

PROTECTION OF VIRGINIA'S WETLANDS

**REPORT OF THE
WETLANDS STUDY COMMISSION**

To

THE GOVERNOR

And

THE GENERAL ASSEMBLY OF VIRGINIA



HO 14, 1972

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1972

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Report of the
Wetlands Study Commission
to
The Governor and The General Assembly of Virginia

Richmond, Virginia
January 4, 1972

TO: HONORABLE LINWOOD HOLTON, *Governor of Virginia*
and
THE GENERAL ASSEMBLY OF VIRGINIA

The 1969 report on Coastal Wetlands prepared by the Virginia Institute of Marine Science begins:

“Coastal wetlands represent only one percent of the total area of the State, and marshes one-half of one percent. Yet 95% of Virginia’s annual harvest of fish (commercial and sport) from tidal waters is dependent to some degree on wetlands. Ducks, Rails, Snipe and many other kinds of birds could not survive without wetlands. Muskrat, Otter, Beaver, and Mink dwell in coastal wetlands. Tourists in burgeoning numbers come to loll on the beaches or to revel in the natural beauty of our wetlands. All users of these valuable natural resources, whether they seek pleasure or profit, pour dollars into the economic stream, provide jobs, and pay taxes.

“The valuable wetlands and other resources which enrich our lives and quicken the pace of our economic life are the heritage and property of all citizens of the Commonwealth, yet the wetlands which nurture them are not, for the most part, under public control. Can such a significant portion of the economic and sociological base of Tidewater continue to hang so tenuously on the mounting and uncontrolled pressures to capriciously dredge, fill, dike, and bulkhead wetlands and to convert them into housing developments, industrial sites, and alas, garbage dumps?”

The 1971 General Assembly displayed its concern by passing House Joint Resolution No. 60 which created a Commission to study the problems relating to our wetlands:

HOUSE JOINT RESOLUTION NO. 60

Creating a commission to consider
matters relating to the wetlands.

Whereas, the wetlands of this State, involving as they do our marine resources and recreational features, are under constant threat of being put to other uses, and

Whereas, if the wetland resources of this State are lost, this generation will have allowed to slip from its grasp a priceless treasure and future generations will be forever deprived of this important part of our environment; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That a commission is hereby created to make a study and report upon the wetlands of this State. Such study shall include, among other matters, an inventory of the wetlands resources available to us, the dangers threatening them, and steps the State and local governments can take to preserve the potential of this great resource for this and future generations.

The Commission shall be composed of nine members of whom three shall be appointed by the Speaker of the House of Delegates from the membership thereof, three shall be appointed by the President of the Senate from the membership thereof and three shall be appointed by the Governor from within or without the State. The members of the Commission shall receive no compensation for their services but shall be paid their necessary expenses, for which, and for such clerical and technical assistance as will be required, there is hereby appropriated the sum of ten thousand dollars to be paid from the contingent fund of the General Assembly. The Commission shall conclude its study and make its report to the Governor and General Assembly not later than December one, nineteen hundred seventy-one. All agencies of the State shall assist the Commission upon its request.

At their first organizational meeting in Richmond, the Commission elected Delegate Russell M. Carneal of Williamsburg and Delegate Walther B. Fidler of Warsaw, Chairman and Vice Chairman, respectively. Other members of the Commission are Denis J. Brion, Attorney, Alexandria; Senator Leslie D. Campbell, Jr., Ashland; Senator William E. Fears, Accomac; Delegate George N. McMath, Onley; Senator Paul W. Manns, Bowling Green; M. Lee Payne, Banker, Norfolk; and James C. Wheat, Businessman, Richmond.

The Virginia Advisory Legislative Council and the Division of Statutory Research and Drafting provided facilities to carry out this study; and Arthur H. Horwitz was assigned to assist the members and the study group at all times. Carl W. Tobias, Charlottesville, served as consultant.

At an early meeting, the Commission invited representatives of the Virginia Institute of Marine Science, the Virginia Marine Resources Commission, the U. S. Corps of Engineers and the Governor's Council on the Environment to present their thoughts on this problem.

