

**REPORT OF THE  
CHESAPEAKE BAY LEGISLATIVE ADVISORY COMMISSION  
TO  
THE GOVERNORS  
OF MARYLAND AND VIRGINIA,  
THE GENERAL ASSEMBLY OF  
THE COMMONWEALTH OF VIRGINIA  
AND  
THE GENERAL ASSEMBLY OF  
THE STATE OF MARYLAND**



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# CHESAPEAKE BAY LEGISLATIVE ADVISORY COMMISSION

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## TABLE OF CONTENTS

	Page	
I	Introduction	
II	History of Interstate Relations Over Chesapeake Bay Matters	3
III	Issues of Interstate Concern	7
IV	Overview of Existing Agency Roles	15
V	Evaluation of Proposed Management Alternatives	35
VI	Recommendation of the Commission	44
VII	Bi-State Agreement on the Chesapeake Bay	50
VIII	Appendices	61
	Appendix A	
	Appendix B	
	Appendix C	
IX	Footnotes	60



## I.

### INTRODUCTION

This report contains the findings and recommendations of the Chesapeake Bay Legislative Advisory Commission. This Commission was created by resolutions passed by the General Assemblies of Maryland and Virginia during the 1978 Session. Those resolutions directed the Commission to evaluate existing and proposed management institutions for the Chesapeake Bay and to report to the 1980 Sessions of both State legislatures with recommendations for improving the management of this common resource.

The Commission has held a series of eight meetings and workshops at locations alternately in Virginia and Maryland. Since its inception, the Commission has called upon private individuals and State representatives to provide background information and supporting documents identifying areas of concern and providing a data base from which the Commission could work in pursuing its objectives. In early 1979 the co-chairmen of the Commission distributed inquiry letters to 235 public and private agencies and individuals, soliciting comments on the need for improved coordination in management of the Chesapeake Bay and the means by which such improvements may be achieved. The Commission's request for information and opinions generated

a tremendous response and provided the Commission with numerous letters and studies providing insight into Chesapeake Bay affairs. This material has been carefully reviewed by the Commission in its deliberations and in the formulation of these recommendations.

This report includes a synthesis of some of this information in order to provide to the legislators of both States an overview of the history of interstate relations concerning the Chesapeake Bay, a summary of issues of interstate concern, and an analysis of existing agency roles in these various areas. The principle alternative management institutions which might conceivably be adapted to the Chesapeake Bay region are reviewed and evaluated. Finally, the recommendations of the Commission, together with a draft of the necessary enabling legislation, are presented. These recommendations call for the creation of a permanent advisory body serving the legislatures of the two states and providing a central body for the resolution of policy questions of mutual concern to the States of Virginia and Maryland.



## II

### HISTORY OF INTERSTATE RELATIONS OVER CHESAPEAKE BAY MATTERS

The spirit of cooperation between the two states which facilitated the creation of the Chesapeake Bay Legislative Advisory Commission, the Governors' Agreement on the Chesapeake Bay and other interstate activities in recent years has not always existed between the citizens of Virginia and Maryland. Mr. Donald P. Eveleth, a legislative analyst with Maryland's Department of Legislative Reference prepared a "Historical Account of Maryland's and Virginia's Relationship in Governing the Chesapeake Bay"<sup>1</sup> for the Commission which surveyed the often troublesome interaction between the two states since colonization in the seventeenth century.

Conflicts between the two states frequently arose from boundary and property disputes. One of the earliest of these disputes resulted when a Virginia trader, William Claiborne refused to recognize Maryland sovereignty over his Kent Island trading post. Claiborne's refusal to obtain a license for his trading post from George Calvert, Lord Baltimore, led to a confrontation which has been characterized as the first naval battle of the New World. The claims to Kent Island were not finally settled until almost

20 years after the initial dispute arose; in the Compromise of 1657 Maryland and Virginia finally agreed that Kent Island would be recognized as Lord Baltimore's property.

The Bay played a key role in shaping the development of the two colonies. Its tributaries provided a ready avenue for trade and transportation. Not surprisingly, the two states had numerous conflicts concerning the regulation of shipping throughout the Chesapeake Bay. In 1777, Congress recommended joint arbitration between the states to settle their trade differences, but these were not resolved until 1785 when the states ratified a compact which was to define their relative rights for 172 years. Under this compact Virginia agreed not to charge tolls for vessels entering the Chesapeake Bay bound for Maryland ports, Maryland gave Virginia certain rights of use (particularly as to joint fisheries), navigation and jurisdiction over the Potomac and Pocomoke Rivers and the states agreed as to their respective rights to the Chesapeake Bay.

Perhaps one of the most infamous areas of interstate conflict on the Bay began in the early 1800's when the productivity of the choice Chesapeake Bay oyster beds began to decline. By 1820 each state had acted to limit access to the oyster beds to its own residents. These limitations were supplemented by additional harvesting regulations in subsequent decades. Frequent clashes erupted between Maryland and Virginia watermen, and between the watermen

of each state and that state's enforcement agencies. As the fishing effort increased, the precise location of the Maryland-Virginia border became a critical issue; when a firm boundary was established in the Award of 1877, Maryland had to give up about 23,000 acres of oyster beds to the Commonwealth of Virginia. Even with the boundary question settled, serious conflicts over shellfish resources continued into the present century.

Although residency restrictions for fishermen have survived in each state to the present, the two states have come to recognize the desirability of joint action on problems of mutual concern. Both states joined in the Interstate Commission for the Potomac River Basin in 1940 and have worked to strengthen it since the 1960's. Both have entered into the Atlantic States Marine Fisheries Commission, which was ratified by Congress in 1942, joining thirteen other states in an advisory commission concerned with better ways of assisting and controlling various Atlantic coast fisheries. The two states negotiated the Potomac River Compact of 1958, which superseded the old Compact of 1785 and established a Potomac River Fisheries Commission to regulate the fisheries of the Potomac River estuary. The estuarine portion of the Potomac River is now the only section of the Chesapeake Bay system which is shared by and jointly managed for fishermen from both Maryland and Virginia. More recently the two states have sponsored conferences in 1967 and 1977 to further open communication on

matters of baywide concern.

As Eveleth's account illustrates, the early concerns of the two states were directed at securing to their own citizens the greatest possible share of the land and aquatic resources of the Chesapeake region. Despite the early inclination toward isolationism within each state on matters of increasing scarcity of natural resources, the events of recent decades have demonstrated the willingness of each to enter into cooperative arrangements for their mutual benefit.

### III

#### ISSUES OF INTERSTATE CONCERN

One of the first tasks undertaken by the Commission was that of narrowing the focus of its survey of management issues relating to the Chesapeake Bay. A host of issues have been presented for the Commission's attention, reflecting the rapid intensification of uses affecting the Bay and the acute need to address them in a coordinated manner. The watershed of the Bay includes parts of many states beyond Virginia and Maryland. A truly comprehensive review of the well-being of the Bay could legitimately extend to a consideration of acid-mine drainage in the Appalachian Mountains and striped bass regulations on Long Island Sound. It was the consensus of the Commission, however, that its studies should be limited geographically to the tidewater region of the watershed and should be concentrated in six broad subject areas, including (1) transportation, (2) fisheries and wildlife, (3) recreation, (4) economics, planning and major facility siting, (5) research and information, and (6) water quality. Discussions among Commission members and correspondence provided to the Commission identified specific issues in each of these areas which would be appropriate for joint review and action. These issues of mutual state concern are described in the sections which follow.<sup>2</sup>

## Transportation

Both Maryland and Virginia have an enormous stake in the continued viability of the Chesapeake Bay as a shipping route. The Hampton Roads and Baltimore Port complexes are among the busiest in the nation. The mutual interest of the two states in commercial shipping on the Bay extends to several associated issues. The trend toward bulk carriers of greater draft has increased the need for dredging both in portions of the main stem of the Bay and in the principal ports in each state. This dredging, in turn, will require the location of suitable spoil disposal sites of sufficient size to avoid dredging delays.

Although a vessel traffic services system for commercial shipping on Chesapeake Bay is not a likely prospect at this time, the increasing size of the recreational fleet may require some action to minimize interference with shipping. Likewise, the suggestion has been offered that conventional aids to navigation require improvement. Spills of oil and other hazardous materials from barges and ships have generated a continuing need for cooperative emergency responses by the states and the federal government. Finally, both states have a common need to evaluate the extent to which shore erosion in certain areas may be aggravated by vessel wakes.

