did not sit back At least they care.

[illegible] B. Flipp
[illegible]
[illegible]

To assemble a council staff capable of "monitoring all state actions which would affect coastal resources" would most likely exceed the federal funds which might accrue from approval of the plan. To date we are the only agency with direct experience in the administration of such an oversight process under the wetlands program. In that instance we have the advantage of a carefully developed legal policy, achievable standards and scientifically proven guidelines to help assure consistency among regulatory boards as well as to assist in the administrative review of decisions which do not achieve the legal policy and standards or fail to accommodate the guidelines. Such a program offers an excellent chance of sustaining a judicial challenge. The concept embodied in the draft Executive Order on the other hand, superimposes an unstructured administrative process over legally mandated decision processes that are already subject to judicial review.

I must confess that we were under the impression, probably as a result of verbal assurances, that the Virginia program simply describes the way business is currently conducted. Upon review, however, we see radical departures. For example, the simple act of prioritizing uses of geographical areas of particular concern may well interfere with the legal responsibilities of local boards and VMRC to weigh all factors involved in a decision and select the alternative offering the greater overall public value. Similarly, by giving the authority for federal consistency determinations to the Council on the Environment, a potential veto is superimposed over existing state and federal decisions if the opportunity offered is exercised.

Again, we fully recognize that the danger is not in a zealous council staff fully exercising its authority, but rather in the excruciating and often conflicting pressures from outside interests demanding that they do so. I feel sure that is why our General Assembly, in its long reliance on the citizen commission form of government, has carefully developed checks and balances against both abuse of authority and the improper application of pressure.

Unfortunately, I don't have any simple answers to the problems I have raised. I do, however, believe that the responsibility and authority of the council staff must be more narrowly defined if the Administrator is to avoid becoming the de facto czar of all coastal decision processes.

I have discussed this letter thoroughly with Commissioner Pruitt and Fred Fisher, and both are in agreement with my concerns.

With all good wishes, I am

Sincerely,

Norman L. Larsen
Chief, Habitat Management

NEL:vld
MM
cc: Mr. William A. Pruitt
Mr. Frederick S. Fisher

VIMS

THE COLLEGE OF WILLIAM AND MARY
VIRGINIA INSTITUTE OF MARINE SCIENCE
SCHOOL OF MARINE SCIENCE

24 September 1985

1985
Council on the Environment

Mr. Keith Buttleman, Administrator
Council on the Environment
903 Ninth Street Office Building
Richmond, VA 23219

Dear Mr. Buttleman:

We have reviewed the draft environmental impact statement prepared by the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration on the proposed Commonwealth of Virginia Coastal Resources Management Program.

We feel this draft document presents Virginia's program in a fair and generally comprehensive manner. I have only two minor comments which I believe would provide a better picture of the program to a reader not regularly involved in Coastal Resources Management in Virginia.

1. The Virginia Institute of Marine Science's day-to-day provision of technical and scientific advice to local wetlands boards and state regulatory agencies is mentioned on page V-6 and in Appendix I-1. I believe this assistance should be mentioned whenever the program is discussed, but particularly in the summary (page 3) and on p. 176 in paragraph 2 under the Wetlands Management heading.

2. The steady annual rise in shoreline permit applications handled by the local wetlands boards has not been matched by increases in local financial or technical assistance. The importance of these volunteer boards to the Commonwealth's successful habitat protection program should be recognized by establishing a high priority for CRM funding to be passed to the localities for their support.

The Commonwealth of Virginia has developed a strong and effective Coastal Resources Management Program with state resources. I believe this program can be strengthened and enhanced through closer working relationships with federal agencies as envisioned in the Coastal Zone Management Act. The Virginia Institute of Marine Science is looking forward to working with the Office of Ocean and Coastal Resource Management once again as part of the Commonwealth's Coastal Resources Management team.

Sincerely,

Frank O. Perkins
Dean/Director

Gloucester Point, Virginia 23062 (804) 642-7000

COMMONWEALTH of VIRGINIA

Marine Resources Commission

WILLIAM A. PRUITT
Commissioner
ROBERT D. CRAFT
Chief, Administration and Finance
NORMAN E. LARSEN
Chief, Habitat Management

ASSOCIATE MEMBERS

October 2, 1985

1985
Council on the Environment

Mr. Larry Minock
Council on the Environment
903 Ninth Street Office Building
Richmond, Virginia 23219

Dear Larry:

This responds to Keith's memorandum of August 22, 1985 which forwarded the Commonwealth of Virginia Coastal Resources Management Program and Draft Environmental Impact Statement and requested our review and comments.

It appears that the draft Executive Order would insert the staff of the Council on the Environment and the Secretary of Commerce and Resources directly into every aspect of every regulatory process. Such a tremendously broadened role appears to conflict with the citizen commission regulatory process and the legal authority of that decision mechanism.

Under such an arrangement a serious problem would likely emerge as special interests begin to demand that the Council staff and the Secretary exercise their prescribed conflict resolution responsibilities in nearly every regulatory action. The volume of such requests would quickly overwhelm both the current Council staff as well as the staff of the regulatory agencies themselves in preparing the Secretary to deal appropriately with the issues involved. Resultant unacceptable delays in the decision process would inevitably occur. Numerous examples spring quickly to mind of which the dredging of Hoskins Creek and the Sandbridge bulkhead issue are only two recent ones.

RICHARD T. SPAIN, CHAIRMAN
BOX 47A WAVERLY 23890
W. FRANK CHAPMAN, JR., VICE CHAIRMAN
P.O. BOX 350, 120 BLVD., SALEM 24153
GLENN R. CROSHAW
P.O. BOX 6-888 VIRGINIA BEACH 23467
DAVID FANNESTOCK
SILER RT. BOX 26 A, WINCHESTER 22601
ELLIS JONES, JR.
BOX 487 TAZEWELL 24651
THOMAS C. LEGGETT
LEGGETT STORES, P.O. BOX 370
SOUTH BOSTON 24592
FRANK T. SUTTON, III
[illegible] RD CIRCLE WEST, RICHMOND, 23221
[illegible] TAYLOR
[illegible] CANTERLANE, RESTON [illegible]
HENRY A. THOMAS
[illegible] ALEXANDRIA [illegible]
[illegible]

COMMONWEALTH of VIRGINIA

COMMISSION OF GAME AND INLAND FISHERIES
Box 11104, Richmond, 23230-1104

[illegible] CROSS, JR., EXECUTIVE DIRECTOR
4010 WEST BROAD STREET
BOX 11104
RICHMOND, 23230
(804) 257-1000

MEMORANDUM

Council on the Environment

TO: Charlie Ellis
Council on the Environment

FROM: Jack Randolph

DATE: September 24, 1985

SUBJECT: Comments on Virginia's Coastal Resources Management Program and Draft Environmental Impact Statement

Overall, this is a thorough management plan with environmentally sound goals and objectives. The priorities stated for the geographic areas of particular concern (GAPC) and overall program appear to be consistent and sound, although actual implementation and enactment of them could be affected by specific and local socio-economic factors so that they might change in the final run.

From a wildlife standpoint, we feel the program is lacking in that it addresses wildlife only in the GAPC section through wildlife management areas. This probably stems from the idea that the primary financial benefit of wildlife is hunting and fishing. A more realistic approach would be to treat the coastal zone as a unique ecosystem and manage it as community, recognizing each integral part. It appears this has been done for the most part except for wildlife omission. The Commission's jurisdiction here reaches beyond fishing, boating, and hunting regulations to the endangered and threatened species and nongame protection. Although financial benefits are not as obvious for nonconsumptive wildlife, there are far more users, recreation hours, and expenditures according to the National Survey of Fishing, Hunting and Wildlife Associated Recreation in Virginia. The Commission's responsibility for conservation of all wildlife in the Commonwealth should somehow be incorporated throughout the program. In conclusion, the priorities of conservation and preservation should be paramount for the Commonwealth's extremely sensitive and productive coastal zone.

KT/RHCjr/sp

AN EQUAL OPPORTUNITY EMPLOYER

[illegible]

COMMONWEALTH of VIRGINIA

DEPARTMENT OF HIGHWAYS & TRANSPORTATION
1221 EAST BROAD STREET
RICHMOND, 23219

September 30, 1985

1985 Council on the Environment

Mr. K. J. Buttleman
Council on the Environment
903 Ninth Street Office Building
Richmond, Virginia 23219

Re: Draft - EIS Proposed Coastal Resources Management Program

Dear Mr. Buttleman:

We have reviewed the subject document and understand that the State comments are to be funnelled through the Council. The Department's main concern with the proposed program is in the area of potential delay required for a consistency determination with the provision for 45 days to inform the Federal Agency of its agreement or disagreement with the consistency determination.

We would urge that this procedure be considered on a system basis rather than a project-by-project basis since the volume of projects would naturally require a large amount of staff time which has already been applied to the existing process.

We would hope procedures could be developed that would consider the present requirements of the various agencies involved in the clearance of Highway projects.

We will be glad to discuss this further with you at the appropriate time.

Sincerely,

J. S. Hodge
Director of Engineering

cc: Mr. R. L. Hundley

TRANSPORTATION · AMERICA'S LIFELINES

COMMONWEALTH of VIRGINIA

Department of Health
Richmond, Va. 23219

MEMORANDUM

TO: Mr. Keith J. Buttleman, Administrator
Council on the Environment

FROM: Mr. Eric H. Bartsch, P. E., Director
Division of Water Programs

DATE: October 8, 1985

SUBJECT: Review of Virginia Coastal Resources Management Program and Associated DEIS

As requested in your memorandum dated August 22, 1985, my staff has reviewed the subject draft environmental impact statement and concurs with the proposal.

EHB/jc

VDH

COMMONWEALTH of VIRGINIA

Department of Emergency Services

September 4, 1985

MEMORANDUM

TO: Keith J. Buttleman
Council on the Environment

FROM: James M. Surratt
Director, Plans Division

SUBJECT: Review of Virginia Coastal Resources Management Program and Associated DEIS

Subject document was reviewed, and our Department has no comments to offer other than to say we are happy that Virginia has submitted its Coastal Resources Management Program for approval to participate in the Federal program.

JMS/MAK/jgl

In addition to the waterborne commerce associated with Virginia ports, Virginia's waters provide passage to the Port of Baltimore, the nation's fifth largest in total tonnage in 1982 with a maintained 42-foot channel ~~, artificially maintained~~.

Both commercial shipping and defense-related use of Virginia's waterways require the maintenance of certain minimum depths in the major channels which entail either constant or periodic dredging, depending on the rate at which they fill. In addition, dredging to facilitate recreational boating involves the removal of thousands of cubic yards of bottom annually.

Commercial transportation, fishing, and recreational boating uses of coastal waters are restricted by the natural shoaling of waterways and may be aggravated by man's onshore activities which create sediment. Land disturbances which accompany farming or precede construction onshore may result in an increase in sediment deposited in coastal waters, often hastening the filling in of navigable channels. Shoreline and bottomland alterations may disrupt or alter natural sediment transport patterns and may hasten channel filling. Because of competing shoreline uses and the environmental problems caused by contaminated ~~spoil~~ dredged material, the availability of suitable sites for dredged ~~spoil~~ material disposal is rapidly diminishing.

b. National Defense

Another significant user of Virginia waters is the U.S. military with several naval facilities in the Hampton Roads area. These water-dependent bases are accompanied by a number of related facilities such as the two naval air stations. The total military establishment in Tidewater, which is located there either directly or indirectly because of the waterfront location, contributes over $2.1 billion to Virginia's economy and employs an estimated 180,000 civilians.

c. Recreation and Tourism

Recreation is probably the most significant use of Virginia's coastal waters in terms of numbers of persons involved. Each year millions of people from all parts of the Commonwealth and from out-of-state travel to the water's edge to enjoy such activities as swimming, boating, fishing, surfing, picnicking and camping. Many others who live along the shores enjoy the same activities but do not travel to enjoy them and, thus, do not appear in travel statistics. With the addition of the thousands of Virginians employed in tourism and recreation related businesses, the impact coastal recreation has on the state's economy as well as the enjoyment of its citizens is great.

Facilities associated with recreational use of Virginia's coastal waters are widespread and include at least 34 fishing piers, 830 acres of beaches on the Atlantic or Bay, and more than 18,000 public and private campsites. Boating accounts for the greatest number of developed facilities with over 160 public boat launching ramps and over 290 marinas in addition to those numbered above. Estimates of use are difficult to

could be used as a tool to determine the best use classification of land in the coastal management area. Reference to this could be added to the List of Activities Which Contributes to the Management of Virginia's Coastal Resources, Appendix I-1 of Volume II of the Draft EIS.

Enclosed is a paper explaining the LESA system. For additional information on this subject, please contact T. Graham Copeland, Jr., Director of Agricultural Opportunities, Department of Agriculture and Consumer Services, telephone no. 786-3549.

EAF:bmc
Enclosure

cc: Commissioner J. Mason Carlton
Dr. Berkwood M. Farmer

B. C. LEVINES, JR.
Director

DIVISIONS
FORESTRY
HISTORIC LANDMARKS
LITTER CONTROL
PARKS AND RECREATION
SOIL AND WATER CONSERVATION

COMMONWEALTH of VIRGINIA

DEPARTMENT OF CONSERVATION AND HISTORIC RESOURCES
1100 Washington Building, Capitol Square
Richmond, Virginia 23219 (804) 786-2121

September 16, 1985

MEMORANDUM

TO: Charles H. Ellis
Council on the Environment

FROM: Bonnie S. Greenwood, Administrative Staff Specialist

SUBJECT: Review of VA Coastal Resources Management Program and Associated DEIS

This department has additional comments concerning soil and water conservation. If you are still at a stage where these comments could be reviewed, it would be appreciated.

Page V-18 — We have questions concerning 30,000 acres and 300 acres per year. It is suggested that you contact Bob Byrne or Scott Hardaway at Virginia Institute of Marine Science.

Page V-20 — (first paragraph) Delete the last 2 sentences of the paragraph because development is occurring or has occurred along highly eroding shoreline. A letter dated 12/19/84 from Gerry Seeley, Division of Soil and Water Conservation, to Keith Buttleman requested the same change.

Page V-21 — (first paragraph) Delete the first 2 sentences as they do not apply to the tidal area of Virginia. The damage from Camille and Agnes were above the fall line.

Page VIII-1 — (third paragraph, eighth word) Change "localized" to widespread.

Page VIII-3 — (third paragraph, last word) Change 275,000 to 260,000.

ptc
cc: Lee Hill
Scott Crafton

COMMONWEALTH of VIRGINIA

S. MASON CARBAUGH
COMMISSIONER

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
Planning and Development
P. O. Box 1163, Richmond, Virginia 23209

BERKWOOD M. FARMER, Ph.D
DIRECTOR AND
CHIEF ECONOMIST

September 12, 1985

MEMORANDUM

TO: Mr. Keith J. Buttleman
Administrator
Council on the Environment

FROM: Earl A. Finch

SUBJECT: Review of Virginia Coastal Resources Management Program and Associated DEIS

The Coastal Resources Management Program is a commendable program as set forth in the Draft Environmental Impact Statement. The concept of coastal zone management seems to place most of the concerns on shoreline management objectives including wetlands and dunes. In Volume I of the Draft EIS under Part I, item e, page 3, there is reference to nonpoint source pollution control from soil erosion and non-agricultural runoff and the voluntary state programs (BMPs) for the reduction of nonpoint source pollutants from agriculture and urban areas.

On page 7, item C-d states under the Federal CZMA the state should develop a management program that among other things (d) "identifies the inland and seaward areas subject to the management program."

The "inland" boundary of the Coastal Zone of Virginia's Management is defined in Item A, Chapter II of Volume I of the Draft EIS. This area includes about 29% of the state's total land area and about 20% of Virginia's farmland. Forestland is also important, accounting for 61% of land use in the Tidewater area.

Much of the agricultural land in the management area is farmed within the shoreline areas of the bays and their tributaries. Preservation of this land for agricultural production is important to both current economic activities in localities of the area (and the state) and the agricultural production base for the future. A system presently being developed and placed into use in developing land use plans is the Virginia Land Evaluation and Site Assessment System (LESA). The LESA approach to land evaluation

COMMONWEALTH of VIRGINIA

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[illegible]

Virginia Port Authority
600 World Trade Center
Norfolk, Virginia 23510
Cable Address Vaports
Telephone (804) 623-8000
TWX 710-881-1231

J. Robert Bray
Executive Director

September 16, 1985

Mr. Keith J. Buttleman
Administrator
Virginia Council on
the Environment
903 Ninth Street Office Bldg
Richmond, Virginia 23219

Dear Keith:

The Coastal Resources Management Program and Draft Environmental Impact Statement has been reviewed. Enclosed is a copy of pages 152-153 showing the proposed changes.

Sincerely yours,

R. Todd Coyle

R. Todd Coyle
Director of Planning

RTC/cmw
Attachment

do not extend as far up the tributary rivers as they would in autumn, a time of lower average freshwater inflow rates. Illustrative of such an extreme situation were the effects of Tropical Storm Agnes on the Bay, during which freshwater input to the estuary was about 15 times higher than normal for that time of year (June). Low flows as well can seriously affect the Bay's environment, allowing water of much higher salinity than normal to reach far upstream.

Salinity values also vary from east to west across the Bay, with the denser, higher salinity water extending farther up the Bay along Virginia's Eastern Shore, due primarily to the effect of the earth's rotation known as the Coriolis force.

5. Uses

Virginia's coastal waters are used in a variety of ways and are of irreplaceable value to the citizens of the entire state in terms of commerce, food production, recreation, aesthetics, and as a habitat for living organisms. The biological productivity of the marine and estuarine waters forms the base of large commercial and recreational fishing industries and is a source of pleasure to a large number of Virginians and visitors.

a. Transportation

Commercial transportation as a use of Virginia's waters is significant to the national as well as to the state economy. In 1982, more than 68 million tons of foreign trade moved through Virginia ports, primarily the Port of Hampton Roads. In that year, Hampton Roads led all ports in the nation in volume of total foreign trade tonnage. Combined, Virginia ports account for approximately 7.1 percent of the nation's foreign trade tonnage. Coal was the largest export commodity; residual fuel oils were the largest import commodity.

Virginia's port complex includes one of the finest natural harbors in the world and two inland river ports. The Hampton Roads harbor and shipping center consists of marine terminals in Newport News, Norfolk, Portsmouth and Chesapeake, and is served by ~~an artificially~~ a maintained 45-foot deepwater channel. The river ports are Alexandria on the Potomac, served by a 25-foot channel, and Richmond on the James, with a ~~an artificially~~ maintained channel of 25 feet to the Deepwater Terminal and 18 feet to the barge terminal just below the falls. In addition, a number of individual industries send and receive commodities by water using their own docks. These include Allied Chemical Corporation of Hopewell (chemicals shipped by barge), Chesapeake Corporation at West Point on the York (pulpwood), and the Amoco Refinery at Yorktown (oil), among others.

In 1974, direct port-related employment in Virginia accounted for 108,000 persons. With the addition of those persons whose employment related indirectly to ports, total wages amounted to over $1.3 billion.

HARRY HUGHES
GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

October 14, 1985

cc: JB/PT
BURGESS/URAVITCH

Mr. Peter L. Tweedt
Director
United States Department of Commerce
National Oceanic and Atmospheric
Administration
33 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Mr. Tweedt:

Thank you for your letter of August 15, 1985 providing the State of Maryland with an opportunity to comment on the Draft Virginia Coastal Zone Management Program document.

I have transmitted the draft document to the Department of Natural Resources which will prepare comments for your consideration.

Sincerely,

Harry Hughes

Governor

GENERAL INFORMATION 301 269 3431 TTY FOR DEAF BALTO AREA 269 2609 D C METRO 565 0450

B. C. LEYNES, JR.
Director

DIVISIONS
FORESTRY
HISTORIC LANDMARKS
LITTER CONTROL
PARKS AND RECREATION
SOIL AND WATER CONSERVATION

COMMONWEALTH of VIRGINIA

DEPARTMENT OF CONSERVATION AND HISTORIC RESOURCES
1100 Washington Building, Capitol Square
Richmond, Virginia 23219 (804) 786-2121

September 11, 1985

MEMORANDUM

TO: Charles H. Ellis, III
Senior Environmental Programs Analyst

FROM: Bonnie S. Greenwood, Administrative Staff Specialist

SUBJECT: Review of Virginia Coastal Resources Management Program and Associated DEIS

Volume I, page 143 should read: There are over 116 large wood related industries in the area concerned directly with the primary processing of timber products. These forest industries annually harvest about 189 million board feet of saw timber and 422 thousand cords of pulpwood. The harvest creates annual income to Tidewater forest landowners of $41 million for their timber as it stands in the woods. When cut and processed by the forest industry, these products in 1982 had a value added worth of $1.11 billion.

We have no comment concerning either soil and water resources or park and recreation resources.

mmv

cc: Phil Grimm - F
Scott Crafton - S&WC
Dick Gibbons - P&R

CHESAPEAKE
Dr. Willa S. Bazemore, City Councilwoman
John W. Butt, City Councilman
William D. Scalf, City Manager

FRANKLIN
Wayne [illegible] Reed, City Manager
Nancy R. Watson, City Councilwoman

ISLE OF WIGHT COUNTY
[illegible] H. Owen, County Administrator
Richard [illegible] Turner, Chairman, Board of Supervisors

[illegible]
Dr. [illegible] Andrews, City Councilman
David Clark IV, Citizen Appointee
Julian F. Hirst, City Manager
Elizabeth M. Howell, City Councilwoman
Joseph A. Leafe, Mayor

PORTSMOUTH
Rev. Ben A. Beamer, Sr., City Councilman
George L. Hanbury, City Manager
Gloria O. Webb, Vice-Mayor

SOUTHAMPTON COUNTY
Joseph E. Johnson, County Administrator
Stanley W. Johnson, Vice-Chairman, Board of Supervisors

SUFFOLK
Andrew B. Damiani, Mayor
John L. Rowe, Jr., City Manager

VIRGINIA BEACH
John A. Baum, City Councilman
Robert W. Clyburn, Citizen Appointee
Louis R. Jones, City Councilman
Thomas H. Muehlenbeck, City Manager
Reba S. McClanan, City Councilwoman

COMMONWEALTH of VIRGINIA

STATE WATER CONTROL BOARD
2111 Hamilton Street

Richard N. Burton
Executive Director

Post Office Box 11143
Richmond, Virginia 23230-1143
(804) 257 0056

BOARD MEMBERS
David H. Miller
Chairman
Watkins M. Abbitt, Jr.
Vice Chairman

October 3, 1985

MEMORANDUM

TO Larry Minock

FROM Bernard Caton

RE Coastal Resources Management Program

I have reviewed the Coastal Resources Management Program and Draft EIS. The only area of concern readily apparent was the draft Executive Order's Enforcement section. If there is any possibility that this language could be construed to imply that the Council or the Secretary could override decisions made by our Board, I believe the language should be revised. Our citizen Board has statutory, policy-related responsibilities for agency programs. Any dimunition of this authority by Executive Order would seemingly contradict the wishes of the General Assembly.

I would be happy to discuss this with you further if you wish.

:pc

Hon. Patricia Ticer, Chairman
Alexandria
Margaret Vanderhye, Vice-Chairman
Fairfax County
Joseph B. Wisniewski, Treasurer
Fairfax County
John W. Epling
Executive Director

Northern Virginia Planning District Commission

7630 Little River Turnpike • Annandale, Virginia 22003-2678 • (703) 642-0700

September 30, 1985

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Mr. Joseph A. Uravitch, Regional Manager
Great Lakes and South Atlantic Regions
Office of Ocean and Coastal Resource Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Mr. Uravitch:

The Northern Virginia Planning District Commission appreciates the opportunity to review the draft environmental impact statement on the Commonwealth of Virginia's proposed Coastal Resources Management Program (CRMP).

At its meeting on September 26, 1985, the NVPDC adopted Resolution No. 85-7 (attached), endorsing the proposed program and urging prompt approval by the National Oceanic and Atmospheric Administration of the Draft EIS. The Commission, in conjunction with its member localities, has developed comments on steps the State might take to better coordinate implementation of the CRMP with local governments. The specifics of these suggestions are contained in the attached staff study.

The NVPDC looks forward to assisting its member local governments benefit from this worthwhile partnership of federal, state, and local governments and the private sector.

Sincerely yours,

John W. Epling
Executive Director

JWE:tb

Attachment

cc: Edward Wilczynski, Acting Chief, Ecology and Conservation Division, NOAA
Keith J. Buttleman, Administrator, Virginia Council on the Environment
Sheldon Lynn, Planning Director, City of Alexandria
Robert Wheeler, Chief, Planning Division, Arlington County
Denton U. Kent, Deputy County Executive for Planning and Development, Fairfax County
Sidney R. Steele, Director, Office of Comprehensive Planning, Fairfax County
Roger Snyder, Planning Director, Prince William County
Darrell G. Winslow, Executive Director, Northern Virginia Regional Park Authority

Strengthening Local Government

Southeastern Virginia Planning District Commission

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10 KOGER EXECUTIVE CENTER • SUITE 100
NORFOLK, VIRGINIA 23502 • (804) 461-3200
ARTHUR L. COLLINS • EXEC DIR/SECY

September 18, 1985

Mr. Joseph A. Uravitch, Manager
Great Lakes and South Atlantic Regions
Office of Ocean and Coastal Resource Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Re: Virginia Coastal Resources Management Program (LUG:17F)

Dear Mr. Uravitch:

Pursuant to your request of August 15, 1985, the Southeastern Virginia Planning District Commission has reviewed the Commonwealth of Virginia Coastal Resources Management Program and Draft Environmental Impact Statement. The Commission and its member local governments have participated actively in the development of this program since its inception in 1974. Our role in this process ranged from that of a reviewing agency to managing the Regional Advisory Committee for Southeastern Virginia. Commission and local government staff served on a number of state-level administrative and legislative advisory committees during program development. One of our member local governments was a leader in the development of the State's sand dune protection program and most are active participants in the State's wetlands management program. Most recently, the Commission has completed a comprehensive Regional Energy Impact Analysis through the Coastal Energy Impact Program. The SVPDC is also actively involved in a number of other programs, e.g. water quality planning, which relate directly to the management of our coastal resources.

At its Executive Committee meeting of September 18, 1985, the Southeastern Virginia Planning District Commission acted to endorse the Virginia Coastal Resources Management Program and to urge expeditious federal approval of that program. The Commission believes that the Program, as described in the above-referenced document, is reasonable and accommodates the needs of the Commonwealth. We are pleased that the Virginia Program continues to emphasize more efficient use of existing management programs without the establishment of a new institutional structure. The Commission believes that federal approval of the Virginia Coastal Resources Management Program with its attendant increased funding and federal consistency provisions will augment and enhance the Commonwealth's capability to continue to effectively manage its coastal resources.

The Southeastern Virginia Planning District Commission appreciates the opportunity to participate in this review and looks forward to working with the State in the continued development and implementation of the program.

Sincerely,

John L. Rowe
Chairman

JLR:fh
cc: Mr. Edward Wilczynski, OCRM
Mr. Keith J. Buttleman, VCOE

CITIES OF CHESAPEAKE FRANKLIN NORFOLK PORTSMOUTH SUFFOLK & VIRGINIA BEACH AND COUNTIES OF ISLE OF WIGHT & SOUTHAMPTON
COMMISSIONERS LISTED ON REVERSE

CONCLUSIONS

It is recommended that the Commission express its support for the Virginia Coastal Resources Management Program as described in the Draft EIS, that it recommend to the COE that it give attention to the above concerns in the design of the final Program, and that it urge the NOAA to approve the Virginia Program.

LOCAL COORDINATION

The following staff members from affected local government jurisdictions were contacted during the course of this review.

City of Alexandria: Sheldon Lynn, Planning Director
Arlington County: Jim Snyder, Comprehensive Planning Office
Fairfax County: Bruce Douglas, Office of Comprehensive Planning
Prince William County: Bill Shelly and Mukund S. Lokhande, Planning Department
Northern Virginia Regional Park Authority: Ken Brundage

SIGNATURE OF STAFF COORDINATOR Joseph J. Brannan

SIGNATURE OF EXECUTIVE DIRECTOR _____

ATTACHMENTS:

Letter to the Hon. John Warner
Letter to the Hon. Paul Trible

NORTHERN VIRGINIA PLANNING DISTRICT COMMISSION

To: Northern Virginia Planning District Commission

From: John W. Epling, Executive Director

Date: September 26, 1985

Subject: Action Re: Resolution No. 86-9. Transmittal of Comments on the Draft Environmental Impact Statement on the Proposed Commonwealth of Virginia Coastal Resources Management Program.

CAPSULE

ISSUE STATEMENT

The Commonwealth of Virginia is seeking federal approval of its Coastal Resources Management Program. Approval by the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, of Virginia's program for coastal land and water use activities would make the State and certain Virginia localities eligible to receive federal administrative grants and would require that Federal actions be consistent with the program. The National Environmental Policy Act (NEPA) of 1969 requires that a draft environmental impact statement (DEIS) be prepared as part of the review and approval process. The issue before the Commission is whether the State program as described in the DEIS will accomplish the purposes of the Coastal Zone Management Act of 1972 (as amended), and if so, should the Commission endorse the State program and recommend to NOAA its approval.

BACKGROUND

Virginia's involvement in the federal Coastal Zone Management Program dates back to the mid-1970s when the State applied for and received multi-year funding from NOAA to develop a coastal resources management program. State participation in the federal program ended in 1979 when a comprehensive state coastal zone management bill failed to win approval in the General Assembly. Since that time, some elements of the 1979 legislation have been enacted. Citing these developments and other administrative steps toward a coastal management program that would meet the criteria for approval under the federal CZM Act, the State has now decided to seek federal approval of its program. Virginia's program proposes no new State programs, organizations, regulations, or laws. Instead, it relies on a "networking" approach -- a linking together of existing programs, agencies and laws into a functional system that will meet the minimum federal requirements for an effective program. Northern Virginia local governments most directly affected by this proposed program are those located within what the State has defined as the "Virginia Coastal Management Area," namely Arlington, Fairfax, and Prince William counties and the City of Alexandria.

RECOMMENDATION

It is recommended that the Commission authorize the following comments on the DEIS and Virginia's participation in the federal Coastal Zone Management Program be transmitted to the appropriate State and federal officials.

through effective site selection..." Criteria governing hazardous waste facilities siting are presently under development by the Hazardous Waste Facilities Siting Council, which is not listed among the lead enforcement agencies but which has an obviously important role, along with the State Health Department, which is listed, in the attainment of this State goal.

C) Coordination and Oversight:

The Program's coordination and oversight function extends from the Secretary of Commerce and Resources downward to the Virginia Council on the Environment, as the "lead agency" for purposes of federal grants, monitoring and reporting, to each of the more than 20 state agencies assigned individual management activities. This arrangement is determined by the administrative vehicle used to fix responsibility for program coordination and oversight, namely a Governor's Executive Order, which is pending.

Because the State has elected to design its management program around existing State programs and is proposing no new legislation or regulatory actions (other than the proposed Governor's Executive Order requiring State agencies to act in compliance with the Program), the Commission has focused its review on aspects of the organizational structure that will be used by the State in carrying out the Program.

The CZMA requires that a State's management program include "a description of the organizatonal structure proposed to implement such a program, including the responsibilities and interrelationships of local, areawide, state, regional and interstate agencies in the management process."

In January 1985, when it reviewed the COE document "Coastal Resources Management," NVPDC offered an overall endorsement of the Virginia Coastal Resources Management Program and recommended that the Program indicate more explicitly how, the State proposes to coordinate its CRM Program with local governments. NVPDC suggested that the program would be significantly strengthened by assigning such coordinative responsibilities to planning district commissions. As noted earlier, the Draft EIS leaves this issue largely unaddressed.

The need here is to make clear how local governments will participate in the implementation of the plan and how the

State proposes to build and maintain effective coordination and communication between the State and localities. The strength of the CRM Program will depend, in large measure, on the extent to which CRM policies achieve uniform application and CRM programs are implemented in a consistent fashion. The Council on the Environment should provide for a regional coordination and communication mechanism in its Program document and should indicate how it intends to promote its effective operation.

The organizational structure outlined by the State assigns coordination and oversight responsibilities to the Secretary of Commerce and Resources with administrative responsibilities delegated to the Council on the Environment. While this appears to be a reasonable and workable arrangement, heavy reliance is placed for interagency communication and intergovernmental coordination on the Commonwealth Intergovernmental Review Process (CIRP), which is administered by the Department of Housing and Community Development and utilizes regional clearinghouses.

Among the most important responsibilities of the [illegible] review and comment on "consistency determinations" -- assessments made by federal agencies that their intended actions are not in conflict with approved State plans. The fact that responsibility for administering the consistency provisions of the Coastal Zone Management Act and the Commonwealth Intergovernmental Review Process (developed in response to Presidential Executive Order 12372 of July 14, 1982) is divided among two agencies, COE and the Department of Housing and Community Development, respectively, necessitates close coordination between the two agencies.

Local governments and planning district commissions, as well as affected State agencies, need to be assured that they will have timely access to information on proposed federal activities within the coastal zone. This is particularly important for activities not included on the COE's published list of "Federal Activities Subject to Consistency Review" and those for which a claim is made that that activity does not require a consistency determination. In addition, it is important that the COE establish a clear and equitable process for accommodating local concerns.

It is recommended that the COE expand on its description of how it will coordinate with the DH&CD to provide information to planning district commissions and local governments on federal activities -- and State projects that may not involve federal funding or permit authority -- to ensure that federal consistency requirements are adhered to.

- the Virginia CRM Program is consistent with the objectives and policies of the federal Coastal Zone Management Act of 1972, as amended;
- award of federal funds under Section 306 (program implementation) of the Act will help Virginia meet those objectives;
- Virginia's management authorities are adequate to implement the program; and
- a net environmental gain will result from program approval and implementation.

The Commonwealth's objective in developing a coastal resources management program is to establish a comprehensive, coordinated approach for the protection, preservation and orderly development of the Commonwealth's coastal resources.

To be approved by NOAA, Virginia's Program must contain three broad classes of policies that are related to resource protection, management of coastal development, and simplification of governmental processes.

The CZMA lists six general requirements for federal approval of State programs. The State program must

- identify and evaluate those coastal resources recognized in the Act as requiring management or protection by the State;
- reexamine existing policies or develop new policies to manage these resources.
- determine specific use and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns;
- identify the inland and seaward areas subject to the management program;
- provide for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements; and
- include sufficient legal authorities and organizational arrangements to implement the program and to ensure conformance to it.

Elements of the CRM of major concern to Northern Virginia include the following:

A) Goals and Policies:

Virginia's CRM Program is based in part on a set of 24 goal statements (e.g., "promote the wise use of coastal resources for the economic benefit and employment of our citizens," and "reduce non-point pollution in tidal streams, estuaries, embayments and coastal waters caused by inappropriate land uses and inadequate land management practices").

These goals appear to be sufficiently encompassing and consistent with NVPDC's regional policies and programs.

B) Activities:

The Program identifies more than 20 state agencies which conduct activities related to the management of Virginia's coastal resources. The centerpiece of the Program, however, is a set of eight distinct management activities (e.g., wetlands management, nonpoint source pollution control, and point source pollution control) for which "enforceable policies" exist in federal or state statutes and related agency regulations. The Program tacitly recognizes the interrelationships among the various components of the coastal ecosystem (land, water and air) and the distinct interests and activities of various levels of government that may affect them. And although the Program acknowledges the need for a comprehensive approach to coastal resources management that integrates national, state, regional and local interests and programs, the Program's currently stated emphasis is placed on eight regulatory programs "through which critical land and water uses and activities are subject to the control of the state." This approach is largely the result of the State's declared intention to "propose no new state programs, organizations, regulations, or laws," but rather to use the "networking" process to link up existing State programs, agencies and laws into a system that will meet federal requirements.

This approach should take into account the need for close coordination among State agencies that share regulatory and/or enforcement responsibilities in the environmental protection area. For example, it is stated that one of the 24 program goals is to "reduce the potential for damage to coastal resources from toxic and other hazardous materials

Northern Virginia
Planning District Commission

7630 Little River Turnpike • Annandale, Virginia 22003 • (703) 642-0700

RESOLUTION

Resolution 86-9

Date: September 26, 1985
Patron: Vance Myers, Chairman
Regional Resources
Committee

**TRANSMITTAL OF COMMENTS ON
THE DRAFT ENVIRONMENTAL IMPACT STATEMENT ON
VIRGINIA'S PROPOSED COASTAL RESOURCES MANAGEMENT PROGRAM**

WHEREAS, the Commonwealth of Virginia has submitted a Coastal Resources Management Program document to the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, and is seeking federal approval for Virginia's participation in the federal Coastal Zone Management Program; and

WHEREAS, NOAA is inviting comments on the draft environmental impact statement (EIS) on Virginia's proposed Coastal Resources Management Program, and has scheduled a public hearing on September 30, 1985, in Fairfax; and

WHEREAS, the U.S. House of Representatives has passed legislation (HR 2121) reauthorizing the federal Coastal Zone Management Act through 1990 and the Senate Commerce Committee has reported out a companion measure, SR 959, which is due for a Senate floor vote shortly; and

WHEREAS, Virginia's participation in the federal program would make Virginia and local governments in the Commonwealth eligible for financial assistance in carrying out coastal resources management activities as permitted by the Coastal Zone Management Act of 1972 (as amended); and

WHEREAS, Virginia's participation in the federal program would ensure that federal activities within Virginia's coastal zone are consistent with the Virginia Coastal Resources Management Program; and

WHEREAS, the Commission recognizes the need for a comprehensive, coordinated approach for the protection, preservation and orderly development of the Commonwealth's coastal resources and views the program as benefiting the citizens of the Commonwealth; and

NVPDC

Resolution #86-9
TRANSMITTAL OF COMMENTS ON
THE DRAFT ENVIRONMENTAL IMPACT STATEMENT ON
VIRGINIA'S PROPOSED COASTAL RESOURCES MANAGEMENT PROGRAM
September 26, 1985

WHEREAS, a major share of the land area within the Northern Virginia Planning District lies within the "Virginia Coastal Management Area;"

BE IT THEREFORE RESOLVED THAT the NVPDC authorize its Chairman or her designee to deliver, in written or oral form as may be appropriate, the following testimony on behalf of the Commission at the September 30, 1985, public hearing; and

BE IT FURTHER RESOLVED THAT the NVPDC authorize its Executive Director to transmit the following comments and staff study on the draft environmental impact statement to the appropriate federal and state officials prior to the October 7, 1985, deadline for comments; and

BE IT FURTHER RESOLVED THAT the NVPDC forward letters to Virginia's two U.S. Senators expressing its support for legislation, currently pending in the Congress, to reauthorize the Coastal Zone Management Act.

NORTHERN VIRGINIA PLANNING DISTRICT COMMISSION
SEAL
1969

The undersigned certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the Northern Virginia Planning District Commission held on September 26, 1985.

John W. Epling, Executive Director

NVPDC ROLE

Under authority granted by the Virginia Area Development Act of 1969 (Va. Code Chapter 34, 15.1-1400), the Northern Virginia Planning District Commission (NVPDC) is charged with "promot(ing) the orderly and efficient development of the physical, social and economic elements of the District by planning, and encouraging and assisting governmental subdivisions to plan for the future." In authorizing the creation of planning district commissions, the General Assembly sought "to provide a means of coherent articulation for community needs, problems, and potential for service in relation to State government."

NVPDC's specific involvement in coastal resources management dates to 1977 when the Commission conducted a public workshop on coastal resources management in Northern Virginia funded by a $12,000 grant from the State. In a December 1977 Resolution, NVPDC prepared and endorsed a set of comments on draft Proposals for Coastal Resources Management in Virginia developed at the direction of the Governor's Secretary of Commerce and Resources and presented those comments at a State-sponsored public hearing.

In October, 1983, Mr. Keith Buttleman of the staff of the Virginia Council on the Environment addressed the Commission on Virginia's renewed efforts to develop a coastal resources management program and to secure federal approval of Virginia's program.

In January 1985, following the dissemination by the Council on the Environment of a document entitled "Coastal Resources Management" and upon the Council's express invitation to review and submit comments, NVPDC adopted Resolution 85-25, NVPDC Comments On Virginia's Proposed Coastal Resources Management Program. At that time, NVPDC offered an overall endorsement of the Virginia Coastal Resources Management Program and supplied specific comments on two aspects of the Program. NVPDC recommended that the Program:

1.) indicate more explicitly how the State proposes to coordinate its CRM program with local governments. NVPDC suggested that the program would be significantly strengthened by assigning such coordinative responsibilities to planning district commissions.

