7/7/2025

Virginia Administrative Code

Chapter 1030. Management Plan for the Ungranted State Lands in Accomack and Northampton Counties

4VAC20-1030-10. Purpose.

To date 28,507 acres of ungranted state lands have been identified in Accomack and Northampton Counties. These ungranted state lands, which include state-owned beaches, marshes, meadowlands, commons, and other coastal lands, constitute a fragile and dynamic natural coastal resource of the Commonwealth of Virginia. As set forth in § 28.2-1504 of the Code of Virginia, the goal of this management plan shall be to conserve and protect the shores of the sea, marsh and meadowlands, and the natural values and natural processes associated therewith. To the extent not inconsistent with that goal, the management plan shall also consider the traditional uses of such properties and the promotion of tourism and commerce.

The purpose of this plan is the development of a comprehensive conservation and management strategy whereby these lands may be managed in such a manner as to conserve and protect the natural values associated with those lands (habitats, food webs, plant and animal species) while accommodating compatible traditional uses. This plan envisions single agency management with involvement of local interests and state natural resource agencies in the conservation and management of these lands, and provides a mechanism for the resolution of conflicting uses. These lands, and their management, do not stand alone. They are, especially on the Eastern Shore seaside, an essential and integral part of a large and complex working ecosystem which is subject to regulation and management by numerous agencies, government and nongovernment, at many different levels.

Statutory Authority

§§ 28.2-103 and 28.2-1504 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 15, Issue 15, eff. March 15, 1999.

4VAC20-1030-20. Description of ungranted state lands.

A. Location and boundaries. This management plan covers 28,507 acres of ungranted state lands on Virginia's Eastern Shore. 27,722 acres are located on the seaside between the barrier islands and the mainland. 785 acres are located on the bayside. Although most of these lands are marsh, there are some uplands and fringe marsh included in the acreage identified as being state owned. The state lands covered by this plan have been surveyed by the Virginia Marine Resources Commission (VMRC) which produced a series of maps depicting the state lands. The maps have been recorded in the clerks' offices of Accomack and Northampton Counties and can be found at the Accomack County Courthouse in Accomac and at the Northampton County Courthouse in Eastville.

B. Surrounding demographic features.

1. Northampton County. Northampton County is located on the southern half of the Delmarva Peninsula in Virginia, known as Virginia's Eastern Shore. The southern tip of the Eastern Shore is connected to the Virginia mainland by the Chesapeake Bay Bridge-Tunnel.

Northampton County is approximately 35 miles in length with an average width of six miles. The county extends from the Accomack County line in the north to Fisherman Island at the southern tip of the peninsula. The county encompasses about 360 square miles or 229,947 acres of land, tidal marshes, bayside creeks and barrier islands.

More than half of the total acres in Northampton County are marshes, bayside creeks, and barrier islands. Twenty-five percent of the land is in agricultural and forest use. Only 3.0% of the land is developed for residential and commercial use. The remaining portion is undeveloped.

Northampton County is governed by a Board of Supervisors. The county seat is in Eastville. According to statistics published in the 1990 census, the population of Northampton County is 13,061. The county is predominantly rural with occasional small residential centers. The basis of the economy is agriculture and seafood. The main occupations are in retail trade; the agriculture, forestry and fishing industries; manufacturing; construction; tourism; and health/education services.

2. Accomack County. Accomack County is located on the northern half of Virginia's Eastern Shore. Accomack County is approximately 45 miles long with an average width of 15 miles. The county stretches from the Northampton County line at the south to the Maryland state line at the north, and out to Tangier and Smith Islands in the Chesapeake Bay.

Accomack County encompasses approximately 476 square miles, or 300,649 acres of mainland, marsh and barrier islands. Sixty-six percent of the mainland is in agricultural and forest use. Twenty-three percent of the land is tidal marshes and barrier islands, and the remaining 11% is developed for residential and commercial use.

Accomack County is governed by a Board of Supervisors. The county seat is in Accomac. According to statistics published in the 1990 census, the population of Accomack County is 31,703. The main occupations are in retail trade; manufacturing; health/education; tourism; and the agriculture, farming and fishing industries.