## Fisheries and Wildlife

The common interest of the states in the fisheries of the Chesapeake Bay is frequently cited as requiring greater

cooperative efforts in their management. Each state controls critical portions of fish habitat such as migratory pathways and spawning and nursery grounds. Many species are part of a common fishery harvested in both states: crabs, shad, herrings, sea trout, striped bass, flounders, bluefish and many other species. Fishing controls in each state have direct consequences for the total resource; inconsistent laws for the same species are sometimes perceived as being irrational and erode public confidence in each state's management activities. The two states have an ongoing policy question in the allocation of fisheries resources between commercial and recreational fishermen. The two states may be faced with a common problem as a result of the Supreme Court decision in Douglas vs. Seacoast Products, Inc.,<sup>3</sup> which held that Virginia could not exclude federally-licensed fishing vessels from outside the state from fishing for menhaden in Virginia waters on the same terms as Virginians. The rationale of that case could possibly be extended to allow nonresident fishermen to compete with Maryland and Virginia watermen for Chesapeake Bay finfish and shellfish. Finally, an opportunity deserving joint evaluation which has been promoted by scientists is the development of an interstate oyster fishery capitalizing upon the more reliable seed production in Virginia and the relatively pest-free growing waters of Maryland.

Most of the wildlife concerns of the states are localized in nature. Some mobile species with habitat in both states

include nutria and diamond back terrapin. Migratory waterfowl using the Atlantic flyway are affected by the hunting seasons established in each state; although bag limits and the hunting season length is set by federal agencies, the power of each state to establish the opening and closing dates for the hunting season may be appropriate for coordination.

### Recreation

Each state is faced with the problem of a growing demand for water-oriented recreational opportunities and the limited access to the Bay which now exists; however, this problem must be solved principally by the independent efforts of each state. Quite likely the main area in which the states have a mutual concern is the regulation of recreational boating. Since the Bay provides a common fishing and cruising ground for both Maryland and Virginia boats, the states should cooperate in their regulation of marine sanitation devices and vessel pump-out stations. As noted in the preceding section on transportation, the states should jointly evaluate the need to take steps to minimize conflicts between recreational boating and commercial fishing and shipping traffic. Also there exists a common research need in this area to evaluate the contribution of recreational boat wakes to shoreline erosion.

### Economics, Planning and Major Facility Siting

Some facilities by their nature have greater than local



impacts of an economic and environmental nature. Nuclear power plants, industries, refineries and ports are examples of facilities with potentially far ranging impacts. Under current federal air pollution laws, the construction of such facilities may be restricted because of emission sources in other states or because of the designation of downwind "sensitive" areas which might be affected. In the interest of sound regional planning, Maryland and Virginia may wish to cooperate in the siting of such facilities having a potential impact on the Bay region as a whole. Other activities that may require similar cooperation might include planning of sewage treatment plants and the location of dump sites for hazardous materials. In these areas similar laws could be implemented or mutual sites could be developed. Solid waste disposal strategies may also benefit from coordination and a regional approach. The possible development of onshore support facilities for outer continental shelf oil and gas extraction may be an area suitable for bi-state cooperation.

Bi-state regional planning may offer an improved environmental and economic climate in several other problem areas. Virginia and Maryland will undoubtedly continue to cooperate in the management of residential water supplies in light of the fact that residential demand is forecast to exceed supply by the year 2020. Future regional planning goals may include the longterm baywide projection of trends, opportunities, needs and changes and concerted state efforts to stimulate or respond to federal legislation, regulation or initiatives.

## Research and Information<sup>4</sup>

In sharing the management of a great natural resource, Maryland and Virginia also share many similar research and information needs: responsible management of such a resource demands the ability to recognize joint problems and needs, initiate adequate and coordinated research efforts and disseminate information so that it may be used by agencies and local governments in each state having management duties.

At the present time, there are many private, state, and federal organizations conducting Bay related research. A mechanism or process might be considered to better identify mutual problems that should be the focus of coordinated research efforts. Unnecessary duplication of research efforts should be avoided and cooperative research encouraged where appropriate. By identifying joint problems, funding could be facilitated through joint state efforts to secure state and/or federal monies.

Of critical importance is the transmittal of research data to the public and to decision-makers. To accomplish this goal and to further enhance research coordination a central repository for Chesapeake Bay research might be considered. Such a repository might also function as a baywide data system, holding information about past and present research. Joint efforts may be desirable in the development of educational materials about the Bay for distribution to the public, legislators and others. Finally,

Maryland and Virginia may wish to make recommendations regarding the continued funding of the Army Corps of Engineers' Chesapeake Bay hydraulic model and the studies to be conducted with it.

### Water Quality

The Chesapeake Bay is literally a mixing bowl filled with waters draining from most of the State of Maryland, from about half of the Commonwealth of Virginia and intruding from the ocean. Water quality is determined in part by natural phenomena: tidal flushing from the ocean, freshwater flows from numerous tributaries, storms, floods, wind driven waves and even solar heating. However, man has a critical responsibility for water quality through direct controls upon materials discharged into Bay waters and through changes in land use and land management practices in the areas which drain to the Bay. The commitment made by each state to control pollution sources will have an obvious impact on the health and productivity of the Bay's living resources in which the states have a common interest. The states have a need for a continuing, open dialogue concerning the strategies pursued by each in pollution abatement, especially as to a shared waterway such as the Potomac River. Each state could benefit from improved estuarine water quality modelling capabilities and from a greater ability to detect and evaluate the consequences of an increasing range of pollutants which are finding their way into waters of the Bay. These possibilities

may be appropriate for cooperative research or funding by the two states' water quality agencies or for complementary regulation and enforcement.

### Conclusion

The issues discussed above present some serious challenges as well as some tremendous opportunities. Action in certain of these areas may well be unlikely; in other areas joint action will be essential. In any case the interests of both states require that these issues be evaluated cooperatively by their representatives and that interstate coordination of agency activities in these areas be initiated and supported.

These issues do not present themselves in a governmental vacuum. Virginia, Maryland and the federal government have established a number of research, planning, advisory and regulatory programs with existing responsibilities in these areas. The following section examines the primary agency activities in these areas and the interaction of these agencies across state lines.

#### IV

#### OVERVIEW OF EXISTING AGENCY ROLES

In each of the six areas of interstate concern identified by the Commission for specific review, there now exist state and federal programs which cumulatively exercise broad management powers over the Chesapeake Bay region. A problem often encountered in attempts to improve interstate coordination in other situations has been the failure to integrate the solution into the existing web of governmental institutions. The recommendations of the Commission were grounded in an awareness of federal and state laws and the efforts of administrative agencies to implement those laws. The roles of existing federal and state agencies in each of the six areas of concern are summarized below.

##### Transportation

Grouped under the general heading of transportation are governmental activities including vessel traffic management, maintenance of aids to navigation, port development, channel dredging, dredge spoil disposal, and the handling of emergencies. The principal federal agencies having responsibilities in these areas are the Coast Guard, the Army Corps of Engineers and the Environmental Protection Agency. The Coast Guard has authority

over vessel traffic control and serves as the primary enforcement tool for ship discharges and oil spills.<sup>5</sup> The Army Corps of Engineers is responsible in a proprietary and regulatory capacity for the improvement of navigable waters of the Chesapeake Bay.<sup>6</sup> The erection of structures such as wharves, piers, or pipelines requires Corps permission. The Corps has authority to regulate dredging and spoil disposal in navigable waters, in coordination with the Environmental Protection Agency and other interested federal, state and local agencies. The Corps may undertake its own dredging projects, after consultation with other agencies and Congressional authorization. The Environmental Protection Agency, the Fish and Wildlife Service and other federal agencies charged with protecting environmental interests have the responsibility to comment on the Corps' developmental and regulatory activities.<sup>7</sup>

In Maryland the Department of Transportation is involved with Bay-related transportation issues through the Maryland Port Administration.<sup>8</sup> The Administration is responsible for promoting harbor facilities throughout the State. Because of its relative size and importance, the Port of Baltimore is the focus of MPA's attention. The Administration not only facilitates the activities of private industry within port locations, but also operates its own terminal facilities and provides port police. The Department of Natural Resources

also regulates certain transportation related activities. For instance, the Department (together with the Board of Public Works) must also authorize any dredging in Chesapeake Bay waters.<sup>9</sup> The Water Resources Administration, a subagency of the Department of Natural Resources, regulates oil transfer operations and licenses those facilities which engage in this activity.<sup>10</sup> It also maintains an oil spill emergency response system for containing and removing spills.<sup>11</sup> The Waterways Improvement Fund is administered by the Department to finance local dredging projects and other improvements to navigation.<sup>12</sup> The Natural Resources police not only enforce the state's game and fish laws, but also enforce boating safety regulations.