2.) include urban waterfronts within "Geographic Areas of Particular Concern."

The Commission is pleased to note that the Draft EIS accommodates the later issue by incorporating "Waterfront Development Areas" within the inventory of "Geographic Areas of Particular Concern." However, the Draft EIS leaves the former issue largely unaddressed.

NVPDC's current concern is threefold: first, that a strong State Coastal Resources Management Program be instituted and that it respect fundamental local land management roles well-founded in the Commonwealth's history; second, that the Program be organized and supplied with adequate resources to carry out its objectives; and third, that the Program encourage the utilization of the regional planning, coordination and technical assistance capacities that exist within planning district commissions situated in the "Virginia Coastal Management Area."

Comments on the DEIS, including provisions of the State Program, may be directed to the following persons: Mr. Keith J. Buttleman, Administrator of the the Virginia Council on the Environment, to Mr. Joseph A. Uravitch, Manager, Great Lakes and South Atlantic Regions, National Oceanic and Atmospheric Administration, and to Mr. Edward Wilczynski, Acting Chief, Ecology and Conservation Division, U.S. Department of Commerce.

It would also seem appropriate for the Commission to present a summary of its comments at a public hearing on the DEIS sponsored by NOAA and scheduled for September 30, 1985, at George Mason University, Fairfax.

ANALYSIS

The Coastal Zone Management Act (CZMA) of 1972 and its amendments (1976 and 1980) affirm a national interest in the effective protection and careful development of the coastal zone by providing assistance and encouragement to coastal states to voluntarily develop and implement management programs for their coastal areas. The federal CZMA provides incentives and a national direction that cannot be provided by the states alone in addressing coastal issues and problems.

Federal approval of the Virginia CRM Program will have the following effects:

- o Financial assistance to the Commonwealth to assure adequate program implementation activities by the State and local entities; and
- o Allow the State use of the federal consistency provision of the CZMA to ensure that federal activities, federally licensed and permitted activities, Outer Continental Shelf (OCS) plans (other than oil and gas lease sales), and federal assistance to the Commonwealth and local governments are consistent with the Virginia Coastal Resources Management Program.

The National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resources Management, which is responsible for assessing the adequacy of the state program proposals and which prepared the Draft EIS, has made a preliminary determination that:

TORREY C. BROWN, M.D.
SECRETARY

JOHN R. GRIFFIN
DEPUTY SECRETARY

STATE OF MARYLAND
DEPARTMENT OF NATURAL RESOURCES
TIDEWATER ADMINISTRATION
TAWES STATE OFFICE BUILDING
ANNAPOLIS 21401

September 19, 1985

Mr. Joseph Uravitch, Regional Manager
Great Lakes & South Atlantic Regions
Office of Ocean & Coastal Resource Management
Page Building #1
2001 Wisconsin Avenue, N.W.
Washington, D.C. 20235

Dear Mr. Uravitch:

This letter is in response to a request for comments on the Draft EIS on Virginia's Coastal Zone Management Program. After reviewing the Program document, it is our judgment that Virginia's Coastal Management Program meets the requirements for Program approval.

The only questions we have is how implementation of Virginia's Coastal Zone Management Program will be coordinated with the implementation of Virginia's Chesapeake Bay Initiatives developed in response to the recommendation of the EPA Chesapeake Bay program.

We look forward to working with the State of Virginia on matters of mutual coastal zone mangement concern.

Sincerely,

Jacob N. Lima, PhD
Director
Coastal Resources Division

JNL/EHB/ses

TTY FOR DEAF - BALTIMORE 269 2609 WASHINGTON METRO 565 0450

Hon. Nancy K. Falck, Chairman
Fairfax County
Brian Power, Vice-Chairman
Loudoun County
Joseph B. Wisniewski, Treasurer
Fairfax County
John W. Epling
Executive Director

Northern Virginia
Planning District Commission

7630 Little River Turnpike • Annandale, Virginia 22003-2678 • (703) 642-0700

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Fairfax County
As of January 22, 1985

September 26, 1985

The Honorable John Warner
U. S. Senate
421 Russell Office Building
Washington, D. C. 20510

Dear Senator Warner:

Since it was signed into law by President Nixon in 1972, the Coastal Zone Management Act has heightened public awareness of the fragile nature of our coastal regions. The Act has also demonstrated the need for a firm yet flexible management system to balance economic development with environmental conservation.

This letter is to urge your support for SB 959, the Coastal Zone Management Act reauthorization bill. SB 959 will maintain the federal government's strong financial participation in this vital partnership involving federal, state, and local governments and the private sector.

By adoption of the attached Resolution No. 86-9, of September 26, 1985, the Northern Virginia Planning District Commission also endorsed Virginia's plan for participation in the federal Coastal Zone Management Program. With timely review by the National Oceanic and Atmospheric Administration, the Commission is encouraged to believe that Virginia could be declared eligible for full participation in this program by January 1986.

Sincerely yours,

Patricia S. Ticer
Chairman

PST:TB:pm

Attachment

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX
4100 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030

September 16, 1985

Joseph A. Uravitch, Regional Manager
Great Lakes and South Atlantic Regions
Office of Ocean and Coastal Resource Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Mr. Uravitch:

Thank you for the opportunity to review the draft environmental impact statement on the proposed Commonwealth of Virginia Coastal Resources Management Program (VCRMP). We have found the D.E.I.S. to be a well-organized and thoroughly prepared document, and we concur with the general findings and conclusions.

As noted in our previous comments on the Coastal Resources Plan, it is still not fully clear at this stage as to how local governments will participate in the implementation of the plan. Effective coordination between the State and local governments will be essential, especially in relation to those core programs which are the current responsibility of local governments, i.e., wetlands and dune protection. To promote effective coordination and communication between the State and localities, it will be imperative for the Virginia Council on the Environment to have adequate staff and to develop working liaisons with county and city personnel. The use of regional coordinating committees, composed of local, regional and state respresentatives which meet on a routine basis, may be very useful towards achieving the uniform application of plan policies and consistent implementation of plan programs. For example, there is little formal coordination among the coastal management efforts in Fairfax County, Prince William County and Alexandria. Under the VCRMP, the Council on the Environment should develop such coordination and oversee its continued progress.

Finally, we would like to note the apparent need for a re-inventory of the State's wetland resources. The existing wetlands inventory conducted by the Virginia Institute of Marine Sciences in the 1970's is outdated and in some counties is incomplete. Although certain counties conduct their own inventories, not all localities have the staff or resources to do so. A state-wide re-inventory would, therefore, be extremely beneficial to this critical core regulatory program and should be a beneficial impact associated with the approval of the VCRMP. We suggest this effort be listed under

A. Impacts Associated with Program Funding on page 170 of Volume I of the D.E.I.S. We also suggest that this effort be made a high priority at the time of implementation of the plan.

Fairfax County looks forward to working with the State on the implementation of the Coastal Resources Management Plan, and we hope these comments will be helpful towards establishing an effective, valuable program. To this end, we urge the speedy approval of the Draft Environmental Impact Statement.

Sincerely,

Sidney R. Steele, Director
Office of Comprehensive Planning

SRS:WFS:mcm

cc: Edward Wilczynski, Acting Chief
Ecology and Conservation Division, NOAA

Keith J. Buttleman, Administrator
Virginia Council on the Environment

Denton U. Kent, Deputy County Executive
for Planning and Development

THE COMMISSION FINDS THE DRAFT ENVIRONMENTAL IMPACT STATEMENT -- AND THE STATE COASTAL RESOURCES MANAGEMENT PROGRAM IT ADDRESSES -- TO CONFORM TO REQUIREMENTS OF THE FEDERAL COASTAL ZONE MANAGEMENT ACT OF 1972 AND FEDERAL REGULATIONS ISSUED PURSUANT TO THAT ACT AS WELL AS THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969. THE STATE'S PROPOSED PROGRAM APPEARS TO BE A GOOD FAITH EFFORT TO MEET THE REQUIREMENTS FOR STATE PARTICIPATION IN THE FEDERAL COASTAL ZONE MANAGEMENT PROGRAM. THAT IS NOT TO SAY THAT THERE ARE NOT IMPROVEMENTS THAT COULD BE MADE IN THE PROGRAM, PARTICULARLY IN THE AREA OF INTERLOCAL AND INTERGOVERNMENTAL COORDINATION, AREAS ON WHICH THE DRAFT E.I.S. DOES NOT DWELL.

THE VIRGINIA COUNCIL ON THE ENVIRONMENT HAS PREPARED A PROGRAM THAT RELIES HEAVILY ON EXISTING LAW AND INSTITUTIONAL ARRANGEMENTS. THERE IS A GENUINE NEED, HOWEVER, FOR THE STATE TO MORE FULLY APPRECIATE THE NEED FOR CONTINUOUS AND RELIABLE COMMUNICATIONS WITH LOCAL GOVERNMENTS ON MATTERS RELATED TO IMPLEMENTATION. THIS COORDINATIVE FUNCTION, WHICH PLANNING DISTRICT COMMISSIONS WOULD APPEAR WELL POSITIONED TO FACILITATE, WOULD GO A LONG WAY TOWARD ASSURING UNIFORM APPLICATION OF POLICIES AND CONSISTENT IMPLEMENTATION AT THE LOCAL LEVEL.

THE COMMISSION ALSO RECOMMENDS THAT THE VIRGINIA COUNCIL ON THE ENVIRONMENT, THE LEAD STATE AGENCY FOR ADMINISTERING THIS PROGRAM, EXPAND ON HOW IT WILL COORDINATE WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, THE AGENCY WHICH ADMINISTERS THE COMMONWEALTH INTERGOVERNMENTAL REVIEW PROCESS. IT IS IMPORTANT TO THE FUNCTIONING OF THIS PROGRAM THAT INFORMATION ON PROPOSED FEDERAL AND STATE PROJECTS DESERVING OF A CONSISTENCY REVIEW BE SUPPLIED ON A ROUTINE BASIS TO PLANNING DISTRICT COMMISSIONS AND LOCAL GOVERNMENTS. CLOSE COORDINATION BETWEEN THESE TWO STATE AGENCIES IS CRITICAL TO ENSURING THAT FEDERAL CONSISTENCY REQUIREMENTS ARE ADHERED TO AND THAT LOCAL GOVERNMENTS AND REGIONAL AGENCIES ARE INCLUDED IN THE INFORMATION CHAIN.

THE COMMISSION ALSO RECOMMENDS CLOSE COORDINATION AMONG STATE AGENCIES THAT SHARE REGULATORY AND/OR ENFORCEMENT RESPONSIBILITIES IN THE ENVIRONMENTAL PROTECTION AREA. THE COMMISSION IS PARTICULARLY CONCERNED WITH THE NEED TO PROTECT COASTAL AREAS FROM THE SITING OF TOXIC AND HAZARDOUS WASTE GENERATING, STORAGE, TREATMENT AND DISPOSAL FACILITIES.

THE COMMISSION APPRECIATES THIS OPPORTUNITY TO PRESENT ITS ENDORSEMENT OF THIS GREATLY NEEDED PROGRAM. WE BELIEVE THE SUGGESTIONS ADOPTED BY THE COMMISSION WILL STRENGTHEN IMPLEMENTATION OF THE VIRGINIA PROGRAM BY FOSTERING A HIGH LEVEL OF STATE-LOCAL COORDINATION.

THANK YOU AGAIN FOR COMING TO NORTHERN VIRGINIA TO RECEIVE PUBLIC COMMENTS ON A PROGRAM THAT PROMISES TO MAKE AN IMPORTANT CONTRIBUTION TO THE WISE USE OF THE COMMONWEALTH'S COASTAL RESOURCES.

TESTIMONY OF COMMISSONER VANCE MYERS

AT THE SEPT. 30, 1985, PUBLIC HEARING
ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT
ON THE VIRGINIA COASTAL RESOURCES MANAGEMENT PROGRAM

GOOD EVENING AND WELCOME TO NORTHERN VIRGINIA. MY NAME IS VANCE MYERS AND I AM A RESIDENT OF THE CITY OF FAIRFAX. I SERVE AS THE CITY'S CITIZEN REPRESENTATIVE ON THE NORTHERN VIRGINIA PLANNING DISTRICT COMMISSION, WHERE I CHAIR THE COMMISSION'S REGIONAL RESOURCES POLICY COMMITTEE.

THE COMMISSION, AS YOU MAY KNOW, IS THE REGIONAL COMPREHENSIVE PLANNING AGENCY WHICH PROVIDES PLANNING, COORDINATION AND TECHNICAL ASSISTANCE SERVICES TO 12 LOCAL GOVERNMENTS IN NORTHERN VIRGINIA. ACTING IN AN ADVISORY CAPACITY, THE COMMISSION OPERATES CONTINUING PROGRAMS IN SUCH COASTAL RESOURCES-RELATED AREAS AS WATER RESOURCES MANAGEMENT AND COMMUNITY DEVELOPMENT. THE COMMISSION IS ONE OF 22 SUCH REGIONAL PLANNING AGENCIES IN VIRGINIA AND ONE OF NINE WITHIN THE VIRGINIA COASTAL MANAGEMENT AREA.

I AM ADDRESSING YOU THIS EVENING ON BEHALF OF ALEXANDRIA CITY COUNCILWOMAN PATRICIA TICER, WHO SERVES AS CHAIRMAN OF THE NORTHERN VIRGINIA PLANNING DISTRICT COMMISSION. I HAVE BEEN ASKED BY MRS. TICER TO CONVEY TO YOU THE COMMISSION'S ENDORSEMENT OF THE PROPOSED VIRGINIA COASTAL RESOURCES MANAGEMENT PROGRAM AND TO URGE ITS PROMPT APPROVAL BY THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION. THE COMMISSION ALSO ASKED THAT I COMMUNICATE A FEW CONSTRUCTIVE COMMENTS ON CERTAIN SPECIFIC ASPECTS OF THE DRAFT ENVIRONMENTAL IMPACT STATEMENT AND THE PROPOSED PROGRAM, PARTICULARLY AS IT SETS FORTH HOW THIS PARTNERSHIP OF FEDERAL, STATE AND LOCAL GOVERNMENTS IS TO BE IMPLEMENTED.

IN ADOPTING RESOLUTION NUMBER 86-9 AT ITS MEETING OF SEPTEMBER 26, 1985, THE COMMISSION AFFIRMED THE NEED FOR A COMPREHENSIVE AND COORDINATED PROGRAM TO ENSURE THE PROTECTION, PRESERVATION, AND ORDERLY DEVELOPMENT OF THE COMMONWEALTH'S VALUABLE COASTAL RESOURCES.

THE PLANNING DISTRICT COMMISSION APPROACHES THIS PROPOSED PROGRAM FROM THE PERSPECTIVE OF A REGIONAL AGENCY THAT WAS VERY MUCH INVOLVED IN THE STATE'S EFFORTS IN THE 1970s TO BUILD A SOLID PROGRAM FOR MANAGING THE VIRGINIA'S COASTAL RESOURCES. THE COMMISSION'S MANDATE FROM THE GENERAL ASSEMBLY IS TO "PROMOTE THE ORDERLY AND EFFICIENT DEVELOPMENT OF THE PHYSICAL, SOCIAL AND ECONOMIC ELEMENTS OF THE DISTRICT BY PLANNING, AND ENCOURAGING AND ASSISTING GOVERNMENTAL SUBDIVISIONS TO PLAN FOR THE FUTURE..." PURSUING THIS MANDATE, THE COMMISSION SERVES AS A NEUTRAL REGIONAL FORUM FOR DECISION-MAKING. THE COMMISSION PROVIDES LOCAL GOVERNMENTS AND STATE AGENCIES WITH INFORMATION AND ANALYSES NECESSARY TO MAKE SOUND LOCAL AND REGIONALLY-BENEFICIAL DECISIONS. IT ALSO SUPPLIES A HIGH LEVEL OF TECHNICAL ASSISTANCE ON WATER QUALITY AND RELATED MANAGEMENT ISSUES TO ITS MEMBER LOCAL GOVERNMENTS.

THE COMMISSION HAS FOLLOWED WITH GREAT INTEREST THE DEVELOPMENT OF THE VIRGINIA PLAN. IT HAS REVIEWED THE DRAFT ENVIRONMENTAL IMPACT STATEMENT IN CONJUNCTION WITH THE LOCAL GOVERNMENTS SITUATED WITHIN "THE COASTAL MANAGEMENT AREA," INCORPORATING MANY OF THEIR COMMENTS IN ITS OWN ANALYSIS.

federal licenses or permits from requirements of 15 CFR 930 Subpart D, which allows a six-month review period. Federal agency activities requiring federal licenses or permits are subject to the consistency requirements of 15 CFR 930 Subpart C. Therefore, we would anticipate a 45-day review period for Navy consistency determinations involving federal permits. We recommend that federal property be explicitly excluded from discussions/requirements associated with Waterfront Development Areas of Particular Concern, page V-23.

We recommend the following revisions to Appendix II Federal Holdings:

Page 16	Add Lafayette Branch Annex, 14.91 acres (owned) Norfolk, Navy.
Page 17	Northwest Security Group Activity: Change acres to 4032.76.
	Change Gallop Farm Housing Site to Carper Housing Site, 97.62 acres.
Page 18	Naval Ship Engineering Center (0.05 acre) and Human Resource Management Center (0.05 acre) are leased, not owned.
	NAVSUPCEN Craney Island Fuel Section: Change acres to 895.14.
	Norfolk Naval Shipyard: Change acres to 764.28.
	Naval Ammunition Depot, St. Juliens: Change acres to 499.47.
	Add St. Helena Annex, 31.53 acres (owned), Norfolk, Navy.
	Delete Naval Electronics Systems Engineering Center; it is included in Naval Shipyard Norfolk.
	Add Gosport Housing, 56 acres (owned) Portsmouth, Navy
	Add Stanley Court Housing, 15.63 acres (owned) Portsmouth, Navy.
	Amphibious Base Landing Beach Area, Camp Pendleton: Change acres to 358.32.
	Delete Explosive Ordnance Disposal Group; it is included in Pt. Story.
	Naval Air Station, Oceana: Change acres to 5331.42.
	Naval Auxiliary Landing Field: Add Pentress and change acres to 2556.09.
	Add Wadsworth Housing, 74.67 acres (owned) Virginia Beach, Navy.
Page 19	Camp Peary: Change acres to 9273.99.
Page 20	Naval Weapons Station: Add Yorktown and change acres to 10624.28.
	Delete Copeland Park; it is no longer leased.
Page 22	Combine Tangier North Site, Tangier South Site, and Onancock Municipal Dock to read Tangier Island Site, 0.40 acres (leased).

28 October 1985

Thank you for the opportunity to comment on this important program. We sincerely hope these recommendations are helpful.

Sincerely,

P. W. DRENNON
Assistant Commander for
Facilities Planning and
Real Estate

resource management. In fact, the inclusion of such detailed regulations in other state coastal management programs has actually delayed the implementation of important federal conservation initiatives.

There is also the unfortunate matter of Virginia's long-standing, but plainly unconstitutional, efforts to reserve the privilege of fishing in her marine waters to Virginia residents. See Douglas v. Seacoast Products, 431 U.S. 265 (1977) and Tangier Sound Watermen's Assoc. v. Douglas, 541 F.Supp. 1287 (1982). Under no circumstances should the Secretary of Commerce approve the incorporation of section 28.1-57 of the Virginia Code as part of Virginia's coastal zone program.

cc: GC - Robert J. McManus
A - Anthony J. Calio

DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND
200 STOVALL STREET
ALEXANDRIA, VA 22332-2300

2023TP
28 October 1985

Mr. Joseph A. Uravitch, Regional Manager
Great Lakes and South Atlantic Regions
Office of Ocean and Coastal Resource Management
3300 Whitehaven Street, N. W.
Washington, D. C. 20235

OCT 29 1985

Jan-CPD

Dear Mr. Uravitch:

The following comments are submitted after review of the Commonwealth of Virginia Coastal Resources Management Program and Draft Environmental Impact Statement (DEIS) forwarded by your letter of 14 August 1985.

The Coastal Program and DEIS reflect a significant amount of intense planning and consideration of both federal and state perspectives on coastal zone management. The overall product is well done and generally sensitive to issues of mutual concern. We do, however, have specific recommendations that, upon inclusion in the state program, will clarify certain points and make future coordination easier.

The terms "coastal zone" and "coastal area" are used interchangeably throughout the documents and particularly in Section XA (page X-2) concerning federal activities. We recommend exclusive use of "coastal zone" to preclude future confusion concerning separation of the coastal zone from excluded federal property, which in combination are often called the coastal area.

The list of federal activities subject to consistency review given on page X-7 and statements on negative determination requirements given on page X-2 do not clearly reflect the Coastal Zone Management Act and implementing regulations. Navy activities, particularly new construction, expansion of existing buildings, and acquisition/release of property, will be closely reviewed by the Navy for potential direct impacts on the coastal zone. Either a consistency determination or a negative determination will be submitted to the Virginia Council on the Environment for activities determined by Navy to have the potential for direct impacts on the coastal zone. No notification will be made for activities determined by Navy to have no potential for direct impacts on the coastal zone.

Section XB, Federally Licensed and Permitted Activities, discusses on page X-3 a six-month state review period for consistency determination associated with permit applications. 15 CFR 930.52 clearly excludes federal agencies applying for

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Washington, D.C. 20235

F:JED

March 20, 1986 cc: BLIZZARD/TWEEDT
BURGESS/URAVITCH
Burtleman/Minnick
Bondareff/Orr
Micremet

TO: N/ORM - Peter L. Tweedt

FROM: F - William G. Gordon

SUBJECT: Coastal Resource Management Plan Commonwealth of Virginia

Reference is made to my letter of June 21, 1985 and our subsequent meeting regarding the subject application by the Commonwealth of Virginia for approval of a coastal resource management plan. Since our meeting, my staff has had several discussions with officials from Virginia. I understand that your staff has also had discussions with Virginia officials. In each instance these State officials have confirmed that they continue to desire to include all of the State's fisheries laws and regulations in their coastal resources management plan.

I am further advised, through your staff, that the National Marine Fisheries Service (NMFS) remains the sole objector, and that you feel that you cannot approve the Virginia application in light of our objection. While NMFS continues to believe that its rationale for not including such detailed laws and regulations is valid, we recognize the State's position and its right to present those laws and regulations as a part of its coastal resource management plan. On balance we do not believe that our objection should deter you from approving the State's plan if all other aspects are judged acceptable.

The NMFS will pledge its best efforts to work with the Commonwealth of Virginia to ensure that fisheries management occurs in a complimentary and cooperative manner and thus minimize the possibility of any difference escalating to any significant degree. I wish the Commonwealth every success in the prudent application of Federal coastal resource funds to help solve some of the complex coastal ecological problems.

Please let me know how we can be of further assistance.

FYI cc: WOLFF/BMAT

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Washington, D.C. 20235

JUN 21 1985

ACTION: BURGESS
CC: JB/PT

recd. by Cratick 6/28/85

TO: N - Paul M. Wolff

FROM: F - William G. Gordon

SUBJECT: Comments on DEIS for Virginia's Coastal Resources Management Program

On behalf of the National Marine Fisheries Service, I take exception to the incorporation of Title 28 of the Laws of Virginia Relating to the Marine Resources of the Commonwealth as part of Virginia's Coastal Resources Management Program (VCRMP).

In addition to providing certain statutory restrictions on the harvest of fish and shellfish from the marine waters of the Commonwealth, this title also establishes a collegial body, the Marine Resources Commission, and vests that body with "authority to make such regulations as it deems necessary to promote the general welfare of the seafood industry and to conserve and promote the seafood and marine resources of the State, including regulations as to the taking of seafood...." Moreover, Section 28.1-57 purports to reserve the privilege of commercial fishing within the state to state residents.

While we believe the GOALS AND POLICIES of the VCRMP as listed on pages I-1 through I-3 represent progressive and laudable objectives, the inclusion of detailed laws and regulations concerning the harvest of marine resources is ill-advised. This is particularly true when coupled with the grant of general rulemaking authority to the Marine Resources Commission.

Fisheries management is a dynamic process in which knowledge of resource and socio-economic conditions can be expected to improve over time. We expect that Virginia laws and regulations will change about as frequently as those our agency promulgates for the exclusive economic zone adjacent to Virginia's coastal zone. It has been our experience that state-federal relations have not been improved in those instances where the Secretary of Commerce has approved the incorporation of state fishery laws at the level of detail contained in the VCRMP. The level of detail increases the administrative burden on both state and federal agencies without any corresponding benefit in terms of

On the same point, we feel that the meaning of "alteration or expansion of physical development projects" could possibly be more closely defined in the program to take into account situations where the project has, for all practical purposes, no affect by virtue of the character of work to be done. One approach to this could be the establishment of thresholds for alterations and expansion activities. The benefit of both recommendations we feel, could be a reduction in the burden to both the community as well as the State agency, while still being in keeping with the intent of the consistency review.

Hopefully, if such greater specificity cannot be achieved at this stage of program development, it could be a matter for negotiation at some future date.

Thank you for the opportunity to comment.

Sincerely,

Lawrence Levine

Lawrence Levine
Regional Environmental Officer

Federal Emergency Management Agency
Region III 105 South 7th Street Philadelphia, Pennsylvania 19106

September 18, 1985

Mr. Joseph A. Uravitch
Regional Manager
Great Lakes and South Atlantic Regions
Office of Ocean & Coastal Resource Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Mr. Uravitch:

We have received the draft environmental impact statement prepared by the Office of Ocean and Coastal Resource Management, U.S. Department of Commerce.

Based upon our review, the proposed Commonwealth of Virginia Coastal Resource Management Program appears be be a positive approach to sound Coastal Flood Plain Management practices and corresponds with the Federal Emergency Management Agency, National Flood Insurance Program (NFIP) regulations under Section 60.3 of the Federal Register.

This office offers any technical assistance where the interpretation of the NFIP Coastal Floodplain regulations are applicable. Thank you for the opportunity to review the draft environmental impact statement for the Virginia Coastal Resource Management Program.

Sincerely,

Walter P. Pierson
Chief
Natural and Technological
Hazards Division

Advisory Council On Historic Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, NW #809
Washington, DC 20004

OCT 29 1985

Mr. Joseph A. Uravitch
Regional Manager
Great Lakes and South Atlantic Regions
Office of Ocean and Coastal
Resource Management
3300 Whitehaven Street, N.W.
Washington, DC 20235

REF: Virginia Coastal Resources Management Program

Dear Mr. Uravitch:

Thank you for providing us with a copy of the Draft Environmental Impact Statement for NOAA's proposed approval of the referenced program. As has already been discussed between Ms. June Craddock of your office and Ronald Anzalone of the Council, the various references and commitments concerning protection of historic properties contained in the document respond to the concerns raised in our letter of January 16, 1985. With regard to the Office of Ocean and Coastal Resource Management's approval of the Virginia program, we have no objection to your determination of no adverse effect.

With regard to case-specific dispersal of Federal funds for construction projects or non-construction programs, we appreciate NOAA's commitment to ensure appropriate compliance with Section 106 of the National Historic Preservation Act (DEIS, p. 183). Please consult with the Virginia State Historic Preservation Officer on a case-by-case basis, as necessary, and follow any remaining steps under the Council's regulations (36 CFR Part 800) if any historic or archeological properties may be affected.

Thank you for your continued cooperation. If you have any questions or wish to discuss these issues further, please contact Ronald D. Anzalone at 202-786-0505 (an FTS number).

Sincerely,

for Don L. Klima
Chief, Eastern Division
of Project Review

DEPARTMENT OF THE AIR FORCE
REGIONAL CIVIL ENGINEER EASTERN REGION (HQ AFESC)
528 TITLE BUILDING 30 PRYOR STREET S.W.
ATLANTA GEORGIA 30335-6801

ROV2

4 October 1985

Reivew of the Virginia Coastal Resources Management Program (VCRMP) and Draft Environmental Impact Statement (DEIS)

U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Ecology and Conservation Division
Attn: Mr. Edward Wilczynski
Acting Chief
3300 Whitehaven Street, NW
Washington, DC 20235

1. The Air Force Regional Civil Engineer-Eastern Region (AFRCE-ER) is the designated Air Force point of contact for the VCRMP. We have completed our review of the VCRMP and DEIS and offer the following comments:

a. Exclusion of Federal Lands. Pages II-4 and II-7, Table II-2, and Appendix II-1 adequately provide for the exclusion of federal lands from Virginia's coastal zone. However, we note the following regarding specific Air Force properties:

(1) Langley AFB acreage, in Appendix Table II-1, should be owned: 2883.0; lesser int.: 269.0.

(2) Langley Family Housing Annex acreage in Appendix Table II-1 should be owned: 284.0; lesser int.: 4.0. Locality should be Poquoson, not York.

(3) Byrd Field acreage in Appendix Table II-1 should be owned: 1, lesser int.: 143.0.

(4) These properties no longer belong to the Air Force and should be deleted from Appendix Table II-1:

Morrison Radio Beacon Annex
Cape Charles Communication Facility
Cape Charles Facility Annex
Langley Missile Site

(5) The total acreage for Air Force lands in Table II-2, on page II-7 should be changed to 3583.0.

b. National Defense. The VCRMP and DEIS adequately cover national defense as an important consideration in the national interest on pages IV-4 through IV-6 and in Appendix II-1.

c. Federal Consistency.

(1) Pages X-1 through X-6 address federal consistency requirements adequately. However, we note that the VCRMP and DEIS does not specifically mention the intergovernmental coordination process formerly under OMB Circular A-95, and now carried under Executive Order (E.O.) 12372. Under E.O. 12372, Section 2(a), we are required to use the state comment process through the state single point of contact (SPOC) for consistency notification or other coordination actions. The VCRMP and DEIS indicates on page X-2 that while the Virginia Council on the Environment (COE) prefers notification of federal agency actions through the NEPA process that "... Other federal processes will serve for notification ..." We take this to mean that the state coordination process as required under E.O. 12372 will be acceptable for filing consistency determinations. Thus, Air Force activities in the Virginia coastal zone will use the E.O. 12372 process for filing determinations. We suggest that a statement be inserted on page X-2, last paragraph, to clarify the state's intention to use the E.O. 12372 process for coordination.

(2) Page X-2, paragraph three states that where "... a consistency determination is not required ... the federal agency shall provide the COE with a notification ... briefly setting forth the reasons for its negative determination." The Air Force currently participates in sixteen state coastal management programs in the eastern United States. We have not been required to furnish a negative declaration on a possible consistency determination by any of these states. We discussed this matter with Mr. Joseph Uravitch of your staff on 3 October 1985, and he confirmed that negative declarations would not be required on actions where the Air Force determines that there will be no impact on the coastal zone.

2. Thank you for the opportunity to review the VCRMP and DEIS. Our point of contact is Mr. Winfred G. Dodson at commercial telephone (404) 221-6821/6776.

Sincerely,

THOMAS D. SIMS
Chief
Environmental Planning Division

cc: HQ USAF/LEEV
ANGSC/DEV
HQ TAC/DEEV
1 CSG/DEEV
NOAA/Mr. Uravitch

WM/R: SE.!

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20310-2600

REPLY TO ATTENTION OF

7 OCT 1985

DAEN-ZCE

Joseph A. Uravitch, Regional Manager
Great Lakes and South Atlantic Regions
Office of Ocean and Coastal
Resource Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Mr. Uravitch:

The Department of the Army has received and reviewed the Draft Environmental Impact Statement (DEIS) and Management Program for Coastal Resources in the Commonwealth of Virginia. The following comments for your consideration have been provided by the U.S. Army Training and Doctrine Command which operates a number of military installations in Virginia:

1. Excluding from consideration federal undertakings which do not impact beyond the area of federal control is acknowledged. However, under the Commonwealth's proposed Coastal Resources Management Program, the Army as a federal agency will be "responsible for determining whether its activities directly affect the coastal zone and whether those activities are consistent to the maximum extent practicable with Virginia's program". The proposed process of submitting a "consistency determination" to the state will lengthen an already costly and time consumming process established under the Coastal Zone Management Act of 1972 and could possibly delay national defense activities at Army installations in Virginia without providing additional protection to coastal resources.

2. Currently, the Council on the Environment (COE) receives for review and comment copies of draft and final Environmental Impact Statements prepared by the Army for major actions proposed in Virginia. Under the proposed

Coastal Resources Management Program, Chapter X Federal Consistency, "federal agencies must provide the COE with all applicable NEPA documents...for the COE's review of the agency's consistency determination". Will COE now require submission of lesser environmental documentation such as Records of Environmental Consideration and Environmental Assessments for proposed actions with no significant environmental impact or actions that are categorically excluded?

3. Under the proposed Coastal Primary Sand Dune Guidelines (Appendix III-5), activities in primary dunes will now require prior authorization, through the existing joint permit application process presently used for obtaining authorization of activities in tidal zone, wetlands or navigable waters. Will this new requirement be retroactive and applicable to previously proposed activities in primary dunes that have already undergone review in accordance with the National Environmental Policy Act (NEPA)? Specifically, there are three (3) multi-million dollar projects currently programmed at Fort Story, VA. These projects involve some construction in coastal primary dunes and, accordingly, have been addressed in an Environmental Impact Statement for the on-going mission at Fort Story which was recently filed by the Army under the requirements of NEPA. If in accordance with the proposed Coastal Management Program a permit must now be obtained from the Virginia Marine Resources Commission, the timely programming of funds for these projects may be jeopardized and, subsequently, the Fort Story mission may be impaired.

4. Under the proposed management program the local community would acquire permitting authority over activities affecting coastal resources. A single contact should be established at the state level for federal activities to deal directly with, rather than having to coordinate with numerous local committees. A single centralized permitting authority established at the state level would enable federal activities to standardize their approach to coordinating with the Commonwealth and would ensure uniform evaluations devoid of influence from the local political climate.

We appreciate the opportunity to review the proposed Coastal Resources Management Program and DEIS. If additional information or clarification of comments is required, please feel free to contact our representative on this matter Ms. Susan Scherff of the U.S. Army Training and Doctrine Command, ATTN: ATEN-FN, Fort Monroe, VA 23651-5000. Ms. Scherff may be reached at telephone number (804) 727-3300/3335.

Thomas H. Magness III
Colonel, Corps of Engineers
Chief, Army Environmental Office

CF:
U.S. Department of Commerce
National Oceanic and Atmospheric
Administration
ATTN: Mr. Edward Wilczynski
Room 5813
Washington, D.C. 20230

U.S. Department of Transportation
United States Coast Guard

Commander
Fifth Coast Guard District

Federal Building
431 Crawford Street
Portsmouth, VA 23705
Staff Symbol (dpl)
Phone (804) 398-6270

16452
Ser 5138
2 October 1985

Mr. William St. J. Chubb
Senior Staff Officer
U.S. Department of Transportation
Office of the Secretary of Transportation
Regional Representative of the Secretary
Region III
434 Walnut Street
Philadelphia, Pennsylvania 19106

Dear Mr. Chubb:

This letter is in reference to your memorandum of 5 September 1985, concerning Virginia's Coastal Resources Management Plan. In Volume I, paragraph 2 on page V-1 and paragraph 1 on page 173 state that the Virginia Council on the Environment will determine whether a federal activity as proposed will be consistent or inconsistent with the management program. In accordance with 15 CFR 930.34(a), however, federal agencies are responsible for determining whether an activity will affect the coastal zone and whether those activities are consistent with the state's approved program.

Sincerely,

JARVIN H. BARNES, Jr.
Environmental Protection Specialist
By direction of the Commander,
Fifth Coast Guard District

OCT 7 '85

U.S. Department of Transportation
United States Coast Guard

Commandant
United States Coast Guard

Washington, DC 20593
Staff Symbol G-WP-3
Phone (202) 426-2262

RECEIVED
MAR 25 [redacted]

16478

MAR 24 1986

Mr. Joseph A. Uravitch
Manager, Great Lakes
& South Atlantic Regions
Office of Ocean
& Coastal Resource Management
3300 Whitehaven Street N.W.
Washington, D.C. 20235

Dear Mr. Uravitch:

The language which Michigan wishes to incorporate in their Coastal Zone Management Program as indicated in your letter of February 13th is still evasive as to when Federal property is actually abandoned. After consultation with our legal staff, we believe the inclusion of the following phrase (underscored) would clarify this point. After...such property, unless the Federal Government has affirmatively disclaimed title to the property. The above language would be applicable to the Virginia program also.

This amended language would still preserve the intent of Michigan and Virginia to manage underwater historic property while at the same time clarifying the status of Federal property located on state bottom lands.

Sincerely,

J. C. SCHMIDTMAN
Captain, U.S. Coast Guard
Chief, Planning and Evaluation Staff
By direction of the Commandant

United States Department of the Interior

OFFICE OF THE SECRETARY
MID-ATLANTIC REGION
Custom House, Room 502
Second and Chestnut Streets
Philadelphia, Pennsylvania 19106

ER 85/1295 October 11, 1985

Joseph A. Uravitch, Regional Manager
Great Lakes and South Atlantic Regions
Office of Ocean and Coastal Resource
Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Mr. Uravitch:

The Department of the Interior has reviewed the draft environmental impact statement on the proposed Commonwealth of Virginia Coastal Resources Management Program. We offer the following comments for your consideration.

Outer Continental Shelf Activities

We note that the Virginia Coastal Management Program includes a goal to encourage exploration and production of outer continental shelf (OCS) energy reserves, and expresses support for OCS oil and gas development as long as it is done in a manner that assures protection of the State's environmental and economic interests. The Program is in consonance with the objectives of the Minerals Management Service (MMS) mission and the activities of that Service's Atlantic OCS Region.

However, we recommend revision of Chapter X, part C, OCS Plans (pages X-4 and X-5) as described below.

The Program identifies federal consistency issues including a process for reviewing OCS plans. Presumably, the term "OCS Plans" excludes OCS lease sales in accordance with last year's Supreme Court decision (Secretary of the Interior et al. v. California et al.) and recent National Oceanic and Atmospheric Administration (NOAA) regulations (15CFR923 and 930). The language in the Program document does not explicitly state this distinction, however. For the purposes of clarification and to avoid confusion, such a distinction should be included in the document.

U.S. Department of Transportation
United States Coast Guard

Commandant
United States Coast Guard

Washington, DC 20593
Staff Symbol: C-UP
Phone: (202) 426-2262

16478
OCT - 4 1985

Mr. Joseph A. Uravitch
Regional Manager,
Great Lakes & South Atlantic Regions
Office of Ocean & Coastal Resource
Management
3300 Whitehaven Street, N. W.
Washington, D. C. 20235

Dear Mr. Uravitch:

We have reviewed Virginia's Coastal Resource Management Program and Draft Environmental Impact Statement and offer the following comments.

Since the Underwater Historic Property Section of the Virginia Code is to be a part of the Program, it is recommended that the following language be included.

"Nothing in (Section 10-262 of the Virginia Code) may be construed to divest the United States of any property interest in submerged property owned by the United States, nor may it restrict the right of the United States to engage in salvage of any such property"

Sincerely,

J. C. SCHMIDTMAN
Captain, U.S. Coast Guard
Chief, Planning and Evaluation Staff
By direction of the Commandant

The Federal consistency process contained in the Program is in accordance with the procedures presently employed by the MMS Atlantic OCS Region as per existing regulations. It should be noted, however, that Volume I, page X-5, first paragraph, line 13, states that, in the event of a State objection to the consistency certification of an exploration plan, the Federal Agency (MMS) "may not approve the plan or issue any license or permit . . . ." In conformance with regulations found at 30 CFR 250.34-1 (e)(2), the Director of MMS must take action (i.e., approval, modification, or disapproval) on a proposed exploration plan which encloses consistency certifications, within 30 days of submission. The State review period for exploration plans and related applications is 90 days. As a result, it is possible for a State to object to an Atlantic lessee's exploration plan consistency certification after the plan itself has received approval. However, in accordance with regulations found at 30 CFR 250.34-1(1), no license or permit (e.g., permit to drill) shall be issued until such time that States with approved coastal zone management programs have "concurred" or have been conclusively presumed to concur, with the lessee's (i.e., applicant's) coastal zone consistency certification accompanying an exploration plan.

According to regulations found at 250.34-1(g), in the case of an objection, the "approved" plan shall be returned to the lessee for modification to accommodate the State's objection. Alternatively, the objection can be appealed to the Secretary of Commerce pursuant to the procedures described in Section 307 of the Coastal Zone Management Act and the implementing regulations. In no case will a permit or license be granted until the Secretary of Commerce has taken action on the consistency objection.

Federal Assistance to State and Local Governments

For information purposes, we suggest that the list of Federal activities involving Federal assistance to State and local governments (Chapter X) and subject to consistency review under the Virginia Coastal Program, be referenced specifically as to the title and source. Two such programs administered by the National Park Service are the Land and Water Conservation Fund and the National Historic Preservation Fund.