C. Climate. The climate of the Eastern Shore is coastal with mild winters and warm, humid summers.

D. Land use.

1. Historic uses. The ungranted state lands covered by this management plan have historically been open to the public for traditional subsistence and recreational uses. Open access to beaches, marshes and meadowlands has been allowed in the past for recreational activities such as hunting, fishing, fowling, trapping, camping, salvaging, and egging. In addition, commercial harvest of fowl, furbearers, finfish, shellfish, and terrapin has been allowed historically subject to state and federal regulations and, for personal and family use, by local citizens for centuries. These rights are intrinsic to the commons concept recognized in Virginia statutes and such uses are supported by historical precedent and general usage.

2. Current uses. Ungranted state lands are currently used for recreational and commercial activities, subject to state and federal regulations. It should be noted that certain historical uses, such as egging, are no longer permissible under current legislation. This plan does not change existing laws and regulations concerning recreational and commercial activities or other traditional uses of the ungranted state lands. If it is, however, found that these activities threaten the natural integrity of these lands, it may be necessary to revise existing laws and regulations or to establish new guidelines or policies. Such changes would be in accordance with established procedures.

3. Surrounding land holdings.

a. Accomack County. The land surrounding the ungranted state lands in Accomack County fall into two categories of the Accomack zoning ordinance: (i) the agriculture district which covers portions of the county occupied by various open uses such as marsh lands, beaches, forests, parks and farms; and (ii) the Barrier Island District. In addition, Accomack County has a wetlands ordinance and a Chesapeake Bay preservation ordinance which overlay the zoning ordinance. Any development in these zoning districts is subject to the restrictions and regulations of the Accomack zoning ordinance. The county's future land use plans are detailed in the Accomack Comprehensive Plan, Section 5.

b. Northampton County. The land surrounding the ungranted state lands in Northampton County is currently zoned as an agriculture/residential district. There are, however, several ordinances that overlay the agriculture district. These are the Chesapeake Bay/Atlantic Ocean Preservation Area, the wetlands ordinance, and the primary sand dune ordinance. The future land use plan for Northampton County is detailed in Part II of the Northampton Comprehensive Plan.

4. The Nature Conservancy land holdings. The Nature Conservancy, a private, nonprofit conservation organization, owns and manages 14 islands, saltmarsh tracts, and adjacent mainland sites totaling 40,000 acres on Virginia's Eastern Shore. This area is called the Virginia Coast Reserve, and it has been designated a Biosphere Reserve by the United Nations Educational, Scientific, and Cultural Organization (UNESCO) in its Man and the Biosphere Programme, recognizing it as one of the world's most important ecosystems. The Nature Conservancy is working to protect significant ecological values on Virginia's Eastern Shore.

5. Federal land holdings. The federal government has extensive holdings on Virginia's Eastern Shore. The U.S. Fish and Wildlife Service administers the National Wildlife Refuge System for the protection and conservation of fish and wildlife including those threatened with extinction. The U.S. Fish and Wildlife Service has two offices, the Chincoteague National Wildlife Refuge and the Eastern Shore National Wildlife Refuge, that manage the federal holdings on Virginia's Eastern Shore. The federal holdings are:

Chincoteague National Wildlife Refuge:

Assateague—9,459 acres

Chincoteague—550 acres

Morris Island—427 acres

Assawoman Island—1,434 acres

Metomkin Island—174 acres

Cedar Island—1,250 acres

Eastern Shore National Wildlife Refuge—752 acres

Fisherman Island National Wildlife Refuge—1,825 acres

Wallops Island National Wildlife Refuge—3,376 acres (3,000 acres owned by NASA)

6. State land holdings. In addition to the ungranted state lands covered by this management plan, the Commonwealth of Virginia owns lands designated as natural areas and state parks on the Eastern Shore. These are:

Wreck and Bone Island—a natural area preserve managed by the Department of Conservation and Recreation—1,380 acres

Parker's Marsh—a natural area managed by the Department of Conservation and Recreation—750 acres

Kiptopeke State Park—managed by the Department of Conservation and Recreation, Division of State Parks—375 acres

Mockhorn Island—a wildlife management area managed by the Department of Game and Inland Fisheries—7,642 acres

Saxis Marsh—a wildlife management area managed by the Department of Game and Inland Fisheries—5,574.34 acres

7. Local land holdings.

Raccoon Park—located in Northampton County—60 acres

Statutory Authority

§§ 28.2-103 and 28.2-1504 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 15, Issue 15, eff. March 15, 1999.