In Virginia the transportation sector is managed and regulated primarily by the State Water Control Board, the Virginia Port Authority, and the Marine Resources Commission. The State Water Control Board has responsibility for promulgating and enforcing regulations concerning the discharge of oil and other hazardous substances into State waters.<sup>13</sup> To the extent that transportation activities affect wetlands or subaqueous bottoms, the Marine Resources Commission plays an important part by virtue of its responsibility for state bottoms and administration of the State Wetlands Act.<sup>14</sup> The Commission of Game and Inland Fisheries enforces boating safety regulations.<sup>15</sup> Finally, the Virginia Port

Authority functions in much the same way as the Maryland Port Authority, and is charged with the promotion, improvement and long term management of Virginia's ports.<sup>16</sup>

### Fisheries and Wildlife

This area embraces the management of shellfish and finfish, the maintenance of spawning and nursery areas, wetlands protection, and the management of wildlife and game resources. The federal agencies involved are primarily concerned with enforcing the various game laws which protect migratory species and with regulating activities with a potential for altering the existing environment. The game laws are enforced by wardens of the U.S. Fish and Wildlife Service, who closely coordinate their work with state enforcement agencies in Maryland and Virginia.<sup>17</sup> The Department of the Interior is also concerned with the management of national parks and wildlife refuges in the Bay area. Agencies of the Department of Commerce have two important responsibilities related to fisheries and wildlife. First, the National Marine Fisheries Service is responsible for fishery resources development activities, which include market research, loan guarantees for rehabilitating or constructing vessels and suggestions for improving market practices.<sup>18</sup> Commerce's second area of responsibility is promotion of state-level



coastal zone management through the Office of Coastal Zone Management.<sup>19</sup>

The Environmental Protection Agency has a secondary role in fisheries and wildlife protection through its administration of the National Pollution Discharge Elimination System Program and by virtue of its advisory and consulting role in the spoil disposal and wetlands permit programs.<sup>20</sup>

Finally, the permitting actions of the Corps of Engineers, as the regulatory authority for wetland alterations and dredge spoil disposal, have significant consequences for Bay fisheries and wildlife.<sup>21</sup>

Within the state of Maryland, primary jurisdiction for fisheries and wildlife is in the Department of Natural Resources. The Department's Natural Resources Police Force coordinates with the federal agencies the enforcement of federal and state game laws. The names of the Department's subagencies are descriptive of their program responsibilities for fish and wildlife resources: the Tidewater Fisheries Division and Coastal Resources Division, both within the Tidewater Administration, the Wildlife Administration, and the Wetlands Division of the Water Resources Administration.<sup>22</sup> Fisheries and wildlife resources located where the state of Maryland has proprietary interest are managed by the Forest or Parks Services.<sup>23</sup> Shellfish sanitation is addressed by the Department of Health and Mental Hygiene.<sup>24</sup>

In Virginia the Marine Resources Commission has regulatory jurisdiction over fin and shellfish and for the environs which they inhabit below the fall line of the rivers.<sup>25</sup> The Commission oversees the administration of the state's wetlands laws and regulates the use of state bottoms. The Commission, primarily a regulatory body, is assisted by the Virginia Institute of Marine Sciences, a research advisory and educational organization.<sup>26</sup> The State Health Commissioner also has responsibility for shellfish: he may inspect shellfish wherever they are harvested within the State, close shellfish beds, or restrain any entity from selling, buying or marketing shellfish if he finds that the shellfish are unfit for market.<sup>27</sup> The Department of Conservation and Economic Development<sup>28</sup> and the Commission of Outdoor Recreation<sup>29</sup> each have an important impact in this area through their respective management and planning functions related to State-owned lands.

### Recreation

This area includes a variety of diverse concerns such as sanitation facilities on boats, provision of public access to the Chesapeake, recreational traffic management, hunting and fishing, and regional problems related to marinas and private harbors. At the federal level the Coast Guard, in consultation with the Environmental Protection Agency is

charged with responsibility for establishing and enforcing regulations for marine sanitation devices for boats.<sup>30</sup> The Coast Guard also has responsibility for boating safety and for navigational aids. The National Park Service and the Bureau of Fish and Wildlife, which maintain parks and refuges, respectively, have control over public access to the Chesapeake over lands which they manage.<sup>31</sup> The Fish and Wildlife Service has responsibility, as indicated previously, to enforce game laws for migratory species. The Corps of Engineers may have a developmental or regulatory role in relation to the construction and maintenance of recreational boating facilities.

Maryland has exercised some degree of responsibility in all these areas. Through the water quality certification procedure and the wetland regulatory process the state has promoted the use of adequate onshore sanitary facilities and pumpout stations at marinas to reduce discharges of wastes from boats.<sup>32</sup> The Maryland Department of Natural Resources is the agency of State government with principal responsibility for providing public access to the Bay. This is accomplished, first, by the Parks and Forest Services which provide access, where appropriate, over state lands,<sup>33</sup> or, second, by the Waterway Improvement Division of the Tidewater Administration, which provides services and improvements to promote recreational boating on the Chesapeake Bay.<sup>34</sup> The

Waterway Improvement Division, in cooperation with the Marine Police, supplements federal efforts to provide navigational aids and also marks channels, clears obstructions, and undertakes some dredging.<sup>35</sup> The Marine Police enforce boat safety laws and render assistance to recreational vessels where needed.<sup>36</sup> The Counties and municipalities have an important role in providing facilities or parks for public access to the Bay and local zoning has a determinative impact on development of marinas and private harbors.

The State of Virginia has a variety of programs affecting recreation. Through its State Water Control Board, the state has promulgated rules and regulations for controlling the discharge of sewage from boats.<sup>37</sup> The Department of Conservation and Economic Development, Division of Parks, is a primary provider of public access to the Chesapeake Bay in Virginia.<sup>38</sup> The Commission on Outdoor Recreation has overall planning responsibility for outdoor recreational facilities.<sup>39</sup> The Game and Inland Fisheries Commissions regulates hunting and freshwater fishing. It also carries out a program for the acquisition and development of public boat landings.<sup>40</sup> The development of marinas and private harbors is subject to the State wetlands act and Marine Resource Commission jurisdiction over state bottoms. As in Maryland, local zoning and harbor regulations may have a significant effect on the development of marinas and private harbors.

## Economics, Planning and Major Facility Siting

This topic includes the location of Bay-related commercial and industrial activities, the allocation of areas for specific uses and the long-term projection of trends and opportunities. None of the federal agencies seek directly to impose a comprehensive federal plan on the Chesapeake Bay. Nevertheless, the federal presence on the Bay is so pervasive--indeed, overwhelming in certain sectors--that the federal government represents an important planning entity on the Bay. Congress has directed the Corps of Engineers to make a comprehensive study of the Chesapeake Bay; there is currently a congressionally authorized EPA study of the Bay. These studies are in addition to the ongoing Corps of Engineers planning program to identify appropriate waterway improvement projects. The Coastal Zone Management Program, discussed previously, does not seek to impose a federal plan, but does establish federal standards for state plans. While an effort has been made to coordinate federal and state permitting activities, there has been less attention given to coordinating federal planning activities; in fact, these activities are largely independent efforts.

In Maryland the State Department of Planning provides certain overview planning functions for the northern part of the Chesapeake Bay. The Department of State Planning's

duties have been devised so as not to conflict or impinge upon local zoning authority.<sup>41</sup> The Department engages in studies and reviews designed to provide an understanding of future trends. The Department also seeks to coordinate certain activities of federal, state and local entities. For example, the Department plays an active role pursuant to the National Environmental Policy Act by coordinating the various state and local submissions which form a part of the NEPA review. Other resource-oriented planning in Maryland is fragmented among several agencies including the Coastal Resources Division of the Tidewater Administration, the planning sections of the Water Resources Administration, and the water and sewer programs of the Department of Health and Mental Hygiene Environmental Administration.<sup>42</sup> The Maryland Department of Economic Development has primarily served to support Maryland's search for new industry.<sup>43</sup> The basic mission of the Department is to develop studies which identify economic opportunities and resources in Maryland which can be utilized by outside industry. The Maryland Port Administration, as discussed previously, serves as a catalyst and facilitator of Maryland's port needs. In that capacity long range studies and planning are undertaken, efforts which can have a substantial impact on the location of major port facilities.<sup>44</sup> The Maryland Department of Natural Resources is responsible for the

Maryland Power Plant Siting Program, under which the state is authorized to acquire power plant sites and to review sites selected by electric utilities.<sup>45</sup> This program was enacted to facilitate the selection of these sites, a process which had sometimes been hampered by local opposition. Another major state program affecting major facilities decisions is the Maryland Coastal Facilities Review Act, providing a particularly comprehensive review mechanism for the siting and construction of energy-related facilities including refineries, pipelines and LNG terminals.<sup>46</sup> Even with these state-level planning and regulatory programs, basic land use decisions in Maryland remain the province of the counties and municipalities.