The Land and Water Conservation Fund Program provides fifty percent matching grants to States and through the States to local governments, for acquisition and/or development of outdoor recreation areas. For specific information on the Land and Water Conservation Fund Program in the State of Virginia, contact can be made with the State Liaison Officer, Arthur H. Buehler, Jr., Director, Outdoor Recreation Services Section, Division of Parks and Recreation, 1201 Washington Building, Capital Square, Richmond, Virginia 23219 (804/786-2556).

The Historic Preservation Fund Program provides matching funds to States for the acquisition and development of properties listed in the National Register of Historic Places. The State Historic Preservation Officer (SHPO) allocates the funds for projects up to fifty percent of the eligible and approved cost. Funds are usually made available on a reimbursement basis.

For further information on the Historic Preservation Fund Program, we recommend that contact be made with the SHPO, Bryan Mitchell, Executive Director, Virginia Historic Landmarks Commission, 221 Governor Street, Richmond, Virginia 23219 (804/786-3143).

Shorefront Access

Two additional programs for consideration under Chapter VI, Shorefront Access Planning and Protection, are the National Trails System and the National Wild and Scenic Rivers System. The National Trails System Act, Public Law 90-543, as amended, provides the means for instituting a national system of recreation, scenic, and historic trails to promote the preservation of, public access to, travel within, open space, outdoor areas, and historic resources of the nation. Of 12 National Recreation Trails, designated by the Secretary of the Interior into the National System in Virginia, Seashore State Park Trail System is the only one located in the Coastal Zone.

The Wild and Scenic Rivers Act, Public Law 90-542, as amended, provides for the protection of certain of our country's remaining free-flowing rivers, preserving them for the use and enjoyment of present and future generations. It is the purpose of the act to preserve and protect the outstandingly remarkable values associated with those rivers and to make them accessible to the public. For further information, contact may be made with the Federal Services Division, National Park Service, Mid-Atlantic Region, 143 South Third Street, Philadelphia, Pennsylvania 19106 (215/597-2785).

Fish and Wildlife Resources

Although we have not identified any significant fish and wildlife issues at this time, it is our intention to provide you with additional comments by early November.

Summary Comments

With the exception of revisions to Chapter X to address the OCS issues we have discussed above, we note no significant conflicts of the proposed Virginia Coastal Resources Management Program with Department of the Interior programs, and find that the draft environmental statement adequately addresses our concerns.

Thank you for the opportunity to provide comments.

Sincerely,

Anita J. Miller
Regional Environmental Officer

cc: Mr. Edward Wilczynski
Ecology & Conservation Division
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

cc: Crudup

United States Department of the Interior

OFFICE OF THE SECRETARY
MID-ATLANTIC REGION
Custom House, Room 502
Second and Chestnut Streets
Philadelphia, Pennsylvania 19106

November 14, 1985

ICPD 29

ER 85/1295

Joseph A. Uravitch, Regional Manager
Great Lakes and South Atlantic Regions
Office of Ocean and Coastal Resource Management
3300 Whitehaven Street, NW
Washington, D.C. 20235

Dear Mr. Uravitch:

This letter provides the Department of the Interior's supplemental comments concerning the draft environmental impact statement on the proposed Commonwealth of Virginia Coastal Resources Management Program (CRMP).

FISH AND WILDLIFE RESOURCES

As background to our comments, we note that the U.S. Fish and Wildlife Service (FWS) has certain responsibilities and operations, as mandated by Congress, that will remain unchanged by implementation of the Commonwealth's program (Section 307 (e)(1), CZM Act, 1972). Specific legislation mandates FWS involvement in the coastal zone, and includes protection and enhancement responsibility for migratory birds, anadromous fish, aquatic species including mammals and reptiles, and endangered species. Additionally, under the provisions of the Fish and Wildlife Coordination Act, as amended, FWS participates in the Section 10 (River and Harbor Act, 1899) and Section 404 (Federal Water Pollution Control Act Amendments, 1972) regulatory program executed by the U.S. Army Corps of Engineers. The FWS mission in the coastal zone is to protect (preserve, restore and improve) fish, wildlife and naturally functioning aquatic and wetland ecosystems, and to discourage activities and developments that would individually or cumulatively unnecessarily destroy, damage or degrade fish and wildlife resources. It is FWS practice, in cases where proposed works are water-dependent, to recommend that unavoidable damages or losses of such resources be reasonably mitigated or compensated.

General Comments

In general, we support the goals and objectives of the Virginia CRMP. The passage of statutes to protect non-vegetated tidal wetlands and coastal primary sand dunes indicates an understanding of ecological processes occurring along the coast and the need for protection of these resources. Discussions of erosion and sedimentation in the document indicate an awareness of the increasing environmental problems associated with these processes.

However, there appear to be some inherent problems in the Commonwealth's regulatory framework which may impact the effectiveness with which certain programs are carried out. Areas of particular concern to us are coastal primary dune protection, wetlands management and protection of non-tidal wetlands, all of which are (or would be) overseen by the Virginia Marine Resources Commission (VMRC). We note that in one case in the past, involving a proposed activity on coastal primary sand dunes, the state legislature granted an exemption from the coastal Primary Sand Dune Protection Act after permit applications for the activity had been denied by both the local Wetlands Board and the VMRC. In the event that this becomes a frequent occurrence, it would be difficult to maintain an effective coastal resources management program. We are also concerned with some of the permits currently being issued without compensation for the aquatic habitat being lost. The decline of the resources in the Chesapeake Bay is the result of many cumulative actions that are incompletely mitigated. Each loss of fringing wetland and productive shallow water causes a concomitant loss of fish, wildlife and habitat. Only through adequate mitigation can we expect to maintain current populations. Restoration of historic levels will require enhancement efforts. An aggressive CRMP must recognize these historic and ongoing changes, their causes, and ways to rectify the existing problems. Wetlands protection is an important part of a coastal resources management plan. In addition to vegetated and non-vegetated tidal wetlands protection, we would like to see Virginia provide some type of protection for non-tidal wetlands as well. As with tidal wetlands, these areas serve important ecological functions such as flood control, water quality improvement, food chain support and nutrient cycling and additionally serve socio-economic functions involving consumptive and non-consumptive uses. We consider the protection of such wetlands to be a necessity for effective land and water resource management. We would also encourage the CRMP to address the concepts of mitigation and compensation for unavoidable habitat losses.

An issue which we feel needs clarification or further treatment is that of agricultural runoff. According to the DEIS, agricultural runoff is exempt from the standards and guidelines established under the 1973 Virginia Erosion and Sediment Control law. Since agricultural operations have the potential for significant contribution to erosion, sedimentation and water degradation, it would be appropriate to establish some type of control over such operations. Additional efforts such as the institution of Best Management Practices (BMP's) for agricultural activities would aid in reducing adverse environmental impacts. We found no mention of such efforts in the document.

Specific Comments

In Part IV of Volume I (Description of the Affected Environment), the discussion of threatened and endangered species given on page 142 needs some correction and expansion. The brown pelican (Pelecanus occidentalis) was de-listed on February 4, 1985 and is no longer considered a threatened or endangered species. The peregrine falcon (Falco peregrinus) does nest in Virginia. In 1895 there were nine known pairs of prergrines in the state, and all were either on or associated with artificial nesting structures (mostly hacking towers). Two of the three nests fledged seven young. The discussion failed to include sea turtles which nest occasionally along the Virginia coast.

In 1985, three loggerhead turtle (Caretta caretta) nests were discovered near Back Bay National Wildlife Refuge. Loggerheads also nest regularly, in low numbers, on Chincoteague. One endangered plant, the small-whorled pogonia (Isortia medeoloides), is known to occur in coastal Virginia. In addition to the listed species, numerous plant species which are candidates for listing occur in Tidewater Virginia and the coastal plain (see attached list). For additional information on rare plants in the state, contact Mr. Steve Croy, Virginia Natural Heritage Program, Biology Department-Herbarium, VPI/SU, Blacksburg, Virginia 24061; telephone: (703) 961-5746.

On page 165 the scientific name for Atlantic croaker is incorrect. It should be Micropogonias undulatus.

On page 166 the scientific name for summer flounder is misspelled. It should be Paralichthys dentatus.

On page 167 and 168 the names of several waterfowl species are either listed or spelled incorrectly. The following corrections are taken from the 1983 edition of the American Ornithologists' Union Checklist of North American Birds:

mallard	Anas platyrhynchos
American black duck	Anas rubripes
wood duck	Aix sponsa
American wigeon	Anas americana
canvasback	Aythya valisineria
lesser scaup	Aythya affinis
snow goose	Chen caerulescens
tundra swan	Cygnus columbianus.

We appreciate the opportunity to comment on the Virginia document and regret the delay. If you have questions on these comments, please contact Suzanne Nair of the Fish and Wildlife Service, 1825B Virginia Street, Annapolis, Maryland 21401, telephone (301) 269-5448.

Sincerely,

Anita J. Miller
Regional Environmental Officer

Enclosure

cc: Mr. Edward Wilczynski, NOAA

List of Candidate Plant Species

Bacopa stragula

Bacopa simulans

Calamovilfa brevipilis

Cardamine longii

Carex barrattii

Carex chapmani

Cassia fasciculata var. macrosperme

Eriocaulon parkeri

Helenium virginicum

Helonias bullata

Juncus caesariensis

Lilaeopsis carolinensis

Lobelia boykini

Micranthemum micranthemoides

Nestronia umbellula

Physostegia leptophylla

Rhexia aristosa

Sida inflexa

Trilliumpusillum virginianum

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

OCT 22 1985

Joseph Uravitch
Office of Oceans and Coastal
Zone Management
National Oceanic and Atmospheric
Administration
3300 Whitehaven Street, NW
Washington, D.C. 20235

RE: Commonwealth of Virginia Coastal Resource Management Program and Draft Environmental Impact Statement; D-NOA-D90011-VA.

Dear Mr. Uravitch:

The Environmental Protection Agency Region III, in accordance with its responsibilities under the National Environmental Policy Act and Section 309 of the Clean Air Act has completed its review of the Commonwealth of Virginia Coastal Resource Management Program (CRMP) and Draft Environmental Impact Statement (DEIS).

The proposed action consists of the official approval and implementation of the CRMP which will allow the Commonwealth of Virginia to receive funds authorized by the Coastal Zone Management Act (CZMA) (P.L. 94-370). Approval of the CRMP is broadly based on the compliance of the proposed program to the CZMA. Stated alternatives appearing in the DEIS are the denial or the delay of approval. Options for the Commonwealth include withdrawing the program and application from Federal review or modifying the proposed program to reflect comments and concerns detailed during this review period.

The DEIS is lacking in concise, descriptive information regarding Virginia's bountiful resources and does not detail the particular problems and pressures currently experienced it its coastal zone. Therefore, we have rated this document "EC-2" (Environmental Concerns - Insufficient Information) per EPA's rating system (enclosed).

Our ensuing comments address the broad issue of compliance of the CRMP with the requirements of the CZMA. Our major concerns, however, lie with the programmatic factors in the proposed plan and the amount of predictability that the program affords to the preservation, protection and enhancement of coastal zone resources in Virginia. We have also constructed, for the benefit of the DEIS author(s), some additional alternatives to explore. As we are responsible for monitoring and assessing all environmentally related activities in EPA Region III (see map), we necessarily are exposed to a great number of coastal zone issues. For this reason, our comments use the strategies of other approved state management plans in the region for comparison purposes.

In regard to the CZMA's outline for state programs, it is unclear whether Virginia wishes to adopt the responsibility of complying with the entire CZMA program factors or is limiting its plan solely to resource management. This distinction appears to be important in clearly defining the scope of the CRMP as it relates to the CZMA and we ask for a more precise regulatory reference through which the Commonwealth intends to receive its funding.

Core Regulatory Program

The DEIS states that the proposed Virginia CRMP relies upon eight existing state programs and over twenty different state agencies that implement those programs. The Virginia Council on the Environment is to monitor all state actions which could affect coastal resources.

On the surface, the Virginia CRMP "networking" strategy is not unlike other approved state management programs in which general state environmental planning goals, e.g., water quality enhancement, are recognized in terms of their application to the coastal zone, e.g., estuarine embayments. The Virginia CRMP seeks to provide satisfactory levels of control to coastal management while proposing no new state programs to deal specifically with coastal issues. We believe that it will be difficult for Virginia to solve its coastal resource problems when over twenty different state agencies are relied upon to efficiently run the program. The effective plan relies upon oversight capabilities of the Virginia Council on the Environment to assure sound implementation. We believe that the Virginia COE is a good and logical choice for this role. Its success will be governed by resource and funding levels and the authority it will be provided.

An improved environmental gain could be fashioned from a better designed coastal program which detailed specific coastal policy and use guidelines which would better manage those coastal resources described in the DEIS, i.e., fisheries, subaqueous lands, wetlands, point and non-point source pollution, shoreline sanitation, dunes and air quality. An enforceable state coastal policy would mutually benefit both the enhancement of coastal resources and the environmental quality of the coastal zone.

Direct state review of actions subject to compliance with an enforceable coastal resource management program could also assist in the development of pollution abatement strategies which are needed along Virginia's developed waterfront areas and coastal industrial zones. For example, living marine resources and ecological systems in these areas could be guaranteed an improved environment through a CRMP-based toxics control strategy using CZMA funds to set up an interdisciplinary task force. This task force could intensively study Virginia's most seriously degraded coastal areas and make recommendations for their improvement and future use. Although this method utilizes the "networking" concept already apparent in the CRMP, it effects a greater amount of focus on proper coastal resource management than the generic design contained in the DEIS.

Organizational Structure

The Virginia Council on the Environment is the designated lead agency for administering the approved CRMP. The Council's direct involvement with CRMP activities is the biennial CRMP review and evaluation and solicitations from other state agencies for conflict resolution. Outside of these, the Council is to "provide day-to-day monitoring of (CRMP) funded activities." This exercise will be performed by the "selective" review of "periodic" reports, agency meeting agendas, newsletters, the media, and comments from interested parties. It is important that these methods be bolstered to permit the the Council to adequately monitor the myriad coastal/state activities that undoubtedly occur, and to track those that are slated for funding. Otherwise, the Council may be less than well informed, and may find itself ill-prepared to act as lead agency. The Council on the Environment and the proposed Virginia CRMP would benefit from a more integrated and solid approach which should include an efficient tracking system and a firmly anchored management program that outlines the Council's clear input into the decisions of other state entities that affect the coastal zone.

Geographic Areas Of Particular Concern (APC)

In general, the APC described in the proposed program provide a good basis on which to concentrate special coastal management techniques and we support their use. We suggest that every APC be afforded the same detailed descriptions in the DEIS as was the "Spawning, Nursery and Feeding Grounds" natural resource APC. The quality geographic accounts given the latter helped provide the reader a useful illustration to envision Virginia's special coastal resources like the Chesapeake Bay area.

We recommend a more centralized management system be incorporated to significantly improve the recognition of priorities of uses in the APC. For instance, advanced identification of potential conflicts of use could be included in the formation and discussion of special areas. By providing a framework for action, anticipated conflicts could be resolved before they arose and/or became unwieldy.

The DEIS should more fully describe the Waterfront Development APC due to tremendous importance these special areas exact in Virginia. The proper siting of waterfront dependent activities requires much greater consideration than was given in the DEIS to ensure environmental compatibility.

Conclusions

In light of other approved state management programs that we are aware of and with regard to the intent of the CZMA, we suggest that the Virginia CRMP establish a centralized coastal program which operates on a more focused level program to carry out coastal zone initiatives are most effective. Nevertheless, Virginia has adopted a networking approach that relies upon the Virginia Council on the Environment to provide broad based leadership. Given this approach, EPA strongly suggests that the Council be given the resources and authority necessary to actively pursue coastal zone initiatives. Otherwise, federal monies may not effect in appreciable change since the program, made up entirely of existing programs, activities and offices that are already established, would be unfocused and potentially ineffective.

In a broader sense, we believe that the Office of Ocean and Coastal Resource Management should conduct a study of the approved state management programs that are currently in effect. This study would review the management aspects and rate the effectiveness of the programs on a 1) national level and on a 2) regional/ Delmarva level. Using both reviews, OCRM should prepare a comprehensive analysis of how the proposed Virginia CRMP compares to the overall picture and how it specifically may enhance coastal resource management in the Delmarva/Chesapeake area. This analysis would not only be of the broad program comparisons but discuss in detail all of the singular methods by which coastal resource management is successfully conducted. The results of this comparison would be extremely useful to the Commonwealth of Virginia to inform them how the proposed CRMP fits in with respect to the national picture and whether or not it is comparable to its coastal neighbors. The strength of the comparison model could prove useful during evaluations and during program implementation changes.

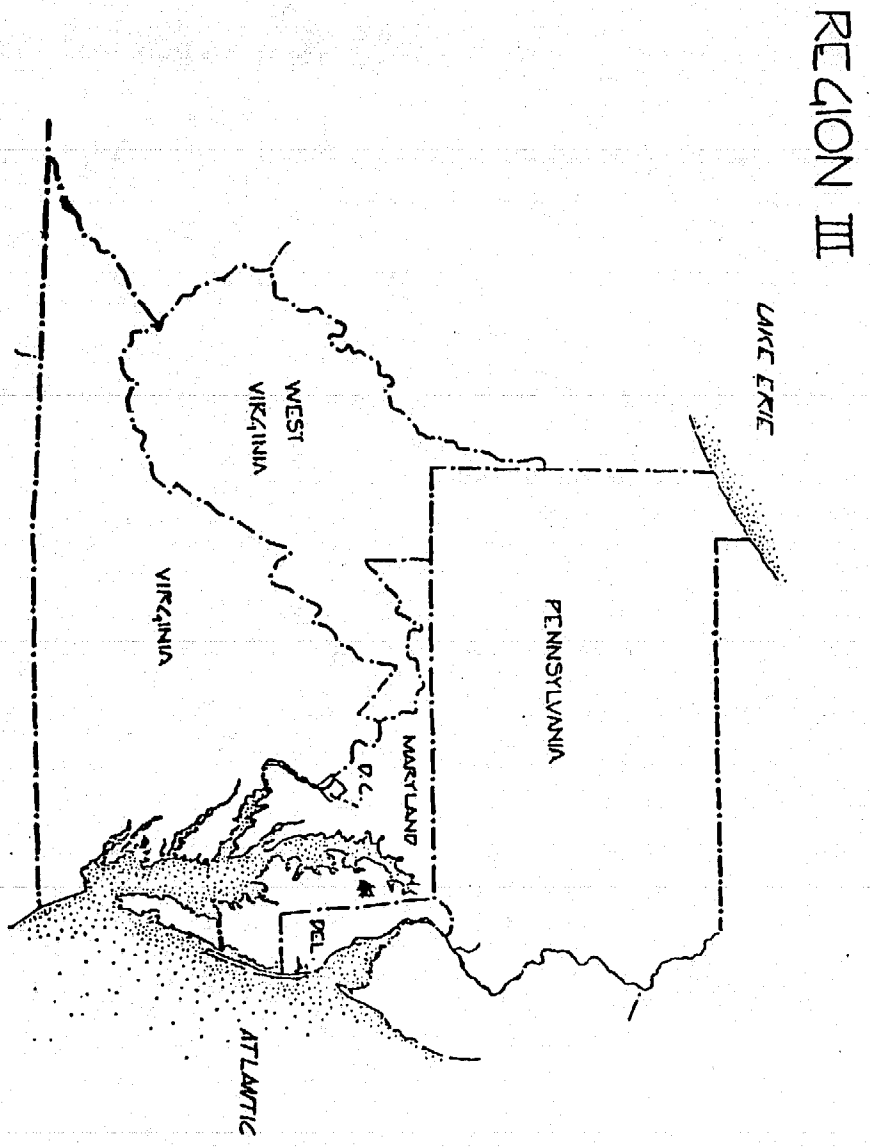
Thank you very much for this opportunity to provide comments on the proposed Coastal Resource Management Program for the Commonwealth of Virginia. If there are any questions regarding these comments please contact Patricia Charnas at 215/597-2940.

Sincerely,

Richard V. Pepino

Richard V. Pepino, Chief
NEPA Compliance Section

Enclosures



SUMMARY OF RATING DEFINITIONS
AND FOLLOW-UP ACTION

Environmental Impact of the Action

LO—Lack of Objections
EPA has no objections to the proposed action as described in the draft impact statement or suggests only minor changes in the proposed action.

EC—Environmental Concerns
EPA has identified environmental impacts associated with the proposed action that should be corrected in order to fully protect the environment.

EO—Environmental Objections
EPA has identified significant environmental impacts associated with the proposed action that should be avoided in order to adequately protect the environment. EPA intends to work with the proposing agency to reduce these impacts.

EU—Environmentally Unsatisfactory
EPA believes that the proposed action is environmentally unsatisfactory because of its potentially harmful effect on the environment. If the potential for unsatisfactory impacts is not corrected at the final EIS stage, the project will be recommended for referral to the CEQ. EPA intends to work with the proposing agency to reduce these impacts.

Adequacy of the Impact Statement

Category 1—Adequate
The draft impact statement adequately sets forth the environmental impact of the preferred alternative or action and adequately sets forth alternatives that are reasonably available to the project or action.

Category 2—Insufficient Information
The draft EIS does not contain sufficient information to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS which could reduce such environmental impacts of the action. The inadequate information, data, analyses, or discussion should be included in the final EIS.

Category 3—Inadequate
The draft EIS does not adequately assess the potentially significant environmental impacts of the action, or the reviewer has identified new, reasonably available, alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS which should be analyzed in order to reduce the potentially significant environmental impacts. The inadequate information,

Figure 4-1

data, analyses, or discussions are of such a magnitude that they require full public review at a draft stage. This rating constitutes a finding that the draft EIS does not meet the purposes of NEPA and/or the Section 309 review, and thus must be formally revised and made available for public comment in a supplemental or revised draft EIS.

Figure 4-1 (continued)

U.S. Department of Housing and Urban Development
Philadelphia Regional Office, Region III
Liberty Square Building
105 South Seventh Street
Philadelphia, Pennsylvania 19106-3392

OCT 0 8 1985

Mr. Joseph A. Uravitch
Regional Manager
Great Lakes and South
Atlantic Regions
Office of Ocean and Coastal
Resources Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Mr. Uravitch:

This is in response to your letter of August 14, 1985, requesting our review and consideration of the draft environmental impact statement for the Virginia Coastal Resources Management Program. We have reviewed the document and our comments are concerned with the consistency provisions applicable to federal assistance to state and local government which is discussed on page X-5.

As set forth in Virginia's program, the State's intergovernmental review agency will be the vehicle for consistency determinations. We would note in this connection that grantees receiving HUD Community Development Block Grant (CDBG) funds are not required to comply with E.O. 12372 requirements unless they plan to use their CDBG funds for the planning or construction of water or sewer facilities. HUD does, however, require compliance, as applicable, with CZM consistency requirements as part of its environmental review process (24 CFR Part 58). This will obviously require direct consultation with the Council on the Environment in those instances where the intergovernmental review process is not required.

One aspect of the consistency review process which is of concern to us is the project coverage, and what exactly is meant by a physical development project. Many projects and activities eligible under the CDBG Program, for example, should have no affect on the coastal area. For NEPA purpose, many such projects have been designated as categorically excluded. A similar exclusion of activities may prove applicable and workable in the case of coastal areas with respect to consistency determinations.

PART X - ERRATA SHEET FOR THE APPENDICES PRINTED WITH THE DEIS/VCRMP

ADDENDUM

Part A: Errata sheets for the DEIS Appendices

Part B: Additional sections of the Code of Virginia that relate to The Virginia Coastal Resources Management Program

*Codes of Virginia, 1985 and Earlier, pp. 1-39.

Codes of Virginia, 1986 Session, pp. 40-67.

*Part B.1 See pp. 67-70 for Additional Virginia Code Sections, 1985 and earlier.

Errata Sheets for the DEIS Appendices

Appendix I-1: List of Activities Which Contribute to the Management of Virginia's Coastal Resources

The Land Evaluation and Site Assessment System (LESA) being implemented by the Virginia Department of Agriculture and Consumer Services is added to the list.

Appendix II-1: Federal Holdings in Virginia's CRM Management Area by Planning Districts.

Changes in land holdings for the U.S. Air Force and the U.S. Navy are as follows:

U.S. Air Force

1. Langley AFB acreage should be owned: 2883.0; lesser interest: 269.0

2. Langley Family Housing Annex acreage should be owned: 284.0; lesser interest: 4.0 (Poquoson)

3. Byrd Field acreage should be owned: 0; lesser interest: 143.0

4. Properties no longer owned or leased by U.S. Air Force:

   Morrison Radio Beacon Center
   Cape Charles Communication Facility
   Cape Charles Facility Annex
   Langley Missile Site

U.S. Navy

1. Add Lafayette Branch Annex, 14.91 acres (owned) Norfolk, Navy.

2. Northwest Security Group Activity: Change acres to 4032.76.

3. Change Gallop Farm Housing Site to Carper Housing Site, 97.62 acres.

4. Naval Ship Engineering Center (0.05 acre) and Human Resource Management Center (0.05 acre) are leased, not owned.

5. NAVSUPCEN Craney Island Fuel Section: Change acres to 895.14.

6. Norfolk Naval Shipyard: Change acres to 764.28.

7. Naval Ammunition Depot, St. Juliens: Change acres to 499.47.

8. Add St. Helena Annex, 31.53 acres (owned), Norfolk, Navy.

9. Delete Naval Electronics Systems Engineering Center; it is included in Naval Shipyard Norfolk.

10. Add Gosport Housing, 56 acres (owned) Portsmouth, Navy.

11. Add Stanley Court Housing, 15.63 acres (owned) Portsmouth, Navy.

12. Amphibious Base Landing Beach Area, Camp Pendleton: Change acres to 358.32.

13. Delete Explosive Ordance Disposal Group; it is included in Ft. Story.

14. Naval Air Station, Oceana: Change acres to 5331.42.

15. Naval Auxiliary Landing Field: Add Fentress and change acres to 2556.09.

16. Add Wadsworth Housing, 74.67 acres (owned) Virginia Beach, Navy.

17. Camp Peary: Change acres to 9273.99.

18. Naval Weapons Station: Add Yorktown and change acres to 10624.28.

19. Delete Copeland Park; it is no longer leased.

20. Combine Tangier North Site, Tangier South Site, and Onancock Municipal Dock to read Tangier Island Site, 0.40 acres leased).

Appendix III-1: Legal Authority to Manage Virginia's Proposed Coastal Resources Program

This appendix contains a letter from the Virginia Attorney General's office on the authorities of the Virginia program and a draft Executive Order. They have been replaced by an updated authorities letter and a revised, signed Executive Order which are now located in the text of the FEIS document.

DELEGATION OF POWERS

§ 2.1-39.1. Delegation of powers. — The Governor is authorized to designate and empower any secretary or other officer in the executive branch who is required to be confirmed by the General Assembly or either house thereof, to perform without approval, ratification, or other action by the Governor any function which is vested in the Governor by law, or which such officer is required or authorized by law to perform only with or subject to the approval, ratification of the Governor; provided, however, that nothing contained herein shall relieve the Governor of his responsibility in office for the acts of any such secretary or officer designated by him to perform such functions. Any designation or authorization under this section shall be in the form of a written executive order, shall be subject to such terms, conditions, and limitations as the Governor may deem advisable, and shall be revocable in whole or in part at any time by the Governor. (1976, c. 731.)

BOUNDARY LINES

§ 7.1-4. Boundary line between Virginia and North Carolina. — The boundary line between Virginia and North Carolina having been run part of the way by Joshua Fry and Peter Jefferson, commissioners from Virginia, together with others from North Carolina; and after the inhabitants of this Commonwealth and those of North Carolina had settled themselves farther westward than the line was so run, the General Assembly of Virginia having, at October session, 1778, passed an act under which Thomas Walker and Daniel Smith were appointed commissioners on the part of this State to meet others on the part of North Carolina, and extend and mark the line between Virginia and North Carolina, which commissioners on the part of this State made a report of the line run under the act; and the line so run, commonly called and known by the name of Walker's line, having been established as the boundary between North Carolina and this Commonwealth, first by the legislature of that state, and then, on the seventh of December, 1791, by an act of the General Assembly of this State: It is hereby declared that the line so run by Fry and Jefferson, and afterwards extended by Walker and Smith as before mentioned, constitutes the boundary line between Virginia and North Carolina; but the claims for lands lying between Walker's line and the line commonly called Henderson's line, are to be decided in favor of the oldest title, whether derived from this Commonwealth or from the State of North Carolina. (Code 1950, § 7-3; 1966, c. 102.)

§ 7.1-4.1. Boundary line between Virginia and North Carolina eastward from low-water mark of Atlantic Ocean. — The boundary line between Virginia and North Carolina eastward from the low-water mark of the Atlantic ocean shall be and hereby is a line beginning at the intersection with the low-water mark of the Atlantic ocean and the existing North Carolina-Virginia boundary line; thence due east to the seaward jurisdictional limit of Virginia; such boundary line to be extended on the true ninety degree bearing as far as a need for further delimitation may arise.

This section shall become effective upon the ratification and approval thereof, and concurrence therein, by the General Assembly of the State of North Carolina and upon the approval of and consent to this section by the Congress of the United States. (1970, c. 343.)

UNDERWATER HISTORIC PROPERTY

§ 10-145.9. Underwater historic property. — A. "Underwater historic property" shall mean any submerged shipwreck, vessel, cargo, tackle or underwater archaeological specimen, including any object found at underwater refuse sites or submerged sites of former habitation, that has remained unclaimed on the state-owned subaqueous bottom and has historic value as determined by the Virginia Historic Landmarks Commission.

B. Underwater historic property shall be preserved and protected and shall be the exclusive property of the Commonwealth. Preservation and protection of such property shall be the responsibility of all State agencies including but not limited to the Virginia Historic Landmarks Commission, the Virginia Institute of Marine Science, and the Virginia Marine Resources Commission.

C. It shall be unlawful for any person, firm or corporation to conduct any type of recovery operations involving the removal, destruction or in any way disturbing any underwater historic property without first making application to and receiving a permit from the Virginia Marine Resources Commission for a permit to conduct such operations pursuant to § 62.1-3 of the Code of Virginia. If the Virginia Marine Resources Commission, with the concurrence of the Virginia Historic Landmarks Commission and in consultation with the Virginia Institute of Marine Science and other concerned State agencies, finds that granting the permit is in the best interest of the State, it shall grant the applicant a permit. The permit shall require that all objects recovered shall be the exclusive property of the Commonwealth. The permit shall provide the applicant with a fair share of the objects recovered, or in the discretion of the Virginia Historic Landmarks Commission, a reasonable per centum of the cash value of the objects recovered to be paid by the Virginia Historic Landmarks Commission. Title to all objects recovered shall be retained by the Commonwealth unless or until they are released to the applicant by the Virginia Historic Landmarks Commission. All recovery operations undertaken pursuant to a permit issued under this section shall be carried out under the general supervision of the Virginia Historic Landmarks Commission and in accordance with § 62.1-3 of the Code of Virginia and in such a manner that the maximum amount of historic, scientific, archaeologic and educational information may be recovered and preserved in addition to the physical recovery of items. The Virginia Marine Resources Commission shall grant no such permit to conduct such operations at substantially the same location described and covered by a permit previously granted if recovery operations are being actively pursued under such previously granted permit, unless the person, firm, or corporation holding the previously granted permit concurs in the grant of another permit.

D. The Virginia Historic Landmarks Commission may seek a permit pursuant to this section and § 62.1-3 of the Code of Virginia to preserve and protect or recover any underwater historic property.

E. Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor and, in addition, shall forfeit to the Commonwealth any objects recovered. (1976, c. 579.)

POWERS OF AUTHORITIES

§ 15.1-1232. Powers of authority. — Each authority created hereunder shall be deemed to be an instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each such authority is hereby authorized and empowered:

(a) To have existence for such term of years as specified by the participating political subdivisions;

(b) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(c) To adopt an official seal and alter the same at pleasure;

(d) To maintain an office at such place or places as it may designate;

(e) To sue and be sued;

(f) To acquire, purchase, lease as lessee, construct, reconstruct, improve, extend, operate and maintain parks within or partly within and partly without one or more of the political subdivisions by action of whose governing body or governing bodies the authority was created; and to acquire by gift, purchase or the exercise of the right of eminent domain lands or rights in land or water rights in connection therewith; and to sell, lease as lessor, transfer or dispose of any property or interest therein acquired by it, at any time; provided, however, that the power of eminent domain shall not extend beyond the geographical limits of the political subdivision or subdivisions composing the authority;

(g) To regulate the uses of all lands and facilities under control of the authority;

(h) To issue revenue bonds and revenue refunding bonds of the authority, such bonds to be payable solely from revenues derived from the use of the facilities or the furnishing to any political subdivision of park services;

(i) To accept grants and gifts from the political subdivision forming the authority, the State of Virginia, the federal government or any other governmental bodies or political subdivisions, and from any unit, private corporation, copartnership, association or individual;

(j) To enter into contracts with the federal government, the Commonwealth of Virginia, any political subdivision, or any agency or instrumentality thereof, or with any unit, private corporation, copartnership, association, or individual providing for or relating to the furnishing of park services or facilities;

(k) To contract with any municipality, county, corporation, individual or any public authority or unit of this or any adjoining state, on such terms as the said authority shall deem proper, for the construction, operation and maintenance of any park which is partly in this Commonwealth and partly in such adjoining state;

(l) To exercise the same rights of acquiring property for the construction or improvement, maintenance or operation of a park as the county or city or counties or cities by which such authority is created may exercise. The governing body of any unit, notwithstanding any contrary provision of law, is hereby authorized and empowered to transfer jurisdiction over, to lease, lend, grant or convey to the authority upon the request of the authority, upon such terms and conditions as the governing body of such unit may agree with the authority as reasonable and fair, such real or personal property as may be necessary or desirable in connection with the acquisition, construction, improvement, operation or maintenance of a park, including public roads and other property already devoted to public use. Agreements may be entered into by the authority with the Commonwealth of Virginia, or any agency acting on behalf of the Commonwealth of Virginia, for the acquisition of any lands or property, owned and/or controlled by the Commonwealth of Virginia, for the purposes of construction or improvement, maintenance or operation of a park;

(m) In the event of annexation by a municipality not a member of the authority of lands, areas, or territory served by the authority, then such authority may continue to do business, exercise its jurisdiction over properties and facilities in and upon or over such lands, areas or territory as long as any bonds or indebtedness remain outstanding or unpaid, or any contracts or other obligations remain in force;

(n) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including a trust agreement or trust agreements securing any revenue bonds or revenue refunding bonds issued hereunder;

(o) To do all acts and things necessary or convenient to carry out the powers granted by this chapter;

(p) To borrow at such rates of interest as the law authorizes from the federal government or any agency thereof, individuals, partnerships, or private or municipal corporations, for the purpose of acquiring parklands and improvements thereon, to issue its notes, bonds or other obligations, to secure such obligations by mortgage or pledge of the property and improvements being acquired and the income derived therefrom, and to use any revenues and other income of the authority for payment of interest and retirement of principal of such obligations; provided that prior approval of the governing body of the

county or city shall be obtained by an authority created by a single political subdivision. Any county, city or town which has formed or joined an authority may lend money to such authority. The power to borrow set forth in this § 15.1-1232 (p) shall be in addition to the power to issue revenue bonds and revenue refunding bonds set forth in § 15.1-1232 (h) and § 15.1-1237. Notes, bonds or other obligations issued under this subsection (p) shall not be deemed to constitute a debt of the Commonwealth or of any political subdivision of the Commonwealth or a pledge of the faith and credit of the Commonwealth or of any political subdivision of the Commonwealth; and

(q) To adopt such rules and regulations from time to time, not in conflict with the laws of this State, concerning the use of properties under its control as will tend to the protection of such property and the public thereon. All such rules and regulations shall be subject to chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9. (Code 1950 (Repl. Vol. 1956), § 15-714.5; 1950, p. 1246; 1952, c. 401; 1956, c. 472; 1962, c. 623; 1968, c. 613; 1976, c. 483; 1977, c. 381; 1981, c. 182.)

FISH, OYSTERS, SHELLFISH AND OTHER MARINE LIFE

§ 28.1-49.1. Size of fish that may be caught; purchase or possession of undersized fish. — Except as otherwise provided by regulation adopted pursuant to §§ 28.1-23 through 28.1-26 of this Code, it shall be unlawful for any person to take, catch or possess any sturgeon fish; cobia (bonita) which is less than twenty inches in length; or more than ten percent or two by count, whichever is greater, of summer flounder (fluke) less than twelve inches in length. Whenever any person has possession of more than 100 pounds in the aggregate of summer flounder, the taking, catching or possession of which is or might be unlawful due to their size, a lot of 100 pounds of such species may be separated by any inspector from the whole quantity thereof for purposes of determining whether more than 10% thereof are under the lawful size for purposes of this provision. If less than ninety percent are within the lawful size, such person shall be presumed guilty of having violated this provision. Measure of length for purposes of this section shall be from nose to tip of tail. Any sturgeon fish caught by any person or any fish below the lawful size herein provided shall be at once returned to the water.

It shall be unlawful for any dealer or wholesaler of fish for human consumption to buy from others or to otherwise possess for purposes of resale any fish, the taking, catching or possession of which is unlawful, or to possess for purpose of resale any fish, the taking, catching or possession of which is unlawful due to the size thereof, as provided herein, unless in the latter case at least ninety percent of the fish of each type mentioned herein are of a lawful size. Whenever a dealer or wholesaler of fish has possession of more than 100 pounds in the aggregate of any variety or species, the taking, catching or possession of which is or might be unlawful due to their size, a lot of 100 pounds of each species or variety may be separated by any inspector from the whole quantity thereof for purposes of determining whether less than 90% thereof were under or over the lawful size for purposes of this provision. If less than ninety percent are within the lawful size the dealer or wholesaler shall be presumed guilty of having violated this provision, if the fish were bought from others or otherwise possessed for purposes of resale. (1970, c. 629; 1981, c. 579; 1984, c. 13; 1985, cc. 546, 615.)

The 1985 amendments. — The first 1985 amendment in the first sentence of the first paragraph substituted "take, catch or possess" for "take or catch and retain possession of"; in the first sentence of the second paragraph substituted "taking, catching or possession" for "taking or catching and retention or possession" and substituted "taking, catching or possession" for "taking or catching or retention or possession"; in the second sentence of the second paragraph substituted "taking, catching or possession" for "taking or catching and retention or possession" and inserted "by any inspector"; deleted the former last sentence of the second paragraph, which read "The provisions of this section shall not apply to persons in the conduct of a retail seafood business"; and deleted the third paragraph, which read "The provisions of this section shall apply only to the tidal waters of the Commonwealth which are under the jurisdiction of the Marine Resources Commission."

The second 1985 amendment, effective April 3, 1985, inserted "more than ten percent or two by count, whichever is greater, of" and deleted "which is" preceding "less than twelve" near the end of the first sentence of the first paragraph and added the present second and third sentences of the first paragraph.

§ 28.1-104. **Removal of oysters planted by mistake.** — When, by any resurvey of oyster-planting ground or survey made to reestablish the lines of the State survey of natural oyster beds, rocks, or shoals, which shall hereafter be made under the direction of the Marine Resources Commission, it shall appear that any holder, without his own default, and by mistake of any officer of the State has had assigned to him and included in the plat of his assignment any portion of the natural oyster beds, rocks or shoals, as defined by law, and such holder shall file a petition with the Commission for leave to remove such oysters or shells from such ground, and that without default of the holder and by mistake of an officer of the State there has been assigned to him and included in the plat of his assignment a portion of the natural oyster beds, rocks or shoals, as defined by law, then the Commission may allow the holder a reasonable time, not exceeding two years, within which to remove such oysters, their increase and the shells therefrom. (Code 1950, § 28-113; 1962, c. 406.)

Cross references. — For constitutional provision relating to natural oyster beds, etc., see Va. Const., art. XI, § 3.

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

The cases in the following annotation were decided under repealed § 28-113, corresponding to this section.

This section, as a remedial one, should be interpreted liberally. It is at least a fair assumption that the Commission will, upon a showing of the required statutory conditions by the holder, grant him the right to remove the oysters he has planted. J.H. Miles & Co. v. McLean Contracting Co., 180 F.2d 789 (4th Cir. 1950).