4VAC20-1030-30. Resources.

A. Physical features.

1. Introduction. The Eastern Shore of Virginia lies on the Atlantic Coastal Plain where the geology is characterized by layers of unconsolidated sediments (sand, silt, gravel) over deeply buried bedrock. Marshes and some other wetland types contain significant amounts of peat (partly decayed vegetation) at or near the surface. The soils and hydrology of the ungranted state lands on the seaside and bayside have not been completely identified. In 1976, the Nature Conservancy issued a study of the barrier islands which included detailed descriptions of the geology, soils, and hydrology of the Eastern Shore and in 1993, the Division of Mines, Minerals, and Energy produced a geologic map of Virginia. Until the sources of information are updated, they are the best sources of information on the physical resources of the Eastern Shore.

2. Seaside lands. Barrier islands extend along the eastern side of the Eastern Shore peninsula. Virginia's barrier islands parallel the peninsula from the Maryland state line to the southern tip at Fisherman Island, and lie within Accomack and Northampton Counties.

The barrier islands are characterized by broad beaches and sand dunes on the eastern shores and extensive marshes on their inner coasts. The islands are composed of sands deposited by the ocean. Between the barrier islands and the mainland lies a maze of tidal flats, salt marshes, tidal channels, and shallow bays. The tidal marshes, of which most of the ungranted state lands are comprised, are an important aquatic ecosystem. The Waterway Along the Coast of Virginia (WCV) winds through the marsh, providing boat passage and access to much of the area.

The barrier islands undergo constant change and are occasionally breached at high tide. Due to coastal dynamics, some of the areas that are now tidal marshes may become beach areas in the future.

3. Bayside lands. The western side of the Eastern Shore peninsula fronts on the Chesapeake Bay. This shore has a varied physiography including islands, high bluffs, dunes, flat sandy beaches, tidal flats, and marshes. The entire west coast of the peninsula is penetrated by a complex system of tidal creeks.

B. Habitats of the ungranted state lands.

1. Salt marshes. The majority of the ungranted state lands consist of salt marsh. The dominant vegetation on these marshes is salt marsh cordgrass. A short form of this species grows in the interior of the marshes; a taller form normally lines the channels and guts. The salt marshes provide spawning and nursery grounds for fish and food for waterfowl and wildlife, deter shoreline erosion, and control water quality by trapping sediment.

2. Other habitats. A small percentage of the ungranted state lands are habitats other than salt marsh. These include fastlands, tree-lined ridges, and shrub habitats dominated by such species as marsh elder, groundsel tree, and wax myrtle; shell piles associated with the margins of some of the marshes built up to an elevation slightly above high tide; sandy berms which may accrete along the edges of some of the marshes; tidal flats, salt ponds, and pannes (small shallow saltwater ponds) scattered throughout the marshes; and wrack, the debris washed up along the high tide line.

C. Shellfish and finfish of the Eastern Shore. The seafood industry in Virginia is one of the Eastern Shore's oldest and most successful industries. Commercial and recreational fishing and aquaculture contribute significantly to the economy of the Eastern Shore. Shellfish and finfish are found in the waters surrounding the Eastern Shore. Oysters, clams, and crabs are commercially important shellfish and crustaceans. Commercially and recreationally important finfish include menhaden, flounder, scup, striped bass, herring, mullet, weakfish, bluefish, Norfolk spot, croaker, and sea trout.

D. Game species of the Eastern Shore. The only large game on the Eastern Shore is the white-tailed deer. Small game is plentiful and the wide variety of small game found on the Eastern Shore includes the cottontail rabbit, bobwhite (quail), mourning dove, turkey, woodcock, opossum, weasel, skunk, muskrat, red and gray fox, raccoon, river otter, mink, and squirrel. The Eastern Shore is also an important area for migratory waterfowl including ducks, geese, rails, and other migratory game birds.