In Virginia mechanisms for promoting economic activity in the Bay regions of the State are not as formalized as in Maryland. A principal proponent of economic activity is the Virginia Port Authority, which has been discussed previously. VPA also acts in support of the local jurisdictions, which often have their own programs to encourage new industry. Other types of new businesses are promoted by the Division of Industrial Development.<sup>47</sup> Virginia has not enacted a State program for major facilities siting, comparable to Maryland's Power Plant siting law. The Council on the Environment provides an interagency liaison on projects which pose possible environmental impacts.<sup>48</sup> Localities may participate in comprehensive regional planning via Planning District Commissions.<sup>49</sup> As in Maryland, fundamental land use controls in Virginia are exercised by county and municipal governments.

## Research and Information

This area of concern includes means for identifying informational needs, the coordination of research efforts, and the communication of research results to users. At the federal level the two largest research programs in the history of Bay research have been undertaken by the Corps of Engineers and the Environmental Protection Agency. The Corps' study was a synthesis of accumulated research data defining in a comprehensive way the existing conditions present on the Bay and projecting future conditions. Congress authorized EPA to conduct a massive program of new research which is now ongoing. EPA has incorporated a "public participation" element in its study designed in part to inform the public of the nature of studies being conducted. Another major federal research effort underway is the United States Geological Survey study on the Potomac River. Other research activities conducted by federal agencies include project evaluations required by the National Environmental Policy Act.<sup>50</sup> Nearly all the federal agencies which have been mentioned in this overview participate to some degree in funding research on the Chesapeake Bay. Since no federal agency is established as the "lead agency" for bay-related research, there has been recent interest in Congress in designating one agency as a clearinghouse for federally funded research on Chesapeake Bay.

Major state and private research institutions carrying out Bay-related research include the Virginia Institute of



Marine Science, the University of Maryland, the Smithsonian Institution and Johns Hopkins University. These four institutions have joined in the Chesapeake Research Consortium to facilitate the conduct of inter-institutional studies. Many state agencies conduct extensive research program in their respective areas. For example, the Maryland Power Plan Siting Program has sponsored key studies of striped bass populations in the Bay. Finally, numerous private consulting firms carry out studies under contract to these agencies.

### Water Quality

This area of concern includes the setting of effluent and receiving water standards, stormwater management, sediment control and other nonpoint source water quality problems. Since the passage of the Federal Water Pollution Control Act Amendments in 1972 the Environmental Protection Agency has been the lead agency at the federal level in improving and protecting water quality.<sup>51</sup> Under the National Pollution Discharge Elimination System, EPA has established pollution control programs and has disbursed funds for the construction of sewage treatment plants. EPA provides comments upon Corps permit applications to assure the protection of water quality. When periodic or accidental water quality incidents, such as oil spills, occur, EPA works with the Coast Guard to enforce regulations in this area.

In Maryland the Department of Natural Resources has been delegated responsibility for administering the federal discharge permits program.<sup>52</sup> The State Department of Health and Mental Hygiene, acting through its Environmental Health Administration shares responsibilities for determining whether shellfish beds are safe and for regulating toxic substances. It has regulatory control over county comprehensive sewer and water plans.<sup>53</sup> The Environmental Health Administration directs the wastewater treatment works program for the state and is responsible for approving the construction of treatment plants. Another important component in insuring water quality is proper stormwater management and sediment control. While the Maryland Department of Natural Resources has oversight responsibility in this area, the primary regulatory focus is upon local government enforcement of sediment control plans which are required for active construction sites.<sup>54</sup>

In Virginia, the State Water Control Board has the regulatory responsibility for setting water quality standards and regulations and for enforcing the same.<sup>55</sup> Virginia, like Maryland, has a water quality program acceptable to the federal government and has been delegated N.P.D.E.S. authority. The Virginia Institute of Marine Sciences provides extensive scientific backup and analysis for the water quality program.<sup>56</sup> The Water Control Board shares responsibility with the State Department of Health for the construction, planning, operation and monitoring of sewage treatment facilities.<sup>57</sup> Erosion

and sediment control in Virginia is a mixture of state and local responsibility. State legislation authorizes a special erosion commission to replenish the public beaches of Virginia Beach.<sup>58</sup> The remainder of the state is governed by soil conservation district plan<sup>59</sup> providing for the application by localities of certain minimum state standards designed to combat erosion and sedimentation.

#### Interstate Cooperation Among Existing Agencies

In recent years a variety of agencies and institutions have been involved in cooperative efforts in response to Bay-related problems which concerned more than one state. In interviews with agency personnel conducted under the sponsorship of the Chesapeake Bay Legislative Advisory Commission,<sup>60</sup> a number of such instances were discussed which reveal the scope of past efforts. For example, as water consumption in the greater Washington, D.C., area approached the limits of available supplies in the Potomac River, it became necessary for the two states and the District of Columbia to negotiate a "Potomac River Low Flow Allocation Agreement" to assure an equitable distribution of water. (In these negotiations the District of Columbia was represented by the U.S. Army Corps of Engineers, which is charged with the maintenance of the city's water supply). This resolution avoided the need to resort to litigation for an apportionment.

Oil spill emergencies have sometimes resulted in cooperative action. In 1978, for example, Maryland volunteered to make its oil containment and clean-up resources available to Virginia on a contractual basis to assist with an oil spill near Chesapeake Beach, Virginia. More recently (in October, 1979) the State of Maryland provided assistance to the Coast Guard on a contractual basis in the containment of a barge spill in the Potomac River. In another instance Virginia officials sued to recoup the costs of cleaning up an oil spill from a Steuart Petroleum Company barge. The State of Maryland, among others, submitted an amicus curiae brief in that case supporting the right of the State of Virginia to conduct an oil spill cleanup program independent of that maintained by the federal government.

A more lasting example of interstate cooperation has been the coordinated attention of the states to concerns over the Potomac River. In 1940 Congress ratified a compact creating the Interstate Commission on the Potomac River Basin, functioning principally in an information-gathering and coordinating role. This role was strengthened by a 1970 amendment authorizing the Commission to establish technical sections to focus upon the resolution of particular problems of water pollution and water supply in the basin, such as the water supply needs of the District of Columbia metropolitan area. Interstate concerns in the estuarine portion of the Potomac were addressed by the Potomac River Compact of 1958, creating the Potomac River Fisheries Commission. The estuarine waters

of the Potomac are the only waters which are shared by the fishermen of both states. The Commission has been authorized to regulate this joint fishery and in doing so it frequently exchanges technical information with the fisheries agencies in each state. Similarly, both states have joined with thirteen other states in the Atlantic States Marine Fisheries Commission, which received congressional approval in 1942. This Commission is oriented principally toward problems of migratory marine species and has provided a forum for discussion among the member states of issues confronting their coastal fisheries.

Another ongoing activity is the interaction required under federal law when a discharge authorized by one state may affect water quality in another state. The principal effect of this requirement has been to require Virginia to notify the Maryland Water Resources Administration when considering the issuance of discharge permits into the Virginia tributaries of the Potomac River. Also, because the entire Potomac River is within Maryland's regulatory jurisdiction, Maryland must issue a discharge permit for any Virginia sources discharging into the Potomac. The administration of this program in each state under the National Pollution Discharge Elimination System has thus provided a formalized, albeit limited, interaction in the management of pollution in a major waterbody of the Chesapeake Bay drainage basin. A related interaction occurred in the development of Section 208 areawide water quality management plans for the Washington metropolitan area.

In the area of research, the organization of the Chesapeake Research Consortium has enabled the principal research institutions in the Bay region to share their complementary resources in

undertaking a wide range of studies. The Virginia Institute of Marine Science, the Johns Hopkins University, the University of Maryland and the Smithsonian Institution, as members of CRC, have benefitted not only through direct participation in joint scientific investigations, but have also obtained indirect benefits from the open communication among scientists fostered by this association.

A joint research effort is presently being conducted by the Virginia Institute of Marine Science and the Maryland Geological Survey, which have undertaken separate, but complementary research programs for the purpose of collecting baseline information on the sediments, chemicals, and benthic organisms of the Chesapeake Bay bottom. These two research programs were funded jointly by federal grants and the implementation of this research effort has resulted in a high level of cooperation and coordination, including exchanges of equipment when necessary. To the extent that one agency may have special expertise in carrying out certain types of analyses on bottom samples, it has been assigned these responsibilities for the entire Chesapeake Bay study. As a result, the entire study is being conducted in a more effective manner than either state could have achieved acting alone.