It is a regulation designed to maintain the policies of the State. On the one hand, its object is to discharge the trust created by art. XI, § 3 of the Virginia Constitution, as to natural oyster beds, rocks and shoals, so as to recover them promptly for the public benefit if leased by mistake of the State's own official. And on the other hand, its object is to encourage the planting and propagation of oysters by assuring the lessee that, if innocent, he may recover his planted oysters. Blake v. Marshall, 152 Va. 616, 148 S.E. 789 (1929), cited in Gloucester Seafood Workers' Ass'n v. Houston, 35 F.2d 193 (E.D. Va. 1929); J.H. Miles & Co. v. McLean Contracting Co., 180 F.2d 789 (4th Cir. 1950).

It does not violate art. XI, § 3 of the Virginia Constitution. — This section does not discriminate, but merely restricts the use by the public of the public oyster grounds for a limited period for the purpose of removing the property of the planter illegally but innocently placed there because of the mistake of the agent of the Commonwealth. This restriction is reasonable and is not contrary to art. XI, § 3 of the Virginia Constitution. Blake v. Marshall, 152 Va. 616, 148 S.E. 789 (1929).

Or the Fourteenth Amendment of the federal Constitution. — This section, which empowers the Commission of Fisheries (now Marine Resources Commission) to exclude licensed tongers from the use of the natural oyster ground for a limited period of time to enable a planter who, without default on his part and through the mistake of an officer of the State, has been led to place his private property on such land, is not a denial of due process or the equal protection of the law, and is therefore not in conflict with those provisions of the Fourteenth Amendment of the Constitution of the United States. Gloucester Seafood Workers' Ass'n v. Houston, 35 F.2d 193 (E.D. Va. 1929).

This section changes the common law, under which oysters planted on natural oyster land become forfeited to the State. Hurley v. Commission of Fisheries, 264 F. 116 (E.D. Va. 1920), aff'd, 257 U.S. 223, 42 S. Ct. 83, 66 L. Ed. 206 (1921); Blake v. Marshall, 152 Va. 616, 148 S.E. 789 (1929); J.H. Miles & Co. v. McLean Contracting Co., 180 F.2d 789 (4th Cir. 1950).

And it gives the holder of natural oyster ground the right to remove planted oysters on certain conditions set out in the section. Thus, the ground (1) must have been assigned to him and included in the plat of assignment, (2) without his fault, and (3) by the fault of an officer of the State. Hurley v. Commission of Fisheries, 264 F. 116 (E.D. Va. 1920), aff'd, 257 U.S. 223, 42 S. Ct. 83, 66 L. Ed. 206 (1921); J.H. Miles & Co. v. McLean Contracting Co., 180 F.2d 789 (4th Cir. 1950).

Only when such conditions are effective. — Where the occupier of natural oyster ground had not brought himself within the conditions imposed by this section, the Commission of Fisheries (now Marine Resources Commission) properly refused to allow him to remove oysters from such ground. Hurley v. Commission of Fisheries, 264 F. 116 (E.D. Va. 1920), aff'd, 257 U.S. 223, 42 S. Ct. 83, 66 L. Ed. 206 (1921).

§ 28.1-105. **Larceny of oysters and shells.** — Any person other than such holder, his agent, or employees going upon such ground and taking oysters and shells therefrom before the expiration of the time allowed such holder, shall be deemed guilty of larceny thereof. (Code 1950, § 28-114; 1962, c. 406.)

Section gives protection to holder of oyster beds. — This section makes it larceny for anyone other than the holder, his agent or employees, to go upon the ground and remove the oysters and shells thereupon. Though this section is criminal, for a violation of which only the State of Virginia can prosecute, it yet serves as a protection to the holder of the oyster beds against the depredations of outsiders. And no criminal sanctions seem to be provided if the holder removes the oysters without having first obtained the requisite permission. J.H. Miles & Co. v. McLean Contracting Co., 180 F.2d 789 (4th Cir. 1950), decided under repealed § 28-114, corresponding to this section.

§ 28.1-106. **Removal of markers of planting grounds.** — It shall be unlawful for any person to intentionally or knowingly injure, remove or displace any boundary oyster stakes, range monuments, signal beacon, boundstone, post or buoy, or any part, appurtenance or enclosure thereof, erected, constructed or set on the land or water of this State, or upon the lawful beds of any lessee, for the purpose of designating, locating, surveying or mapping any shellfish grounds. (Code 1950, § 28-121; 1962, c. 406.)

§ 28.1-107. **Maps to be filed; evidential value.** — All maps of the bays, rivers and creeks of this Commonwealth made by the Marine Resources Commission showing the location of oyster-planting grounds in these waters, shall be filed in the office of the Marine Resources Commission.

Any such map and the areas of the individual assignments of oyster-planting grounds platted thereon shall be evidence in all the courts of this Commonwealth of all the oyster-planting grounds leased by the Commonwealth to private individuals at the time the survey and map were made. (Code 1950, § 28-122; 1962, c. 406; 1984, c. 4.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

The 1984 amendment in the first paragraph substituted "All maps" for "A copy of all maps," substituted "Marine Resources Commission" for "engineer of the Commission of Fisheries and," and substituted "office of the Marine Resources Commission" for "clerk's office of the county or city having jurisdiction over the respective underwater areas" and in the second paragraph substituted "Commonwealth" for "State" following "leased by the."

ARTICLE 5.

Oyster-Planting Ground.

§ 28.1-108. **Assignments of planting grounds to riparian owners.** — A. Any owner of land bordering on a body of water in the oyster-growing area of this Commonwealth whose shore front measures at least 205 feet at the low-water mark, who has not had as much as one-half acre of ground already assigned him on the front, or whose lease has terminated and is not to be renewed, may make application for planting grounds to the Commission. The Commission shall assign to him such ground wherever the owner may designate in front of his land that is within his riparian waters, not exceeding in area one-half acre, to be not less than 105 feet wide along the shore and beginning at low-water mark, extending out not more than 210 feet, or to the middle of the body of water, or to the middle of the channel, whichever is the shorter distance. The grounds shall be surveyed, plotted, marked, assigned and recorded in all respects as provided for assignments to persons in § 28.1-109 of the Code of Virginia. Any riparian assignment that was duly recorded in the clerk's office of the county or city wherein the grounds are located, or at the Commission office prior to July 1, 1978, shall continue in effect.

B. The riparian leaseholder shall have the exclusive right to the use thereof for the purpose of planting or gathering oysters and clams.

C. The assignment made pursuant to this section shall pass with the transfer of the adjacent highland to the subsequent owner of highland and cannot be held separated from the highland. A transfer of highland ownership shall require that there be a transfer of the riparian assignment within eighteen months after the transfer of the highland ownership under the following conditions and provisions:

1. The application for transfer shall be in the form prescribed by the Commission, and shall be filed with the Commission.
2. The Commission or its chief engineer shall require a new survey if there is not a survey of the exact parcel or parcels of grounds to be transferred.
3. The cost of any new surveys required under this section shall be borne by the person making the transfer, and the cost and fees shall be the same as for surveys made by the Commission.
4. The application shall be accompanied by a transfer fee of five dollars.
5. The engineering office of the Commission shall return the approved application for transfer and plat with any correction to the applicant. A copy of the transfer and plat shall be recorded at the office of the Commission.
6. [Repealed.]

7. Should no application for transfer be received by the Commission within eighteen months after the transfer of the highland ownership, the riparian assignment shall become vacant and open to assignment.

D. If any portion of the waterfront is assigned to a riparian claimant under this section, which at the time is occupied by others with oysters actually planted thereon, the person occupying the waterfront shall have eighteen months in which to remove the oysters and the riparian claimant shall pay all survey and assignment and recording charges incurred in connection with the transfer of the riparian oyster-planting ground.

This section shall, on and after July 1, 1962, be applicable in all counties and cities of the Commonwealth bordering on bodies of water, in its oyster-growing areas, except it shall not be applicable to riparian lands located above the James River Bridge in the James River or its tributaries. In any county or city in this Commonwealth where more than one-half acre of ground per waterfront tract has heretofore been assigned to a riparian owner, after July 1, 1962, the ground in excess of one-half acre shall be deemed to be ground under a regular lease and assignment, and not a riparian assignment.

This section, so far as the quantity of land to be assigned to and held by riparian owners is concerned, shall not apply to Northampton County, but § 6 of Chapter 254 of the Acts of Assembly of 1883 and 1884 shall continue in force as to the county. Nothing herein contained shall be construed as authorizing a rental of a lesser amount per acre than that provided by law for riparian owners in Northampton County of the land assigned them as such riparian owners. Nothing in the section which restores to riparian owners in Northampton County one-fourth of their respective waterfronts, suitable for planting oysters, shall be so construed as to permit the owners of waterfronts to compel occupants of the fronts to remove their oysters from any fourth of the shores, if the residue of the shore is already in the landowner's possession, or is unoccupied.

Nothing in this section shall be construed to prevent the erection by riparian landowners of wharves, landings or other structures as otherwise permitted by law. (Code 1950, § 28-123; 1950, p. 987; 1956, c. 586; 1958, c. 184; 1960, c. 517; 1962, c. 406; 1964, c. 393; 1968, c. 747; 1972, c. 644; 1976, c. 256; 1978, c. 548; 1984, cc. 100, 244, 259.)

The 1984 amendments. — The first 1984 amendment rewrote this section.

The second 1984 amendment inserted "within eighteen months after the transfer of the highland ownership" in the second sentence of the introductory language of subsection C, added subdivision C 7, and otherwise rewrote this section.

The third 1984 amendment rewrote the first sentence of subdivision C 5, which formerly provided for return of the application for transfer and corrected plat or new plat to the clerk of court and notification to the applicant of such transfer; added the second sentence of subdivision C 5; deleted subdivision C 6, relating to recording of the transfer and new plat by the clerk of court and in the office of the Commission; and otherwise rewrote this section.

The section is set out above as amended by the third 1984 amendment, with those changes from the first two 1984 amendments not conflicting therewith incorporated.

§ 28.1-109. General oyster-planting grounds. — (1) *Grounds comprising.* — The residue of waterfront in excess of what is already assigned or reserved for the riparian owners, and the residue of the beds of the bays, rivers, creeks and shores of the sea other than those within the limits of navigation projects adopted and authorized by the Congress and those required for the disposal of materials dredged incident to the maintenance of such projects, and other than natural oyster beds, rocks or shoals, as defined by law and included in the Baylor survey, may be occupied for the purpose of planting or propagating oysters thereon, and may be leased by the Commission upon proper application therefor.

(2) *Eligible applicants: provisions of section incorporated in lease.* — Application for assignment of oyster-planting ground may be made by any resident of the Commonwealth, or any county, municipality, or political subdivision of the Commonwealth, or by any firm, or corporation chartered under the laws of this Commonwealth for the purpose of oyster culture and the oyster business provided that at least sixty percent of the stock of any such corporation must be wholly owned by residents of the Commonwealth of Virginia.

(3) *Application for assignment.* — All applications for assignment of oyster-planting grounds shall be made in writing, in duplicate, to the Marine Resources Commission. Applications shall be given priority in the same order in which they are received, except that no application for any ground then under lease shall be considered valid for that portion under lease. The application shall state, as nearly as possible, the number of acres applied for and

definite location, with the name of one or more prominent points or objects adjacent to such ground. It shall be the duty of any resident, firm or corporation desiring to obtain a location for planting or propagating oysters to apply to have the location ascertained, designated, surveyed and assigned.

(4) *Posting of notice of applications.* — Notice of the application shall be posted by the Commission for not less than sixty days at the courthouse of the county or city in which the ground applied for lies, and in at least two or more prominent places in the vicinity of the ground and shall in addition, be published at least once a week for four consecutive weeks in a newspaper of general circulation in that county or city.

(5) [Repealed.]

(6) *Survey and marking of ground.* — If a protest is not filed in the Commission office within sixty days after posting of the notice of application, the chief engineer of the Marine Resources Commission shall designate a surveyor to survey the grounds and make a plat in duplicate of the same. The surveyor shall forward the plat of survey to the office of the Marine Resources Commission to be approved by the engineer of the Commission. If no protest to the application or surveying of ground is made before the expiration of thirty days after the plat of survey is recorded in the office of the Marine Resources Commission, the ground applied for shall be assigned provided:

(a) That the application and assignment complies with all applicable provisions of law and if in the judgment of the Commission it shall be wise to do so.

(b) All fees, costs, and the annual rental have been paid for the lease of the ground. The ground shall be marked at the expense of the applicant, at the time the survey is made, and at the direction of the surveyor, with suitable stakes or other such markers, as may be permitted and approved by the Commission; and these suitable stakes or markers shall be kept by the lessee in their proper places at all times during the continuance of the lease, so as to conform accurately to the survey. Should such stakes or other markers be removed, knocked down, or be carried away, the lessee shall replace them in their proper places; and if he fails to do so within thirty days after being notified, the lessee shall have no claim against any person for trespassing on the ground in any manner.

(7) *Application, surveying fee and recording fee.* — Any applicant for oyster-planting ground or for riparian oyster ground shall pay an application fee of twenty-five dollars and in addition shall pay to the Commission for any surveying done by the Commission an amount equal to the cost of the survey and of preparing the original and one copy of a plat thereof. Before an assignment or transfer, the applicant shall pay the cost of recording each assignment or transfer and plat in the Commission office. No ground shall be assigned until all the fees prescribed herein have been paid.

(8) *Restrictions on assigned acreage and applications.* — No assignment, except in Chesapeake Bay, shall exceed 250 acres. No applicant, after having had as much as 250 acres of oyster ground assigned to him, shall again make application for another assignment of oyster grounds within 6 months from the day his assignment was recorded and completed as the statutes hereinafter provide. If an assignment is not made within six months after the expiration of the notice required by statute to be posted for sixty days, the application shall, upon the expiration of six months, lapse and become null and void, unless an extension is allowed by the Commission. In cases where a protest has been filed with the Commission against the granting of an application, the application shall not lapse until the Commission has finally acted upon the application.

(9) *Restriction on acreage owned or operated.* — No person, firm or corporation shall own or operate more than 3,000 acres of oyster grounds in the waters of this Commonwealth other than the Chesapeake Bay; and should ground in excess of 3,000 acres be acquired by original assignment to the assignee, or be assigned to him or them by a lawful holder of such oyster ground, or as heir or distributee, or by devise or bequest, he or they shall, nevertheless, have a right to lawfully hold the ground for and during the period of 1 year and shall have a legal right to assign it. Should no assignment be made within 1 year the oyster-planting ground so acquired, in excess of 3,000 acres, shall revert to the Commonwealth of Virginia, and may be applied for by any person having a legal right to do so.

(10) *Application for planting ground in Chesapeake Bay; acreage allowed; annual rental.* — Application for planting ground in Chesapeake Bay in waters from fifteen feet or more in depth shall be made to the Marine Resources Commission. The Commission shall have the right to accept or reject any application as it may deem best for the public interests; and the number of acres to be assigned to any applicant shall not exceed 5,000 acres. The

assignment shall not intertere with the established fishing rights and any such application, surveying, and marking shall conform to the law pertaining to oyster-planting grounds. The annual rental per acre in the Chesapeake Bay, in waters from fifteen feet or more in depth, shall be such an amount per acre as the Commission may designate, but in no case shall be less than seventy-five cents annually per acre.

(11) *Payment of annual rental; penalty for default.* — The applicant shall pay to the Commission the annual rental for such ground at the rate of one dollar fifty cents per acre or any fraction thereof, annually, except as provided for the Chesapeake Bay, and for bathing ground. Such rental shall be due on September 1 of each year after the date of assignment, and, if not paid on or before December 5, a ten percent penalty shall be added to the annual rental charge, and the Commission may proceed to levy for rental and penalty.

(12) *Duration of lease.* — Each assignment shall continue in force for a period of twenty years from the date of assignment, unless the assignment is terminated in one of the manners provided by law. New or initial assignments made after July 1, 1980, shall continue in force for a term of ten years. The interest in such ground shall be construed as a chattel real.

Upon the death of the renter, testate as to the lease, it shall vest in the named beneficiary subject to the rights of creditors, if he is a resident of this Commonwealth, provided that he files an application for transfer with the Commission within eighteen months after the date of death. If the named beneficiary is not a resident he shall have eighteen months after the date of death to transfer the lease to a qualified holder.

Upon the death of the renter, intestate as to the lease, the lease shall be vested in the personal representative, if there is one, who shall transfer the lease to a qualified holder within eighteen months.

If there is no qualification on the renter's estate within one year of his death, the Commission may within six months thereafter transfer the lease to a qualified holder upon receipt of a transfer duly executed by all of the lawful heirs of the renter both resident and nonresident.

If there is no transfer under any of the above, the ground shall become vacant and open to assignment.

Upon expiration of the initial or any subsequent term of the assignment, the Commission shall, on application of the holder, renew the assignment for an additional term of ten years. The Commission shall not renew or extend an assignment where there has been neither significant production of shellfish nor reasonable plantings of shellfish or cultch during any portion of the ten-year period immediately prior to the application for renewal, unless the Commission finds that there was good cause for the failure to produce or plant shellfish or cultch or finds that the assignment is directly related to and beneficial to the production of oyster-planting grounds immediately adjacent to the assignment.

(12a) [Repealed.]

(12b) *Requiring lessee or transferor to have ground surveyed and plat recorded; canceling lease for failure of lessee to have survey.* — If the chief engineer and the Commission should determine that in any past assignment of oyster ground or when there is any attempt to transfer oyster ground, that there has not been a survey, a recorded plat, or both, acceptable to the Commission and which, in their opinion, does not accurately describe the metes and bounds of the leased ground, the Commission shall require the lessee, the transferor, or both, to have the ground surveyed and the plat recorded.

If the lessee fails to order the survey or resurvey within six months after date of notification to the lessee or transferor, by certified mail, the Commission shall cancel the lease on its books and may accept applications therefor from the general public.

(12c) *Payment of costs for service, etc., required under paragraph (12b).* — The cost of the surveys and recording fees required under paragraph (12b) hereof shall be borne by the lessee or transferor and the cost and fees shall be the same as for surveys made by the Commission.

(13) *Possession gives no preference as to assignment.* — Any person, firm or corporation in possession of any oyster-planting ground which has not been assigned according to law shall have no preference as to having it assigned to him, but the ground shall be open to the first applicant.

(14) *Recordation of plat.* — The plat and assignment, as soon as practicable after completion, and after the ground has been assigned to the applicant, shall be filed for record in the office of the Marine Resources Commission.

(15) *Commonwealth guarantees rights of renter subject to right of fishi* — To any person, after having complied with all requirements, as set forth . the statutes necessary to have ground assigned to him, the Commonwealth will guarantee the absolute right to the renter to continue to use and occupy the ground for the term of the lease, subject to: (a) subsection (12) of this section; (b) riparian rights; (c) the right of fishing in waters above the bottoms, provided (i) that no person exercising the right of fishing shall use any device which is fixed to the bottom, or which, in any way, interferes with the renter's rights or damages the bottoms, or the oysters planted thereon, and (ii) that crab pots and gill nets which are not staked to the bottom shall not be construed as devices which are fixed to the bottom unless the crab pots and gill nets are used over planted oyster beds in waters of less than four feet at mean low water on the seaside of Northampton and Accomack Counties; and (d) established fishing stands, but only if the fishing stand license fee is timely received from the existing licensee of the fishing stand and no new applicant shall have priority over the oyster lease. However, a fishing stand location, assigned prior to the lease of the oyster ground, is to be considered a vested interest, a chattel real, and is an inheritable right which may be transferred or assigned whenever the current licensee complies with all existing laws.

(16) *When leases become vacant.* — In any case where the Commission finds that the person in whose name the lease was made, is dead, or unknown, and there is no one actually claiming such property as an heir or assignee of the former lessee, the ground shall become vacant and open to assignment.

(17) *Delinquent ground.* — Any ground or area which becomes delinquent shall be open and available to be leased, after the following conditions have been complied with:

(a) The Commission must have notified the person in writing on or about September 1 of that year of the amount of rent due. If the rent becomes delinquent, a second notice must be mailed by certified mail on or about June 1 of the following year.

(b) If the person holding the lease does not pay all rents and penalties due on or before June 30 of the following year the assignment shall terminate.

(c) [Repealed.]

(18) *Effect of proposal for navigation project.* — From and after the date on which the Commissioner of Marine Resources receives information to the effect that with regard to a specified navigation improvement project, the Secretary of the Army has been authorized by congressional action to cause a survey to be made on any such project, the Commissioner shall obtain the consent and approval of the Governor before leasing any public oyster-planting grounds which may be required for dredging operations or spoil disposal areas in connection with the project. If after the completion of the survey and a submission of the District Engineers' report thereon to the Chief of Engineers, United States Army, the proposed navigation improvement project is not authorized, the affected ground will again become available for lease and assignment.

Nothing in the above shall prohibit the renewal of any lease already in existence at the time the Commissioner receives information as to the authorization of a survey, as set out above.

(19) *Consolidation of lease.* — Upon written request by a leaseholder the Commission may consolidate into one lease contiguous leases held by the same leaseholder. The consolidation, upon approval by the Commission, shall be considered a new lease. (Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406; 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259.)

Cross references. — For constitutional prohibition against leasing natural oyster beds, see Va. Const., art. XI, § 3. As to general prohibition against nonresidents taking or planting oysters, see § 28.1-122 and note thereto.

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

The cases in the following annotation were decided under repealed § 28-124, corresponding to this section.

such ground during his term; this marks the limit of his right. He does not take a fee simple title, nor can he use the property for any other purpose except for that stated in the statute, and hence every other right heretofore in the public is preserved. Darling v. City of Newport News, 123 Va. 14, 96 S.E. 307 (1918), aff'd, 249 U.S. 540, 39 S. Ct. 371, 63 L. Ed. 759 (1919).

And is strictly construed against the grantee. — A grant or lease of oyster beds by the State is strictly construed against the grantee. Nothing passes except what is granted specifically or by necessary implication. Darling v. City of Newport News, 123 Va. 14, 96 S.E. 307 (1918), aff'd, 249 U.S. 540, 39 S. Ct. 371, 63 L. Ed. 759 (1919).

The 1984 amendment rewrote this section.

Lease of oyster grounds constitutes "private property" of lessee. — Subject to the government's dominant power over navigation, a lease of oyster grounds, pursuant to State law, on beds of navigable streams within the State, constitutes "private property" in the lessee. Blake v. United States, 181 F. Supp. 584 (E.D. Va. 1960), aff'd, 295 F.2d 91 (4th Cir. 1961).

And is within intendment of Fifth Amendment to United States Constitution. — Leasehold interests in oyster grounds are "chattels real," and as such, are generally held to be within the intendment of the Fifth Amendment to the United States Constitution, since the leases are alienable, descendible, renewable as of right for a definite term, and constitute a valuable means of livelihood. As such, the leases possess all of the elements held essential to constitute private property. Blake v. United States, 181 F. Supp. 584 (E.D. Va. 1960), aff'd, 295 F.2d 91 (4th Cir. 1961).

A lease under this section is made only "for the purpose of planting and propagating oysters" on the ground leased, and it is for this purpose alone that the planter is authorized to use and occupy such ground. While any citizen might have taken oysters therefrom before the lease, afterwards only the lessee may do so and all others are excluded from either planting or taking oysters from such ground during his term; this marks the limit of his right. He does not take a fee simple title, nor can he use the property for any other purpose except for that stated in the statute, and hence every other right heretofore in the public is preserved. Darling v. City of Newport News, 123 Va. 14, 96 S.E. 307 (1918), aff'd, 249 U.S. 540, 39 S. Ct. 371, 63 L. Ed. 759 (1919).

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Incorporation of provisions of statute in lease to corporation. — The purpose of the language of subsection (2), relating to the incorporation of the provisions of this section in a lease to a corporation, is to specify the terms and conditions under which a resident corporation, with nonresident stockholders, may engage in the business of planting, cultivating, selling and marketing oysters on grounds leased by it from the State. It means that a lease to such a corporation is subject to these "provisions" or conditions which must be complied with. It is the "violation" of these stipulated "provisions" by the lessee and not the failure of the State agency to "incorporate" or write them in the instrument, which the statute says "shall forfeit the lease." Nuttall v. Lankford, 186 Va. 532, 43 S.E.2d 37 (1947).

"It would add no force to the provisions to write them in the lease. Since the General Assembly has said that a lease is to be granted on these terms, such terms are binding both on the agency of the Commonwealth and on the lessee, whether they be actually written in the instrument or not." Nuttall v. Lankford, 186 Va. 532, 43 S.E.2d 37 (1947).

Where it was contended that the lessee of oyster-planting grounds was a "dummy" corporation owned by either a foreign corporation or a nonresident, and was chartered for the purpose of enabling the foreign corporation or

Nothing in the above shall prohibit the renewal of any lease already in existence at the time the Commissioner receives information as to the authorization of a survey, as set out above.

(19) *Consolidation of lease.* — Upon written request by a leaseholder the Commission may consolidate into one lease contiguous leases held by the same leaseholder. The consolidation, upon approval by the Commission, shall be considered a new lease. (Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406; 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259.)

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Lease of oyster grounds constitutes "private property" of lessee. — Subject to the government's dominant power over navigation, a lease of oyster grounds, pursuant to State law, on beds of navigable streams within the State, constitutes "private property" in the lessee. Blake v. United States, 181 F. Supp. 584 (E.D. Va. 1960), aff'd, 295 F.2d 91 (4th Cir. 1961).

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Amendment to the United States Constitution, since the leases are alienable, descendible, renewable as of right for a definite term, and constitute a valuable means of livelihood. As such, the leases possess all of the elements held essential to constitute private property. Blake v. United States, 181 F. Supp. 584 (E.D. Va. 1960), aff'd, 295 F.2d 91 (4th Cir. 1961).

A lease under this section is made only "for the purpose of planting and propagating oysters" on the ground leased, and it is for this purpose alone that the planter is authorized to use and occupy such ground. While any citizen might have taken oysters therefrom before the lease, afterwards only the lessee may do so and all others are excluded from either planting or taking oysters from the tidal waters, subject to the ancient right of the riparian owners to drain the harmful refuse of the land into the sea, which is the sewer provided therefor by nature. Darling v. City of Newport News, 123 Va. 14, 96 S.E. 307 (1918), aff'd, 249 U.S. 540, 39 S. Ct. 371, 63 L. Ed. 759 (1919).

nonresident to hold and operate oyster-planting grounds in Virginia, contrary to subsection (2) of this section, it was held that under the evidence there was no merit in the contention. Nuttall v. Lankford, 186 Va. 532, 43 S.E.2d 37 (1947).

Bank as predecessor in title. — In a controversy over oyster-planting grounds, it was contended that the tenure of the holder was void because the record showed that among its predecessors in title was a Virginia bank, which was not "chartered for the purpose of oyster culture and the oyster business," as required by subsection (2) of this section. At the time the bank required the leases, the statute simply required that they "be occupied by any resident of the State for the purpose of planting or propagating oysters thereon." The provision requiring a corporate holder to be chartered "for the purpose of oyster culture and the oyster business" was inserted in the statute after the bank's tenure. It was held that even if it were assumed that the acquisition by the bank was ultra vires, the bank's title to the property was not void, but was only subject to be avoided in a direct proceeding instituted by the State for that purpose. And since its title was not overthrown in that manner the bank could convey an indefeasible title to another. Nuttall v. Lankford, 186 Va. 532, 43 S.E.2d 37 (1947).

Renewal of lease under former statute. — See Nuttall v. Lankford, 186 Va. 532, 43 S.E.2d 37 (1947).

Pollution of oyster beds by drainage from riparian lands. — An oyster planter takes his right to plant and propagate oysters on the public domain of the Commonwealth in the State agency to "incorporate" or write them in the instrument, which the statute says "shall forfeit the lease." Nuttall v. Lankford, 186 Va. 532, 43 S.E.2d 37 (1947).

"It would add no force to the provisions to write them in the lease. Since the General Assembly has said that a lease is to be granted on these terms, such terms are binding both on the agency of the Commonwealth and on the lessee, whether they be actually written in the instrument or not." Nuttall v. Lankford, 186 Va. 532, 43 S.E.2d 37 (1947).

Where it was contended that the lessee of oyster-planting grounds was a "dummy" corporation owned by either a foreign corporation or a nonresident, and was chartered for the purpose of enabling the foreign corporation or

Or by municipal sewage. — A municipal corporation situated on an arm of the sea, adjacent to tidal waters, has the right to use such waters for the purpose of carrying off its refuse and sewage to the sea, so long as such use does not create a public nuisance, and any injury occasioned thereby to private oyster beds is damnum absque injuria. City of Hampton v. Watson, 119 Va. 95, 89 S.E. 81 (1916); Darling v. City of Newport News, 123 Va. 14, 96 S.E. 307 (1918), aff'd, 249 U.S. 540, 39 S. Ct. 371, 63 L. Ed. 759 (1919).

The right given the city of Newport News, by its charter, and Acts 1908, c. 349, to discharge its sewage into the ocean does not violate the contract rights of an oyster bed lessee holding under the former statute granting the absolute right of occupancy for fixed periods, since these provisions relate to the possession of the land, and not to the quality of the water over it. Darling v. City of Newport News, 249 U.S. 540, 39 S. Ct. 371, 63 L. Ed. 759 (1919). But now see the provisions pertaining to pollution in Titles 21 and 62.1.

Failure of the lessee to maintain markers as required by subsection (6) would have no possible effect upon the right of the Commonwealth in prosecuting a criminal charge for larceny of oysters. Melvin v. Commonwealth, 202 Va. 511, 118 S.E.2d 679 (1961).

§ 28.1-109. General oyster-planting grounds.

And is strictly construed against the grantee.

Shellfish leases, which are grants in derogation of the common or public right, are strictly construed against the lessee. Nothing passes except what is granted specifically or by necessary implication. Working Waterman's Ass'n v. Seafood Harvesters, Inc., 227 Va. 101, 314 S.E.2d 159 (1984).

This section and § 28.1-110 to be read into assignments. — Although not set forth in the form lease, the pertinent provisions of this section and § 28.1-110 are to be read into the assignments as terms of the contract, binding on the Commonwealth and the lessee. Working Waterman's Ass'n v. Seafood Harvesters, Inc., 227 Va. 101, 314 S.E.2d 159 (1984).

§ 28.1-109.1. **Excusing rent payment on condemned oyster grounds in the Lynnhaven river and tributaries.** — Whenever leased oyster ground in the Lynnhaven river and its tributaries has been condemned by the Commissioner of the State Department of Health for not less than one hundred eighty consecutive days, other than regular seasonal condemnation, the lessee, after prior written notice to the Commission, may elect not to pay the rent on the condemned acreage for the year immediately following the year in which the one hundred eightieth day of condemnation occurs. This election may continue until the condemnation is terminated. Provided, however, that if the lessee avails himself of this section (i) oysters or clams shall not be taken from such leased area by the lessee for any reason during the condemnation period; (ii) the lease shall continue to run and (iii) the lessee may renew the lease as provided by law; and provided further, that the Marine Resources Commission may not make a new lease assignment or transfer an existing lease that lies wholly or partially within a condemned area unless such applicant executes a release that he will not exercise his rights under this section for the duration of the lease. (1976, c. 557.)

§ 28.1-110. **Ground for clams.** — All provisions in this title referring or relating to the leasing of oyster grounds shall also include the right of the Commission to lease grounds for the purpose of planting, growing, storing and harvesting clams. The Commission may use the same application and assignment forms and procedures for leasing ground for the purpose of producing clams as provided for leasing grounds for the purpose of producing oysters. (1962, c. 406; 1970, c. 726.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-110. Ground for clams.

Lease strictly construed against lessee. — Shellfish leases, which are grants in derogation of the common or public right, are strictly construed against the lessee. Nothing passes except what is granted specifically or by necessary implication. Working Waterman's Ass'n v. Seafood Harvesters, Inc., 227 Va. 101, 314 S.E.2d 159 (1984).

This section and § 28.1-109 to be read into assignments. — Although not set forth in the form lease, the pertinent provisions of § 28.1-109 and this section are to be read into the assignments as terms of the contract, binding on the Commonwealth and the lessee. Working Waterman's Ass'n v. Seafood Harvesters, Inc., 227 Va. 101, 314 S.E.2d 159 (1984).

Rights not stated in statute are preserved to public. — The lessee does not take a fee simple title, nor can he use the property for any other purpose except that stated in the statute, and hence every other right theretofore in the public is preserved. Working Waterman's Ass'n v. Seafood Harvesters, Inc., 227 Va. 101, 314 S.E.2d 159 (1984).

Under leases which granted "absolute right" to lessees "to use and occupy" the ground for the term of the leases for the purpose of "planting, growing, storing and harvesting clams," while any person might have taken clams from the beds before the grants, afterwards only the particular lessee could do so and all others are excluded from such activity on the grounds. These provisions mark the limit of the right under the lease. Working Waterman's Ass'n v. Seafood Harvesters, Inc., 227 Va. 101, 314 S.E.2d 159 (1984).

§ 28.1-111. **Natural rocks, etc., not to be used or staked off.** — It shall be unlawful for any person to stake in or use or continue to use or occupy for the purpose of propagating or planting oysters or shells any natural oyster bed, rock, or shoal, as defined by law, or any bottom which has not been assigned to him according to law, or any public clamming or scalloping grounds which have been set aside as such. The inspector for that district or any other officer of the Marine Resources Commission, shall require any such person to remove all stakes, watchhouses, or other obstructions from the natural beds, rocks, or shoals or from any bottom which has not been assigned to him according to law; failure to remove such stakes or other obstructions within ten days of the notice

in writing is received by said person shall constitute a separate and additional unlawful act and violation of this title of the Code of Virginia, and the stakes or other obstructions shall be removed by the inspector or other officer of the Commission at the cost of the person unlawfully placing or having placed said stakes or other obstructions. (Code 1950, § 28-125; 1962, c. 406.)

Cross references. — For constitutional prohibition against leasing, etc., of natural oyster beds, see Va. Const., art. XI, § 3.

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-112. Transfer or assignment. — A person holding a valid existing lease of oyster-planting ground, may transfer, or assign all or any part of the lease to another under the following conditions and provisions:

(1) The transfer or assignment may be made only to a resident of the Commonwealth of Virginia or firm, or corporation authorized by the laws of this Commonwealth to occupy and hold oyster-planting ground.

(2) The application for transfer or assignment shall be in the form prescribed by the Commission and shall be filed with the Commission.

(3) The Commission or its chief engineer shall require a new survey if there is not a survey of the exact parcel or parcels of grounds to be transferred or assigned.

(4) The cost of any new surveys required under this section shall be borne by the person making the transfer, and the cost and fees shall be the same as for surveys made by the Commission.

(5) The application shall be accompanied by the transfer fee of five dollars if the parcel or parcels are ten acres or less in area and ten dollars if the parcel or parcels are more than ten acres in area.

(6) The engineering office of the Commission shall record the application for transfer or assignment with any correction or new plat it may deem necessary in the office of the Marine Resources Commission.

(7) The transfer or assignment shall constitute a new lease of the tract or parcel assigned and of the remainder or balance, if any, of the ground remaining under the old lease.

(8) [Repealed.] (Code 1950, § 28-126; 1962, c. 406; 1984, cc. 100, 259.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

The 1984 amendments. — The first 1984 amendment substituted "the lease" for "said lease" in the introductory language of subsection A; substituted "Virginia" for "the State of Virginia" and substituted "Commonwealth" for "State" in subdivision A(1); deleted "inspector for the district in which said ground is located, which application shall be forwarded to the engineering office of the" following "filed with the" in subdivision A(2); deleted "or same" following "fees" in subdivision A(4); substituted "the parcel" for "said parcel" in two places in subdivision A(5); substituted "the application" for "said application," substituted "the transfer" for "said transfer," and substituted "the clerk" for "said clerk" following "sent to" in subdivision A(6); substituted "the court" for "said court" and substituted "the transfer" for "said transfer" following "recording" and following "receiving" in the first sentence of subdivision A(8); and substituted "the transfer" for "said transfer" in the second sentence of subdivision A(8).

The second 1984 amendment substituted "the lease" for "said lease" in the introductory language; substituted "Commonwealth" for "State" in two places in subdivision (1); deleted "and" preceding "shall be filed," substituted "the ground" for "said ground," and substituted "and forwarded" for "which application shall be forwarded" in subdivision (2); deleted "for same" following "fees" in subdivision (4); substituted "the parcel" for "said parcel" in two places in subdivision (5); substituted "record the" for "return said" and substituted "in the office of the Marine Resources Commission" for "to the clerk of the court of the county or city in which the ground lies, and shall notify the applicant by mail that said transfer has been sent to said clerk" in subdivision (6); and deleted subdivision (8), relating to recording of the transfer or assignment together with the new plat in the clerk's office and in the office of the Commission.

The section is set out above as amended by the second 1984 amendment, with those changes from the first 1984 amendment not conflicting therewith incorporated therein.

§ 28.1-113. **Refund of rent paid under mistake.** — Whenever it is made to appear to the Marine Resources Commission, by satisfactory evidence, that any person has, under mistake of law or fact, paid to the Commonwealth any sum or sums of money, he then and there not being legally obligated to pay the same, the Commission, if of the opinion that justice so requires, may refund the same. All amounts refunded under this section shall be paid out of the then current appropriations made for the use of the Commission. (Code 1950, § 28-127; 1962, c. 406.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-114. **Relief from rent.** — The Marine Resources Commission may forgive ground rent for oyster leases in any area declared a disaster area for oyster culture. A disaster area may be declared when any natural or man-made condition arises which precludes satisfactory culture of oysters in that area. Such declaration for an area shall be made by the Marine Resources Commission upon the advice of the Director of the Virginia Institute of Marine Science on or before the first day of July of each year, and ground rent due and payable in September following such declaration may be forgiven for the ensuing tax year and such relief may continue until the Marine Resources Commission with the approval of the Virginia Institute of Marine Science shall declare the area again productive. (Code 1950, § 28-128; 1962, c. 406.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-115. **Condemnation of oyster bottoms and grounds.** — The Department of Highways and Transportation, and any county, city or town shall have the right by eminent domain, to acquire any right or interest, partial or complete, in and to any oyster bottoms, oyster-planting grounds or interest therein that it deems necessary for the purpose of such Department or county, city, or town, respectively. The procedure in such cases shall conform, mutatis mutandis, to the provisions of article 5 (§ 33-57 et seq.) of chapter 1 of Title 33 of the Code of 1950 relating to the exercise of the right of eminent domain by the State Department of Highways and Transportation in acquiring lands for highway purposes.

The Department of Conservation and Historic Resources shall have the same right of eminent domain against the same properties as outlined above, where the purpose of the condemnation is to provide for a navigational improvement benefiting an area of the State or the whole State and not limited to purposes of any particular county, city or town. (Code 1950 (Suppl.), § 28-122.1; 1950, p. 92; 1962, c. 406.)

1984 reorganization. — The Department of Conservation and Historic Resources, referred to in this section, is established effective January 1, 1985, by Acts 1984, c. 750. Prior to that date, its functions under this section are to be performed by the Department of Conservation and Economic Development.

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

Article 5 (§ 33-57 et seq.) of chapter 1 of Title 33, referred to in this section, was repealed by Acts 1970, c. 322. For similar provisions, see article 7 (§§ 33.1-89 et seq.) of chapter 1 of Title 33.1.

§ 28.1-116. Rights of owner to waters within lawful survey. — (a) If any creek, cove or inlet within the jurisdiction of this Commonwealth makes into or runs through the lands of any person, is less than one hundred yards in width at mean low water and is comprised within the limits of his lawful survey, as defined in § 62.1-2, such person or other lawful occupant shall have the exclusive right to use such creek, cove or inlet for sowing or planting oysters or other shellfish; provided, however, that in the county of Mathews the owners or lawful occupants of land on both sides of any creek, cove or inlet, except Horn Harbor, Winter Harbor and Milford Haven, suitable for the planting of oysters, above the point where such creek, cove or inlet is one hundred yards in width, shall have the exclusive right to use such creek, cove or inlet for planting oysters therein, the right of the owners or occupants of land on the opposite sides of such creek, cove or inlet to extend to the middle of the channel, wherever that may be from time to time.

(b) The Commission shall, to the extent practicable, in leasing oyster planting ground in Winter Harbor give priority to those eligible applicants who were, before July one, nineteen hundred seventy-two, users of grounds in Winter Harbor, and who apply for assignment within ninety days of July one, nineteen hundred seventy-two. (Code 1950, § 28-132; 1962, c. 406; 1964, c. 393; 1966, c. 656; 1968, cc. 659, 747; 1972, c. 539.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-117: Repealed by Acts 1975, c. 186.