E. Birds of the Eastern Shore. The most outstanding biological resources of the ungranted state lands are the bird communities they support. During the spring and summer no less than 25 different sensitive (rare, threatened, endangered, or highly vulnerable) species of gulls, terns, herons, ibis, and shorebirds use the ungranted state lands for nesting or foraging or both. According to the Department of Game and Inland Fisheries comprehensive bird survey, a total of 34,536 colonial birds nested in Northampton and Accomack Counties in 1993.

Habitat quality and diversity as well as the undeveloped nature of the area contribute to the importance of ungranted state lands in protecting sensitive species. In addition to waterfowl, shorebird and songbird species, colonial ground nesters such as the common tern and colonial shrub nesters such as the black-crowned night-heron use the ungranted state lands during all or a portion of the year. The comprehensive bird survey also identified threatened species such as the gull-billed tern, rare species such as the black skimmer, and sensitive species such as the laughing gull.

Many migratory birds using the Atlantic Flyway pass through the Eastern Shore on their spring and fall migrations to Central and South America and the Caribbean. This area is thought to be one of the most important focal points or "staging areas" for raptor and passerine migration on the east coast of the United States. Large concentrations of waterfowl and other migratory birds utilize these areas for over-wintering as well.

F. State and federally listed endangered and threatened species. Section 1538 of the federal Endangered Species Act, 16 USC §§ 1531-1544, makes it illegal for any person subject to the jurisdiction of the United States to "take" any federally endangered or threatened species of fish or wildlife without a special exemption. Under this Act, "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm has been further defined to consist of acts that may include significant habitat

modification or degradation that results in the killing or injury of individuals by significantly impairing the essential behavioral patterns, including breeding, feeding or sheltering.

The federal Endangered Species Act also provides protection measures for species listed under the law as threatened or endangered. These protection measures include recovery planning, mechanisms for cooperative management among federal and state agencies, habitat protection, and funding for state agencies for research and management of listed species.

The state Endangered Species Act, § 29.1-563 et seq. of the Code of Virginia, is administered by the Department of Game and Inland Fisheries. This act prohibits the taking, transportation, processing, sale or offer for sale within the Commonwealth of any fish or wildlife listed as a threatened or endangered species on the Federal Endangered Species List except as permitted. It further authorizes the listing of additional endangered or threatened species, not appearing on the federal list, that are likewise protected.

The Plant Protection Bureau of the Department of Agriculture and Consumer Services of the Commonwealth of Virginia administers the Endangered Plant and Insect Species Act, § 3.1-1020 et seq. of the Code of Virginia. This act makes it illegal for any person to dig, take, cut, possess, or otherwise collect, remove, transport, process, sell, offer for sale or give away any species native to or occurring in the wild in Virginia that are listed as threatened or endangered species except as specifically permitted, or when the plants or insects occur on the "taker's" own land.

Several mammals, birds, insects, and plants listed as threatened or endangered on federal and state lists have been identified on or in the waters surrounding Virginia's Eastern Shore.

These are:

1. Mammals:

Delmarva Peninsula Fox Squirrel (Sciurus niger cinereus)—listed as endangered on both the federal and state endangered species lists.

Bottlenose Dolphin (Tursiops truncatus), Manatee (Trichechus manatus), Harbor Seal (Phoca vitulina), Harbor Porpoise (Phocoena phocoena), Humpback Whale (Megaptera novaeangliae) and Fin Whale (Balaenoptera physalus)—listed as endangered or protected by the federal Marine Mammal Protection Act.

2. Birds:

Bald Eagle (Haliaeetus Leucocephalus)—listed as threatened on both the federal and state lists.

Peregrine Falcon (Falco peregrinus)—listed as endangered on both the federal and state endangered species lists.

Wilson's Plover (Charadrius wilsonia)—listed as endangered on the state endangered species list.

Piping Plover (Charadrius melodus)—listed as threatened on both the federal and state lists.

Gull-billed Tern (Sterna nilotica)—listed as threatened on the state list.