These interactions are by no means exhaustive of the number of times Maryland and Virginia have cooperated on problems of mutual concern. However, they are illustrative of the various ways in which the two states can interact and suggest the possibility of extending these types of efforts into new fields.

Three vehicles have been (and continue to be) available for the evaluation of the adequacy of past efforts to solve problems of interstate concern. Bi-state conferences have been held in 1967 and 1977 to provide a forum for an exchange of views and information.<sup>61</sup> These conferences were widely attended and well publicized and facilitated the interaction of agency personnel from both states. In 1978, the General Assemblies of Maryland and Virginia created the Chesapeake Bay Legislative Advisory Commission to assist in the evaluation of interstate coordination of management of the Bay and its uses. More recently, on August 22, 1979, the Governors of Virginia and Maryland formalized an agreement to coordinate research, planning and management activities affecting the Bay through the formation of a "Bi-State Working Committee" of agency representatives from both states. The Committee will assess coastal and Bay issues of common concern, determine joint courses of action when appropriate, exchange information, develop mutually compatible policies and goals and maintain frequent interaction with federal and local officials, interested citizens and scientists.

As can be seen from this discussion, existing institutions have taken a number of actions consistent with the growing interest in favor of coordinated management. To be sure, interstate interaction has generally occurred in isolated instances, often in response to unusual circumstances or problems. It is felt that these examples illustrate the general pace and scope of past approaches to problems of

mutual concern by existing agencies and institutions. While much as been achieved in this respect, and much more can be achieved by the efforts of the Bi-State Working Committee, the Commission finds that problems facing the Bay community require a greater level of interstate cooperation than that which has been achieved to date.



V

EVALUATION OF PROPOSED MANAGEMENT  
ALTERNATIVES

The Commission reviewed six general types of alternative management institutions which might conceivably be adapted for use in improving and coordinating Bay management activities in the two states, in addition to the possibility of adapting existing institutions. The characteristics of each option were presented in detail in a report prepared for the Commission entitled "Description of Available Institutional Alternatives for Improved Chesapeake Bay Management."<sup>62</sup> The alternatives considered were: (1) reliance upon existing government agencies, with no new entity being created, (2) a bi-state commission without federal participation, (3) a federal-interstate commission, (4) a commission created under Title II of the Water Resources Planning Act of 1965, (5) a commission or agency created pursuant to Section 309 of the Coastal Zone Management Act of 1972, (2) an interstate planning agency created under Section 208 of the Federal Water Pollution Control Act Amendments, and (7) a federal regional management authority.

The first alternative considered was continued reliance upon existing state agencies to identify areas in which improved interstate coordination is needed and to make

necessary changes to achieve such improvements. This choice would avoid the creation, staffing, and funding of any new agency. In the past agencies have recognized particular needs for interstate cooperation on an ad hoc basis, and, as noted in the previous section, the Governors of Virginia and Maryland have recently formed a Bi-State Working Committee of agency officials to provide greater continuity in this process. Although no legislative action is needed to permit this process to continue, it would be expected that under this alternative the executive branches would recommend necessary changes to the respective General Assemblies from time to time (such as the possible need for uniform laws in the two states on a particular subject).

The second alternative, a bi-state commission not involving federal participation, is one of the most flexible or adaptable of the six categories. The functions which could be assigned to such a commission might include information gathering, problem investigation, planning, formulation of recommendations or even direct regulation of specified activities. There are no statutory limitations or requirements imposed by federal law as exist with certain of the other choices. Generally speaking, there is no need to obtain Congressional ratification of an interstate agreement creating such a commission unless the states delegated substantial powers

of regulation which would be concentrated in the new agency. This type of commission would be independent of federal agencies in formulating and implementing policy. Financial support for this alternative would be the responsibility of the two states.

The category of federal-interstate agencies is distinguished by some degree of federal participation. The extent of federal involvement and the extent to which the federal agencies would be bound by the decisions of the commission would be determined by Congress in its required ratifying legislation. Although specific types of federal-interstate agencies (such as Title II Commissions) are limited by an existing statutory framework, the general category of federal-interstate commissions may be shaped to assume any form which is acceptable to the Congress and the participating states. The Delaware River Basin Commission is an example of this type which is notable for the broad planning, regulatory and developmental powers which were delegated to it.<sup>63</sup>

The possibility of a "Title II" commission for the Chesapeake Bay has received considerable attention in the past. Title II of the federal Water Resources Planning Act authorizes the President to approve the formation of an interstate planning agency upon the request of the states in a given river basin.<sup>64</sup> The Act provides for partial federal funding and specifies the composition and duties of this planning agency. The terms of the Act would establish

a commission of ten federal agency representatives and two state representatives: one each from Virginia and Maryland. Primarily, the commission would be required to carry out certain planning activities under the supervision of the Water Resources Council, although some of the six existing Title II commissions have become involved to a limited extent in areawide wastewater management planning and in coastal zone management activities.

Another option considered was the establishment of an interstate agency to coordinate state coastal zone planning, policies and programs in Maryland and Virginia. Section 309 of the federal Coastal Zone Management Act of 1972 confers the consent of Congress to adjacent coastal states to enter into agreements or compacts for these purposes, and authorizes grants by the Secretary of Commerce of up to 90 per cent of the costs of creating and operating an entity to implement the agreement.<sup>65</sup> The Act preserves the primary role of the states in carrying out its goals; similarly a Section 309 agency would be essentially a bi-state commission with great flexibility of operation within the broad statutory framework, although a procedure for federal-state consultation is encouraged by that section. Two possible drawbacks exist at present which have created some uncertainty about the availability of this alternative for the Chesapeake Bay. The federal Office of Coastal Zone

Management has not yet taken a firm position on the question whether Maryland and Virginia could form a Section 309 agency since Virginia has not received federal approval for its coastal resources program. A second problem is that, to date, Congress has never appropriated any funds for disbursement by the Secretary of Commerce for the support of a Section 309 agency.

The sixth institution examined was an interstate planning body designated pursuant to Section 208 of the Federal Water Pollution Control Act Amendments of 1972.<sup>66</sup> The principal focus of Section 208 planning activities undertaken since the passage of the Amendments has been the preparation of plans on a multi-county basis within each state which identify present and future needs for sewage treatment facilities. Nonetheless, Section 208 authorizes comprehensive planning directed at the entire spectrum of land use activities having water quality impacts. This federally-assisted planning is usually carried out by state, local or regional entities, but the Act expressly recognizes that in appropriate circumstances an interstate agency may be designated for 208 planning responsibilities. This interstate approach, which has been used in a number of areas around the country, could conceivably be adapted to provide for broad water-quality-related planning efforts over the entire Chesapeake Bay region.

Finally, brief consideration was given to the desirability of a regional federal authority exercising management powers throughout the Chesapeake Bay. The Tennessee Valley Authority, a federally-chartered corporation, is such a regional authority and has been often cited for its effectiveness in achieving its purposes of flood control, power production and the improvement of navigation.<sup>67</sup> On the Chesapeake Bay, the Army Corps of Engineers has performed comprehensive baywide studies, has undertaken navigational improvements of major significance to shipping throughout the Bay, and exercises far-reaching regulatory control over physical changes to the Bay, its tributaries and wetlands. This broad authority could form the basis for a centralized federal management authority through a consolidation of parts of the Baltimore and Norfolk Districts.

#### Factors Considered

A number of important factors influenced the Commission in evaluating these alternatives and in narrowing the range of options to a particular choice. The challenges facing the states require a greater level of cooperation between their respective policy-makers than exists today. More specifically, the Commission has found that there are insufficient mechanisms for policy linkage between the states,

analysis and response to longterm trends and conflicts, assured continuity of coordination and legislative advice from a Baywide perspective.

Furthermore, it is the consensus of the Commission that the primary responsibility for governing the Chesapeake Bay should remain with the states and their political subdivisions, and that management difficulties arising from intra- and interstate jurisdictional boundaries should be resolved through efforts of the states. The federal presence in Bay management has increased dramatically over the past decade, yet many key federal programs, such as those created by the Coastal Zone Management Act and the Federal Water Pollution Control Act Amendments of 1972, preserve rather than preempt state regulatory responsibilities. Although improved baywide management will often require a substantial degree of interaction between the states and the federal agencies, the Commission has determined that the goal which must be achieved immediately is increased cooperation between the two states themselves.

The Commission also finds that it is not necessary or desirable at this time to create an entity having management or regulatory functions. This does not foreclose the future possibility that the states may elect to consolidate certain of their regulatory powers in one or more areas in a joint management agency. The improved capacity for

legislative oversight provided by the recommendations made herein will better enable the two General Assemblies to evaluate such possibilities as the need may arise.