§ 28.1-118. **Rights of riparian owners to build bulkhead or wharf.** — All assignments or leases of oyster grounds under this chapter shall be subject to the rights vested in riparian claimants under § 28.1-108 and also to this proviso and condition, namely: That any landowner desiring to erect a bulkhead or wharf in front of his property or to open a channel to reach water of navigable depth or the channel of the stream, or for other purposes, and is not already a lessee or riparian holder of suitable bottoms for that purpose, shall have the right to give the lessee or other holder of oyster grounds in front of his property twelve months' notice of such intention; and upon the expiration of that time, the rights of the lessee or holder of so much of such oyster grounds as shall be reasonably needed for the building of bulkhead or wharf or channel shall cease; but if such bulkhead, wharf or channel be not commenced as specified in such notice within three months after such oyster grounds shall be vacated, then the former lessee or holder of such oyster grounds shall have the right to resume possession of such oyster grounds as he may have vacated in favor of such landowners, subject to the provisions of this chapter, provided further that anyone constructing a channel under provision of the section shall compensate the lessee of any oyster shore or oyster grounds for all losses or damages resulting thereto including the value of the ground taken for the construction of the channel and the lessee shall have recourse under action of the law in the court of the proper jurisdiction of the Commonwealth of Virginia to recover said damages. (Code 1950, § 28-134; 1962, c. 406.)

Land leased for wharf not to be used for other purposes. — Neither the lessee of a parcel of land on the beach of a navigable river for the purpose of erecting thereon a steamboat wharf nor any person claiming under him has any right to erect on the leased premises houses for carrying on, or to carry on any business, not connected with that of conducting the wharf. Nor does the assignment of said land to the lessee by the State for oyster planting purposes authorize the use of said houses for carrying on a mercantile business. Grinels v. Daniel, 110 Va. 874, 67 S.E. 534 (1910).

§ 28.1-118.1. **Bathing grounds; assignment; rental.** — Any person desiring to obtain a location for bathing grounds shall apply to the Commission to have his location designated, surveyed and assigned for the purpose afore-

said, and for the ground shall pay an annual rental of seven dollars and fifty cents per acre. Any such application, surveying, assigning and marking shall conform to the law pertaining to oyster-planting grounds. Any license so granted shall be for bathing grounds for public or commercial use only.

Should any lessee of bathing ground have his ground or any portion thereof resurveyed or should he reassign any or all of the ground, the resurvey or reassignment shall not be construed to be a twenty-year renewal of his lease, or as a new assignment of the ground, but shall be deemed to be a continuation of the original assignment, subject to all the limitations and conditions under which the ground was originally assigned.

The lessee of any bathing ground, the rent of which is to be paid to the following September of any year, may abandon his holdings at any time without being liable for the payment of the rent for the following year, provided he notifies the inspector, deputy inspector or the Commission in writing of his intention so to do before September 1. This notice, when received by the inspector or deputy inspector, shall be immediately forwarded by the inspector or deputy inspector to the office of the Commissioner. (Code 1950, § 28-187; 1960, c. 517; 1962, c. 406; 1984, c. 100.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

The 1984 amendment substituted "Commission" for "inspector of the district in which the grounds lie" and substituted "the ground" for "such ground" in the first sentence of the first paragraph; substituted "the resurvey" for "such resurvey" and substituted "the ground" for "such ground" following "assignment of" and following "under which" in the second paragraph; substituted "Commission" for "Commission of Fisheries" and substituted "September 1" for "September first" in the first sentence of the third paragraph; and substituted "This" for "Such" and substituted "the inspector" for "such inspector" following "forwarded by" in the second sentence of the third paragraph.

ARTICLE 6.

License Taxes Generally for Taking, Processing and Buying Bivalves.

§ 28.1-119. Tax on handling bivalves. — (A) *Tax graduated by amount of oysters handled.* — Every person, firm or corporation engaged in the business of shucking or packing oysters in this State shall pay a license tax for the privilege of transacting such business, to be graduated by the amount of oysters shucked or packed by him during the period for which his license is granted.

(B) [Repealed.]

(C) *Shuckers and packers.* — For every license to a person, firm or corporation engaged in the business of shucking or packing oysters the license taxes shall be graduated as follows: (1) for any number of gallons under one thousand, a tax of seven dollars and fifty cents; (2) for one thousand gallons or over, up to ten thousand, a tax of twenty dollars; (3) for ten thousand gallons or over, up to twenty-five thousand, a tax of forty-five dollars; (4) for twenty-five thousand gallons or over, up to fifty thousand, a tax of seventy-five dollars; (5) for fifty thousand gallons or over, up to one hundred thousand, a tax of one hundred twenty-five dollars; (6) for one hundred thousand gallons or over, up to two hundred thousand, a tax of one hundred seventy-five dollars; (7) for two hundred thousand gallons or over, a tax of two hundred and seventy-five dollars.

(D) *Reports required of licensees.* — To ascertain the amount of oysters marketed it shall be the duty of such person, firm or corporation, on the first day of January of each year, or within ten days thereafter, to make report in writing, under oath, to the oyster inspector for the district for which he was licensed, showing the amount of oysters actually shucked or packed or sold in barrels by him during the next preceding twelve months.

(E) *Violation.* — Each inspector shall report every oyster packer who shall fail to comply with the requirements of this section. Any person, firm or corporation violating the provision of this section, or making false reports shall be guilty of a misdemeanor.

(F) *Tax in lieu of other taxes on capital.* — The sum imposed under and by virtue of this section shall be in lieu of all taxes for State purposes on the capital actually employed in such business. The word "capital" shall include moneys and credits actively used in carrying on the business, including goods, wares and merchandise on hand, and all solvent bonds, demands, and claims made and contracted in the business during the preceding year. Real estate shall not be held to be capital, but shall be assessed and taxed as other specific property.

(G) *Other property listed and taxed.* — All other property held by such person, firm or corporation shall be listed and taxed as other property.

(H) *Collection and disposition of license tax.* — The sum required by this section to be paid when the license is taken out shall be collected in the manner that the amounts required to be paid for other licenses under the oyster laws of the State are collected. (Code 1950, § 28-136; 1950, p. 976; 1954, c. 178; 1960, c. 517; 1962, c. 406; 1968, c. 747; 1979, c. 274.)

§ 28.1-119.1. License for purchase of oysters, clams, crabs, finfish or eels; fee; display; monthly reports. — Any person, firm, or corporation, purchasing from the catcher, oysters or clams caught from the public grounds of the Commonwealth or the Potomac River, or crabs, finfish or eels caught from the waters of the Commonwealth or the Potomac River, shall: (1) for each place of business in the Commonwealth purchase a license therefor and the license fee shall be fifty dollars; and (2) for each boat or motor vehicle used for buying in the Commonwealth shall purchase a license therefor and the license fee shall be twenty-five dollars.

The license plate issued by the Commission shall be affixed in a conspicuous place on the place of business, boat or motor vehicle.

Any person, firm or corporation purchasing oysters under the license specified herein shall file monthly reports as required by § 28.1-92. These reports shall be filed with the Commission each month regardless of whether oysters were purchased that month or not.

Nothing in this section shall be construed as applying to any person purchasing for personal consumption, any place of business which is solely a restaurant, or any person who operates a business which is subject to local license taxes under § 58-266.1 of the Code and who has in his possession no more than one bushel of peeler crabs to be sold as bait.

All fees collected pursuant to this section shall be deposited to the credit of the Virginia Marine Products Fund. (1970, c. 726; 1979, c. 274; 1980, c. 218; 1984, c. 316.)

Editor's note. — Section 58-266.1, referred to in this section, is repealed effective January 1, 1985, by Acts 1984, c. 675. For similar provisions, effective January 1, 1985, see §§ 58.1-3701 through 58.1-3706, 58.1-3711, 58.1-3720, and 58.1-3732 through 58.1-3735.

This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

The 1984 amendment deleted "or transporting" following "used for buying" in clause (2) of the first paragraph, deleted "said" preceding "place of business" in the second paragraph, substituted "These" for "Such" at the beginning of the second sentence of the third paragraph, deleted "nor to" following "purchasing for personal consumption" and inserted "or any person who operates a business which is subject to local license taxes under § 58-266.1 of the Code and who has in his possession no more than one bushel of peeler crabs to be sold as bait" in the fourth paragraph. The amendment also substituted "Commonwealth" for "State" throughout the first paragraph.

§ 28.1-120. Taking oysters or clams by hand or with tongs. — (1) *Application for license.* — Any resident of this State who shall be duly qualified and desires to take or catch oysters or clams from the waters of the Commonwealth, not leased for planting purposes, by hand or with ordinary or patent tongs, or any other instrument allowed by law other than a scrape or dredge, shall first apply to an inspector for a license.

(2) *License fees.* — The license fee for taking oysters shall be as follows:

(a) For each person taking or catching oysters by hand or with ordinary tongs, ten dollars.

(b) For each person taking or catching oysters with patent tongs, thirty-five dollars.

(3) *Fee for taking clams.* — License fee for taking clams shall be as follows:

(a) For each person taking or catching clams by hand or with ordinary tongs, fifteen dollars.

(b) For each person taking or catching clams with patent tongs, thirty-five dollars.

The license for taking clams by tongs, ordinary or patent, shall entitle the holder thereof to take only clams from the public bottoms in the waters of the Commonwealth but not from public oyster rocks, beds and shoals or from leased oyster ground, and is not to be construed, in anywise, to permit or authorize the taking of oysters at any time.

(4) *Possessing oysters while taking clams.* — If any person shall have in his possession any oysters while taking or catching clams or scallops under the preceding subsection during the season in which it is unlawful to take or catch oysters from the natural rocks, beds or shoals, he shall be prima facie guilty of violating the law of taking or catching of oysters therefrom during the prohibited season.

(5) *Taking clams in certain areas.* — It shall be unlawful to take or catch clams at any time, or by any means, in Pocomoke Sound above a line drawn from Drum Bay Point, in the county of Accomack, and running a north-northwest course to the line between the states of Maryland and Virginia, except upon such grounds in those waters as may be set aside for public clamming or scalloping purposes by the Marine Resources Commission.

(6) *Restriction on size of clams.* — It shall be unlawful for any person to harvest or ship any clams smaller in size than the legal size fixed by the Commission.

(7) *Exhibition of license.* — Any person engaged in taking oysters or clams from public grounds shall have such license available for inspection and shall exhibit it whenever requested by an inspector. Failure to exhibit the license upon demand of any inspector shall be a misdemeanor and prima facie evidence that such person is working without a license; provided, however, that if such person exhibit a license issued prior to the time of his arrest to the inspector before the date of trial, the inspector shall request the court to dismiss the charge.

(8) *Oysters and clams for household use exempted.* — This section shall not apply to the taking or catching of oysters or clams for immediate household use but not for planting or for sale, provided that no one may take more than one bushel of oysters or two hundred fifty clams in any one day without having a license.

(9) *Violation of section.* — Any person violating the provisions of this section shall be guilty of a misdemeanor. (Code 1950, § 28-137; 1960, c. 517; 1962, c. 406; 1964, c. 393; 1966, c. 684; 1970, c. 726; 1979, c. 274.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-120.1. Regulations for conservation of surf clams. — The Commission is authorized and empowered to promulgate such regulations as it deems necessary and appropriate to promote the conservation and wise use of the surf-clam resource. (1973, c. 411.)

ARTICLE 7.

Nonresidents Generally.

§ 28.1-121. Who deemed nonresident. — No person shall be deemed a resident of Virginia within the meaning of this chapter who is not a taxpayer in the Commonwealth, and shall not have maintained his residence therein for one year and actually resided therein for the four months next preceding the time when he makes application for any privileges or licenses granted to residents under this chapter; or unless he be a bona fide purchaser of land in Virginia and has actually lived within the Commonwealth for the four months

next preceding the time when he makes application for any privileges or licenses granted to residents under this chapter; provided, no restriction as to residence in this section shall prevent any person from obtaining license when required for buying fish or shellfish, or for the shucking of oysters; provided, further, that in dredging or scraping private planting grounds on permission of the Commission the restriction as to the residence in this section shall not apply to the crew, master or owner of any boat engaged by the leaseholder to dredge or scrape private planting grounds for oysters only. (Code 1950, § 28-138; 1962, c. 406; 1983, c. 306.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

The 1983 amendment substituted "Virginia" for "this State" in two places, substituted "Commonwealth" for "State," substituted "the Commonwealth" for "this State," and at the end of the section substituted "apply to the crew, master or owner of any boat engaged by the leaseholder to dredge or scrape private planting grounds for oysters only" for "prohibit the having of nonresidents as crew for any boat used in the fish or shellfish industry, if such boat be owned wholly by a resident or residents

§ 28.1-122. Nonresidents not to take or plant oysters, etc. — If any person other than a resident of this State, as defined in this article, shall take or catch fish or shellfish, in any of the waters of this State, or in any of the waters under the jurisdiction of this State, for market or profit, or if any person other than a resident of this State or a corporation authorized by law to occupy and hold oyster-planting grounds, rent any oyster-planting grounds, or plant shellfish in any of the waters of the State, or waters under the jurisdiction of the State, he shall be guilty of a misdemeanor, and such rental, lease or assignment shall be void. Where the penalty is incurred by reason of the defendant being a nonresident, the burden of proof as to his residence shall be on him, provided this section shall not apply to any oyster-planting ground against which foreclosure proceedings have been instituted or title to which is acquired by reason of the death of the lessee, and provided further that any interest to title acquired under this provision shall not extend for a period of more than twelve months from the time the title vests. (Code 1950, § 28-139; 1962, c. 406.)

Constitutionality. — Acts 1874, c. 214 (similar to this section), by which only such persons as are not citizens of Virginia are prohibited from planting oysters in the soil covered by her tidewaters, is neither a regulation of commerce nor a violation of any privilege or immunity of interstate citizenship. McCready v. Virginia, 94 U.S. 391, 24 L. Ed. 248 (1876).

Application to nonresident crabbers violates privileges and immunities clause. — To the extent that commercial crabbing in Virginia waters by nonresidents is proscribed by this section, it is repugnant to the privileges and immunities clause of the federal Constitution and must fall. Tangier Sound Watermen's Assoc. v. Douglas, 541 F. Supp. 1287 (E.D. Va. 1982).

§ 28.1-123. Citizens not to be interested with nonresident. — If any citizen of Virginia shall for market or profit be concerned or interested with any person not a resident thereof in taking or catching shellfish in any of the waters of the Commonwealth, or in waters under the jurisdiction of the Commonwealth, or in planting oysters or other shellfish therein, or shall knowingly permit any person, not a resident of Virginia, to engage in any such business in his name for market or profit, he shall be guilty of a misdemeanor; but the restrictions as to residence in this section shall not prevent a resident from owning stock in a corporation in which nonresidents are stockholders, if such corporation is authorized by law to occupy oyster-planting grounds. (Code 1950, § 28-140; 1962, c. 406; 1983, c. 307.)

The 1983 amendment substituted "Virginia" for "this State" in two places, deleted "fish or" following "taking or catching," and substituted "the Commonwealth" for "this State" in two places.

Application to nonresident crabbers violates privileges and immunities clause. — To the extent that commercial crabbing in Virginia waters by nonresidents is proscribed by this section, it is repugnant to the privileges and immunities clause of the federal Constitution and must fall. Tangier Sound Watermen's Assoc. v. Douglas, 541 F. Supp. 1287 (E.D. Va. 1982).

ARTICLE 8.

Culling Oysters.

§ 28.1-124. Culling oysters. — In addition to any other penalty prescribed by law, any person charged with violating any regulation governing the culling of oysters shall be required, by the officer making the charge, to scatter the entire cargo of oysters on the public rocks under the supervision of an inspector and at the expense of the person charged with the violation. Provided that in lieu of throwing the cargo overboard the person charged with the violation may post cash bond with the officer making the charge in an amount approximately equal to the value of the entire load as determined by the officer making the charge. The refusal to either dump the oysters overboard or post a cash bond shall constitute a distinct and separate offense from any other violation. A person who has posted a cash bond who is acquitted shall be refunded the cash bond; if found guilty the cash bond shall be forfeited and deposited to the credit of the Special Oyster Replenishment Fund.

If a cash bond is posted by the person charged, the person charged shall properly cull the entire cargo of oysters immediately after the inspector has found them to be in violation of such regulation and before they can be sold, planted or disposed of by the person charged or by any other person to prevent the marketing of illegal oysters or shells or both.

The aforesaid requirement to scatter the entire cargo of oysters on the public rocks shall only apply to a cargo of oysters taken by any catcher from the public oyster grounds and shall not apply to oysters which have been purchased by a buyer and in the buyer's possession.

It shall be unlawful to have more than one-half gallon of shucked oysters kept on board a boat harvesting on the public rocks. (Code 1950, § 28-141; 1960, c. 517; 1962, c. 406; 1964, c. 393; 1966, c. 684; 1968, c. 747; 1979, c. 606; 1981, c. 52; 1985, c. 125.)

The 1985 amendment rewrote this section.

§ 28.1-126: Repealed by Acts 1985, c. 125.

§ 28.1-127. Prima facie evidence of violation; defense. — It shall be unlawful for a person to have any oysters or shells on the culling board, deck, washboard or other receptacle above the hold of the boat or in the deckhouse of the boat or any person oystering upon the natural rocks, beds or shoals when the boat is not at anchor, or when the boat is off the public rocks or when the boat is approaching a buy boat, or approaching a landing. The attempt of any person to escape or to throw oysters or shells overboard into the water other than in the ordinary process of culling, or to the culling board or deck from the hold, upon the approach of the oyster inspector or police boat shall be prima facie evidence of the violation of the Commission's culling regulations.

It shall be unlawful for any person to offer for sale or have in his possession oysters which have not been culled as required by the Commission's regulations; if upon trial for such offense the accused person asserts the claim or defense that the unculled oysters were taken from private planting grounds, the burden of proving such defense or fact shall be upon the accused person. It shall be unlawful for any person who has in his possession unshucked oysters, to resist or interfere with any inspector or other authorized officer in the examination of oysters suspected of being unculled, or to refuse to admit an inspector or other authorized officer to a boat or oyster house for the purpose of such inspection. (Code 1950, § 28-146; 1962, c. 406; 1985, c. 125.)

The 1985 amendment substituted "the Commission's culling regulations" for "§§ 28.1-124 and/or 28.1-125" at the end of the first paragraph and substituted "the Commission's regulations" for "§ 28.1-124" and "the" for "said" preceding "unculled oysters were taken" in the first sentence of the last paragraph.

ARTICLE 9.

Dredging or Scraping.

§ 28.1-128. Where lawful to issue permits to dredge; carrying dredge or dredging equipment on boat. — It shall be unlawful for any person at any time to take and catch oysters with dredges and scrapes from any public rocks, beds, or shoals in this State. Provided, however, that the Commission may authorize the use of dredges upon Johnson's Rock, Thoroughfare Rock, Fox's Island Rock, John's Rock, Klondike Rock, Onancock Rock, Crammy Hack Rock, and California Rock, during the months of March and April, nineteen hundred seventy-eight.

It shall be unlawful for any person to have on board a boat a dredge or equipment normally used for dredging, unless he has a permit to dredge, or a license to dredge, and has said license or permit available for inspection on board of said boat.

It shall be unlawful for any dredge or any equipment to be used in dredging, approved by license or permit, to be carried or transported on board a boat of the licensee or permittee, or his employee, except when actually in use, or going to or coming from the grounds on which the dredging is permitted or licensed to take place or to and from one dock to another dock for maintenance and repairs to such boat and/or equipment. (1962, c. 406; 1964, c. 393; 1975, c. 167; 1977, c. 13; 1978, c. 85.)

Editor's note.—This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-128.01. Use of hydraulic dredges prohibited. — It shall be unlawful for any person at any time to take and catch hard-shell clams through the use of hydraulic dredges provided, however, that the Marine Resources Commission and the Virginia Institute of Marine Science may use hydraulic dredges to take and catch hard-shell clams on an experimental basis. In no event shall a permit to take and catch hard-shell clams through the use of hydraulic dredges be issued to any other person. (1981, c. 138.)

Application of section to leases granted before enactment. — There was only minimal alteration of the leaseholders' rights under the leases by enactment of this section, where the leases granted an exclusive right to take clams from the leased grounds, but not a right to use a hydraulic dredge in so doing. The enactment of this section constitutes a police power restriction on the mode by which they may exercise their right, but it does not affect substantially the right to harvest the shellfish or the exclusiveness of the right. Accordingly, this section is not unconstitutional as applied to such leaseholders. Working Waterman's Ass'n v. Seafood Harvesters, Inc., 227 Va. 101, 314 S.E.2d 159 (1984).

§ 28.1-128.1. Fishing in Pocomoke Sound and Tangier Sound. — A. Notwithstanding any other provisions of law, the Commission, in order to protect and promote the oyster or clam fishery in that area of the Pocomoke Sound and Tangier Sound described herein, shall have authority to open and close such area, or any part thereof, for the taking of oysters or clams or prescribe the manner, method, size, and season of oyster or clam catch whenever it deems it advisable to do so. Such area is contained within the boundaries of a line commencing at buoy "A" on the Commonwealth of Virginia and State of Maryland line, thence 114° true 2.17 miles to Long Point, thence 137° true 3.40 miles to beacon number "2" off Ebb Point, thence 208° true 2.15 miles to beacon number "2" off Halfmoon Point, thence 216° true 1.78 miles to beacon number "11" off Deep Creek, thence 285° true 2.67 miles to beacon number "1" off Camp Island, thence 238° true 1.77 miles to beacon number "6" off Beach Island, thence 155° true 2.75 miles to beacon number "2" off Chesconessex Creek, thence 223° true 2.49 miles to beacon number "1" off Ware Point, thence 275° true 3.13 miles to bell buoy number R "2," thence 276° true 7.08 miles to can buoy number C "34," thence 049° true 3.09 miles to can buoy number C "1," thence 049° true 1.73 miles to Tangier Island Light House,

thence 011° true 2.70 miles to beacon number "3" off Tangier Island, thence 319° true 0.62 miles to beacon number "1" off Tangier Island, thence 332° true 3.15 miles to mean low water mark on North East point on Fishbone Island, thence 005° true 2.68 miles to mean low water mark on south end of Horse Hammock, thence following mean low water northerly to the State of Maryland, and the Commonwealth of Virginia line, thence, following the Maryland and Virginia state boundary line back to the point of beginning.

The Commission shall also have authority over the area as contained within the boundaries of a line commencing at buoy "A" on the Commonwealth of Virginia and State of Maryland line; thence, in a northeasterly direction approximately 1.74 miles along the said Virginia-Maryland line to a point which is approximately 260 feet northeast of buoy "C" on said line; thence, in a southwesterly and southern direction along the eastern boundary line of Public Ground No. 12 and Public Ground No. 13 approximately 1.73 miles to the northern line of the Fisheries Management Area running from buoy "A" to Long Point; thence, in a northwesterly direction approximately 1.07 miles to buoy "A" and point of beginning.

B. In the exercise of its authority granted pursuant to this section, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. This publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising its authority. (1978, c. 85; 1981, cc. 52, 63; 1984, c. 242.)

Editor's note. — Acts 1978, c. 85, cls. 2 and 3, provide:

"2. That the provisions of § 28.1-128.1 shall become effective as of July one, nineteen hundred seventy-eight.

"3. That an emergency exists and this act is in force from its passage."

The act was approved March 10, 1978.

The 1984 amendment, effective March 26, 1984, in the first sentence of the first paragraph of subsection A inserted "oyster or clam" in two places and inserted "or the taking of oysters or clams"; in the second sentence of the first paragraph of subsection A substituted "Commonwealth" for "State" in two places; added the second paragraph of subsection A; and in the second sentence of subsection B substituted "This" for "Such" and substituted "its authority" for "such authority."

§ 28.1-128.2. Fishing in Chesapeake Bay immediately west of Tangier Island. — A. Notwithstanding any other provisions of law, the Commission, in order to protect and promote the fishery in that area of the Chesapeake Bay described herein, shall have authority to open and close such area, or any part thereof, or prescribe the manner, method, size and season of catch whenever it deems it advisable to do so. Such area is contained within the boundaries of a point beginning at the southeastern point of Tangier Island, thence, in a southeastern direction to Tangier Sound Light; thence, in a southwestern direction to can buoy C "1"; thence continuing in a southwestern direction to nun buoy N C "34"; thence, in a northwestern direction to nun buoy N "2"; thence, continuing the same direction to the 36-foot deep contour; thence, along the 36-foot deep contour to the Virginia-Maryland Boundary Line; thence, in a northeastern direction to Smith Island, Hog Neck; thence, in a southeastern direction along the western side of Smith Island, Cheesman Island, Shank Island, Goose Island and Tangier Island to the point of beginning.

B. In the exercise of its authority granted pursuant to this section, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required of the Commission in exercising such authority. (1982, c. 121.)

§ 28.1-128.3. Taking oysters or clams in Chesapeake Bay between Smith's Point and Windmill Point. — A. Notwithstanding any other provisions of law, the Commission, in order to protect and promote the oyster or clam fishery in that area of the Chesapeake Bay described herein, shall have authority to open and close such area, or any part thereof, for taking oysters or clams, or prescribe the manner, method, size and season of oyster or clam catch whenever it deems it advisable to do so. Such area is contained within the boundaries of a line commencing at Smith Point Lighthouse, thence southerly

through a line of nun buoys numbered "C79," "C77," "C73," "C71," "C69," "C67," "C65," to a beacon designated BR"R," all as they are now positioned or as they may be subsequently repositioned by the United States Coast Guard, thence northwesterly to Windmill Point Lighthouse, thence continuing northwesterly along a sector line to the mean low water line on Windmill Point, thence northerly along the mean low water line around Fleets Island to a point which is south of a beacon numbered 5M, thence north to the beacon numbered 5M, thence northeasterly to a beacon numbered 6M"B," thence northerly to corner 4 of Public Ground No. 28, thence along the western and northern line of Public Ground No. 28 through corners 3, 2 and 1 to corner 8 thereof, thence northeasterly to corner 1 of Public Ground No. 29, thence along the western and northern line of Public Ground No. 29 through corner 4 thereof to an intersection point of Public Ground No. 29 and Public Ground No. 117, thence northerly to the mean low water line on Bull Neck, thence northerly along the mean low water line to Smith Point, thence southeasterly to Smith Point Lighthouse, the point of beginning.

B. In the exercise of its authority granted pursuant to this section, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required of the Commission in exercising such authority. (1982, c. 77.)

Cross references. — As to fishing for food fish generally, see § 28.1-47 et seq. As to fishing for fish for manufacture into fish meal, oil, etc., see § 28.1-58 et seq. As to marking of boats, nets and other devices, and restrictions on fishing in certain waters, see § 28.1-73 et seq.

§ 28.1-128.4. Taking oysters and clams in Piankatank River. — A. Notwithstanding any other provisions of law, the Commission, in order to protect and promote the oyster or clam fishery in that area of the Piankatank River described herein, shall have authority to open and close such area, or any part thereof, for the taking of oysters or clams or prescribe the manner, method, size, and season of oyster or clam catch whenever it deems it advisable to do so. Such area is contained within the boundaries of a line commencing at the southern-most point of Stove Point; thence, in a southeasterly direction to the extreme northwestern-most point of Gwynn Island known as Cherry Point; thence, in a southwesterly direction along the shoreline of Gwynn Island to the No. 3 light at the mouth of Narrows Point; thence, in a northwesterly direction to No. 10 light at Stove Point; thence, in a northeasterly direction to Stove Point and the point of beginning.

B. In the exercise of its authority granted pursuant to this section, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising such authority. (1984, c. 224.)

§ 28.1-129. Application for license to dredge or scrape. — Any resident desiring to dredge or scrape for oysters in the waters where dredging is permitted, shall make application in writing for such privilege to the inspector of the district in which he resides, which application shall be sworn to, and shall plainly state the name of his vessel, the owner or owners thereof, the commander or person in charge and the length of vessel or gross tonnage at which it is rated. Such application shall further state the district in which the owner resides; that the applicant is a resident qualified under the requirements of this section; that no nonresident owns the vessel, in whole or in part, and that it is not held with any intention, or under any agreement, to return it at any subsequent time to a nonresident. (Code 1950, § 28-150; 1962, c. 406.)

§ 28.1-130. Registration and issuance of license. — Upon being satisfied of the facts stated in such application, the inspector shall register such vessel for a fee of one dollar and issue to such applicant a license granting him the privilege of dredging or scraping for oysters on public ground within the prescribed limits and season, which shall be plainly set forth in the license. (Code 1950, § 28-151; 1962, c. 406.)

§ 28.1-131. **Prima facie evidence of violation.** — In any prosecution for the violation of the preceding sections of this article against the master or commander of a vessel, or any of his crew, or any person on board thereof, proof that such vessel was equipped with a crank, dredge, or scrape shall be prima facie evidence of the violation of such section. (Code 1950, § 28-155; 1962, c. 406.)

§ 28.1-132. **Penalty.** — If any person take or catch oysters with a dredge, or scrape, or instrument other than ordinary or patent oyster tongs, or by hand in any of the waters of the Commonwealth except as provided by law, or regulations of the Commission, he shall be deemed guilty of a felony, and upon conviction thereof shall be confined in the penitentiary not less than one year, and fined not less than one hundred nor more than one thousand dollars, either or both. (Code 1950, §§ 28-154, 28-156; 1962, c. 406; 1968, c. 747.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

State may regulate fisheries and oyster beds. — Where not restricted by the United States Constitution, the State is entitled to legislate over her public property and regulate its use, especially fisheries and oyster beds within her limits; the same being the common property of her citizens, never ceded to the United States. Boggs v. Commonwealth, 76 Va. 989 (1882).

§ 28.1-133. **License tax.** — Before any license shall be issued for dredging or scraping, the applicant shall, in addition to the fee of one dollar for registering the boat, pay an annual license tax of fifty dollars for each dredge. The captains or masters of such boats shall always have such license on board of their boats and exhibit the same whenever it shall be demanded by any duly authorized officer; and the refusal so to do shall be prima facie evidence that they are dredging or scraping without having a license therefor. (Code 1950, § 28-157; 1960, c. 517; 1962, c. 406; 1979, c. 274.)

§ 28.1-134. **Dredging or scraping on private ground.** — (1) *When and by whom dredging allowed; permit required.* — It shall be lawful for any resident of this State holding under legal assignment oyster-planting ground of at least three acres in one tract or adjoining tracts and having paid the rent therefor, to dredge or scrape the same at any time, except on Sunday or at night; provided he obtain from the Marine Resources Commission a permit for each boat which is used to dredge or scrape such specified private oyster ground. Such permit shall show the name of the lessee and the name or number of the boat, date of issue and date of expiration, which expiration date shall not be more than twelve months from date of issue and may be renewed for like periods from time to time; and provided, further, that the Commission may after a hearing refuse to grant a permit or renew the same to dredge or scrape any oyster-planting ground unless it be proved that the holder thereof has planted seed oysters or shells thereon and is using said planting ground for the cultivation of oysters and may refuse to grant said permit if it appears to the satisfaction of the Commission at said hearing that the holder of said ground is an habitual violator of the seafood laws; provided, further, that applicant for said permit shall have the right of appeal from any decision of the Commission refusing to grant said permit as provided in chapter 2 (§ 28.1-23 et seq.) of this title. The Commission shall receive three dollars for each such permit issued.

(2) *Dredging or dredging equipment on boat.* — It shall be unlawful for any person to have on board a boat, a dredge or equipment normally used for dredging, unless he has a permit to dredge, or a license to dredge and has said license or permit available for inspection on board of said boat.

It shall be unlawful for any dredge or any equipment to be used in dredging, approved by license or permit, to be carried or transported on board a boat of the licensee or permittee, or his employee, except when actually in use or going to or coming from the ground on which dredging is permitted, or licensed to take place, or to and from one dock to another dock for maintenance and repairs to such boat and/or equipment.

(3) *Marking ground.* — No person shall have or enjoy the privilege hereinbefore granted of dredging or scraping his oyster-planting ground unless he shall have first properly designated and marked the oyster lines of his planting ground by placing prominent and fixed buoys or stakes thereon, such buoys or stakes to be so many inches in diameter and to extend so far above water as the Commission or the Commissioner, may direct, and the same shall be kept up and maintained so as to distinctly mark the outer line or lines of such planting ground. In the event that any single line of the boundary of such planting ground shall exceed three hundred feet in length it shall be marked with at least three or more stakes, with one stake at each end of such line and one or more stakes equally spaced along such line. In the event it appears to the inspector that such ground is not properly marked, he may forthwith suspend the dredging permit until such time as the ground is properly marked. The buoys shall be painted white, and shall have the initials of the person or firm whose property they are, placed upon them near the top, in black letters, of not less than five inches in length. If stakes are used there shall be a sign painted as prescribed for buoys attached to each corner stake.

(4) *Marking boats.* — Such initials shall also be placed upon each side of the prow of any boat or craft used or employed in dredging or scraping such planting ground. (Code 1950, § 28-158; 1950, p. 988; 1952, c. 643; 1954, c. 43; 1958, c. 477; 1962, c. 406; 1964, c. 393; 1968, c. 747; 1972, c. 644; 1979, c. 274.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-135. Revocation of license or permit to dredge. — The Commission, after a hearing, on testimony of an officer of the Commission at such hearing that he has personally observed a person having dredging cable and/or dredging equipment overboard or in any way engaged in dredging in any area other than where a person holds a lawful permit or license to dredge, shall have the authority to revoke all permits and licenses held by said person to dredge on public and/or private grounds, and to refuse to issue any licenses or permits for such purposes for period of one year. Before any hearing is held pursuant to this section there must be at least five days' notice given to the permit or license holder, by written notice served by an officer or by certified mail addressed to the permit or license holder at the address given on the permit or license. (Code 1950, § 28-153; 1962, c. 406.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

ARTICLE 10.

Miscellaneous Provisions.

§ 28.1-136. Oyster measures. — A. It shall not be lawful at any time for any person to buy or sell oysters in this State in the shell by any other than one-half bushel or one bushel metallic measures except as provided in paragraph B of this section, and such measures shall be iron circular tubs with straight sides and straight solid bottoms with holes in bottom, if desired, for draining, such holes to be no larger, however, than one inch in diameter. A half-bushel tub shall have the following dimensions, all measurements to be from inside to inside: fifteen inches across the top, thirteen inches across the bottom, and seventeen inches diagonally from the inside chine to the top; and a bushel tub shall measure eighteen and one-half inches across the top, seventeen inches across the bottom, and twenty-one and one-half inches diagonally from the inside chine to the top, except that oysters harvested from the public rocks in the Potomac river or its tributaries may be bought or sold in one bushel metallic measures which shall measure eighteen inches across the top, sixteen and one-half inches across the bottom, and twenty-one inches diag-

onally from the inside chine to the top. Such metallic measure must be level full across the entire top of the measure to be considered a full measure.

If the seller of any oysters or oyster shells fails to furnish a full measure as defined in this section, or a buyer of any seed oysters or oyster shells accepts less than a full measure as defined in this section, he shall be guilty of a misdemeanor.

B. Oysters may be sold in containers of a size greater than eighteen and one-half inches across the top, seventeen inches across the bottom, and twenty-one and one-half inches diagonally from the inside chine to the top if such container has been approved by the Commissioner and its use to measure oysters has been approved by both the buyer and seller. (Code 1950, § 28-188; 1960, c. 517; 1962, c. 406; 1970, c. 132; 1980, c. 33.)

§ 28.1-137. Theft of oysters, clams, shells, etc. — If any person take, steal or carry away, without permission of the owner, oysters, clams, bedded or planted, oysters deposited by any person making up a cargo for market, shells or seed planted for formation of oyster beds by the State or any person, firm, or corporation, he shall be deemed guilty of the larceny thereof.

After any person is convicted for any violation of taking oysters from public ground, the Commission, without notice and hearing required by § 28.1-36, immediately shall revoke all existing licenses to take or catch finfish or shellfish, issued to such person. No new licenses shall be issued to such person for a minimum of one month or a maximum of two years after such conviction in the discretion of the Commission. (Code 1950, § 28-191; 1960, c. 517; 1962, c. 406; 1966, c. 684; 1968, c. 747.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

Law Review. — For an article on justification as a defense to crime, see 59 Va. L. Rev. 1326 (1973).

Failure of the lessee of oyster grounds to maintain markers as required by § 28.1-109 (6) would have no possible effect upon the right of the Commonwealth to prosecute under this section, for larceny of oysters. Melvin v. Commonwealth, 202 Va. 511, 118 S.E.2d 679 (1961), decided under repealed §§ 28-191 and 28-124, corresponding to this section and § 28.1-109.

Evidence held sufficient. — While the evidence was slightly in conflict as to the staking of the grounds, it was clearly sufficient for the jury to determine that the oysters were taken from the grounds alleged in the warrant. Melvin v. Commonwealth, 202 Va. 511, 118 S.E.2d 679 (1961), decided under repealed § 28-191, corresponding to this section.

§ 28.1-138. Converting shells into lime. — It shall be unlawful for any person to take or catch oysters or shells in any of the waters within the jurisdiction of this State for the purpose of converting the same into lime, unless and except said person has obtained permission from the Commission to convert said shells into lime. (Code 1950, § 28-192; 1962, c. 406.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-139. Taking oysters or loading on vessel on Sunday or in nighttime. — A. No person shall take oysters in the waters of this State, from either public or private grounds, on Sunday or in the nighttime between the hours of sunset and sunrise; nor shall any person load any vessel or boat for such purpose with any oysters from any of the waters of the Commonwealth on Sunday or in the nighttime between the hours of sunset and sunrise.

B. Shucking oysters from the public grounds other than from designated seed areas may be unloaded on shore at packinghouses or loaded on trucks or motor vehicles one-half hour after sunset and one-half hour before sunrise; but those oysters which have been inspected by an oyster inspector and purchased by the packer or planter, and the oysters owned by the packer or planter, may be unloaded at any time except Sunday within the discretion of the packer.

C. The provisions of subsection A of this section shall not apply to the taking or catching, by hand during the prescribed hours of daylight on Sunday, of not more than one bushel of oysters for immediate household use. The presence, on board a boat or other vehicle being used during any Sunday harvesting, of any gear normally associated with the harvesting of oysters other than by hand shall be prima facie evidence of violation of the provisions of this section. (Code 1950, § 28-195; 1958, c. 471; 1960, c. 517; 1962, c. 406; 1966, c. 684; 1975, c. 185; 1981, c. 119.)

§ 28.1-139.1. **Taking clams on Sunday or in nighttime; exception.** — No person shall take clams in the waters of this State, from either public or private grounds, on Sunday or in the nighttime between the hours of sunset and sunrise. This section shall not apply to the taking of clams on Sunday by hand or hand rake between the hours of sunrise and sunset; provided that such clams be for immediate household use only and not for planting or for sale or any other commercial use. (1975, c. 185.)

§ 28.1-140. **Protection of oysters and clams of Virginia; labeling.** — It shall be unlawful for any person, firm or corporation to offer for sale, sell and/or distribute oysters or clams as Virginia oysters or clams unless such oysters and clams have been in the waters of the Commonwealth of Virginia or the Potomac river for a period of at least six months.

Any oysters or clams imported into Virginia, either shucked or unshucked, when sold or distributed, shall not be designated or labeled in any manner indicating they came from Virginia waters or that they are Virginia oysters or clams.

The name, address and Department of Health certificate number on the package or container of the packer or distributor shall not be considered illegal designation or labeling. (1962, c. 406; 1964, c. 393.)

§ 28.1-141. **Oysters on crab dredging boat.** — It shall be unlawful for any person in charge of any boat licensed to catch crabs with a dredge to have or allow on board any oysters in excess of one bushel. Any person violating any provisions of this section shall be guilty of a misdemeanor and punished as provided by law. (Code 1950 (Suppl.), § 28-196.2; 1952, c. 654; 1954, c. 446; 1962, c. 406.)

§ 28.1-142. **Sale of shells to Commission.** — (1) Each shucker or packer of oysters shall sell to the Commission at the prevailing market price up to twenty per centum of the shells, unless said shells are planted in Virginia waters.

(2) On or before December first of each year, the Commission shall notify each shucker or packer whether it will purchase by June first following the shells so set aside. If such notice is not given, the shucker or packer may dispose of such shells as he sees fit. (Code 1950 (Suppl.), § 28-190.1; 1952, c. 648; 1962, c. 406.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

Article 11.

Miscellaneous Provisions as to Particular Waters or Localities.

§ 28.1-143. **Use of rakes or scrapes on ocean side of Eastern Shore.** — It shall be unlawful for any person to use, or employ rakes other than hand rakes, dredges, scrapes, or other like devices for the purpose of taking or catching oysters, crabs, clams, or shells from the natural rocks, beds, or shoals on the eastern or ocean side of Accomack and Northampton counties at any time. Any person violating this provision shall be fined not less than ten nor more than fifty dollars for each offense, and be confined in jail until such fine is paid, but not to exceed thirty days. (Code 1950, § 28-198; 1962, c. 406.)