Henslow's Sparrow (Ammodramus henslowii)—listed as threatened on the state list.

3. Insects:

Northeastern Beach Tiger Beetle (Cicindela dorsalis)—listed as threatened on the federal list.

4. Plants:

Sea-Beach Pigweed (Amaranthus pumilus)—listed as threatened on the federal list.

5. Reptiles:

Loggerhead (Caretta caretta), Leatherback (Dermochelys coriacea), Kemp's Ridley (Lepidochelys kempii), and Green Sea (Chelonia mydas) Turtles—listed as threatened or endangered on both the federal and state lists.

The Division of Natural Heritage of the Virginia Department of Conservation and Recreation has compiled a list of the Natural Heritage Resources of Virginia's Eastern Shore. This list, and an explanation of the global, federal and state rarity rankings, are available from the department upon request.

G. Resource protection laws. Resource protection relies on a number of existing federal and state laws and regulations. Listed below are some of the state laws directly affecting the ungranted state lands:

1. § 28.2-1200 et seq. of the Code of Virginia, which provides that all beds of the bays, rivers, creeks and the shores of the sea within the jurisdiction of the Commonwealth shall remain the property of the Commonwealth and may be used as a common by all the people of the Commonwealth for the purpose of fishing, fowling, and taking and catching oysters and other shellfish.

2. § 28.2-1201 of the Code of Virginia provides that all islands which rise from lands which are ungranted shall remain in public ownership and shall be managed pursuant to the provisions of Article 2 (§ 28.2-1503 et seq.) of Chapter 15 of Title 28.2 of the Code of Virginia.

3. § 28.2-1300 et seq. of the Code of Virginia defines the powers and duties of the Commissioner of the Virginia Marine Resources Commission (VMRC) to preserve and protect the despoliation and destruction of wetlands, and declares that the commissioner shall manage all unappropriated marsh or meadowlands lying on the Eastern Shore of Virginia which remain ungranted pursuant to the provisions of Article 2 (§ 28.2-1503 et seq.) of Chapter 15 of Title 28.2 of the Code of Virginia.

4. § 28.2-1400 et seq. of the Code of Virginia, which provides that the Commissioner of the VMRC shall preserve and protect coastal primary sand dunes and beaches and prevent their despoliation and destruction and maximize their ecological value.

5. § 28.2-1500 et seq. of the Code of Virginia, which provides for the protection and management of ungranted shores of the sea, marsh, and meadowlands under the authority of the Virginia Marine Resources Commission.

Statutory Authority

§§ 28.2-103 and 28.2-1504 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 15, Issue 15, eff. March 15, 1999.

4VAC20-1030-40. The management plan.

A. Management policies. Most of the ungranted state lands addressed by this plan are wetlands. It has long been the public policy of the Commonwealth of Virginia to preserve wetlands and to prevent their despoliation and destruction and to accommodate necessary economic development in a manner consistent with wetlands preservation. In keeping with this policy, it is the goal of this management plan to conserve and protect the shores of the sea, marsh, meadowlands, commons, and other coastal lands subject to this plan, and the natural

values and natural processes associated with these lands and the complex working ecosystem of which they comprise an important part. In a manner consistent with this goal, the management plan shall also consider the traditional uses of such properties and the promotion of tourism and commerce.

State owned lands defined in the management plan will, subject to state and federal laws, be kept open and accessible for the use of the citizens of the Commonwealth. Traditional compatible uses (e.g., hunting, fishing and fowling) will be accommodated as provided for by local, state or federal laws.

Resource protection will rely on a network of federal, state and local laws and regulations. Requirements for local, state and federal permits and licenses will be observed, and the usual application procedures will be followed. Surveillance and enforcement mechanisms will remain in effect. The ungranted state lands fall under a number of different and overlapping jurisdictions and coordination, and cooperation among all levels of government is essential as is centralized storage and management of ungranted state lands information.