### Evaluation of Alternatives

With these factors in mind, several of the alternative institutions were found to be inappropriate vehicles for greater coordination in state management efforts on the Bay. The concept of a federal regional authority was plainly inconsistent with primary obligation of the states in controlling the land and water resources of this region. Similarly, the federal-state imbalance of representation on a Title II commission for the Bay (ten federal commissioners and two state commissioners) raised a real possibility of federal domination in the development of its plans and policies.

Both the Title II commission and the interstate "208" planning agency would be required, as a condition of federal approval and funding, to carry out specific types of planning and studies which could well interfere with research and advisory functions in particular areas identified by the legislatures. A Section 309 coastal zone coordinating agency would have the flexibility that these would not, and could still qualify for a high level of federal funding. Given the uncertain status of the Virginia coastal resources



program and the lack of any present federal commitment to support such an agency, however, this choice was not viewed as a viable alternative at the present. The eventual possibility of a formalized means of coordinating the states' coastal zone programs was otherwise viewed very favorably by Commission members.

The federal-interstate type of compact agency has generally been used in situations in which the agency is vested with substantial authority to exercise planning, regulatory and developmental functions. Although such a compact could theoretically be adapted to any form which is acceptable to Congress and the participating states, its use would necessitate an act of ratification by Congress. Because of the central emphasis placed by the Commission upon cooperation between the executive and legislative branches of the two states, direct federal involvement was not found to be necessary.

## VI

### RECOMMENDATION OF THE COMMISSION

After a careful evaluation of the alternatives, the Commission determined that the present needs for improved coordination between the states in Chesapeake Bay management would best be served by the creation of a bi-state commission answering directly to the General Assemblies of the two states, a commission not including any direct federal participation. This commission would be composed of fourteen members, with equal numbers of commissioners from each state. It would be assisted by a small professional staff headed by a director capable of providing necessary information to the commission on those topics identified for legislative review. The commission would advise the two legislatures on proposed legislation affecting the use of Bay resources and would serve to focus legislative attention on problems identified by the executive agencies.

The commission and its staff would not be involved in any primary research; it would, however, be expected to assemble information and identify sources of expertise on a baywide basis in arriving at recommendations on particular

issues. In many instances of federal policy formulation by the agencies or by Congress, this commission could assist in articulating joint state positions. The commission could assist the respective states in identifying research needs, reviewing funding proposals for research and coordinating related research programs. To carry out these functions the commission would hold periodic meetings, hearings, or conferences as needed. As a central body concerned with whole-bay management and policy, it would provide a useful forum for public comment to the legislatures.

As noted above, the proposed commission would not be assigned any regulatory or management powers. It would be a legislative commission with an improved capability of overseeing the exercise of powers by existing agencies. Generally speaking, the problems in Bay management derive not from the lack of controls over Bay resources, but rather from the failure of the states to adequately coordinate the use of these controls. The role of the commission is conceived as an improvement, not as an enlargement of government.

The Commission recognizes the central role of executive branch agencies in achieving a greater degree of interstate cooperation, a role which promises to become more effective as a result of the establishment of a Bi-State Working Committee pursuant to the Governors' Agreement of August, 1979.

Nonetheless, this role must be complemented and reinforced by improved legislative oversight. Disparities in management practices across state lines are often based upon different legislative policies under existing state laws and cannot be reconciled by executive attention; the resolutions of such conflicts are solely within the competence of the legislative branch. The proposed Agreement would allow the commission to serve as an advisory mediator for the resolution of programmatic conflicts upon the request of both legislatures or the executive branches of both states. This activity would supplement and strengthen the role of the commission in assisting in legislative oversight on Bay matters.

The Commission has determined that truly effective legislative oversight requires an independent capability for examining problems of interstate concern to aid in the formulation of joint legislative policy when appropriate. This capability would be provided under the proposed interstate Agreement set out in Part VII of this Report.

#### The Proposed Agreement Will Not Require Congressional Approval

The type of agreement which is proposed in this report will not require any act of ratification by Congress. The application of the Compact Clause of the Constitution, which provides that no state shall enter into any interstate agreement or compact without the consent of Congress, has been limited by

the Supreme Court to those interstate agreements which may enhance the political power of the participating states, thus encroaching upon or interfering with the supremacy of the federal government.<sup>68</sup> The test has been expressed in terms of whether the agreement has the potential for impacting upon federal supremacy.<sup>69</sup> In applying this test the Supreme Court has stated that the number of parties to an agreement and its establishment of an ongoing administrative body do not automatically present significant potential for enhancing state power at the expense of federal supremacy.<sup>70</sup>

Actions by a group of states may sometimes be more influential than actions taken by the group members independently. To determine whether the agreement enhances the power of the members at the expense of the national government it is necessary to examine the delegation of powers the member states have given to the administrative body created by the agreement.<sup>71</sup> The Supreme Court has indicated several factors which demonstrate that an agreement does not threaten federal supremacy and thus does not require consent. These include the fact that the agreement does not attempt to confer authority upon the member states to exercise any powers they could not exercise in the absence of the agreement, the fact that there is no delegation of sovereign power to the interstate body created by the agreement (as evidenced by each state's freedom to adopt or reject any rules or regulations proposed by that body), and the member states' ability to withdraw from the agreement.<sup>72</sup>

The Supreme Court weighed these factors in a leading case, U. S. Steel Corporation vs. Multistate Tax Commission, decided in 1978.<sup>73</sup> Under the Multistate Tax Compact, which did not receive congressional approval, the Multistate Tax Commission was established to facilitate uniformity of taxation of the income of interstate business by member states and to avoid duplicate taxation. The Commission was authorized to adopt advisory regulations, perform audits of taxpayers at the request of a member state that had specifically adopted the audit procedure, and to seek compulsory process in aid of its auditing power in the courts of any state adopting the audit procedure. Member states retained the right to modify or reject any regulation the Commission adopted, to withdraw from the Compact, and to control completely its tax rate, the composition of the tax base, and the methods of determining tax liability and collecting taxes. In a suit brought by taxpayers challenging the validity of the Compact under the Compact Clause the Supreme Court held that the Compact was not invalid under that clause: even though there might be an incremental increase in the member states' bargaining power in relation to the corporations subject to their taxing jurisdiction, state power was not enhanced in relation to that of the national government.<sup>74</sup> The agreement did not authorize the member states to exercise any powers they could not have exercised in the absence of the compact and no sovereign power was delegated to the Commission.

Using these guidelines it becomes clear that the proposed Bi-State Agreement on the Chesapeake Bay will not require congressional consent. The basic purposes of the interstate body to be created under the agreement are to advise and assist the respective state legislatures in the consideration of issues of mutual concern relating to the Chesapeake Bay and to promote intergovernmental cooperation and coordination in the management of Bay affairs. It will have no regulatory or proprietary functions but will operate in a purely advisory capacity. The Agreement does not purport to authorize member states to exercise any powers they cannot exercise in the absence of the Agreement, and the states would not be delegating any of their sovereign power to the administrative body that will be created by the Agreement.

### Conclusion

For the reasons stated above, the Chesapeake Bay Legislative Advisory Commission recommends to the respective General Assemblies that the following Agreement be authorized by appropriate legislation.





**SENATE BILL NO. 350**

Offered January 31, 1980

*A BILL creating the Chesapeake Bay Commission, stating its purposes; defining its powers and duties; duration and dissolution.*

Patrons—Gartlan, Fears, Cross, Andrews, and Michael; Delegates: Sanford, Scott, Stieffen, and Ashworth

Referred to the Committee on Rules

Whereas, the Chesapeake Bay, its tributaries, wetlands and dependent natural resources constitute a unified ecosystem shared and used by the State of Maryland and the Commonwealth of Virginia; and

Whereas, utilization of the resources of the Bay, including, but not limited to, management and regulatory programs for migratory fowl, finfish, shellfish and implementation of methods to achieve compatible usage of the Bay for commercial and mercantile interests and all actions which affect changes in water quality, substantially involve the joint interests of the State and the Commonwealth; and

Whereas, by mutual resolution, the legislatures of Virginia and Maryland established the Chesapeake Bay Legislative Advisory Commission which was charged with reviewing bi-State and federal Chesapeake Bay management practices; and

Whereas, the Chesapeake Bay Legislative Advisory Commission has identified, in its final report to the State and the Commonwealth, the need for improved coordination of Bay-wide management to meet the long-term needs of the people of both Maryland and Virginia; and