The first meeting was designed to acquaint members of the Commission with the location, problems, and uses of Virginia's wetlands. It was evident from the beginning that a number of public hearings would be necessary in order to allow the public an opportunity to express their views. Consequently, the Commission held public hearings in Norfolk, Alexandria, Yorktown, Richmond, and on the Eastern Shore.

The public hearings attracted many persons from many interested groups. Although the groups differed in their approaches, most supported legislation intended to protect the wetlands. Some groups endorsed State control while others favored local control.

The full Commission met again in November to consider all the possible alternatives. After due deliberation, the Commission makes the following recommendations:

II RECOMMENDATIONS

1. We recommend strong wetlands legislation combining regulation on both the State and local levels. Initial responsibility for protection of wetlands would be placed on the localities. The State would provide a wetlands zoning ordinance

to be implemented by a locality desiring to exercise the power to grant or refuse permits for wetlands alteration. Standards contained in the Wetlands bill and the wetlands zoning ordinance will provide the necessary guidelines to assist localities in making their decision. Any person desiring to use or develop wetlands, other than for certain excepted uses, would apply to his locality for a permit. Notice to the public and to interested State agencies would be provided, and any person directly affected by the issuance of a permit to another would be heard by the local zoning board. The locality would have the discretion whether to accept or deny the application. The State via the Virginia Marine Resources Commission would have a right to review the locality's decision and modify or deny any permit it finds not to be in accord with statutory standards.

A right of review by the Marine Resources Commission will be provided to the applicant, the Commissioner of Marine Resources and the local governing body. The right of appeal to the Circuit Court of the locality from the decision of the Marine Resources Commission will be granted to the applicant, and the local governing body through the local Commonwealth's Attorney.

If a locality does not adopt the model zoning ordinance, the person desiring a permit would apply directly to the VMRC.

2. We further recommend that the Virginia Institute of Marine Science make further study and inventory of the Virginia wetlands and that the General Assembly appropriate a sum sufficient to carry out this recommendation.

III HISTORY BEHIND RECOMMENDATIONS

From the outset, the Commission faced a number of problems. Perhaps the key problem was in what manner to regulate wetlands if regulation was desired. Most speakers at the hearings recommended the State as the administering agency. On the Eastern Shore, the Accomack-Northampton Planning District Commission presented a recommendation to regulate wetlands in certain areas on the local level exclusively and in others concurrently with the Virginia Marine Resources Commission.

The definition of wetlands was another problem to be resolved. The Virginia Institute of Marine Science in cooperation with the Marine Resources Commission was asked to prepare a workable and practical definition. The definition incorporated in this legislation is the product of their work.

Representatives of many organizations testified at the hearings. Repeatedly, the members of the Commission were warned of the potential threat of destruction to all wetlands. The members were informed that once a wetland was destroyed, it was gone forever. Another recurring theme was that Virginia was the only State possessing wetlands which lacked legislation to protect them.

The Commission met in November to make its final recommendations. It is the underlying philosophy of the Commission to place the initial responsibility on local governments to protect their wetlands. The State agency would serve as a check to see that the wetlands receive proper protection.

The Virginia Marine Resources Commission was chosen as the administering agency because it is already working the field of issuing permits and is geared to handle such requests.

The Commission decided that it would be necessary for the State to propose a uniform wetlands zoning ordinance. If the State did not have a standard zoning ordinance, the VMRC would have to review each locality's decision based on a local standard and thus be unable to treat each request equally.

The members were most impressed by the work of the numerous

organizations that testified before the Commission at the public hearings. These interested citizens suggested many of the ideas that have been incorporated in the legislation prepared by the Commission. The Commission wishes to recognize the following groups for their hard work and interest: The Conservation Council of Virginia, The William and Mary Law School Environmental Council, The Accomack-Northhampton Planning District Commission, The League of Women Voters, The Izzak Walton League and The Chesapeake Bay Foundation. This list is by no means complete and the Commission extends its appreciation to all the other groups not mentioned.

CONCLUSIONS

Because the wetlands are such a valuable asset to the Commonwealth, the members of the Wetlands Commission concluded that their task required diligent work and careful study. Most wetlands in Virginia are privately owned; consequently the problem of their regulation is more difficult. The Commission decided to combine the efforts of the local and State government in regulating wetlands. The resulting legislation is strict, yet drafted to protect both the landowners and the public.

Respectfully submitted,

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