B. Administrative framework—management responsibility. Under Chapter 15, Article 2 of Title 28.2 of the Virginia Code, specifically §§ 28.2-1503 and 28.2-1504, the Virginia Marine Resources Commission is designated as the lead agency to manage the ungranted state lands on the Eastern Shore. This management plan will be implemented primarily through a cooperative effort among the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, the Department of Conservation and Recreation, the Department of Game and Inland Fisheries, other participating and affected state agencies, the local governments and residents of Northampton and Accomack Counties, and any other legislatively designated entity.

The following administrative framework identifies roles and responsibilities of Virginia state agencies and the Virginia Coastal Land Management Advisory Council involved in implementing this management plan.

1. Virginia Marine Resources Commission (VMRC). As specified in § 28.2-1501 B of the Code of Virginia, VMRC shall have the power to promulgate regulations and guidelines necessary to implement the policies in this plan and to protect and preserve the ungranted state lands on the Eastern Shore. Management regulations and guidelines shall be promulgated in accordance with § 28.2-103 of the Code of Virginia and the management issues section of this plan.

The VMRC, in consultation with other affected state agencies, shall have the power to regulate outdoor recreational activities that threaten the natural integrity of the ungranted state lands. Regulation of outdoor recreational activities shall be in accordance with the recreational activities section of this plan and the Administrative Process Act, §§ 9-6:14.11 and 9-6:14.12 of the Code of Virginia.

The VMRC shall have the power to amend this management plan as necessary to protect and preserve the ungranted state lands. Amendments to this plan will be in accordance with the provisions of the amendments section of this plan and the procedures established in Article 2 (§ 28.2-209 et seq.) of Chapter 2 of Title 28.2 of the Code of Virginia.

The VMRC shall periodically review the real property inventories of ungranted state lands on the Eastern Shore and may amend or supplement an inventory as may be appropriate. Any amendment or supplement to an inventory shall be filed with the clerks' offices in Northampton and Accomack counties. The VMRC shall publish a notice of the filing of an amendment or supplement to an inventory according to the statutory requirements for public notice contained in Article 1 (§ 28.2-1500 et seq.) of Chapter 15 of Title 28.2 of the Code of Virginia.

2. Virginia Coastal Land Management Advisory Council (VCLMAC). A Virginia Coastal Land Management Advisory Council shall be established to advise the VMRC on issues relating to the management of ungranted state lands on the Eastern Shore.

The VCLMAC shall be comprised of six residents of Northampton and Accomack Counties. They shall represent tourism and commerce, traditional uses of shores of the sea, marsh and meadowlands, and conservation interests. Any private person or entity owning more than 50% of the land area of the barrier islands of the Eastern Shore shall be one of the six members. The residents serving on the VCLMAC will be appointed by the Governor. In making these appointments, the Governor shall consider recommendations submitted by the Boards of Supervisors of Northampton and Accomack Counties.

The VCLMAC shall also include the Director of the Virginia Department of Conservation and Recreation or his designee, the Director of the Virginia Department of Game and Inland Fisheries or his designee, and the Commissioner of the Virginia Marine Resources Commission or his designee.

The VCLMAC shall advise the VMRC on issues relating to the management of ungranted shores of the sea, marsh and meadowlands, and shall advise the VMRC on the development of the management plan prepared pursuant to § 28.2-1504 of the Code of Virginia.

The term of office of each appointed member of the VCLMAC shall be for three years. Appointments to fill vacancies shall be made to fill the unexpired term. Members of the VCLMAC shall receive no compensation for their services but shall receive reimbursement for actual expenses.

The VCLMAC shall meet at the call of the Commissioner of the VMRC or at least once per year. The VCLMAC may recommend proposed regulations or guidelines for the ungranted state lands to the VMRC. The VMRC shall have final decision-making authority on the promulgation of proposed regulations and guidelines.

The VCLMAC may recommend to the VMRC resolutions to conflicts between parties on the use of the ungranted state lands. The VMRC shall have the authority to decide cases of conflicting uses. The VCLMAC may recommend amendments to this management plan. The VMRC shall have final decision-making authority on proposed amendments to this plan.