Whereas, effective cooperation in and coordination of Bay management has been stressed by the Commission, and reports by citizens groups, the participants in the Bi-State Conference on the Chesapeake Bay, and many other analyses directed toward optimal long-term balance in the management of the Chesapeake Bay; and

Whereas, the State and the Commonwealth share the primary responsibility for the management of the Bay and activities affecting it; and

Whereas, the Commission has found that the provisions of this Agreement would enhance the ability of the respective State legislatures to evaluate and respond to problems of Bay-wide concern; now, therefore,

Be it enacted by the General Assembly of Virginia:

**CHESAPEAKE BAY COMMISSION.****Article I.****Membership and Organization.**

*§ 1. Commission created.—The Chesapeake Bay Commission, hereinafter designated as "Commission", is hereby created.*

*§ 2. Members.—The Commission shall consist of fourteen members, seven from Virginia and seven from Maryland. In each state, five of the members shall be members of the General Assembly. In Maryland, two Senators designated by the President of the Senate*

1 *and three Delegates designated by the Speaker of the House shall serve as members. In*  
2 *addition, the President of the Senate and the Speaker of the House shall jointly select two*  
3 *Maryland members who are not legislators. In Virginia, two Senators designated by the*  
4 *Committee on Privileges and Elections and three Delegates designated by the Speaker of*  
5 *the House of Delegates shall serve as members. In addition, the Committee on Privileges*  
6 *and Elections and the Speaker of the House shall jointly select two Virginia members who*  
7 *are not legislators.*

8 § 3. *Term.—Any Commission member appointed from either State who is a legislator*  
9 *shall serve a term coterminous with his current term of office. The non-legislative*  
10 *members shall serve at the pleasure of their respective appointing authorities, but such*  
11 *term will not exceed four years unless reappointed.*

12 § 4. *Compensation.—The Commission members shall serve without compensation from*  
13 *the Commission but may be reimbursed by the Commission for necessary expenses*  
14 *incurred in and incident to the performance of their duties. In addition, Commission*  
15 *members from each State may receive any other compensation to which they may be*  
16 *entitled under the laws of the respective States.*

17 § 5. *Meetings and Voting.—Commission meetings shall be held at least once each*  
18 *quarter, and at such other times as the Commission may determine. In order to constitute*  
19 *a quorum for the transaction of any business, at least four Commission members from*  
20 *each State must be present and vote on the business transacted. Approval of proposed*  
21 *action shall require the majority vote of the Commission members present.*

22 § 6. *Organization, internal procedures and delegation of powers.—The Commission*  
23 *members shall serve as the governing body of the Commission, and, except as hereinafter*  
24 *provided, shall exercise and discharge all powers, functions and responsibilities assigned to*  
25 *the Commission. The Commission shall provide for the organization of internal procedures*  
26 *of the Commission and to this end shall adopt suitable bylaws. The Commission shall have*  
27 *a chairman and a vice-chairman, chosen by the respective delegation, whose offices shall*  
28 *alternate annually between the signatory States and may at no time be held by members*  
29 *from the same signatory. A member from the State of Maryland shall serve as chairman*  
30 *for each year whose last numerical digit is even and during that year a member from*  
31 *Virginia shall be vice-chairman. A member from the Commonwealth of Virginia shall serve*  
32 *as chairman from each year whose last numerical digit is odd and during that year a*  
33 *member from Maryland shall serve as vice-chairman. The Commission may maintain one*  
34 *or more offices for the transaction of its business. The Commission may, without regard to*  
35 *the civil service or the laws of any signatory relative to public officers and employees,*  
36 *create and abolish offices, employments and positions as it deems necessary for the*  
37 *purposes of the Commission, affix and provide for the duties, conditions of employment,*  
38 *qualifications, appointment, removal, term, compensation, and other rights and benefits of*  
39 *the Commission's officers and employees, and shall appoint the principal officers of the*  
40 *Commission and allocate among them administrative functions, powers, and duties. The*  
41 *Commission may delegate to the officers and employees of the Commission any powers,*  
42 *functions and responsibilities under this Agreement as it deems suitable, except that it*  
43 *may not delegate its power to make recommendations to the respective legislatures, to*  
44 *issue reports or to adopt the annual expense budget.*

## ARTICLE II.

*Purposes, Powers and Duties.*

§ 7. *Purposes.*—*The purposes of the signatories in enacting this Agreement are to assist the legislatures of Maryland and Virginia in evaluating and responding to problems of mutual concern relating to the Chesapeake Bay; to promote intergovernmental cooperation; to encourage cooperative coordinated resource planning and action by the signatories and their agencies; to provide, where appropriate, through recommendation to the respective legislature, uniformity of legislative application; to preserve and enhance the functions, powers and duties of existing offices and agencies of government; and to recommend improvements in the existing management system for the benefit of the present and future inhabitants of the Chesapeake Bay region.*

§ 8. *Powers.*—*In pursuit of the purposes and duties set forth in this article, the Commission may exercise the following powers:*

1. *The Commission may collect, compile, analyze, interpret, coordinate, tabulate, summarize, and distribute technical and other data relative to the Chesapeake Bay and its environs. It may conduct or contract for studies, except those for primary scientific research, and may prepare reports on existing or potential problems within the Bay region.*

2. *The Commission may prepare, publish and disseminate information in reports related to the resources of the region.*

3. *The Commission may serve as an advisory board to any requesting agency of either State on matters of bi-State concern.*

4. *The Commission may make application for grants, services or other aids as may be available from public or private sources to finance or assist in effectuating any purposes of this Agreement; and receive and accept the same on such terms and conditions as may be required by the law of the respective signatory states.*

5. *The Commission may purchase administrative supplies and may lease sufficient office space if such space is not otherwise made available for its use.*

6. *The Commission may exercise such other powers as are granted by this Agreement and take such actions as are necessary or appropriate for performing the duties set forth in this Agreement.*

§ 9. *Duties.*—*In carrying out the purposes set forth in this article, the Commission shall have the following duties:*

1. *The Commission shall (i) identify specific Bay management concerns requiring intergovernmental coordination and cooperation, and (ii) recommend to the States and/or to the federal and local governments legislative and administrative actions necessary to effectuate coordinated and cooperative management for the Bay.*

2. *In administering the provisions of this Agreement the Commission shall consider the needs of the region for industrial and agricultural development and for gainful employment and maintenance of a high quality environment.*

3. *The Commission shall respect and support the primary role of the respective signatory States and their administrative agencies in managing the resources of the region.*

4. *The Commission shall collect, analyze and disseminate information pertaining to the region and its resources for the respective legislative bodies. The Commission shall prepare*

1 *an annual report indicating the status of bi-State environmental and economic Bay issues*  
2 *and the progress of bi-State coordinative efforts.*

3 *5. The Commission shall represent common interests of the signatories as they are*  
4 *affected by the activities of the federal government and shall assist in the monitoring of*  
5 *those activities in the Chesapeake Bay region.*

6 *6. The Commission may provide an arbitration forum to serve as an advisory mediator*  
7 *for bi-State programmatic conflicts when such action is requested by the respective*  
8 *legislatures or by the Executive branches of both States.*

9 **ARTICLE III**

10 ***Budgets and Financing.***

11 *§ 10. Annual Budget.—The Commission shall annually adopt a budget, which shall*  
12 *include the Commission's estimated expenses for administration and operation. In*  
13 *establishing the annual current expense budget, the Commission shall balance total*  
14 *expenses against the Commission's estimate of revenues from all sources, either previously*  
15 *appropriated by a signatory State or receivable from any person or governmental agency*  
16 *by contract or grant with that person or governmental agency. The chairman of the*  
17 *Commission shall certify to the respective signatories, and submit to persons in other*  
18 *governmental agencies, statements of the amounts requested from them in accordance*  
19 *with existing cost-sharing established by this Agreement or by the parties. The chairman*  
20 *of the Commission shall transmit certified copies of such budgets to the principal budget*  
21 *officer of the respective signatory parties at such time and in such manner as may be*  
22 *required under their respective budgetary procedures.*

23 *§ 11. Apportionment of cost.—The amount required for the Commission's current*  
24 *expense budget shall be apportioned equally among the signatory parties unless a different*  
25 *apportionment is agreed to by unanimous vote of the Commission.*

26 *§ 12. Initial Budget.—The current expense budget for the first fiscal year of operation*  
27 *shall be one hundred fifty thousand dollars, to be equally apportioned between the*  
28 *respective signatory States.*

29 **ARTICLE IV.**

30 ***Amendments to Agreement.***

31 *§ 13. No modification without legislative approval.—This Agreement shall not be*  
32 *amended or modified except with the concurrence of the legislatures of the State of*  
33 *Maryland and the Commonwealth of Virginia. No amendment shall become effective until*  
34 *adopted in the same manner as the original Agreement.*

35 **ARTICLE V.**

36 ***Duration of Agreement.***

37 *§ 14. Term.—The duration of this Agreement shall be for an initial period of ten years*  
38 *from its effective date, and it shall be continued for additional periods of ten years unless*  
39 *one or more of the signatory States, by authority of an act of its legislature, notifies the*  
40 *Commission of intention to terminate the Agreement at the end of the current ten-year*  
41 *term; provided, however, that any signatory, by act of its legislature, can withdraw from*  
42 *the Agreement at the end of any calendar year or fiscal year.*

43 *§ 15. Dissolution.—In the event that this Agreement shall be terminated by operation of*  
44 *§ 14 hereof the Commission shall be dissolved, its assets and liabilities transferred, and its*

1 *corporate affairs wound up in accordance with the unanimous agreement of its*  
 2 *signatories, or failing unanimous agreement, in such manner that the assets and liabilities*  
 3 *of the Commission shall be shared by the respective States.*

4 2. That the Governor of the Commonwealth of Virginia is authorized and directed to  
 5 execute and deliver, together with the Governor of the State of Maryland, the above stated  
 6 agreement creating the Chesapeake Bay Commission and conferring upon it certain powers  
 7 and duties and providing for its administration.