§ 28.1-144. **Leasing of certain bottoms in Rappahannock river prohibited.** — No part of the bottom of the Rappahannock river, lying in or near the center of such river, and running from the mouth of the river to and including Morattico bar, which is now designated on the Baylor survey and resurveys thereof as assignable bottom, and which is commonly known as "deep water planting grounds," shall be subject to lease or assignment, and such bottom is declared to be a part of the public oyster beds and rocks of such river. (Code 1950, § 28-201; 1962, c. 406.)

§ 28.1-144.1. **Temporary restrictions on the leasing of certain oyster grounds in the Chesapeake Bay.** — Except as to applications for leases pending on January one, nineteen hundred seventy-eight, for a one-year period beginning on July one, nineteen hundred seventy-eight, the Commission shall not lease or assign any part of the bottom of that area of the Chesapeake Bay, known as Back river, which is contiguous to the cities of Poquoson and Hampton and York County, if the Commission finds that such part of the bottom of that area has not been leased or assigned since January one, nineteen hundred sixty-eight, and is currently producing oysters. No application for a lease or assignment of such bottom shall lapse as provided for in § 28.1-109 (8) until ninety days after the expiration of the prohibition contained herein. (1978, c. 252.)

§ 28.1-145. **Leasing of certain bottoms in James river prohibited.** — The Marine Resources Commission shall have no power to lease any oyster bottom in the James river, above the James River Bridge, west of the James River Bridge, not theretofore leased, and nothing herein contained shall apply to any renewal of existing leases. (Code 1950 (Suppl.), § 28-201.1; 1952, c. 241; 1954, c. 214; 1960, c. 517; 1962, c. 406.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-146. **Dredging for oysters in James river.** — It shall be unlawful for any person to dredge for oysters in the James river during the open season for taking oysters from the public rocks and shoals; provided, however, that the Marine Resources Commission may grant a permit to applicants therefor to dredge in specified areas. (Code 1950 (Suppl.), § 28.1-201.2; 1952, c. 181; 1962, c. 406; 1964, c. 393.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-147. **Authority of Governor to authorize dredging of channel in navigable waters; special provisions applicable in James river between James River Bridge and Jamestown Island.** — (a) To the extent that the approval, consent or authorization of the Commonwealth is necessary or expedient for any person, firm, corporation, association or government, or for any agency of any or all of the foregoing, or any combination thereof, to dredge a channel of any navigable stream, the bed of which is owned by the Commonwealth, for the purpose of deepening, widening or relocating such channel and making related improvements, the Governor is authorized on behalf of the Commonwealth to grant such approval, consent or authorization upon such terms and conditions as he deems appropriate after the receipt by him of advisory reports from the Virginia Institute of Marine Science, the State Water Control Board, the Marine Resources Commission, the Commission of Game and Inland Fisheries, the Department of Conservation and Historic Resources, the State Port Authority and the State Highway and Transportation Commission;

(b) Provided, however, that such approval, consent or authorization to deepen, widen or relocate the present ship channel in the area of the James river between James River Bridge and Jamestown Island shall not be granted by the Governor until he has received advisory reports from the above-mentioned agencies and except with the consent of the General Assembly. Such advisory reports shall be made available to the Governor and the General Assembly by the above-mentioned agencies not later than December thirty-first, nineteen hundred and sixty-six. The Governor shall at the next succeeding regular session of the General Assembly, or next succeeding special session of the General Assembly called solely or partially for the purpose of

considering the same, whichever first occurs, transmit his recommendations to the General Assembly. If the Governor recommends the deepening, widening or relocating of such ship channel, he shall in his recommendation request the consent of the General Assembly to such project. If each house of the General Assembly grants its consent, by recorded vote of its members present and voting on the question, the Governor shall be authorized to give the approval, consent or authorization of the Commonwealth to such dredging; provided, however, that if either house shall fail for any reason to vote upon the question of consent, by recorded vote of its members present and voting on the question, prior to the adjournment of the regular or special session at which the Governor's recommendation is received, such failure of either house to so vote shall be deemed to grant the consent of that house as if such house had expressly consented to such project. If either house shall expressly decline to grant its consent, by recorded vote of its members present and voting on the question, the Governor shall not be authorized to give the approval, consent or authorization of the Commonwealth to such dredging. (Code 1950 (Suppl.), § 28-201.3; 1958, c. 302; 1962, c. 406; 1964, c. 350.)

1984 reorganization. — The Department of Conservation and Historic Resources, referred to in subsection (a) of this section, is established effective January 1, 1985, by Acts 1984, c. 750. Prior to that date, its functions under subsection (a) of this section are to be performed by the Board of Conservation and Economic Development.

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-148. Mouth of Rappahannock river defined. — Whenever the mouth of the Rappahannock river is used in Title 28 [Title 28.1] of the Code it shall mean: Beginning on the west edge of a concrete breakwater located on the extreme eastmost [point] of Stingray Point, Middlesex County, designated as point "B," said point is located in line with the north side and 98.3 feet from the northeast corner of a porch dwelling owned by William E. Myers; thence north 21° 50′ east (magnetic), 20,240 feet (approximately), to a pipe designated as point "C", located on the extreme eastmost point of Windmill Point, Lancaster County. This area is to include all of the Rappahannock river and its tributaries except as set out in § 93.1 [§ 28.1-83], Code of Virginia. (Code 1950 (Suppl.), § 28-201.4; 1960, c. 517; 1962, c. 406.)

§ 28.1-149. Certain natural oyster rocks in Rappahannock river. — All of Russ' Rock and Little Carter's Rock are declared to be natural oyster rocks, beds and shoals and unassignable to any person for private use, in the same manner and to the same extent as if the same had been embraced within the original Baylor survey; and the Commissioner of Marine Resources is hereby directed as soon as practicable to have such natural oyster rocks, beds and shoals properly and accurately surveyed and a plat of the survey recorded in the clerk's office of Richmond and Essex counties. The expense of making such surveys and recording the plat to be paid by the Commissioner out of the general oyster funds of the State, and such natural oyster rocks, beds and shoals shall henceforth be exempt from assignment to any person. (Code 1950, § 28-203; 1962, c. 406.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-150. Declaring certain grounds in Mobjack Bay natural oyster rocks. — The following grounds in Mobjack Bay, in the county of Gloucester, to wit: First, a lot of oyster-planting ground containing two hundred and eighteen and seventy-five-one-hundredths acres surveyed by Fred E. Reudiger, civil engineer, and assigned to F. W. Darling by George B. Taliaferro, oyster inspector, by an assignment recorded in oyster plat book number four, page thirty-one in the clerk's office of Gloucester County, Virginia; second those

portions of a lot of oyster ground surveyed by Fred E. Reudiger, civil engineer, and assigned to J. Weymouth by George B. Taliaferro, oyster inspector, by his assignment recorded in oyster plat book number four, page thirty-five in the clerk's office of Gloucester County, Virginia, and a lot of oyster ground surveyed by Fred E. Reudiger, civil engineer, and assigned to S. J. Watson by George B. Taliaferro, oyster inspector, by an assignment recorded in oyster plat book number four, page thirty-one, in the clerk's office of Gloucester County, Virginia, which two portions of the two plats adjoin the two hundred-and-eighteen-and-seventy-five-one-hundredths acre lot of oyster ground above described, which was assigned to F. W. Darling and which portions are cut off from the residue of the Weymouth and Watson lots of oyster ground above described, by a line beginning where the boundary of J. Weymouth's ground, which runs north forty-seven degrees, thirty-two minutes east, seventy-eight and sixty-one hundredths chains, intersects the boundary of F. W. Darling ground, which runs south forty-two degrees east, thirty chains, and from this point of intersection running south forty-two degrees east, until it intersects with the line of S. J. Watson's ground, which runs south fifty-one degrees, twenty-six minutes west one hundred and thirteen and seventy-nine-one-hundredths chains (these portions of the Weymouth and Watson lots of oyster ground are cut off by the boundary line hereinbefore described without regard to acreage thereof; the acreage is estimated not to exceed fifty acres), shall be regarded, deemed, and taken to be natural oyster rocks, beds and shoals as fully and effectually to all intents and purposes as if the same had originally been included within the limits and boundaries of the Baylor survey of the natural rocks, beds, and shoals in the waters of the Commonwealth, and subject in all respects to the laws of the State in relation to natural oyster rocks, beds and shoals, and the taking of oysters therefrom, but subject, also, to the existing rights of any lessees of such ground, if there be any such right. (Code 1950, § 28-204; 1962, c. 406.)

§ 28.1-151. Declaring certain areas in Hill's Bay, Mathews County, as natural oyster rocks, beds and shoals. — The following ground in Hill's Bay on the west side of Gwynn's Island, Mathews County, contained within the following boundaries is hereby declared to be natural oyster rocks, beds and shoals and unassignable to any person for private use: Beginning at corner No. 8, Public Ground No. 5 of Mathews County; thence along Public Ground line to corners Nos. 9, 10, 11, 12, 13 and 14 in a northeasterly direction; thence a due east course to the low-water mark on west side of Gwynn's Island; thence following the meanders of the low-tide line in a southwesterly direction to corner No. 5 of J. R. Forrest's oyster lease of 2.01 acres; thence following said oyster lease in a westerly direction to corner No. 4 of said lease; thence in a westerly direction to the point of beginning. The oyster lease of O. V. Sparrow's 10.51 acres, near Cherry Point, is hereby excluded from the area herein described. (Code 1950 (Suppl.), § 28-204.1; 1954, c. 63; 1962, c. 406.)

§ 28.1-152. Declaring certain other areas in Hill's Bay, Mathews County, as natural oyster rocks, beds and shoals. — The following ground in Hill's Bay, Mathews County, contained within the following boundaries is hereby declared to be natural oyster rocks, beds and shoals and unassignable to any person for private use.

The point of beginning is located at the low-tide line on the west side of the Gwynn's Island Bridge, said bridge connecting the mainland and Gwynn's Island; thence following the west right-of-way of said Gwynn's Island Bridge to a point on the south side of Public Ground No. 5, Mathews County; thence along the south side of Public Ground No. 5 in a southwest direction to Public Ground corner No. 2; thence in a generally west direction along said Public Ground corner No. 3; thence in a generally northwest direction along said Public Ground to Public Ground corner No. 4; thence in a generally northwest direction along said Public Ground to Public Ground corner No. 5; thence in a generally northwest direction on the west side of Public Ground No. 5 to a point; thence in a northwest direction along the south side of C. M. Forrest's 4.10 acre oyster ground lease to a point; thence in a northwesterly direction

along the southwest side of J. E. Forrest's 10.17 acre oyster ground lease to a point; thence in an easterly direction along the northern side of J. E. Forrest's 10.17 acre oyster ground lease to a point on the south side of Public Ground No. 5, Mathews County; thence in a northwesterly direction along the south side of Public Ground No. 5 to Public Ground corner No. 6; thence in a generally north direction along the western side of said Public Ground No. 5 to Public Ground corner No. 5; thence in a northerly direction along said Public Ground to Public Ground corner No. 4; thence in a northerly direction along the west side of Public Ground No. 5 to a point; thence following the south edge of Shelton Rowe's, Julian Rowe's and Robert Callis's oyster ground lease of 100 acres in a generally west direction to a point, said point being due north of survey station Rowe's, Julian Rowe's and Robert Callis's oyster ground lease of 100 acres in a "Burton" on Burton's Point to low-tide line; thence following the low-tide line in a generally southeasterly direction to the west side of the mouth of Queen's creek; thence in a southeasterly direction across the mouth of Queen's creek to a point; thence along the low-tide line in a generally easterly direction to the point of beginning. (Code 1950 (Suppl.), § 28-204.1:1; 1958, c. 299; 1962, c. 406.)

§ 28.1-153. Declaring certain areas in Chesapeake Bay, Mathews County, as natural oyster rocks, beds and shoals. — The following ground in Chesapeake Bay, Mathews County, contained within the following boundaries is hereby declared to be natural oyster rocks, beds and shoals and unassignable to any person for private use.

Beginning, as a point of reference, at survey station "Sand," located near the south end of Gwynn's Island; thence due east to the low-water mark on the east side of Gwynn's Island to the true point of beginning; thence due east along the south end of Gwynn's Island; thence due east to the low-water mark on the east Public Ground No. 6, Mathews County; thence following the west side of Public Ground No. 6, Mathews County, in a northerly direction to Public Ground corner No. 8; thence following said Public Ground in a northerly direction to Public Ground corner No. 7; thence following said Public Ground in a northerly direction to Public Ground corner No. 6; thence in a northerly direction, following said Public Ground to Public Ground corner No. 5; thence in a northerly direction following said Public Ground to Public Ground corner No. 4; thence in a northerly direction following said Public Ground to Public Ground corner No. 3; thence in a generally west direction following the south side of Public Ground No. 6 to Public Ground corner No. 2; thence in a generally westerly direction following said Public Ground to Public Ground corner No. 1; thence in a southwesterly direction to the intersection of Public Ground No. 5, Mathews County; thence following the northeast side of Public Ground No. 5 in a southeasterly direction to the low-tide line at Cherry Point on the north side of Gwynn's Island; thence following the low tide on the north side of Gwynn's Island to a point; thence following the low-tide line on the east side of Gwynn's Island in a southerly direction to the true point of beginning. (Code 1950 (Suppl.), § 28-204.1:2; 1958, c. 204; 1962, c. 406.)

§ 28.1-154. Declaring certain areas near Hole in the Wall, in Mathews County, as natural oyster rocks, beds and shoals. — The following ground near Hole in the Wall, Mathews County, contained within the following boundaries is hereby declared to be natural oyster rocks, beds and shoals and unassignable to any person for private use:

1. Beginning at Virginia Commission of Fisheries' survey Station Marsh, located in the marsh on the south side of the Hole in the Wall; thence in a northeasterly direction to corner No. 3 of Carroll Lee Forrest and Vernon Rowe, Junior's, oyster lease of 13.02 acres, thence in a northwesterly direction along said lease to corner No. 2; thence along the east side of R. Herbert Callis' lease of 6.69 acres to corner No. 3 of said lease; thence along the north side of said lease in a westerly direction to corner No. 2, said corner No. 2 in on line of Public Ground No. 7, Mathews County; thence in a northerly direction to Public Ground corner No. 11; thence in a northwesterly direction along Public Ground line to a point opposite corners Nos. 8 and 9 of Maywood L. Callis' 24.69 acres; thence in a northeasterly direction to corner No. 9 of said lease; thence to corner No. 10 of said lease; thence in a northeasterly direction to Virginia Commission of Fisheries' survey Station Sand; thence in a due east course to

the intersection of Public Ground No. 6, Mathews County; thence following along west side of said Public Ground in a southeasterly direction to a point due east of Station Marsh; thence due west to Station Marsh, or point of beginning.

2. Beginning at the northeast corner of Haufler's survey No. 6565; thence in an easterly direction along the line of Milford Haven to a point which is on Public Ground No. 7; thence in a southerly direction along the boundary line of Public Ground No. 7 to a point; thence due west to a point which is the southeastern corner of Callis Ground No. 7222; thence in a northerly direction along Callis Ground No. 7222 and Callis Ground No. 10447 to a point where the eastern boundary of Callis Ground No. 10447 intersects the eastern boundary of Haufler's Ground No. 6565; thence in a northerly direction to the point of beginning. (Code 1950 (Suppl.), § 28-204.2; 1954, c. 111; 1962, c. 406; 1981, c. 128.)

§ 28.1-155. Declaring certain areas in Pocomoke Sound, Accomack County, as natural oyster rocks, beds and shoals. — The following area in Pocomoke Sound, Accomack County, contained within the following boundaries is hereby declared to be natural oyster rocks, beds and shoals and unassignable to any person for private use:

Beginning at a point on the low-water mark on the north end of Saxis Island, said point being due south from the low-water mark and marked by a concrete marker designated as survey point "B" on a map of Pocomoke Sound; thence from the true point of beginning at low water following in a southwesterly direction the low-water mark on the northwest side of Saxis Island to a point, said point being the northeast side of Starling creek; thence southwesterly across mouth of Starling creek to a point; thence following the low-water mark in a southwesterly direction to a point, said point being on the northeast side of the mouth of Fishing creek; thence in a generally westerly direction across the mouth of Fishing creek to a point; thence following the low-water mark around Drum Bay to a point, said point being due north of a concrete survey marker named "Drum"; thence due north to Public Ground No. 11; thence easterly to Public Ground corner No. 13; thence southeasterly to Public Ground corner No. 14; thence easterly to Public Ground corner No. 15; thence southeasterly to Public Ground corner No. 16; thence easterly to Public Ground corner No. 17; thence northeasterly to Public Ground corner No. 18; thence northwesterly to Public Ground corner No. 19; thence northeasterly to Public Ground corner No. 1; thence in a northerly direction to Public Ground corner No. 14 of Public Ground No. 9; thence northerly to Public Ground corner No. 15; thence northeasterly to Public Ground corner No. 16; thence northeasterly toward Public Ground corner No. 17 to a point; said point being due north to the true point of beginning; thence due south to the point of beginning.

Provided, however, that nothing in this section shall be construed as prohibiting assignment of a portion of such area to riparian owners under the provisions of § 28.1-108 of the Code of Virginia. (Code 1950 (Suppl.), § 28-204.3; 1956, c. 135; 1962, c. 406.)

§ 28.1-156. Declaring certain areas in Piankatank river near Stove Point, Middlesex County, as natural oyster rocks, beds and shoals. — The following area, in the Piankatank river around and near Stove Point, Middlesex County be, and the same hereby is declared, as natural oyster rocks, beds, and shoals and unassignable to any person for private use:

Beginning at survey station "R" on extreme southern tip of Stove Point as a point of reference; thence in a southerly direction to the low-water mark on the southern tip of Stove Point; thence in a northerly direction following the low-water mark on the west side of Stove Point to a point due west of survey station "Billy"; thence in a due west course to Public Ground No. 3, Middlesex County; thence in a southerly direction to Public Ground corner No. 6 of said Public Ground; thence in a southerly direction to Public Ground corner No. 5; thence in an easterly direction to Public Ground corner No. 4; thence in a southeasterly direction to Public Ground corner No. 3; thence in a southeasterly direction to a point, said point being on Public Ground No. 5, of Mathews County; thence in a northeasterly direction, following Public Ground No. 5, Mathews County, to a point; thence in a northwesterly direction to Public Ground corner No. 14 of Public Ground No. 2, Middlesex County; thence

in a north-northwesterly direction to Public Ground corner No. 13 of said Public Ground; thence in a westerly direction to corner No. 4 of J. T. Ward's 57.48 acre lease; thence in a northerly direction following the west side of said J. T. Ward's lease to corner No. 5 of the hereinabove mentioned lease; thence in a due west course to the low-water mark on the eastern side of Stove Point; thence following in a southerly direction the low-water mark of the east side of Stove Point to the point of beginning.

Provided, however, that nothing in this section shall affect any oyster ground assignments that are now in effect nor shall this section be construed as prohibiting assignment of a portion of such area to riparian owners under the provisions of § 28.1-108 of the Code of Virginia. (Code 1950 (Suppl.), § 28-204.4; 1956, c. 142; 1962, c. 406.)

§ 28.1-157. Declaring certain areas near the mouth of the Poquoson river, in York County, as natural oyster rocks, beds and shoals. — The following ground near the mouth of the Poquoson river in York County, contained within the following boundaries is hereby declared to be natural oyster rocks, beds and shoals and unassignable to any person for private use.

Tract No. 1. Beginning at low-water mark on the extreme east side of Goodwin Islands at a point known as Tues Point; thence following the low-water mark on the eastern side of Goodwin Islands in a general southerly direction to the extreme southern point of said Goodwin Islands; thence in a southerly direction to corner No. 7 of the 27.72 acre oyster lease of C. E., W. T. and J. T. Crockett, H. H. Hansford and S. E. Wescott; thence in a general easterly direction to corner No. 6 of said oyster lease; thence in a southerly direction to corner No. 5 of said oyster lease; thence in a general westerly direction to corner No. 4 of said oyster lease; thence due south to the low-water mark on the east side of Crab Neck; thence following the low-water mark on the east side of said Crab Neck in a general southerly direction to the extreme tip of said Crab Neck, known as York Point; thence in a general south-southwesterly direction to corner No. 3 of Public Ground No. 9, York County; thence in a southeasterly direction along the northeast side of said Public Ground to Public Ground corner No. 4; thence in a general southerly direction on the east side of said Public Ground to corner No. 1 of said Public Ground; thence in a general southeasterly direction to Public Ground corner No. 3 of Public Ground No. 8, York County; thence in a northeasterly direction following the west side of Public Ground No. 8 to Public Ground corner No. 2; thence in an easterly direction along the northern side of Public Ground No. 8 to Public Ground corner No. 1; thence in a southwest direction along the east side of Public Ground No. 8 to Public Ground corner No. 4; thence in a due east course to the low-water mark on the east side of the mouth of Bennett's creek; thence following the low-water mark in a general easterly direction to Marsh Point, said point is located at the extreme southeast side of the mouth of the Poquoson river; thence in a general northwesterly direction on a line toward Tues Point to a point on the southeast side of Public Ground No. 7, York County; thence in a southwest direction along the southeast side of Public Ground No. 7 to Public Ground corner No. 4; thence in a northwesterly direction along the southwest side of said Public Ground No. 7 to Public Ground corner No. 1; thence in a northeasterly direction along the northwest side of said Public Ground No. 7 to a point; thence following the south line of the oyster ground of C. E. Crockett and A. P. Thomas, said lease containing 12.70 acres, in a general westerly direction to corner No. 3 of said oyster lease; thence following the west side of said oyster lease in a general northerly direction to corner No. 2 of said lease; thence in a northeasterly direction along the northwest side of said oyster lease to a point, said point being located on a line from Tues Marsh to Marsh Point, thence in a northwesterly direction to the low-water mark to Tues Point, or the point of beginning.

Tract No. 2. Beginning at the low-water mark on the extreme east side of Plumtree Point, said point located on the north side of the mouth of Back river, said point is the eastmost point on said side of river; thence in a general north-northwesterly direction toward corner No. 3 of Public Ground No. 7, York County, to a point on the south side of M. F. Quinn's 90.40 acre oyster ground lease; thence in a westerly direction along the south line of M. F. Quinn's oyster lease to a point, said point being located on the southeast side of York County, Public Ground No. 7; thence in a southwesterly direction along

the southeast side of Public Ground No. 7, York County, to a point, said point is located along a line from Tues Point to Marsh Point; thence in a general southeasterly direction along the heretofore described line to the low-water mark on Marsh Point, said Marsh Point being the extreme east point of the south side of the mouth of Poquoson river; thence in a general southeasterly direction along the low-water mark to the point of beginning. (Code 1950 (Suppl.), § 28-204.5; 1958, c. 175; 1962, c. 406.)

§ 28.1-158. Declaring certain ground in Mobjack Bay, in Gloucester and Mathews counties, to be natural oyster rocks, beds and shoals. — The following grounds in Mobjack Bay, Gloucester-Mathews counties, contained within the following boundaries are hereby declared to be natural oyster rocks, beds and shoals and unassignable to any person for private use in the same manner and to the same extent as if the same had been embraced within the original Baylor survey:

Beginning at the westmost corner of W. E. Belvin's 79.25 acre oyster ground lease, designated as corner No. 2 of said lease, said point of beginning also being the northmost corner of additional Public Ground area of 1928, Gloucester County (Deep Rock); thence in a northerly direction along the west side of the said Belvin lease to corner No. 1 of said lease, corner No. 1 also being the southmost corner of John Carr's 84.85 acre oyster ground lease; thence in a northwesterly direction along the southwest side of John R. Carr's 84.85 acre oyster ground lease to corner No. 1 of said oyster ground lease; thence in a general northeasterly direction along the northwest side of John R. Carr's oyster lease to corner No. 2 of said lease, said corner also being the westmost corner of W. E. Belvin's 27.71 acre oyster ground lease; thence in a northeasterly direction along the northwest side of W. E. Belvin's oyster ground lease to corner No. 10 of said lease; thence in a southeasterly direction along the northeast side of W. E. Belvin's oyster ground lease to corner No. 6 of said lease; thence in a northeasterly direction to the southwest side of Public Ground No. 2, Mathews County; thence in a northwesterly direction along the southwest side of Public Ground No. 2, Mathews County, to a point, said point being the intersection of an additional area of Public Clamming Grounds, Gloucester County, with Public Oyster Ground No. 2, Mathews County; thence in a southwest course along additional area of Public Clamming Grounds, Gloucester County; thence in a southwesterly direction along the edge of additional area of Public Clamming Grounds in Gloucester County to a point; thence in a southeasterly direction along the additional area of Public Clamming Grounds, Gloucester County, to the point of beginning. (Code 1950 (Suppl.), § 28-204.6; 1958, c. 475; 1962, c. 406.)

§ 28.1-159. Acts which remain in force. — The following acts of the General Assembly are continued in force:

Chapter 632 of the Acts of 1901-2, approved April 2, 1902, relating to the natural oyster rocks, beds and shoals in Nomini and Currioman bays, in the county of Westmoreland.

Chapter 294 of the Acts of 1901-2, approved March 25, 1902, declaring certain grounds in the James river, in the county of Isle of Wight, known as Day's Point Long Rock be a natural oyster bed, rock or shoal.

Chapter 319 of the Acts of 1901, approved February 16, 1901, including Surry County within the oyster territory of the State, etc.

Chapter 855 of the Acts of 1895-6, approved March 5, 1896, and chapter 263 of the Acts of 1897-98, approved February 9, 1898, declaring certain portions of ground in York river to be natural oyster rocks.

Chapter 862 of the Acts of 1897-98, approved March 3, 1898, relating to the natural oyster rocks, beds and shoals in York river in King and Queen County.

Chapter 279 of the Acts of 1930, approved March 24, 1930, relating to certain natural oyster beds, rocks and shoals in Mathews County. (Code 1950, § 28-205; 1962, c. 406.)

ARTICLE 12.

Clams and Scallops.

§ 28.1-160. Possession of oysters while taking clams or scallops. — If any person shall have in his possession any oysters while taking or catching clams or scallops during the season in which it is not lawful to take or catch oysters from the natural rocks, beds, or shoals, he shall be prima facie guilty of violating the law against taking or catching oysters therefrom during such season, and upon conviction, the penalty shall be the same as for taking or catching oysters from the natural rocks, beds, or shoals, during the prohibited season. (Code 1950, § 28-178; 1954, c. 177; 1960, c. 517; 1962, c. 406; 1968, c. 747; 1970, c. 726.)

§ 28.1-161. Dredging clams in polluted areas for replanting in public clamming grounds. — The Commissioner of Marine Resources shall have authority to dredge clams or have the same dredged in polluted areas for the purpose of replanting the same in public clamming grounds which have been or which may thereafter be set aside. (Code 1950, § 28-179; 1962, c. 406.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-162. Public clamming or scalloping grounds. — Any ground in the waters of this Commonwealth not assigned to anyone for planting or bathing purposes may be, on application of twenty or more citizens to the oyster inspector of the district in which the land lies, laid off and designated as public clamming or scalloping grounds; or the Marine Resources Commission may do so without such petition if in its judgment it is expedient, provided in its opinion no oyster interests will suffer thereby and the clams or scallops are of sufficient quantity for a person to realize at least two hundred and twenty-five clams or one and one-half dollars per day catching and taking clams or scallops from such ground; and, if laid off, the Commission shall have the metes and bounds of such ground accurately designated by proper and suitable stakes; and also have a plat made of the same, to be recorded in the clerk's office of the county wherein the ground lies, all cost of surveying, platting and recording to be paid by the applicants; and such ground shall be set apart and remain as public clamming or scalloping ground for the common use of the citizens of this State so long as the Commission may deem best, and shall not be assigned to anyone during such period. (Code 1950, § 28-180; 1962, c. 406.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-163. Catching of scallops; public scallop grounds. — (1) *Season for catching scallops.* — It shall be lawful for any person, who has been duly licensed according to law, to take or catch scallops with scrapes, from the public grounds of the Commonwealth, to take and catch scallops, by any means from such grounds between the fifteenth day of November of each year and the fifteenth day of April of the succeeding year, inclusive; but it shall be unlawful to take or catch scallops by any means whatsoever between the fifteenth day of April and the fifteenth day of November of any year.

(2) *License tax.* — For the privilege of taking scallops, there shall be paid to the inspector of the district in which he resides a license tax of fifty dollars per year, which shall include the privileges of marketing and shipping scallops so taken or caught.

(3) *Measuring ring; size limit.* — The inspector shall furnish each such licensee with a metal ring, having an inside measurement of one and three-quarter inches; and it shall be unlawful for any person to take, catch, or have in his possession scallops of a size smaller than one and three-quarter inches, which will pass through such metal ring.

4. *Public scallop grounds.* — Any ground in the waters of this Commonwealth not assigned to anyone for planting or bathing purposes, may, on application of twenty or more citizens to the inspector of the district in which the land lies, be laid off and designated as public scallop grounds; or the Marine Resources Commission may do so without such petition if in its judgment it is expedient; provided, in the opinion of the Commission no oyster interest will suffer thereby, and the scallops are of sufficient quantity for a person to realize at least three dollars per day catching and taking scallops from such grounds; and, if laid off, the Marine Resources Commission shall have the metes and bounds of such ground accurately designated by proper and suitable stakes, and also have a plat made of same, to be recorded in the clerk's office of the county wherein the ground lies, all costs of surveying, platting and recording to be paid by the applicants; and such grounds shall be set apart and remain as public scallop grounds for the common use of the citizens of this State so long as the Commission may deem best, and shall not be assigned to anyone during such period. Provided, however, that any person who has procured an oyster and or clamming license shall have the privilege of taking and catching scallops under such license. (Code 1950, § 28-181; 1962, c. 406; 1979, c. 274.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

§ 28.1-164: Reserved.

CHAPTER 6.

CRABS.

Sec.
28.1-165. Licenses to take crabs; amount of tax; restrictions on privilege.
28.1-167. Limitations on sizes of crabs to be taken.
28.1-172. Taking crabs on Sunday.
28.1-172.1. Sale of licenses for crabbing.

§ 28.1-165. Licenses to take crabs; amount of tax; restrictions on privilege. — Any resident of Virginia or nonresident desiring to take or catch crabs for market or profit from the waters of this Commonwealth, or waters under its jurisdiction, by any of the means hereinafter stated, or any person, firm or corporation desiring to engage in the business of buying or marketing crabs for packing or canning the same in any way, shall pay to any inspector the taxes and be subject to the provisions set forth in the other sections of this chapter and the following subsections:

(1) For each person taking or catching crabs by dip nets, net, ordinary trotline, hand rake, or with any device not otherwise licensed by this section other than a hand line, eight dollars. No boat shall be used to pull or push any rake.

(2) For each person taking or catching crabs with patent trotlines, thirty-one dollars.

(3) For each boat operator catching blue crabs by means of a device made of wire or thread net and commonly known as a crab pot, twenty-nine dollars; or if catching crabs with one or more assistants, forty-eight dollars. No such pot or device shall be used which has a mesh less than 1½". A holder of a crab pot license may use peeler pots, exempt from mesh size limitations, without securing an additional license. A peeler pot is defined as a wire mesh pot baited with only live adult male (jimmy) blue crabs and food for these crabs. During the months of June, July and August, however, any person fifteen years of age or under may be an assistant to a boat operator catching blue crabs by means of a device made of wire or thread net without obtaining a license.

(4) For each boat used for the purpose of taking or catching hard crabs with dredges, fifty-eight dollars; but such boat shall not be used as a boat for buying crabs, when the Commission limits the taking of crabs under § 28.1-168.

(5) [Repealed.]

(6) (a), (b) [Repealed.]

(c) No person who is licensed to catch crabs shall be required to procure further license for marketing or shipping his own catch.

(7) For each crab trap or crab pound, five dollars.

(8) For each person scraping crabs with a scrape, sixteen dollars. (Code 1950, § 28-170; 1954, c. 368; 1956, c. 293; 1960, c. 517; 1962, c. 406; 1964, c. 393; 1966, c. 684; 1968, c. 785; 1970, c. 726; 1979, c. 274; 1983, cc. 307, 603; 1985, c. 180.)

The 1985 amendment added "and food for these crabs" at the end of the fourth sentence of subdivision (3).

§ 28.1-167. Limitations on sizes of crabs to be taken. — It shall be unlawful for any person to catch, take or have in possession at any time more than ten hard crabs per United States standard bushel or thirty-five hard crabs per barrel, which measure less than five inches across the shell from tip to tip of the longest spikes, or to destroy them in any manner, but shall immediately return the same to the water alive. Adult female crabs, peeler crabs and soft crabs are exempt from these limitations except that the Commission may change such size restriction for a period not to exceed sixty days to respond to significant ecological changes.

In the exercise of its authority granted pursuant to this section, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising such authority.

The inspector shall have the authority to grade or cull any number of barrels, baskets or containers of crabs in any person's possession which he may deem necessary.

If the inspector finds in excess of ten undersize hard crabs per United States standard bushel or thirty-five hard crabs per barrel, the entire quantity of crabs in or from each barrel, basket or container, which was inspected, and found to contain in excess of ten hard crabs per United States standard bushel or thirty-five hard crabs per barrel, shall be seized by the inspector and all such crabs shall be immediately returned to the water by the person who possessed such crabs. The refusal to return the crabs to the water shall constitute a distinct and separate offense from any other violation.

The aforesaid requirement to return the crabs to the waters shall apply to crabs taken and in possession of a crabber or catcher and shall not apply to crabs which have been purchased by a buyer and in the buyer's possession, nor shall it apply to crabs which have been transported a distance of five miles from the nearest salt water. (Code 1950, § 28-172; 1960, c. 517; 1962, c. 406; 1966, c. 684; 1970, cc. 610, 726; 1977, c. 35; 1978, c. 369; 1981, c. 52; 1985, c. 166.)

The 1985 amendment divided the first paragraph into the present first and second sentence, by deleting "provided that" at the beginning of the present second sentence; in the present first sentence of the first paragraph substituted "ten hard crabs per United States standard bushel or thirty-five hard crabs per barrel" for "ten per centum by count per barrel, box, basket or other shipping container of hard crabs" and deleted "when taken out of the net or scrape" following "to the water alive"; and in the first sentence of the fourth paragraph substituted "in excess of ten undersize hard crabs per United States standard bushel or thirty-five hard crabs per barrel" for "undersize crabs in excess of ten per centum tolerance" and substituted "ten hard crabs per United States standard bushel or thirty-five hard crabs per barrel" for "the ten per centum tolerance."

§ 28.1-172. **Taking crabs on Sunday.** — It shall be unlawful to take from the waters of the Commonwealth crabs for commercial purposes on Sunday or between sunset and three hours before sunrise. Except as otherwise provided, this section shall not apply to peeler pounds or floats.

Any person licensed to take or catch crabs may take only peeler crabs from crab pots on Sunday. In taking peeler crabs from crab pots on Sunday, it shall be unlawful for any person to have in his possession more than five percent by count of hard-shelled crabs. Any violation of this section shall be a Class 3 misdemeanor. (Code 1950, § 28-195; 1958, c. 471; 1960, c. 517; 1962, c. 406; 1975, c. 12; 1976, c. 34; 1983, c. 78; 1985, c. 181.)

The 1985 amendment substituted "sunset and three hours before sunrise" for "one hour after sunset and one hour before sunrise" in the first sentence of the first paragraph and deleted "crab pots" following "apply to" in the second sentence of the first paragraph.

§ 28.1-172.1. Sale of licenses for crabbing. — In order to appraise the anticipated level of harvesting for the purpose of taking seasonal conservation measures, the Commission may require the purchase of licenses before each crab season begins. It may set time periods for the sale of licenses to crab and may grant extensions to individual applicants when it finds exceptional circumstances exist. (1985, c. 165.)

LEGISLATION PASSED IN THE 1986 GENERAL ASSEMBLY SESSION

1986 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 115 *

An Act to amend and reenact §§ 62.1-203, 62.1-206 and 62.1-209 of the Code of Virginia, and to amend the Code of Virginia by adding in Title 62.1 a chapter numbered 22, consisting of sections numbered 62.1-224 through 62.1-232, the amended and added sections relating to the Virginia Water Facilities Revolving Fund.

[S 232]

Approved APR 3 1986

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-203, 62.1-206 and 62.1-209 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 62.1 a chapter numbered 22, consisting of sections numbered 62.1-224 through 62.1-232 as follows:

§ 62.1-203. Powers of Authority.–The Authority is granted all powers necessary or appropriate to carry out and to effectuate its purposes, including the following:

1. To have perpetual succession as a public body corporate and as a political subdivision of the Commonwealth;

2. To adopt, amend and repeal bylaws, and rules and regulations, not inconsistent with this chapter for the administration and regulation of its affairs and to carry into effect the powers and purposes of the Authority and the conduct of its business;

3. To sue and be sued in its own name;

4. To have an official seal and alter it at will although the failure to affix this seal shall not affect the validity of any instrument executed on behalf of the Authority;

5. To maintain an office at any place within the Commonwealth which it designates;

6. To make and execute contracts and all other instruments and agreements necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter;

7. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its properties and assets;

8. To employ officers, employees, agents, advisers and consultants, including without limitations, attorneys, financial advisers, engineers and other technical advisers and public accountants and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality;

9. To procure insurance, in amounts and from insurers of its choice, against any loss in connection with its property, assets or activities, including insurance against liability for its acts or the acts of its directors, employees or agents and for the indemnification of the members of its Board of Directors;

10. To procure insurance, guarantees, letters of credit and other forms of collateral or security from any public or private entities, including any department, agency or instrumentality of the United States of America or the Commonwealth, for the payment of any bonds issued by the Authority, including the power to pay premiums or fees on any such insurance, guarantees, letters of credit and other forms of collateral or security;

11. To receive and accept from any source aid, grants and contributions of money, property, labor or other things of value to be held, used and applied to carry out the purposes of this chapter subject to the conditions upon which the aid, grants or contributions are made;

12. To enter into agreements with any department, agency or instrumentality of the United States of America or the Commonwealth for the purpose of planning, regulating and providing for the financing of any projects;

13. To collect, or to authorize the trustee under any trust indenture securing any bonds to collect, amounts due under any local obligations owned by the Authority, including taking the action required by § 15.1-225 to obtain payment of any sums in default;

14. To enter into contracts or agreements for the servicing and processing of local obligations owned by the Authority;

15. To invest or reinvest its funds as provided in this chapter or permitted by applicable law;

16. Unless restricted under any agreement with holders of bonds, to consent to any modification with respect to the rate of interest, time and payment of any installment of principal or interest, or any other term of any local obligations owned by the Authority;

17. To establish and revise, amend and repeal, and to charge and collect, fees and charges in connection with any activities or services of the Authority; ~~and~~

18. To do any act necessary or convenient to the exercise of the powers granted or reasonably implied by this chapter ~~.~~ *; and*

19. To pledge as security for the payment of any or all bonds of the Authority, all or any part of the Fund transferred to a trustee for such purpose from the Water Facilities Revolving Fund pursuant to § 62.1-231.

§ 62.1-206. Sources of payment and security for bonds.–The Authority shall have the power to pledge any revenue or funds of *or under the control of* the Authority to the payment of its bonds, subject only to any prior agreements with the holders of particular bonds pledging money or revenue. Bonds may be secured by a pledge of any local obligation owned by the Authority, any grant, contribution or guaranty from the United States of America, the Commonwealth or any corporation, association, institution or person, any other property or assets of *or under the control of* the Authority, or a pledge of any money, income or revenue of the Authority from any source.

§ 62.1-209. Provisions of resolution or trust indenture authorizing issuance of bonds.–A. Bonds may be secured by a trust indenture between the Authority and a corporate trustee, which may be any bank having the power of a trust company or any trust company within the Commonwealth. A trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the exercise of its powers and the custody, safekeeping and application of all money. The Authority may provide by the trust indenture for the payment of the proceeds of the bonds and all or any part of the revenues of the Authority to the trustee under the trust indenture or to some other depository, and for the method of their disbursement with whatever safeguards and restrictions as the Authority specifies. All expenses incurred in carrying out the trust indenture may be treated as part of the operating expenses of the Authority.