3. Department of Conservation and Recreation (DCR). The Department of Conservation and Recreation's mission is to conserve Virginia's natural and recreational resources. DCR is responsible for the inventory of natural heritage resources, management of natural heritage information, protection of natural areas containing natural heritage resources, and the stewardship of those natural areas. DCR is the Commonwealth's lead agency in efforts to reduce nonpoint source pollution. The department also has experience managing 65,000 acres of parks and natural areas and their visitors and assists Virginia's counties and cities with the development of local parks. DCR operates many public education programs regarding the conservation of Virginia's natural, cultural, and recreational resources. Through these functions and services, DCR can provide information and technical advice to assist with the management of the ungranted state lands.

4. Department of Game and Inland Fisheries (DGIF). The Department of Game and Inland Fisheries (DGIF) exists to provide public, informational and educational services related to game, inland fisheries and boating, and to serve as the agency responsible for the administration and enforcement of all rules and regulations of the Board of Game and Inland Fisheries, the statutory provisions of Title 29.1 of the Code of Virginia, and related legislative acts. Through these functions and services, DGIF shall provide information and technical advice to assist with the management of the ungranted state lands.

5. Virginia Institute of Marine Science (VIMS). The Virginia Institute of Marine Science shall provide advice and assistance to the VMRC under its general legislative mandate by evaluating wetlands by type and maintaining and updating an inventory of wetlands on the ungranted state lands on the Eastern Shore.

6. Other affected governmental agencies. Other state and federal agencies will retain pre-existing responsibilities for resource management and surveillance and enforcement of statutes and regulations relevant to ungranted

state lands and resources associated with them.

C. Management issues. The following section describes significant issues related to the management of the ungranted state lands on the Eastern Shore.

1. Adoption, amendment or repeal of regulations affecting the ungranted state lands. The VMRC shall have the power to promulgate regulations and guidelines necessary to implement the policy of this management plan.

The VMRC is empowered to make regulations or resolve conflicts affecting the ungranted state lands. The VCLMAC shall have the power to recommend proposed regulations to the VMRC. The adoption process shall be carried out in accordance with Article 2 (§ 28.2-2800 et seq.) of Chapter 2 of Title 28.2 of the Code of Virginia.

In addition, in accordance with the provisions of § 28.2-214 of the Code of Virginia, any person may petition the VMRC for the adoption, amendment or repeal of a regulation. When a private party petitions the VMRC for the adoption, amendment or repeal of a regulation, VMRC shall provide a written response to such petition within 180 days from the date the petition was received.

The VMRC shall establish and maintain a list or lists of persons expressing an interest in the adoption, amendment or repeal of regulations. Any person wishing to be placed on the list may do so by writing to the VMRC. The VMRC shall hold at least one public meeting when it considers the adoption, amendment or repeal of a regulation.

2. Recreational activities. Traditional recreational activities on the ungranted state lands shall be allowed to continue as long as they do not disrupt the natural integrity of the resources.

Traditional and current recreational uses of the ungranted state lands include hunting, fishing, fowling, clamming, oystering, crabbing, trapping, camping, picnicking, beachcombing, salvaging (or wrecking), birdwatching, and other nature study. These activities are subject to federal laws and the laws and regulations of the Commonwealth of Virginia. It is not the intent, objective or desire of this management plan to change existing law unless it is found that current uses threaten the natural integrity of these lands and resources.

The following uses and activities on the ungranted state lands are permitted, if otherwise permitted by federal and state law: conservation, repletion and research activities of the VMRC, VIMS, DGIF, DCR, and other related conservation agencies and educational institutions. Outdoor recreational activities provided that such activities do not (i) impair the natural function of these state lands, or (ii) alter the natural contour of these state lands.

If certain traditional recreational activities are found to threaten the natural integrity of the ungranted state lands, the VMRC shall be empowered through basic laws to regulate the recreational activities to the extent necessary to protect and preserve these lands and their resources. Recommendations for the regulation of recreational activities may come from other state agencies, the VCLMAC, and private parties.

Before initiating such regulations, the VMRC shall consult with other affected state agencies to ensure their knowledge of, and agreement with, the proposed regulation. The VMRC, in deciding to proceed with such regulation, shall follow the procedures for promulgation of regulations set forth in the adoption, amendment or repeal of regulations section of this management plan set out above.