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Official Use By Clerks

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Passed By The Senate

- without amendment
- with amendment
- substitute
- substitute w/amdt

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Passed By The House of Delegates

- without amendment
- with amendment
- substitute
- substitute w/amdt

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Date: \_\_\_\_\_

Date: \_\_\_\_\_

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Clerk of the Senate

Clerk of the House of Delegates

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VIII

APPENDICES

(To be completed by the Co-Chairmen)

Appendix A      Acknowledgements

Appendix B      List of Contributing Agencies,  
Organizations and Individuals

Appendix C      List of Publications and Reports  
Prepared for the Commission

IX

FOOTNOTES

1. Eveleth, Donald P., "Historical Account of Maryland's and Virginia's Relationship in Governing the Chesapeake Bay," Maryland Department of Legislative Services, prepared for the Chesapeake Bay Legislative Advisory Commission, 1979.

2. These issues are discussed in detail in, Jones, J. Claiborne, and Pleasants, John B., "Problems in Chesapeake Bay of Mutual Interest to the State of Maryland and the Commonwealth of Virginia," Virginia Institute of Marine Science, prepared for the Chesapeake Bay Legislative Advisory Commission, August, 1979. A comprehensive summary of the numerous issues presented for the Commission's attention has been prepared by Susan Friedlander of the Maryland Department of Legislative Reference.

3. Douglas vs. Seacoast Products, Inc., 431 U.S. 265 (1977).

4. See generally, Wagner, et al., "Report on Research and Information to the Chesapeake Bay Legislative Advisory Commission," University of Maryland Center for Environmental and Estuarine Studies, October, 1979.

5. 33 U.S.C. §1321.

6. 33 U.S.C. §§ 401, 403, 1344.

7. Id.

8. Md. Ann. Code, Transp. Art. §6-101 et seq.

9. Md. Ann. Code, Nat. Res. Art., Title IX.

10. Id., §8-1406.



11. Id.
12. Id., §8-707.
13. Va. Code Ann. §§62.1-44.7 et seq.
14. Va. Code Ann. §§ 62.1-13.1 et seq.
15. Va. Code Ann. §§ 62.1-166 to 62.1-186
16. Va. Code Ann. §62.1-133.
17. 16 U.S.C. §742(1) et seq.
18. Id.; see also Reorganization Plan No. 4, effective October 3, 1979.
19. 16 U.S.C. §1451 et seq.
20. 33 U.S.C. §1342; 42 U.S.C. §4321 et seq.
21. 33 U.S.C. §1344.
22. See generally, Md. Ann. Code, Nat. Res. Art.
23. Md. Ann. Code, Nat. Res. Art., Title 5.
24. Md. Ann. Code, Art. 43, §228B.
25. Va. Code Ann., §28-1-3.
26. Id., §28-1-195 et seq.
27. Id., §28-1-176 et seq.
28. Va. Code Ann., §10-1 et seq.
29. Id., §10-21.4 et seq.
30. 33 U.S.C. §1322.
31. 16 U.S.C. §§1, 471, 475, 1600-1676.
32. 33 U.S.C. §1341; Md. Ann. Code, Nat. Res. Art.,  
Title 9.
33. Md. Ann. Code, Nat. Res. Art., Title 5.

34. Id., §8-707.
35. Id.
36. Id., §1-201 to 209.
37. Va. Code Ann., 62.1-44.3.
38. Id., §10-18 et seq.
39. Id., §10-21.4 et seq.
40. Id., §29-1 et seq.
41. Md. Ann. Code, Art. 88C, §1 et seq.
42. See, e.g., Md. Ann. Code, Art. 43, §387C.
43. Md. Ann. Code, Art. 41, §257E.
44. Md. Ann. Code, Transp. Art., §6-101 et seq.
45. Md. Ann. Code, Nat. Res. Art., §3-301 et seq.
46. Id., §6-501 et seq.
47. Va. Code Ann., §2.1-74 et seq.
48. Id., §10-180 et seq.
49. Id., §15-1-1403 et seq.
50. 42 U.S.C. §4321 et seq.
51. 33 U.S.C. §1251 et seq.
52. Md. Ann. Code, Nat. Res. Art., 8-1401 et seq.
53. Md. Ann. Code, Art. 43, §387C.
54. Id., §8-1101 to 1108.
55. Va. Code Ann., §62.1-44.2 to 44.34:7.
56. Id., §28-1-195 et seq.
57. Id., §62-1-44.19.
58. Id., §62.1-153 et seq.

59. Id., §2.1-1 to 2.1-112.21.

60. Kinsey, Carrol H., Jr., "Analysis of Virginia and Maryland Interstate Activities: Part I, The Virginia Agencies", Virginia Division of Legislative Services; and Friedlander, Susan, "Analysis of Virginia and Maryland Activities: Part II, The Maryland Agencies", Maryland Department of Legislative Services; both prepared for the Chesapeake Bay Legislative Advisory Commission, 1979.

61. See, e.g., Proceedings of the Bi-State Conference on the Chesapeake Bay, April 27-20, 1977, L.C. No. 77-20344.

62. Habitat, Inc., "Description of Available Institutional Alternatives for Improved Chesapeake Bay Management", prepared for the Chesapeake Bay Legislative Advisory Commission, October 1979, with financial assistance from the Maryland Tidewater Administration and the U.S. Office of Coastal Zone Management.

63. 75 Stat. 688 (1961).

64. 42 U.S.C. §1962b (1965).

65. 16 U.S.C. §1451 et seq.

66. 33 U.S.C. §1288.

67. 16 U.S.C. §831 et seq.

68. Virginia vs. Tennessee, 148 U.S. 503, 519 (1893). This action was expressly applied in a holding by the Supreme Court for the first time in New Hampshire vs.

Maine, 426 U.S. 363 (1978).

69. U. S. Steel Corporation vs. Multistate Tax Commission, 434 U.S. 452, (1978). See also "Legal Problems Relating to Interstate Compacts," 23 Iowa L. Rev. 618, 623 (1939); Engdahl, "Characterization of Interstate Agreements: When is a Compact Not a Compact?" 64 Mich. L. Rev. 63, 69 (1965).

70. Multistate Tax Commission, supra, n.2, 434 U.S. at 472. Until recently, draftsmen have been so uncertain of the application of the compact clause that the great majority of agreements have been submitted to Congress for its approval, even though from the statement of the rule apparently only the exceptional agreement will require consent, and in every case decided subsequent to the 1893 case of Virginia vs. Tennessee in which an interstate agreement has been challenged for lack of congressional consent the reviewing court has found the agreement exempt from the consent requirement. See, e.g., Multistate Tax Commission, supra, n. 2 434 U.S. 503; North Carolina vs. Tennessee, 234 U.S. 1 (1914); Wharton vs. Wise, 153 U.S. 155 (1894).

In recent years states have been more willing to assume that consent is unnecessary and to proceed without it. For example, consent was not required for the compact on Juveniles, the Corrections Compact, or the Welfare Services Compact. See also Council of State Governments

1964-1965 Book of the States 276-77; 1962-63 the Book of the States 268; 1960-61 The Book of the States 245-46.

The majority of these judgments, however, have not yet been subjected to judicial scrutiny of the need for Congressional consent.

71. Multistate Tax Commission, supra, n.2, 434

72. *Id.* at 473.

73. 434 U.S. 452 (1978).

74. *Id.* at 472-473.