B. Any resolution or trust indenture pursuant to which bonds are issued may contain provisions, which shall be part of the contract or contracts with the holders of such bonds as to:

1. Pledging all or any part of the revenue of the Authority to secure the payment of the bonds, subject to any agreements with bondholders that then exist;

2. Pledging all or any part of the assets *of, or funds under control* of the Authority, including local obligations owned by the Authority, to secure the payment of the bonds, subject to any agreements with bondholders that then exist;

3. The use and disposition of the gross income from, and payment of the principal of and premium, if any, and interest on local obligations owned by the Authority;

4. The establishment of reserves, sinking funds and other funds and accounts and the regulation and disposition thereof;

5. Limitations on the purposes to which the proceeds from the sale of the bonds may be applied, and limitations pledging the proceeds to secure the payment of the bonds;

6. Limitations on the issuance of additional bonds, the terms on which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

7. The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds, if any, the holders of which must consent thereto, and the manner in which any consent may be given;

8. Limitations on the amount of money to be expended by the Authority for operating expenses of the Authority;

9. Vesting in a trustee or trustees any property, rights, powers and duties in trust that the Authority may determine, and limiting or abrogating the right of bondholders to appoint a trustee or limit the rights, powers and duties of the trustees;

10. Defining the acts or omissions which shall constitute a default, the obligations or duties of the Authority to the holders of the bonds, and the rights and remedies of the holders of the bonds in the event of default, including as a matter of right the appointment of a receiver; these rights and remedies may include the general laws of the Commonwealth and other provisions of this chapter;

11. Requiring the Authority or the trustees under the trust indenture to file a petition with the Governor and to take any and all other actions required under § 15.1-225 of the Code of Virginia to obtain payment of all sums necessary to cover any default as to any principal of and premium, if any, and interest on local obligations owned by the Authority or held by a trustee to which § 15.1-225 shall be applicable; and

12. Any other matter, of like or different character, relating to the terms of the bonds or the security or protection of the holders of the bonds.

CHAPTER 22.

VIRGINIA WATER FACILITIES REVOLVING FUND.

§ 62.1-224. Definitions.—As used in this chapter, unless a different meaning clearly appears from the context:

"Authority" means the Virginia Resources Authority created in Chapter 21 of Title 62.1 (§ 62.1-197 et seq.).

"Board" means the State Water Control Board.

"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary developmental, planning and feasibility studies, surveys, plans and specifications, architectural, engineering, financial, legal or other special services, the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements, site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment, the reasonable costs of financing incurred by the local government in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, the funding of accounts and reserves which the Authority may require and the cost of other items which the Authority determines to be reasonable and necessary.

"Fund" means the Virginia Water Facilities Revolving Fund created by this chapter.

"Local government" means any county, city, town, municipal corporation, authority, district, commission or political subdivision created by the General Assembly or pursuant to the Constitution or laws of the Commonwealth or any combination of any two or more of the foregoing.

"Project" means any wastewater treatment facility located or to be located in the Commonwealth by any local government. The term includes, without limitation, sewage and wastewater (including surface and groundwater) collection, treatment and disposal facilities; drainage facilities and projects; related office, administrative, storage, maintenance and laboratory facilities; and interests in land related thereto.

§ 62.1-225. Creation and management of Fund.—There shall be set apart as a permanent and perpetual fund, to be known as the "Virginia Water Facilities Revolving Fund," sums appropriated to the Fund by the General Assembly, sums allocated to the Commonwealth expressly for the purposes of establishing a revolving fund concept through the Clean Water Act (33 U.S.C. § 1251, et seq.), as amended from time to time, all receipts by the Fund from loans made by it to local governments, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source public or private. The Fund shall be administered and managed by the Authority as prescribed in this chapter, subject to the right of the Board, following consultation with the Authority, to direct the distribution of loans or grants from the Fund to particular local governments and to establish the interest rates and repayment terms of such loans as provided in this chapter. In order to carry out the administration and management of the Fund, the Authority is granted the power to employ officers, employees, agents, advisers and consultants, including, without limitation, attorneys, financial advisers, engineers and other technical advisers and public accountants and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality. The Authority may disburse from the Fund its reasonable costs and expenses incurred in the administration and management of the Fund and a reasonable fee to be approved by the Board for its management services.

§ 62.1-226. Deposit of money; expenditures; investments.—All money belonging to the Fund shall be deposited in an account or accounts in banks or trust companies organized under the laws of the Commonwealth or in national banking associations located in Virginia or in savings and loan associations located in Virginia organized under the laws of the Commonwealth or the United States. The money in these accounts shall be paid by check signed by the Executive Director of the Authority or other officers or employees designated by the Board of Directors of the Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined by the Authority to be prudent, and all banks, trust companies and savings and loan associations are authorized to give security for the deposits. Money in the Fund shall not be comingled with other money of the Authority. Money in the Fund not needed for immediate use or disbursement may be invested or reinvested by the Authority in obligations or securities which are considered lawful investments for public funds under the laws of the Commonwealth.

§ 62.1-227. Annual Audit.—The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the accounts of the Authority, and the cost of such audit services as shall be required shall be borne by the Authority. The audit shall be performed at least each fiscal year, in accordance with generally accepted auditing standards and, accordingly, include such tests of the accounting records and such auditing procedures as considered necessary under the circumstances. The Authority shall furnish copies of such audit to the Governor and to the Board.

§ 62.1-228. Collection of money due Fund.—The Authority is empowered to collect, or to authorize others to collect on its behalf, amounts due to the Fund under any loan to a local government, including, if appropriate, taking the action required by § 15.1-225 to obtain payment of any amounts in default. Proceedings to recover amounts due to the Fund may be instituted by the Authority in the name of the Fund in the appropriate circuit court.

§ 62.1-229. Loans to local governments.—Except as otherwise provided in this chapter, money in the Fund shall be used solely to make loans to local governments to finance or refinance the cost of any project. The local governments to which loans are to be made, the purposes of the loan, and the amount of each such loan, the interest rate thereon and the repayment terms thereof, which may vary between local governments, shall be designated in writing by the Board to the Authority following consultation with the Authority. No loan from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses.

Except as set forth above, the Authority shall determine the terms and conditions of any loan from the Fund, which may vary between local governments. Each loan shall be evidenced by appropriate bonds or notes of the local government payable to the Fund. The bonds or notes shall have been duly authorized by the local government and executed by its authorized legal representatives. The Authority is authorized to require in connection with any loan from the Fund such documents, instruments, certificates, legal opinions and other information as it may deem necessary or convenient. In addition to any other terms or conditions which the Authority may establish, the Authority may require, as a condition to making any loan from the Fund, that the local government receiving the loan convenant to perform any of the following:

A. Establish and collect rents, rates, fees and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of and premium, if any, and interest on the loan from the Fund to the local government; and (iii) any amounts necessary to create and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate by the Authority to offset the need, in whole or part, for future increases in rents, rates, fees or charges;

B. Levy and collect ad valorem taxes on all property within the jurisdiction of the local government subject to local taxation sufficient to pay the principal of and premium, if any, and interest on the loan from the Fund to the local government;

C. Create and maintain a special fund or funds for the payment of the principal of and premium, if any, and interest on the loan from the Fund to the local government and any other amounts becoming due under any agreement entered into in connection with the loan, or for the operation, maintenance, repair or replacement of the project or any portions thereof or other property of the local government, and deposit into any fund or funds amounts sufficient to make any payments on the loan as they become due and payable;

D. Create and maintain other special funds as required by the Authority; and

E. Perform other acts, including the conveyance of, or the granting of liens on or security interests in, real and personal property, together with all rights, title and interest therein, to the Fund, or take other actions as may be deemed necessary or desirable by the Authority to secure payment of the principal of and premium, if any, and interest on the loan from the Fund to the local government and to provide for the remedies of the Fund in the event of any default by the local government in the payment of the loan, including, without limitation, any of the following:

1. The procurement of insurance, guarantees, letters of credit and other forms of collateral, security, liquidity arrangements or credit supports for the loan from any source, public or private, and the payment therefor of premiums, fees or other charges;

2. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, facilities, utilities or systems, for the purpose of operations and financing, and the pledging of the revenues from such combined projects, undertakings, facilities, utilities and systems to secure the loan from the Fund to the local government made in connection with such combination or any part or parts thereof;

3. The maintenance, replacement, renewal and repair of the project; and

4. The procurement of casualty and liability insurance.

All local governments borrowing money from the Fund are authorized to perform any acts, take any action, adopt any proceedings and make and carry out any contracts that are contemplated by this chapter. Such contracts need not be identical among all local governments, but may be structured as determined by the Authority according to the needs of the contracting local governments and the Fund.

Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the Authority may consent to and approve any modification in the terms of any loan to any local government subject to guidelines adopted by the Board.

§ 62.1-230. Grants to local governments.—Subject to any restrictions which may apply to the use of money in the Fund, the Board in its discretion may approve the use of money in the Fund to make grants or appropriations to local governments to pay the cost of any project. The Board may establish such terms and conditions on any grant as it deems appropriate. Grants shall be disbursed from the Fund by the Authority in accordance with the written direction of the Board.

§ 62.1-231. Pledge of loans to secure bonds of Authority.—The Authority is empowered at any time and from time to time to transfer from the Fund to banks or trust companies designated by the Authority any or all of the assets of the Fund to be held in trust as security for the payment of the principal of and premium, if any, and interest on any or all of the bonds (as defined in § 62.1-199) of the Authority. The interests of the Fund in any obligations so transferred shall be subordinate to the rights of the trustee under the pledge. To the extent funds are not available from other sources pledged for such purpose, any payments of principal and interest received on the assets transferred or held in trust may be applied by the trustee thereof to the payment of the principal of and premium, if any, and interest on such bonds of the Authority to which the obligations have been pledged, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from the sale to the payment of the principal of and premium, if any, and interest on such bonds of the Authority. Any assets of the Fund transferred in trust as set forth above and any payments of principal, interest or earnings received thereon shall remain part of the Fund but shall be subject to the pledge to secure the bonds of the Authority and shall be held by the trustee to which they are pledged until no longer required for such purpose by the terms of the pledge. On or before the tenth day of January in each year, the Authority shall transfer, or shall cause the trustee to transfer, to the Fund any assets transferred or held in trust as set forth above which are no longer required to be held in trust pursuant to the terms of the pledge.

§ 62.1-232. Liberal construction of chapter.—The provisions of this chapter shall be liberally construed to the end that its beneficial purposes may be effectuated. Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, general, special or local, the provisions of this chapter shall be controlling.

1986 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 328

An Act to amend and reenact § 21-89.8 of the Code of Virginia, relating to stop work orders for land disturbing activities.

[S 247]

Approved APR 1 1986

Be it enacted by the General Assembly of Virginia:

1. That § 21-89.8 of the Code of Virginia is amended and reenacted as follows:

§ 21-89.8. Monitoring, reports and inspections. (a) Land-disturbing activities where permit is issued. - With respect to approved plans for erosion and sediment control in connection with land-disturbing activities which involve the issuance of a grading, building, or other permit, either the permit-issuing authority or plan-approving authority shall provide for periodic inspections of the land-disturbing activity to ensure compliance with the approved plan, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from the land-disturbing activities. Notice of such right of inspection shall be included in the permit. The owner, occupier or operator shall be given an opportunity to accompany the inspectors. If the permit-issuing authority or plan-approving authority determines that the permittee has failed to comply with the plan,

the authority shall immediately serve upon the permittee by registered or certified mail to the address specified by the permittee in his permit application , *or by delivery at the site of the permitted activities to the agent or employee of the permittee supervising such activities,* a notice to comply. Where the plan-approving authority serves notice, a copy of each notice shall also be sent to the issuer of the permit. Such notice shall set forth specifically the measures needed to come into compliance with such plan and shall specify the time within which such measures shall be completed. If the permittee fails to comply within the time specified, he may be subject to revocation of the permit; furthermore, he shall be deemed to be in violation of this article and upon conviction shall be subject to the penalties provided by the article.

(b) Other regulated land-disturbing activities. - With respect to approved plans for erosion and sediment control in connection with all other regulated land-disturbing activities, the plan-approving authority may require of the person responsible for carrying out the plan such monitoring and reports, and may make such on-site inspections after notice to the resident owner, occupier or operator as are deemed necessary to determine whether the soil erosion and sediment control measures required by the approved plan are being properly performed, and whether such measures are effective in controlling soil erosion and sediment resulting from the land-disturbing activity. Such resident owner, occupier or operator shall be given an opportunity to accompany the inspectors. If it is determined that there is failure to comply with the approved plan, the plan-approving authority shall serve notice upon the person who is responsible for carrying out the plan at the address specified by him in his certification at the time of obtaining his approved plan *, or by delivery at the site of the permitted activities to the agent or employee of the permittee supervising such activities* . Such notice shall set forth the measures needed for compliance and the time within which such measures shall be completed. Upon failure of such person to comply within the specified period, he will be deemed to be in violation of the article and upon conviction shall be subject to the penalties provided by the article.

(c) Additional provisions. - Notwithstanding the above provisions of this section the following may be applied:

(1) Where a county, city, or town adopts the local control program and the permit-issuing authority and the plan-approving authority are not within the same local government department, the county, city, or town may designate one department to inspect, monitor, report and insure compliance. In the event a district has been designated as the plan-approving authority for all or some of the conservation plans, the enforcement of the program shall be with the local government department; however, the district may inspect, monitor and make reports for the local government department.

(2) Where a district adopts the local control program and permit-issuing authorities have been established by a county, city, or town, the district by joint resolution with the applicable county, city, or town may exercise the responsibilities of the permit-issuing authorities with respect to monitoring, reports, inspections and enforcement.

(3) Where a permit-issuing authority has been established, and such authority is not vested in an employee or officer of local government but is the commissioner of revenue or some other person, the county, city, or town shall exercise the responsibilities of the permit-issuing authority with respect to monitoring, reports, inspections and enforcement unless such responsibilities are transferred as provided for in the above provisions of this section.

(d) Adherence to approved plans and specifications.—Upon receipt of a sworn complaint of a substantial violation of either § 21-89.6 or § 21-89.8 from the designated enforcement officer, the chief administrative officer of (i) the Board, or (ii) the county, city or town operating its own erosion and sediment control program, or (iii) a district which is responsible for monitoring and inspecting for compliance may, in conjunction with or subsequent to a notice to comply as specified in subsections (a) or (b) above, issue an order requiring that all or part of the land disturbing activities permitted on the site be stopped until the specified corrective measures have been taken. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, such an order

may be issued without regard to whether the permittee has been issued a notice to comply as specified in subsections (a) and (b) above. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. Upon completion of corrective action, the order shall immediately be lifted. Nothing in this section shall prevent the chief administrative officer from taking any other action specified in § 21-89.11.

1986 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 329

An Act to amend the Code of Virginia by adding sections numbered 15.1-317.1 and 15.1-1239.1, relating to the capability of certain sewage treatment plants.

[S 269]

Approved APR 1 1986

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 15.1-317.1 and 15.1-1239.1 as follows:

§ 15.1-317.1. Sewage treatment plants to include certain capability.—Whenever a local governing body of a county, city or town or a combination of local governing bodies of counties, cities or towns is using the authority of this chapter to construct a new sewage treatment plant, the facility shall be designed and constructed so that it has the capability to treat the septage from all onsite sewage disposal systems, which are not adequately served by another approved disposal site, located in the area of the county, city or town or combination thereof to be served by such plant.

§ 15.1-1239.1. Sewage treatment plants to include certain capability.—Whenever an authority created pursuant to this chapter is constructing a new sewage treatment plant, the facility shall be designed and constructed so that it has the capability to treat the septage from all onsite sewage disposal systems, which are not served by another approved disposal site, located within the area of the political subdivision or political subdivisions which created the authority to be served by such plant.

1986 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 145

An Act to amend and reenact § 62.1-193 of the Code of Virginia, relating to dredging sand and gravel; exemptions.

[S 315]

Approved MAR 3 0 1986

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-193 of the Code of Virginia is amended and reenacted as follows:

§ 62.1-193. Exemptions from chapter.—The prohibitions of this chapter shall not apply to any owner of any fastland, bluff, beach or bed of stream, upon or in front of which such

deposits may lie, nor to any person or corporation acting under written permission from, or contract with such owner ; ~~nor to any person or corporation acting under the authority of the United States, necessarily removing such deposit in the lawful improvement or regulation of navigation of any waters subject to the authority of the United States~~ .

None of the provisions of this chapter shall be deemed to interfere in any manner with the provisions of any law of this ~~State~~ *Commonwealth* relating to taking fish and oysters.

1986 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 488

An Act to amend and reenact §§ 2.1-512.1 and 62.1-4 of the Code of Virginia, relating to the State Minerals Management Plan.

[S 316]

Approved APR 7 1986

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-512.1 and 62.1-4 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-512.1. Exploration for and extraction of minerals on state-owned uplands.—A. Upon receiving the recommendation of both the Director of the Department of General Services and the Director of the Department of Mines, Minerals and Energy, the Governor shall determine whether the proposed mineral exploration, leasing, or extraction of minerals on state-owned ~~lands~~ *uplands* is in the public interest. No state *-owned* ~~land~~ *uplands* shall be approved for mineral exploration, leasing, or extraction without a public hearing in the locality where the affected land or the greater portion thereof is located and a competitive bid or proposal process as described in the Plan. The provisions of this section shall not apply to the extraction of minerals on state-owned ~~lands~~ *uplands* pursuant to an oil or gas pooling order unless the well through which the extraction will occur is situated on ~~state-owned~~ *such* land.

For the purposes of this section, "state-owned uplands" shall mean lands owned by the Commonwealth (i) which lie landward of the mean low water mark in tidal areas or (ii) which have an elevation above the average surface water level in nontidal areas.

B. The agencies, departments, or institutions proposing or receiving applications for mineral exploration, leasing or extraction on state-owned ~~lands~~ *uplands* shall, through their boards or commissions, recommend as specified in § 2.1-512 B all such activities to the Department of General Services, Division of Engineering and Buildings, following guidelines set forth in the State Minerals Management Plan. The Division of Engineering and Buildings and the Department of Mines, Minerals and Energy shall review and recommend to the Governor such proposed activities. Such agencies, departments or institutions, through their boards or commissions, may execute such leases or contracts which have been approved by the Governor.

C. The Department of Mines, Minerals and Energy, in cooperation with the Department of General Services, Division of Engineering and Buildings, shall develop, with the assistance of affected state agencies, departments, and institutions, a State Minerals Management Plan. The Plan shall include provisions for the holding of public hearings and

the public advertising for competitive bids or proposals for mineral exploration, leasing, and extraction activities *on state-owned uplands* . Sales of mineral exploration permits and leases *for these lands* shall be administered by the Department of General Services, Division of Engineering and Buildings, with the advice of the Department of Mines, Minerals and Energy.

D. The proceeds from all such sales or leases above the costs of such sale to the Department of Mines, Minerals and Energy or to the agency, department or institution sponsoring this sale shall be paid into the general fund of the state treasury, so long as the sales or leases pertain to general fund agencies or the property involved was originally acquired through the general fund. Net proceeds from sales or leases of special-fund agency properties or property acquired through a gift shall be retained by such agency or institution or used in accordance with the original terms of the gift if so stated.

E. Mining, leasing, and extraction activities in state-owned submerged lands shall be authorized and administered by the Virginia Marine Resources Commission pursuant to §§ 62.1-3 through 62.1-4 of the Code of Virginia.

§ 62.1-4. Granting easements in, and leasing of, the beds of certain waters.–The Marine Resources Commission, with the approval of the Attorney General and the Governor, may grant easements in, and may lease, the beds of the waters of the ~~State~~ *Commonwealth* , without the Baylor Survey. Every such easement or lease may be for a period not exceeding five years, may include the right to renew the same for an additional period not exceeding five years each and shall specify the rent royalties and such other terms deemed expedient and proper. Such easements and leases may, in addition to any other rights, authorize the grantees and lessees to prospect for and take from the bottoms covered thereby, oil, gas, and such other minerals and mineral substances as are therein specified; provided, that no such easement or lease shall in any way affect or interfere with the rights vouchsafed to the people of the ~~State~~ *Commonwealth* concerning fishing, fowling, and the catching and taking of oysters and other shellfish, in and from the bottoms so leased, and the waters covering the same. All easements granted and leases made under the authority granted by this section, shall be executed in the name and for and on behalf of the ~~State~~ *Commonwealth* , by the Attorney General, and shall be countersigned by the Governor. All rents or royalties collected from such easements or leases shall be paid into the state treasury to the credit of the Special Public Oyster Rock Replenishment Fund for the purposes of such fund. Expenditures and disbursements of all sums from such fund shall be made as provided in § 62.1-3. The Commissioner of Marine Resources and the Attorney General shall make reports to the General Assembly of all such easements granted or leases so made, such reports to be made on or before ~~the first day of~~ December *1* preceding the convening of each regular session thereof.

The Commission shall, in cooperation with the Division of Mineral Resources of the Department of Mines, Minerals and Energy and with the assistance of affected state agencies, departments and institutions, develop a State Subaqueous Minerals Management Plan which shall supplement the State Minerals Management Plan set forth in § 2.1-512.1 of the Code of Virginia.

The Subaqueous Minerals Management Plan shall include provisions for the holding of public hearings and public advertising for competitive bids or proposals for mineral leasing and extraction activities. The Marine Resources Commission shall promulgate any regulations it deems necessary to develop the Subaqueous Minerals Management Plan.

1986 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 891

An Act to amend and reenact §§ 2.1-20.4, 32.1-164.1:1, 32.1-164.4, 32.1-166.4, 32.1-166.6 and 62.1-199 of the Code of Virginia and amend the Code of Virginia by adding a section numbered 32.1-163.1, relating to sewage handling and disposal.

[S 336]

Approved APR 1 1986

§ 32.1-163.1. Personal liability of sanitarians defined.—A sanitarian while acting within the scope of his employment in approving or denying applications for permits for onsite sewage disposal systems shall be subject to personal liability only for his gross negligence or intentional misconduct.

§ 32.1-164.1:1. Validity of certain septic tank permits.—Any septic tank permit issued shall be deemed valid for a period of ~~thirty~~ *fifty-four* months from the date of issuance unless there has been a substantial, intervening change in the soil or site conditions where the septic system is to be located. ~~This section shall apply retroactively to any septic tank permit issued prior to November 1, 1982.~~

§ 32.1-164.4. Land disposal of septage in counties.—The land disposal of *lime-stabilized* septage *and unstabilized septage shall be prohibited. However, until July 1, 1991, land spreading of lime-stabilized septage and shallow injection of unstabilized septage* shall be allowed in counties ~~with a population of less than 100 people per square mile, as determined by the latest population figures available from the Tayloe Murphy Institute~~ , if prior approval is ~~first~~ obtained from the board of supervisors and ~~then from the local health department pursuant to applicable regulations. Approval by the board of supervisors shall be at its discretion~~ *a permit has been obtained from the State Department of Health pursuant to § 32.1-164.3 in accordance with the Board of Health Regulations on Sewage Handling and Disposal* .

§ 32.1-166.4. Meetings.—The Review Board shall meet ~~at the call of the chairman, or at the written request of at least three of its members; provided that it shall act within thirty days following receipt of any appeal made under these provisions~~ *eight times per year to hear appeals of denials of applications for onsite sewage disposal systems* .

Any appeal shall be filed thirty days prior to a meeting in order to be placed on the docket. The Review Board shall provide its decision in writing within fifteen days of the date of the hearing to the person making the appeal, his representative and the Department of Health.

§ 32.1-166.6. Review Board to hear appeals.—The Review Board shall ~~have the power and duty to~~ hear all *administrative* appeals of denials of ~~on-site~~ *onsite* sewage disposal system permits and ~~to~~ render its decision on any such appeal, which decision shall be *the* final ~~if no appeal is made therefrom~~ *administrative decision* . Proceedings of the Review Board *and appeals of its decisions* shall be governed by the provisions of Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

In addition to the authority to render a final administrative decision, the Review Board, in its discretion, may develop recommendations for alternative solutions to the conditions resulting in denial of the permit and remand the case to the Department of Health for reconsideration.

§ 62.1-199. Definitions.—As used in this chapter, unless a different meaning clearly appears from the context:

"Authority" means the Virginia Resources Authority created by this chapter.

"Board of Directors" means the Board of Directors of the Authority.

"Bonds" means any bonds, notes, debentures, interim certificates, bond, grant or revenue anticipation notes, lease and sale-leaseback transactions or any other evidences of indebtedness of the Authority.

"Capital Reserve Fund" means the reserve fund created and established by the Authority in accordance with § 62.1-215.

"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary developmental, planning and feasibility studies, surveys, plans and specifications, architectural, engineering, financial, legal or other special services, the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements, site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment, the reasonable costs of financing incurred by the local government in the course of the development of the project, carrying charges incurred before placing the project in service, interest on local obligations issued to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, the funding of accounts and reserves which the Authority may require and the cost of other items which the Authority determines to be reasonable and necessary.

"Local government" means any county, city, town, municipal corporation, authority, district, commission or political subdivision created by the General Assembly or pursuant to the Constitution and laws of the Commonwealth or any combination of any two or more of the foregoing.

"Local obligations" means any bonds, notes, debentures, interim certificates, bond, grant or revenue anticipation notes, leases or any other evidences of indebtedness of a local government.

"Minimum capital reserve fund requirement" means, as of any particular date of computation, the amount of money designated as the minimum capital reserve fund requirement which may be established in the resolution of the authority authorizing the issuance of, or the trust indenture securing, any outstanding issue of bonds.

"Project" means any water supply or wastewater treatment facility *including a facility for receiving and stabilizing septage or a soil drainage management facility* located or to be located in the Commonwealth by any local government. The term includes, without limitation, water supply and intake facilities; water treatment and filtration facilities; water storage facilities; water distribution facilities; sewage and wastewater (including surface and groundwater) collection, treatment and disposal facilities; drainage facilities and projects; related office, administrative, storage, maintenance and laboratory facilities; and interests in land related thereto.

1986 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 492

An Act to amend and reenact §§ 2.1-1.1, 2.1-1.3, 2.1-1.6, 2.1-1.7, 2.1-20.4, 2.1-51.7 through 2.1-51.9, 2.1-64.33 and 59.1-271 of the Code of Virginia; to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 5.9, consisting of sections numbered 2.1-51.38 through 2.1-51.40; by adding in Article 1 of Chapter 32 of Title 2.1 a section numbered 2.1-425.2; by adding in Title 10 a chapter numbered 24, consisting of sections numbered 10-263 through 10-312; and to repeal Chapter 22 of Title 9, consisting of §§ 9-144 and 9-145, Chapter 17.1 of Title 10, consisting of §§ 10-186.1 through 10-186.21, Article 3.1 of Chapter 7 of Title 18.2, consisting of §§ 18.2-278.2 through 18.2-278.7, and Article 3 of Chapter 6 of Title 32.1, consisting of §§ 32.1-177 through 32.1-186 and to

repeal Article 8.1 of Chapter 6 of Title 32.1 consisting of §§ 32.1-238.1 through 32.1-238.5 of the Code of Virginia, the amended, added and repealed sections all generally concerned with the establishment of a Department Waste Management, the establishment of a Secretary of Economic Development and a Secretary of Natural Resources; and the organization of agencies under their supervision; penalties.

[S 354]

Approved APR 7 1986

CHAPTER 5.1.
SECRETARY OF ~~COMMERCE AND~~ *NATURAL* RESOURCES.

§ 2.1-51.7. Position established; appointment; term; oath.–The position of Secretary of ~~Commerce and~~ *Natural* Resources is hereby created.

The Secretary shall be appointed by the Governor, subject to confirmation by the General Assembly if in session when the appointment is made, and if not in session then at its next succeeding session. The Secretary shall hold office at the pleasure of the Governor for a term coincident with that of the Governor making the appointment or until a successor shall be appointed and qualified. Before entering upon the discharge of duties, the Secretary shall take an oath to faithfully execute the duties of the office.

§ 2.1-51.8:1. Subject to supervision by Governor; powers and duties.–A. The Secretary of ~~Commerce and~~ *Natural* Resources shall be subject to direction and supervision by the Governor. The agencies assigned to the Secretary shall:

1. Exercise their respective powers and duties in accordance with the general policy established by the Governor or by the Secretary acting on behalf of the Governor;
2. Provide such assistance to the Governor or the Secretary as may be required; and
3. Forward all reports to the Governor through the Secretary.

B. Unless the Governor expressly reserves such power to himself, the Secretary is empowered to:

1. Resolve administrative, jurisdictional, operational, program, or policy conflicts between agencies or officials assigned;
2. Direct the formulation of a comprehensive program budget for the functional area identified in § 2.1-398 encompassing the services of agencies assigned for consideration by the Governor;
3. Hold agency heads accountable for their administrative, fiscal and program actions in the conduct of the respective powers and duties of the agencies;
4. Direct the development of goals, objectives, policies and plans that are necessary to the effective and efficient operation of government;
5. Sign documents on behalf of the Governor which originate with agencies assigned to the Secretary; and
6. Employ such personnel and to contract for such consulting services as may be required to perform the powers and duties conferred upon the Secretary by statute or executive order.

§ 2.1-51.8:2. Duty to monitor and report on water and resources of Chesapeake Bay and its tributaries.–The Secretary of ~~Commerce and~~ *Natural* Resources shall cooperate with appropriate state and federal agencies in the development and implementation of a comprehensive program to monitor the quality of the waters and the living resources of the Chesapeake Bay *and its tributaries* The Secretary shall report biennially in even-numbered years to the General Assembly on the results of this monitoring program and the status of the resources of the Chesapeake Bay *and its tributaries* .

§ 2.1-51.9. Agencies for which Secretary of Natural Resources responsible.–The Secretary shall be responsible to the Governor for the following agencies: ~~Department of Economic Development,~~ Department of Conservation and Historic Resources, ~~Department of Mines, Minerals and Energy,~~ ~~Department of Labor and Industry,~~ ~~Virginia Employment Commission,~~ ~~Department of Commerce,~~ ~~Milk Commission,~~ ~~Department of Agriculture and Consumer Services,~~ Marine Resources Commission, State Water Control Board, State Air Pollution Control Board, Commission of Game and Inland Fisheries, ~~Virginia War Memorial Board,~~ ~~Department of Housing and Community Development,~~ Chippokes Plantation Farm Foundation, ~~State Department of Minority Business Enterprise,~~ Council on the Environment, ~~Virginia Agricultural Council,~~ *and the Department of Waste Management* ~~and Virginia Marine Products Board~~ .

The Governor may, by executive order, assign any state executive agency to the Secretary of ~~Commerce and~~ *Natural* Resources, or reassign any agency listed above to another secretary.

CHAPTER 5.9.

SECRETARY OF ECONOMIC DEVELOPMENT.

§ 2.1-51.38. Position established; appointment; term; oath.–The position of Secretary of Economic Development is hereby created. The Secretary shall be appointed by the Governor, subject to confirmation by the General Assembly if in session when the appointment is made, and if not in session, then at its next succeeding session. The Secretary shall hold office at the pleasure of the Governor for a term coincident with that of the Governor making the appointment or until a successor shall be appointed and qualified. Before entering upon the discharge of duties the Secretary shall take an oath to faithfully execute the duties of the office.

§ 2.1-51.39. Subject to supervision by Governor; powers and duties.–A. The Secretary of Economic Development shall be subject to direction and supervision by the Governor. The agencies assigned to the Secretary shall:

1. Exercise their respective powers and duties in accordance with the general policy established by the Governor or by the Secretary acting on behalf of the Governor;

2. Provide such assistance to the Governor or the Secretary as may be required; and

3. Forward all reports to the Governor through the Secretary.

B. Unless the Governor expressly reserves such power to himself, the Secretary is empowered to:

1. Resolve administrative, jurisdictional, operational, program, or policy conflicts between agencies or officials assigned;

2. Direct the formulation of a comprehensive program budget for the functional area identified in § 2.1-398 encompassing the services of agencies assigned for consideration by the Governor;

3. Hold agency heads accountable for their administrative, fiscal and program actions in the conduct of the respective powers and duties of the agencies;

4. Direct the development of goals, objectives, policies and plans that are necessary for the effective and efficient operation of government;

5. Sign documents on behalf of the Governor which originate with agencies assigned to the Secretary; and

6. Employ such personnel and contract for such consulting services as may be required to perform the powers and duties conferred upon the Secretary by statute or executive order.

§ 2.1-51.40. Agencies for which Secretary of Economic Development responsible.–The Secretary shall be responsible to the Governor for the following agencies: Department of Forestry, Department of Economic Development, Department of Labor and Industry, Department of Mines, Minerals and Energy, Virginia Employment Commission, Department of Commerce, Milk Commission, Department of Agriculture and Consumer Services, Department of Housing and Community Development, Department of Minority Business Enterprise, Virginia Agricultural Council and Virginia Marine Products Board.

The Governor, by executive order, may assign any state executive agency to the Secretary of Economic Development, or reassign any agency listed in this section to another secretary.

1986 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 52

An Act to amend and reenact §§ 10-218 and 10-220 of the Code of Virginia, relating to the Board on Conservation and Development of Public Beaches and the erosion abatement fund.

[H 164]

Approved MAR 30 1986

Be it enacted by the General Assembly of Virginia:

1. That §§ 10-218 and 10-220 of the Code of Virginia are amended and reenacted as follows:

§ 10-218. Commission continued as Board; duties; meetings; compensation; allocation of funds.—A. The Commission on Conservation and Development of Public Beaches is continued and shall hereafter be known as the Board on Conservation and Development of Public Beaches. The Board shall: (i) review the financial needs of localities for implementation of the Public Beach Conservation and Development Act (§ 10-215 et seq.); (ii) determine successful applicants ~~and~~ *; (iii) determine* the equitable allocation of funds among participating localities *except for allocations provided for in the current general appropriations act* ; and ~~(iii)~~ *(iv)* oversee local implementation of approved projects.

B. The Board shall be composed of eight members as follows: One member ex officio shall be selected from each Department or Commission by the Directors of the Virginia Marine Resources Commission, and the Department of Conservation and Historic Resources and six members-at-large shall be appointed by the Governor subject to confirmation by the General Assembly. Members-at-large shall be appointed for terms of four years. Members-at-large are ineligible for reappointment after two terms until four years have elapsed since their last appointment. All terms shall begin July 1, and appointments to fill vacancies occurring shall be for the unexpired term. A chairman shall be selected from among the members-at-large.

C. The Board shall meet once prior to the beginning of each fiscal year to receive applications for grants from localities and to determine the allocation of such grants, and as often throughout the year as necessary.

D. Board members shall be compensated at the rate and manner provided by § 14.1-18 of this Code.

E. The Department of Conservation and Historic Resources shall provide staff assistance from time to time if required and shall maintain such financial records of activities as are necessary.

§ 10-220. Establishment of fund; unexpended money.—A. A fund shall be established to provide grants to local governments covering up to one-half of the costs of erosion abatement measures designed to conserve, protect, improve, maintain and develop public beaches. No grants to any locality shall exceed thirty percent of the money appropriated to such fund for the biennium *unless otherwise provided for in the current general appropriations act* . Money appropriated from such fund shall be matched equally by local funds. Federal funds shall not be used by localities to match money given from such fund. Localities may, however, combine state and local funds to match equally federal funds for purposes of securing federal grants.

B. Money which remains unexpended from such fund at the end of the biennium for which it was appropriated shall be retained and shall become a Special Emergency Assistance Fund to be used at the discretion of the Governor for the emergency conservation and development of public beaches damaged or destroyed by an unusually severe storm, hurricane or other natural disaster.

1986 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 168

An Act to amend and reenact § 28.1-108 of the Code of Virginia, relating to assignment of oyster grounds to riparian owners; penalty.

[H 367]

Approved MAR 30 1986

Be it enacted by the General Assembly of Virginia:

1. That § 28.1-108 of the Code of Virginia is amended and reenacted as follows:

§ 28.1-108. Assignments of planting grounds to riparian owners.—A. Any owner of land bordering on a body of water in the oyster-growing area of this Commonwealth whose shore front measures at least 205 ± *feet* at the low-water mark, who has not had as much as ~~1/2~~ *one-half* acre of ground already assigned him on the front, or whose lease has terminated and is not to be renewed, may ~~make application~~ *apply* for planting grounds to the Commission. The Commission shall assign to him such ground wherever the owner may designate in front of his land that is within his riparian waters, *provided the ground does not encroach into an existing oyster-planting ground lease assigned under § 28.1-109. Such ground shall* not ~~exceeding~~ *exceed* in area ~~1/2~~ *one-half* acre, ~~to be~~ *and shall* not *be* less than 105 feet wide along the shore ~~and~~ , beginning at low-water mark, extending out not more than 210 ± *feet* , or to the middle of the body of water, or to the middle of the channel, whichever is the shorter distance. The grounds shall be surveyed, plotted, marked, assigned and recorded in all respects as provided for assignments to persons in § 28.1-109 of the Code of Virginia. Any riparian assignment that was duly recorded in the clerk's office of the county or city wherein the grounds are located, or at the Commission office prior to July 1, ~~1978~~ *1986* , shall continue in effect.

B. The riparian leaseholder shall have the exclusive right to the use thereof for the purpose of planting or gathering oysters or clams.

C. The assignment made pursuant to this section shall pass with the transfer of the adjacent highland to the subsequent owner of highland and cannot be held separated from the highland. A transfer of highland ownership shall require that there be a transfer of the riparian assignment within eighteen months after the transfer of the highland ownership under the following conditions and provisions:

1. The application for transfer shall be in the form prescribed by the Commission, and shall be filed with the Commission.

2. The Commission or its chief engineer shall require a new survey if there is not a survey of the exact parcel or parcels of grounds to be transferred.

3. The cost of any new surveys required under this section shall be borne by the person making the transfer, and the cost and fees shall be the same as for surveys made by the Commission.

4. The application shall be accompanied by a transfer fee of five dollars.

5. The engineering office of the Commission shall return the approved application for transfer and plat with any correction to the applicant. A copy of the transfer and plat shall be recorded at the office of the Commission.

6. [Repealed.]

7. Should no application for transfer be received by the Commission within eighteen months after the transfer of the highland ownership, the riparian assignment shall become vacant and open to assignment.

D. ~~If any portion of the waterfront is assigned to a riparian claimant under this section, which at the time is occupied by others with oysters actually planted thereon, the person occupying the waterfront shall have eighteen months in which to remove the oysters and the riparian claimant shall pay all survey and assignment and recording charges incurred in connection with the transfer of the riparian oyster-planting ground.~~

This section ~~shall on and after July 1, 1962, be applicable in~~ *applies to* all counties and cities of the Commonwealth bordering on bodies of water, in its oyster-growing areas, except it shall not be applicable to riparian lands located above the James River Bridge in the James River or its tributaries. In any county or city in this Commonwealth where more than one-half acre of ground per waterfront tract has heretofore been assigned to a riparian owner, ~~after July 1, 1962,~~ the ground in excess of one-half acre shall be deemed to be ground under a regular lease and assignment, and not a riparian assignment.

This section, so far as the quantity of land to be assigned to and held by riparian owners is concerned, shall not apply to Northampton County, but § 6 of Chapter 254 of the Acts of Assembly of 1883 and 1884 shall continue in force as to the county. Nothing herein contained shall be construed as authorizing a rental of a lesser amount per acre than that provided by law for riparian owners in Northampton County of the land assigned them as such riparian owners. Nothing in the section which restores to riparian owners in Northampton County one-fourth of their respective waterfronts, suitable for planting oysters, shall be so construed as to permit the owners of waterfronts to compel occupants of the fronts to remove their oysters from any fourth of the shores, if the residue of the shore is already in the landowner's possession, or is unoccupied

Nothing in this section shall be construed to prevent the erection by riparian landowners of wharves, landings or other structures as otherwise permitted by law.

1986 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 171

An Act to amend and reenact §§ 28.1-109 and 28.1-134 of the Code of Virginia, relating to the marking of oyster-planting grounds.

[H 397]

Approved MAR 30 1986

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.1-109 and 28.1-134 of the Code of Virginia are amended and reenacted as follows:

§ 28.1-109. General oyster-planting grounds.—(1) Grounds comprising. - The residue of waterfront in excess of what is already assigned or reserved for the riparian owners, and the residue of the beds of the bays, rivers, creeks and shores of the sea other than those within the limits of navigation projects adopted and authorized by the Congress and those required for the disposal of materials dredged incident to the maintenance of such projects, and other than natural oyster beds, rocks or shoals, as defined by law and included in the Baylor survey, may be occupied for the purpose of planting or propagating oysters thereon, and may be leased by the Commission upon proper application therefor.

(2) Eligible applicants; provisions of section incorporated in lease. - Application for assignment of oyster-planting ground may be made by any resident of the Commonwealth, or any county, municipality, or political subdivision of the Commonwealth, or by any firm, or corporation chartered under the laws of this Commonwealth for the purpose of oyster culture and the oyster business provided that at least sixty percent of the stock of any such corporation must be wholly owned by residents of the Commonwealth of Virginia.

(3) Application for assignment. - All applications for assignment of oyster-planting grounds shall be made in writing, in duplicate, to the Marine Resources Commission. Applications shall be given priority in the same order in which they are received, except that no application for any ground then under lease shall be considered valid for that portion under lease. The application shall state, as nearly as possible, the number of acres applied for and definite location, with the name of one or more prominent points or objects adjacent to such ground. It shall be the duty of any resident, firm or corporation

desiring to obtain a location for planting or propagating oysters to apply to have the location ascertained, designated, surveyed and assigned.

(4) Posting of notice of applications. - Notice of the application shall be posted by the Commission for not less than sixty days at the courthouse of the county or city in which the ground applied for lies, and in at least two or more prominent places in the vicinity of the ground and shall in addition, be published at least once a week for four consecutive weeks in a newspaper of general circulation in that county or city.

(5) [Repealed.]

(6) Survey and marking of ground. - If a protest is not filed in the Commission office within sixty days after posting of the notice of application, the chief engineer of the Marine Resources Commission shall designate a surveyor to survey the grounds and make a plat in duplicate of the same. The surveyor shall forward the plat of survey to the office of the Marine Resources Commission to be approved by the engineer of the Commission. If no protest to the application or surveying of ground is made before the expiration of thirty days after the plat of survey is recorded in the office of the Marine Resources Commission, the ground applied for shall be assigned provided:

(a) That the application and assignment complies with all applicable provisions of law and if in the judgment of the Commission it shall be wise to do so.

(b) All fees, costs, and the annual rental have been paid for the lease of the ground. The ground shall be marked at the expense of the applicant ; ~~at the time the survey is made, and at the direction of the surveyor, with suitable stakes or other such markers, as may be permitted and approved by the Commission; and these suitable stakes or markers shall be kept by the lessee in their proper places at all times during the continuance of the lease, so as to conform accurately to the survey. Should such stakes or other markers be removed, knocked down, or be carried away, the lessee shall replace them in their proper places; and if he fails to do so within thirty days after being notified, the lessee shall have no claim against any person for trespassing on the ground in any manner~~ .

(c) The Commission shall prescribe the methods and manner of marking oyster-planting ground. No lessee of oyster planting ground shall mark such grounds otherwise than in accordance with the rules and regulations established by the Commission.

(7) Application, surveying fee and recording fee. - Any applicant for oyster-planting ground or for riparian oyster ground shall pay an application fee of twenty-five dollars and in addition shall pay to the Commission for any surveying done by the Commission an amount equal to the cost of the survey and of preparing the original and one copy of a plat thereof. Before an assignment or transfer, the applicant shall pay the cost of recording each assignment or transfer and plat in the Commission office. No ground shall be assigned until all the fees prescribed herein have been paid.

(8) Restrictions on assigned acreage and applications. - No assignment, except in Chesapeake Bay, shall exceed 250 acres. No applicant, after having had as much as 250 acres of oyster ground assigned to him, shall again make application for another assignment of oyster grounds within ~~6~~ *six* months from the day his assignment was recorded and completed as the statutes hereinafter provide. If an assignment is not made within six months after the expiration of the notice required by statute to be posted for sixty days, the application shall, upon the expiration of six months, lapse and become null and void, unless an extension is allowed by the Commission. In cases where a protest has been filed with the Commission against the granting of an application, the application shall not lapse until the Commission has finally acted upon the application.

(9) Restriction on acreage owned or operated. - No person, firm or corporation shall own or operate more than 3,000 acres of oyster grounds in the waters of this Commonwealth other than the Chesapeake Bay; and should ground in excess of 3,000 acres be acquired by original assignment to the assignee, or be assigned to him or them by a lawful holder of such oyster ground, or as heir or distributee, or by devise or bequest, he or they shall, nevertheless, have a right to lawfully hold the ground for and during the period of ~~1~~ *one* year and shall have a legal right to assign it. Should no assignment be made within ~~1~~ *one* year the oyster-planting ground so acquired, in excess of 3,000 acres, shall revert to the Commonwealth of Virginia, and may be applied for by any person having a legal right to do so.

(10) Application for planting ground in Chesapeake Bay; acreage allowed; annual rental. Application for planting ground in *the* Chesapeake Bay in waters from fifteen feet or more in depth shall be made to the Marine Resources Commission. The Commission shall have the right to accept or reject any application as it may deem best for the public interests; and the number of acres to be assigned to any applicant shall not exceed 5,000 acres. The assignment shall not interfere with the established fishing rights and any such application, surveying, and marking shall conform to the law pertaining to oyster-planting grounds. The annual rental per acre in the Chesapeake Bay, in waters from fifteen feet or more in depth, shall be such an amount per acre as the Commission may designate, but in no case shall be less than seventy-five cents annually per acre.

(11) Payment of annual rental; penalty for default. - The applicant shall pay to the Commission the annual rental for such ground at the rate of one dollar fifty cents per acre or any fraction thereof, annually, except as provided for the Chesapeake Bay, and for bathing ground. Such rental shall be due on September 1 of each year after the date of assignment, and, if not paid on or before December 5, a ten percent penalty shall be added to the annual rental charge, and the Commission may proceed to levy for rental and penalty.

(12) Duration of lease. - Each assignment shall continue in force for a period of twenty years from the date of assignment, unless the assignment is terminated in one of the manners provided by law. New or initial assignments made after July 1, 1980, shall continue in force for a term of ten years. The interest in such ground shall be construed as a chattel real.

Upon the death of the renter, testate as to the lease, it shall vest in the named beneficiary subject to the rights of creditors, if he is a resident of this Commonwealth, provided that he files an application for transfer with the Commission within eighteen months after the date of death. If the named beneficiary is not a resident he shall have eighteen months after the date of death to transfer the lease to a qualified holder.

Upon the death of the renter, intestate as to the lease, the lease shall be vested in the personal representative, if there is one, who shall transfer the lease to a qualified holder within eighteen months.

If there is no qualification on the renter's estate within one year of his death, the Commission may within six months thereafter transfer the lease to a qualified holder upon receipt of a transfer duly executed by all of the lawful heirs of the renter both resident and nonresident.

If there is no transfer under any of the above, the ground shall become vacant and open to assignment.

Upon expiration of the initial or any subsequent term of the assignment, the Commission shall, on application of the holder, renew the assignment for an additional term of ten years. The Commission shall not renew or extend an assignment where there has been neither significant production of shellfish nor reasonable plantings of shellfish or cultch during any portion of the ten-year period immediately prior to the application for renewal, unless the Commission finds that there was good cause for the failure to produce or plant shellfish or cultch or finds that the assignment is directly related to and beneficial to the production of oyster-planting grounds immediately adjacent to the assignment.

(12a) [Repealed.]

(12b) Requiring lessee or transferor to have ground surveyed and plat recorded; canceling lease for failure of lessee to have survey. - If the chief engineer and the Commission should determine that in any past assignment of oyster ground or when there is any attempt to transfer oyster ground, that there has not been a survey, a recorded plat, or both, acceptable to the Commission and which, in their opinion, does not accurately describe the metes and bounds of the leased ground, the Commission shall require the lessee, the transferor, or both, to have the ground surveyed and the plat recorded.

If the lessee fails to order the survey or resurvey within six months after date of notification to the lessee or transferor, by certified mail, the Commission shall cancel the lease on its books and may accept applications therefor from the general public.

(12c) Payment of costs for service, etc., required under paragraph (12b). - The cost of the surveys and recording fees required under paragraph (12b) hereof shall be borne by the lessee or transferor and the cost and fees shall be the same as for surveys made by the Commission.

(13) Possession gives no preference as to assignment. - Any person, firm or corporation in possession of any oyster-planting ground which has not been assigned according to law shall have no preference as to having it assigned to him, but the ground shall be open to the first applicant.

(14) Recordation of plat. - The plat and assignment, as soon as practicable after completion, and after the ground has been assigned to the applicant, shall be filed for record in the office of the Marine Resources Commission.

(15) Commonwealth guarantees rights of renter subject to right of fishing. - To any person, after having complied with all requirements, as set forth in the statutes necessary to have ground assigned to him, the Commonwealth will guarantee the absolute right to the renter to continue to use and occupy the ground for the term of the lease, subject to: (a) subsection (12) of this section; (b) riparian rights; (c) the right of fishing in waters above the bottoms, provided (i) that no person exercising the right of fishing shall use any device which is fixed to the bottom, or which, in any way, interferes with the renter's rights or damages the bottoms, or the oysters planted thereon, and (ii) that crab pots and gill nets which are not staked to the bottom shall not be construed as devices which are fixed to the bottom unless the crab pots and gill nets are used over planted oyster beds in waters of less than four feet at mean low water on the seaside of Northampton and Accomack Counties; and (d) established fishing stands, but only if the fishing stand license fee is timely received from the existing licensee of the fishing stand and no new applicant shall have priority over the oyster lease. However, a fishing stand location, assigned prior to the lease of the oyster ground, is to be considered a vested interest, a chattel real, and is an inheritable right which may be transferred or assigned whenever the current licensee complies with all existing laws.

(16) When leases become vacant. - In any case where the Commission finds that the person in whose name the lease was made, is dead, or unknown, and there is no one actually claiming such property as an heir or assignee of the former lessee, the ground shall become vacant and open to assignment.

(17) Delinquent ground. - Any ground or area which becomes delinquent shall be open and available to be leased, after the following conditions have been complied with:

(a) The Commission must have notified the person in writing on or about September 1 of that year of the amount of rent due. If the rent becomes delinquent, a second notice must be mailed by certified mail on or about June 1 of the following year.

(b) If the person holding the lease does not pay all rents and penalties due on or before June 30 of the following year the assignment shall terminate.

(c) [Repealed.]

(18) Effect of proposal for navigation project. - From and after the date on which the Commissioner of Marine Resources receives information to the effect that with regard to a specified navigation improvement project, the Secretary of the Army has been authorized by congressional action to cause a survey to be made on any such project, the Commissioner shall obtain the consent and approval of the Governor before leasing any public oyster-planting grounds which may be required for dredging operations or spoil disposal areas in connection with the project. If after the completion of the survey and a submission of the District Engineers' report thereon to the Chief of Engineers, United States Army, the proposed navigation improvement project is not authorized, the affected ground will again become available for lease and assignment.

Nothing in the above shall prohibit the renewal of any lease already in existence at the time the Commissioner receives information as to the authorization of a survey, as set out above.

(19) Consolidation of lease. - Upon written request by a leaseholder the Commission may consolidate into one lease contiguous leases held by the same leaseholder. The consolidation, upon approval by the Commission, shall be considered a new lease.

§ 28.1-134. Dredging or scraping on private ground.—(1) When and by whom dredging allowed; permit required. - It shall be lawful for any resident of ~~this State~~ *the Commonwealth* holding under legal assignment oyster-planting ground of at least three acres in one tract or adjoining tracts and having paid the rent therefor, to dredge or scrape the same at any time, except on Sunday or at night; ~~provided~~ *unless* he ~~obtain~~

obtains from the Marine Resources Commission a permit for each boat which is used to dredge or scrape ~~such~~ *the* specified private oyster ground ~~Such~~ *The* permit shall show the name of the lessee and the name or number of the boat, date of issue and date of expiration ; ~~which~~ . *The* expiration date shall not be more than twelve months from *the* date of issue and may be renewed for like periods from time to time ; ~~and provided, further, that the~~ . *The* Commission may after a hearing refuse to grant a permit or renew the same to dredge or scrape any oyster-planting ground unless it ~~be~~ *is* proved that the holder ~~thereof~~ has planted seed oysters or shells thereon and is using ~~said~~ *the* planting ground for the cultivation of oysters and may refuse to grant ~~said~~ *the* permit if it appears to the satisfaction of the Commission at ~~said~~ *the* hearing that the holder of ~~said~~ *the* ground is an habitual violator of the seafood laws ; ~~provided, further, that~~ . *An* applicant for ~~said~~ *the* permit shall have the right of appeal from any decision of the Commission refusing to grant ~~said~~ *the* permit as provided in Chapter 2 (§ 28.1-23 et seq.) of this title. The Commission shall receive three dollars for each such permit issued.

(2) Dredging or dredging equipment on boat. - It shall be unlawful for any person to have on board a boat, a dredge or equipment normally used for dredging, unless he has a permit to dredge, or a license to dredge and has ~~said~~ *the* license or permit available for inspection on board ~~of said~~ *the* boat.

It shall be unlawful for any dredge or any equipment to be used in dredging, approved by license or permit, to be carried or transported on board a boat of the licensee or permittee, or his employee, except when actually in use or going to or coming from the ground on which dredging is permitted, or licensed to take place, or to and from one dock to another dock for maintenance and repairs to such boat ~~and/~~ or equipment.

(3) Marking ground. - No person shall have or enjoy the privilege ~~hereinbefore~~ *previously* granted of dredging or scraping his oyster-planting ground unless he ~~shall have~~ *has* first properly designated and marked the oyster ~~lines of his planting ground by placing prominent and fixed buoys or stakes thereon, such buoys or stakes to be so many inches in diameter and to extend so far above water as the Commission or the Commissioner, may direct, and the same shall be kept up and maintained so as to distinctly mark the outer line or lines of such planting ground. In the event that any single line of the boundary of such planting ground shall exceed 300 in length it shall be marked with at least 3 or more stakes, with 1 stake at each end of such line and 1 or more stakes equally spaced along such line. In the event it appears to the inspector that such ground is not properly marked, he may forthwith suspend the dredging permit until such time as the ground is properly marked. The buoys shall be painted white, and shall have the initials of the person or firm whose property they are, placed upon them near the top, in black letters, of not less than five inches in length. If stakes are used there shall be a sign painted as prescribed for buoys attached to each corner stake.~~ *-planting ground as prescribed by the Commission in accordance with § 28.1-109 (6) (c). In addition to any other requirements, the initials of the lessee shall be displayed on all lease corners in black letters on a white background not less than five inches in length. If it appears to the inspector that such ground is not properly marked, he may immediately suspend the dredging permit until the ground is properly marked.*

(4) Marking boats. - Such initials shall also be placed upon each side of the prow of any boat or craft used or employed in dredging or scraping such planting ground.

1986 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 184

An Act to amend and reenact §§ 28.1-44, 28.1-130, 28.1-133, 28.1-134 and 28.1-179 of the Code of Virginia, relating to permit and registration fees for certain fishery activities.

[H 547]

Approved MAR 3 0 1986

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.1-44, 28.1-130, 28.1-133, 28.1-134 and 28.1-179 of the Code of Virginia are amended and reenacted as follows:

§ 28.1-44. Fees.—Each inspector, agent or officer shall collect the following fees for services herein enumerated in the issuance of licenses: one dollar and fifty cents for assigning oyster-planting grounds including riparian grounds; three dollars for assigning of bathing grounds; ~~one dollar for issuing permits as required by this title;~~ and such other fees as are specified under other sections of this title pertaining to fish, crabs, clams and other shellfish.

§ 28.1-130. Registration and issuance of license.—Upon being satisfied of the facts stated in such application, the inspector shall register such vessel ~~for a fee of one dollar~~ and issue to such applicant a license granting him the privilege of dredging or scraping for oysters on public ground within the prescribed limits and season, which shall be plainly set forth in the license.

§ 28.1-133. License tax.—Before any license ~~shall be~~ *is* issued for dredging or scraping, the applicant shall ~~; in addition to the fee of one dollar for registering the boat,~~ pay an annual license tax of fifty dollars for each dredge. The captains or masters of such boats shall always have such license on board of their boats and exhibit the same whenever it ~~shall be~~ *is* demanded by any duly authorized officer; and the refusal so to do shall be prima facie evidence that they are dredging or scraping without having a license therefor.

§ 28.1-134. Dredging or scraping on private ground.—(1) When and by whom dredging allowed; permit required. - It shall be lawful for any resident of this ~~State~~ *Commonwealth* holding under legal assignment oyster-planting ground of at least three acres in one tract or adjoining tracts and having paid the rent therefor, to dredge or scrape the same at any time, except on Sunday or at night ~~;~~ , provided he ~~obtain~~ *obtains* from the Marine Resources Commission a permit for each boat which is used to dredge or scrape such specified private oyster ground. Such permit shall show the name of the lessee and the name or number of the boat, date of issue and date of expiration, which expiration date shall not be more than twelve months from date of issue and may be renewed for like periods from time to time ~~; and provided, further, that the~~ . *The* Commission may after a hearing refuse to grant a permit or renew the ~~same~~ *permit* to dredge or scrape any oyster-planting ground unless it ~~be~~ *is* proved that the holder ~~thereof~~ has planted seed oysters or shells thereon and is using ~~said~~ *the* planting ground for the cultivation of oysters and may refuse to grant ~~said~~ *the* permit if it appears to the satisfaction of the Commission at ~~said~~ *the* hearing that the holder of ~~said~~ *the* ground is ~~an~~ *a* habitual violator of the seafood laws ~~; provided, further, that~~ *The* applicant for ~~said~~ *the* permit shall have the right of appeal from any decision of the Commission refusing to grant ~~said~~ *the* permit as provided in Chapter 2 (§ 28.1-23 et seq.) of this title. ~~The Commission shall receive three dollars for each such permit issued.~~

(2) Dredging or dredging equipment on boat. - It shall be unlawful for any person to have on board a boat, a dredge or equipment normally used for dredging, unless he has a permit to dredge, or a license to dredge and has ~~said~~ *a* license or permit available for inspection on board ~~of said boat~~ .

It shall be unlawful for any dredge or any equipment to be used in dredging, approved by license or permit, to be carried or transported on board a boat of the licensee or permittee, or his employee, except when actually in use or going to or coming from the ground on which dredging is permitted, or licensed to take place, or to and from one dock to another dock for maintenance and repairs to such boat ~~and/or~~ , equipment *or both* .

(3) Marking ground. - No person shall have ~~or enjoy~~ the privilege ~~hereinbefore~~ granted of dredging or scraping his oyster-planting ground unless he ~~shall have~~ *has* first properly designated and marked the oyster lines of his planting ground by placing prominent and fixed buoys or stakes thereon, such buoys or stakes to be so many inches in diameter and to extend so far above water as the Commission or the Commissioner ; may direct, and the same shall be ~~kept up and~~ maintained so as to distinctly mark the outer line or lines of ~~such~~ *the* planting ground. ~~In the event that~~ *If* any single line of the boundary of ~~such~~ *the* planting ground ~~shall exceed~~ *exceeds* 300 ~~:~~ *feet* in length it shall be marked with ~~at least 3~~ *three* or more stakes, with ~~1~~ *one* stake at each end of such line and ~~1~~ *one* or more stakes equally spaced along such line. In the event it appears to the inspector that such ground is not properly marked, he may ~~forthwith~~ suspend the dredging permit until ~~such time as~~ the ground is properly marked. The buoys shall be painted white, and shall have the initials of the person or firm whose property they are, placed upon them near the top, in black letters, of not less than five inches in length. If stakes are used there shall be a sign painted as prescribed for buoys attached to each corner stake.

(4) Marking boats. - Such initials shall also be placed upon each side of the prow of any boat or craft used or employed in dredging or scraping ~~such~~ *the* planting ground.

§ 28.1-179. Removal, transportation, etc., from polluted ground.—(1) No person, firm or corporation shall take, catch, transport, sell, offer for sale, remove, receive, keep or store shellfish from condemned areas, or relay shellfish taken from such areas, until a special permit has been obtained from the Commission, which must be carried in his possession when engaged in such operation.

Before any person, firm or corporation ~~shall take~~ *takes* or ~~remove~~ *removes* shellfish from private grounds in condemned areas he shall have written authority in his possession from the owner or lessee , in addition to ~~obtaining~~ the permit as herein required.

No permit for transporting or relaying shall be issued to any person, firm or corporation for the purpose of buying and selling shellfish from condemned areas. Permits for transporting and relaying shall only be issued to persons, firms or corporations ~~who~~ *that* catch shellfish from condemned areas and ~~who~~ *that* want to move such shellfish to an approved area ; , and to those persons who buy shellfish from condemned areas from the catcher and who transport or relay the shellfish to their or other approved grounds.

No permits shall be issued to any motor vehicle transporting and/or relaying shellfish from condemned areas unless such motor vehicle has an enclosed body with doors which can be sealed by an inspector. An inspector shall have the authority to refuse to issue such a permit if he determines the motor vehicle cannot be properly sealed.

If shellfish from condemned areas ~~is~~ *are* to be transported and/or relayed, at any time, by a motor vehicle an inspector shall seal the body of the motor vehicle before departure and the seal shall not be broken by anyone except an inspector at the point of final destination where the cargo is to be discharged for relaying and/or transplanting in an approved area. After the seal is broken an inspector shall supervise the relaying of the shellfish from the truck to the approved area.

Upon evidence of such permit holder offering for sale and not planting such shellfish from condemned areas, the Commissioner shall promptly revoke all permits held by such person, firm or corporation.

(2) Any person, firm or corporation holding a valid permit to remove, transport and/or relay shellfish from condemned area shall keep accurate records and submit monthly reports to the Commission, which shall designate the areas from which the shellfish were removed; the areas to which the shellfish were relayed; the dates of the removal, and/or relaying; the number of bushels of shellfish removed, and/or relayed; the name of the permit holder; the name and address of each person employed and engaged in the operation; the names or numbers of the boats; and the license numbers of the trucks used in the operation. During any month ; covered by permit ; in which no removal and/or relaying is in operation, a report shall be submitted to the Commission, indicating that no

shellfish were removed and/or relayed. It shall be the responsibility of the permit holder to keep accurate records and make reports of the removal, and/or relaying, to the main office of the Commission on or before the tenth day of the month following the month of operation. The permit shall set out the expiration date thereof.

(3) Application for the special permit ~~,~~ provided for in subsection (1) of this section, before the removal, transportation and/or relaying of shellfish from condemned areas, shall be made on forms provided by the Commission. ~~A fee of one dollar shall be paid to the Commission when such application for permit is filed.~~ This permit shall not be transferable.

The special permit, after being issued, may be revoked at any time by the Commissioner, when, in his judgment, it will be to the best interest of the industry that the same be revoked. Any person having ~~said~~ *such* permit revoked may demand a hearing before the Commission at the next scheduled meeting of the Commission.

(4) Shellfish removal, and/or relaying, from condemned areas shall be under the supervision of the Marine Resources Commission and the Department of Health.

(a) The season for the removal, and/or relaying, of shellfish from private grounds shall be from April ~~first~~ *1* to November ~~first~~ *1* .

(b) The season for the removal, and/or relaying of shellfish from public grounds shall be from May ~~first~~ *1* to August ~~fifteenth~~ *15* .

(c) The above dates for the opening and closing of ~~said~~ seasons may be changed by the Commission, and the Commission may refuse to grant permits for removal of shellfish from any and all condemned areas of the waters of the ~~State~~ *Commonwealth* .

(5) Any conveyance engaged in transporting shellfish, which have been caught within condemned areas for the purpose of relaying, to another area where they may be cleansed and made fit for market, shall display a yellow flag of not less than thirty inches in length and eighteen inches in width before any shellfish are placed thereon, and the flag shall be displayed during the entire relaying operation.

(6) It shall be the duty of the inspector of the Marine Resources Commission, and employees of the Department of Health, to examine the area to which shellfish from condemned areas are relayed and see that adequate and proper corner stakes or buoys have been put in place by the lessee before a permit ~~shall be~~ *is* issued to transport to or plant the area. Each corner stake or buoy shall be marked by a yellow flag or bunting of not less than fifteen inches by fifteen inches, and the marking shall remain until a special permit to remove the shellfish for sale or shipment has been obtained from the State Health Commissioner.

(7) No person, firm or corporation shall discharge, or cause to be discharged, any part or all of the shellfish from any conveyance engaged in transporting shellfish from condemned areas at any place other than to approved areas for cleansing, and shall move directly to the approved planting ground ~~,~~ or to conveyances holding a proper permit for relaying to cleansing areas designated in the permit.

(8) The loading and unloading, ashore, of shellfish taken from condemned areas shall only be at points designated by the Commission.

(9) Should the occasion arise for any emergency unloading of any conveyance engaged in transporting shellfish from a condemned area, the Commission shall be notified immediately and disposition of ~~said~~ *the* cargo shall be made under the supervision of the ~~said~~ Commission.

(10) There shall be no transportation, relaying or any movement of shellfish from condemned areas after sunset or before sunrise except by motor vehicle properly sealed pursuant to subsection (1) hereof. Clean shellfish and shellfish from condemned areas shall not be mixed in any quantity in the same cargo.

(11) The Marine Resources Commission, whenever ~~they deem~~ *it deems that* an emergency exists, may make rules and regulations to protect the health of the public, which relate to shellfish from condemned areas, without complying with the requirements of §§ 28.1-24 and 28.1-25. Such rules and regulations shall become effective upon ~~the~~ *their* passage by the Commission. These rules and regulations shall be enforced by revoking any and all permits which may have been issued.

In the exercise of its authority granted pursuant to this section, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising such authority.

1986 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 273

An Act to amend and reenact § 2.1-342 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 28.1-23.2, relating to fisheries statistics.

[H 590]

Approved MAR 3 1 1986

Be it enacted by the General Assembly of Virginia:

1. That § 2.1-342 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 28.1-23.2 as follows:

§ 2.1-342. Official records to be open to inspection; procedure for requesting records and responding to request; charges; exceptions to application of chapter.—(a) Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizens of this Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to any such citizen of this Commonwealth, nor to representatives of newspapers and magazines with circulation in this Commonwealth, and representatives of radio and television stations broadcasting in or into this Commonwealth. The custodian of such records shall take all necessary precautions for their preservation and safekeeping. Any public body covered under the provisions of this chapter shall make an initial response to citizens requesting records open to inspection within fourteen calendar days from the receipt of the request by the public body. Such citizen request shall designate the requested records with reasonable specificity. If the requested records or public body is excluded from the provisions of this chapter, the public body to which the request is directed shall within fourteen calendar days from the receipt of the request tender a written explanation as to why the records are not available to the requestor. Such explanation shall make specific reference to the applicable provisions of this chapter or other Code sections which make the requested records unavailable. In the event a determination of the availability of the requested records may not be made within the fourteen-calendar-day period, the public body to which the request is directed shall inform the requestor as such, and shall have an additional ten calendar days in which to make a determination of availability. A specific reference to this chapter by the requesting citizen in his records request shall not be necessary to invoke the time limits for response by the public body. The public body may make reasonable charges for the copying and search time expended in the supplying of such records; however, in no event shall such charges exceed the actual cost to the public body in supplying such records. Such charges for the supplying of requested records shall be estimated in advance at the request of the citizen.

(b) The following records are excluded from the provisions of this chapter:

(1) Memoranda, correspondence, evidence and complaints related to criminal investigations, reports submitted to the state and local police and the campus police departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of Title 23 of the Code of Virginia in confidence, and all records of persons imprisoned in penal institutions in this Commonwealth provided such records relate to the said imprisonment. Information in the custody of law-enforcement officials relative to the identity of any individual other than a juvenile who is arrested and charged, and the status of the charge or arrest, shall not be excluded from the provisions of this chapter.

(2) Confidential records of all investigations of applications for licenses and all licensees made by or submitted to the Alcoholic Beverage Control Board.

(3) State income tax returns, personal property tax returns, scholastic records and personnel records, except that such access shall not be denied to the person who is the subject thereof, and medical and mental records, except that such records can be personally reviewed by the subject person or a physician of the subject person's choice; however, the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being. For the purposes of this chapter such statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health and Mental Retardation shall be open to inspection and releasable as provided in subsection (a) above. No such summaries or data shall include any patient identifying information. Where the person who is the subject of scholastic or medical and mental records is under the age of eighteen, his right of access may be asserted only by his parent or guardian, except in instances where the person who is the subject thereof is an emancipated minor or a student in a state-supported institution of higher education.

(4) Memoranda, working papers and correspondence held or requested by members of the General Assembly or by the office of the Governor or Lieutenant Governor, Attorney General or the mayor or other chief executive officer of any political subdivision of the Commonwealth or the president or other chief executive officer of any state-supported institutions of higher education.

(4a) Written opinions of the city and county attorneys of the cities, counties and towns in the Commonwealth and any other writing protected by the attorney-client privilege.

(5) Memoranda, working papers and records compiled specifically for use in litigation or as a part of an active administrative investigation concerning a matter which is properly the subject of an executive or closed meeting under § 2.1-344 and material furnished in confidence with respect thereto.

(6) Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition.

(7) Library records which can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

(8) Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, (iii) qualifications for any license or certificate issued by any public body.

As used in this paragraph (8), "test or examination" shall include (i) any scoring key for any such test or examination, and (ii) any other document which would jeopardize the security of such test or examination. Nothing contained in this paragraph (8) shall prohibit the release of test scores or results as provided by law, or limit access to individual records as is provided by law. However, the subject of such employment tests shall be entitled to review and inspect all documents relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, such test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

(9) Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Regulatory Boards or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requestor's expense, by the

individual who is subject thereof, in the offices of the Department of Health Regulatory Boards or in the offices of any health regulatory board, whichever may possess the material.

(10) Records of active investigations being conducted by the Department of Health Regulatory Boards or by any health regulatory board in the Commonwealth.

(11) Memoranda, legal opinions, working papers and records recorded in or compiled exclusively for executive or closed meetings lawfully held pursuant to § 2.1-344.

(12) Reports, documentary evidence and other information as specified in §§ 2.1-373.2 and 63.1-55.4.

(13) Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-134.1 or § 62.1-132.4.

(14) Contract cost estimates prepared for the confidential use of the Department of Highways and Transportation in awarding contracts for construction or the purchase of goods or services.

(15) Vendor proprietary information software which may be in the official records of a public body. For the purpose of this section, "vendor proprietary software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of this Commonwealth.

(16) Data, records or information of a proprietary nature produced or collected by or for faculty or staff of state institutions of higher learning, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information have not been publicly released, published, copyrighted or patented.

(17) Financial statements not publicly available filed with applications for industrial development financings.

(18) Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.

(19) Confidential proprietary records, voluntarily provided by private business to the Division of Tourism of the Department of Economic Development, used by that Division periodically to indicate to the public statistical information on tourism visitation to Virginia attractions and accommodations.

(20) Information which meets the criteria for being filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.) of Title 32.1, regardless of how or when it is used by authorized persons in regulatory processes.

(21) Documents as specified (i) in paragraph 2 of subsection B of § 10-186.9, and (ii) in § 58.1-3 of the Code of Virginia.

(22) Confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.

(23) Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.

(24) Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Personnel and Training; provided however, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form which does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

(25) Fisheries data which would permit identification of any person or vessel, except when required by court order as specified in § 28.1-23.2.

(c) Neither any provision of this chapter nor any provision of Chapter 26 (§ 2.1-377 et seq.) of this title shall be construed as denying public access to records of the position, job classification, official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to any public officer, official or employee at any level of state, local or regional government in this Commonwealth whatsoever. The provisions of this subsection, however, shall not apply to records of the official salaries or rates of pay of public employees whose annual rate of pay is $10,000 or less.

§ 28.1-23.2. Authority to collect fisheries statistics.—The Commission shall have the authority to collect any fisheries data and information which it deems necessary to develop fishery management plans and to evaluate management options. This information shall include, but not be limited to:

1. Statistics for catch and fishing efforts by species from commercial and recreational fishermen;

2. Statistics from fish processors and dealers;

3. Types of gear and equipment used;

4. Areas in which fishing has been conducted;

5. Landing places; and

6. Any other information as deemed necessary by the Commission.

It shall also include information necessary to document the estimated and actual processing capacity of fish processing facilities.

The Commission may enter into cooperative agreements with agencies of another state, the federal government, or others for the collection of statistics, or the Commission may collect statistics from any source and require the reporting of these statistics on forms prescribed by the Commission.

The information collected or reported shall not be disclosed in any manner which would permit identification of any person, firm, corporation or vessel, except when required by court order.

B.1 Additional Virginia Codes Section-- Starting with Section below through to Part B, p. 70 is a continuation of Virginia Codes, 1985 and earlier (see Part B, 1- 39).

§ 32.1-2. Finding and purpose. — The General Assembly finds that the protection, improvement and preservation of the public health and of the environment are essential to the general welfare of the citizens of the Commonwealth. For this reason, the State Board of Health and the State Health Commissioner, assisted by the State Department of Health, shall administer and provide a comprehensive program of preventive, curative, restorative and environmental health services, educate the citizenry in health and environmental matters, develop and implement health resource plans, collect and preserve vital records and health statistics, assist in research, and abate hazards and nuisances to the health and to the environment, both emergency and otherwise, thereby improving the quality of life in the Commonwealth. (1979, c. 711.)

§ **62.1-13.2. Definitions.** — For the purposes of this chapter, the following words shall have the meanings respectively ascribed to them:

(a) *"Commission"* means the Virginia Marine Resources Commission.

(b) *"Commissioner"* means the Commissioner of Marine Resources.

(c) *"Person"* means any corporation, association, or partnership, one or more individuals, or any unit of government or agency thereof.

(d) *"Tidewater Virginia"* means the following counties: Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York; and the cities of Alexandria,

Chesapeake. Colonial Heights. Fairfax. Falls Church. Fredericksburg, Hampton. Hopewell. Newport News. Norfolk. Petersburg. Poquoson. Portsmouth. Richmond. Suffolk. Virginia Beach and Williamsburg.

(e) *"Governmental activity"* means any or all of the services provided by the Commonwealth or a county, city or town to its citizens for the purpose of maintaining public facilities and shall include but shall not be limited to such services as constructing, repairing and maintaining roads, sewage facilities, supplying and treating water, street lights, and construction of public buildings.

(f) *"Vegetated wetlands"* means all that land lying between and contiguous to mean low water and an elevation above mean low water equal to the factor 1.5 times the mean tide range at the site of the proposed project in the county, city or town in question; and upon which is growing on July 1, 1972, or grows thereon subsequent thereto, any one or more of the following: saltmarsh cordgrass (Spartina alterniflora), saltmeadow hay (Spartina patens), saltgrass (Distichlis spicata), black needlerush (Juncus roemerianus), saltwort (Salicornia spp.), sea lavender (Limonium spp.), marsh elder (Iva frutescens), groundsel bush (Baccharis halimifolia), wax myrtle (Myrica sp.), sea oxeye (Borrichia frutescens), arrow arum (Peltandra virginica), pickerelweed (Pontederia cordata), big cordgrass (Spartina cynosuroides), rice cutgrass (Leersia oryzoides), wildrice (Zizania aquatica), bulrush (Scirpus validus), spikerush (Eleocharis sp.), sea rocket (Cakile edentula), southern wildrice (Zizaniopsis miliacea), cattails (Typha spp.), three-squares (Scirpus spp.), buttonbush (Cephalanthus occidentalis), bald cypress (Taxodium distichum), black gum (Nyssa sylvatica), tupelo (Nyssa aquatica), dock (Rumex spp.), yellow pond lily (Nuphar sp.), marsh fleabane (Pluchea purpurascens), royal fern (Osmunda regalis), marsh hibiscus (Hibiscus moscheutos), beggar's tick (Bidens sp.), smartweeds (Polygonum sp.), arrowhead (Sagittaria spp.), sweet flag (Acorus calamus), water hemp (Amaranthus cannabinus), reed grass (Phragmites communis) and switch grass (Panicum virgatum).

The vegetated wetlands of Back Bay and its tributaries and the vegetated wetlands of the North Landing River and its tributaries shall mean all marshes subject to flooding by normal tides, including wind tides, provided this shall not include hurricane or tropical storm tides and upon which one or more of the following vegetation species are growing or grows thereon subsequent to the passage of this amendment: saltmarsh cordgrass (Spartina alterniflora), saltmeadow hay (Spartina patens), black needlerush (Juncus roemerianus), marsh elder (Iva frutescens), groundsel bush (Baccharis halimifolia), wax myrtle (Myrica sp.), arrow arum (Peltandra virginica), pickerelweed (Pontederia cordata), big cordgrass (Spartina cynosuroides), rice cutgrass (Leersia oryzoides), wildrice (Zizania aquatica), bulrush (Scirpus validus), spikerush (Eleocharis sp.), cattails (Typha spp.), three-squares (Scirpus spp.), dock (Rumex sp.), smartweed (Polygonum sp.), yellow pond lily (Nuphar sp.), royal fern (Osmunda regalis), marsh hibiscus (Hibiscus moscheutos), beggar's tick (Bidens sp.), arrowhead (Sagittaria sp.), water hemp (Amaranthus cannabinus), reed grass (Phragmites communis) and switch grass (Panicum virgatum).

(g) *"Wetlands board"* or *"Board"* means a board created as provided in § 62.1-13.6.

(h) *"Wetlands zoning ordinance"* means that ordinance set forth in § 62.1-13.5.

(i) *"County, city or town"* shall mean the governing body of such county, city or town.

(j) *"Back Bay and its tributaries"* means the following as shown on the U.S. Geological Survey Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the Virginia-North Carolina State line; Capsies Creek north of the Virginia-North Carolina State line; Deal Creek; Devil Creek; Nawney Creek; Redhead Bay, Sand Bay, Shipps Bay, North Bay, and the waters connecting them; Beggars Bridge Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black Gut; and all coves, ponds and natural waterways adjacent to or connecting with the above-named bodies of water.

(k) *"North Landing River and its tributaries"* means the following as based on United States Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River from the Virginia-North Carolina line to Virginia Highway 165 at North Landing Bridge; the Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge; all named and unnamed streams, creeks and rivers flowing into the North Landing River and the Chesapeake and Albemarle Canal except the following: West Neck Creek north of Indian River Road; Pocaty River west of Blackwater Road; Blackwater River west of its forks located at a point approximately 6400 feet due west of the point where the Blackwater Road crosses the Blackwater River at the village of Blackwater; Millbank Creek west of Blackwater Road.

(l) *"Nonvegetated wetlands"* means all that land lying contiguous to mean low water and which land is between mean low water and mean high water not otherwise included in the term "vegetated wetlands" as defined herein and also includes those unvegetated areas of Back Bay and its tributaries and the North Landing River and its tributaries subject to flooding by normal tides including wind tides but not including hurricane or tropical storm tides.

(m) *"Wetlands"* means both vegetated and nonvegetated wetlands. (1972, c. 711; 1973, c. 388; 1974, c. 297; 1975, c. 268; 1979, c. 524; 1982, c. 300.)

Editor's note. — This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

Law Review. — For a note on purposes and types of wetlands regulation, see 58 Va. L. Rev. 876 (1972). For article, "Virginia Natural Resources Law and the New Virginia Wetlands Act," see 30 Wash. & Lee L. Rev. 19 (1973).

§ 62.1-194. Casting garbage, etc., into waters. — Except as otherwise permitted by law, it shall be unlawful for any person to cast, throw or dump any garbage, refuse, dead animal, trash, carton, can, bottle, container, box, lumber, timber or like material, or other solid waste, except fish or crab bait in any form, into any of the waters of this State. When a violation of any provision of this section has been observed by any person, and the matter dumped or disposed of in the waters of this State has been ejected from a boat, the owner or operator of such boat shall be presumed to be the person ejecting such matter; provided, however, that such presumption shall be rebuttable by competent evidence. Every such act shall be a misdemeanor punishable by a fine not to exceed $100 or confinement in jail not to exceed thirty days, or both. Every law-enforcement officer of this State and its subdivisions shall have authority to enforce the provisions of this section. (Code 1950, §§ 62-182, 62-183; 1960, c. 246; 1968, c. 659; 1970, c. 486; 1974, c. 603.)

§ 62.1-194.1. Obstructing or contaminating state waters. — Except as otherwise permitted by law, it shall be unlawful for any person to dump, place or put, or cause to be dumped, placed or put into, upon the banks of or into the channels of any state waters any object or substance, noxious or otherwise, which may reasonably be expected to endanger, obstruct, impede, contaminate or substantially impair the lawful use or enjoyment of such waters and their environs by others. Any person who violates any provision of this law shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than $100 nor more than $500 or by confinement in jail not more than twelve months or both such fine and imprisonment. Each day that any of said materials or substances so dumped, placed or put, or caused to be dumped, placed or put into, upon the banks of or into the channels of, said streams shall constitute a separate offense and be punished as such.

In addition to the foregoing penalties for violation of this law, the judge of the circuit court of the county or corporation court of the city wherein any such violation occurs, whether there be a criminal conviction therefor or not shall, upon a bill in equity, filed by the attorney for the Commonwealth of such county or by any person whose property is damaged or whose property is threatened with damage from any such violation, award an injunction enjoining any violation of this law by any person found by the court in such suit to have violated this law or causing the same to be violated, when made a party defendant to such suit. (1968, c. 659.)

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