3. Conflicting uses of the state lands. Conflicts may arise between parties on the uses of the ungranted state lands. The VMRC shall have the power to decide cases of conflicting uses.

This management plan is designed to protect the resources of the ungranted state lands and to provide for research, education and compatible traditional activities. When traditional uses conflict with research and education uses or threaten the integrity of the natural resources, every effort will be made to address the conflicts through a hearing process.

The VMRC is empowered to resolve cases of conflicting uses of the ungranted state lands. Parties in conflict shall appeal to the VMRC for resolution of the conflict and determination of appropriate use. The VMRC shall ascertain the fact basis for their decisions on conflicting uses through an informal conference or consultation proceeding as provided for in the Administrative Process Act (§ 9-6.14:11 of the Code of Virginia). In any case where the informal procedures have failed to resolve the case, the VMRC shall hold a formal hearing in accordance with the provisions of § 9-6.14:12 of the Code of Virginia.

Any party aggrieved by a decision or determination of the VMRC shall have the right to the direct review by an appropriate and timely court action in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

4. Review and amendment of the management plan. As specific issues of management are identified, this management plan may be reviewed and amended.

This management plan was developed to protect the resources on the ungranted state lands while allowing for traditional compatible uses that comply with federal and state laws and regulations and are in keeping with the good ecological health of the entire surrounding ecosystem. Known management issues have been addressed in this section. As other issues arise or are identified which require specific management, it will be necessary to amend the management plan.

Amendments to this management plan may originate with either (i) the VMRC, (ii) the VCLMAC, or (iii) any person through a petition to the VMRC or the VCLMAC to request an amendment to the plan.

Before approving and adopting any amendment to this management plan, the VMRC shall hold at least one public hearing on the amendment after which the lead agency may make appropriate changes or amendments to the management plan.

5. Seasonal restricted areas around bird colonies. Seasonal restrictions will be imposed around active colonies of nesting birds by the appropriate state agency.

Because of the sensitivity of bird nesting colonies, active colonies of nesting birds and 100 meters around these active colonies shall be considered sensitive from April 15 to August 31 of each year. Entrance into these areas for any reason other than approved and permitted research and monitoring activities shall be prohibited during the specified period.

Currently there appears to be little conflict between existing public use patterns and birds nesting on ungranted state lands. As an alternative to posting each colony every summer and then enforcing those posted restricted areas, it is anticipated that an educational approach will be instituted. Through various media and targeting primary user groups, the public will be educated regarding the sensitivity of the nesting birds and encouraged to remain at least 100 meters away from active colonies. Active bird colonies which are close to high use areas may be posted and monitored if this becomes necessary to protect nesting birds.

6. Emergency incidents. Emergency regulations may be imposed as necessary to protect and preserve the ungranted state lands.

In an emergency situation, it may be necessary for the VMRC to issue emergency regulations. For purposes of this plan, "emergency situation" means (i) a situation involving an imminent threat to public peace, health,

safety and welfare, or (ii) a situation involving an imminent threat to the natural resources of these lands.

The VMRC shall have the power to promulgate necessary emergency regulations. The emergency regulation shall be adopted in accordance with the provisions of the agency process for making emergency regulations. Emergency regulations shall remain in effect no longer than 30 days unless a public hearing is held as required in § 28.2-211 after being advertised as prescribed in § 28.2-209 of the Code of Virginia.

The VCLMAC shall have the power to make recommendations for emergency regulations to the VMRC. Private parties shall have the power to recommend emergency regulations to either the VCLMAC, who will forward the request to the VMRC for action, or directly to the VMRC.

7. Fire management. Wildfires should be monitored, and a formal fire management policy may be developed in the future.

Wildfire, whether ignited naturally or by arson, may occasionally affect the ungranted state lands. Prescribed fire, although not indicated for the ungranted state lands at this time, may become a necessary management tool in the future. Wildfires should be monitored and action should be taken to protect neighboring property when necessary. The VMRC may propose regulations regarding campfires if the need arises.

8. Education. An education program will be developed to raise awareness to the sensitive natural resources of the ungranted state lands.

Education initiatives focusing on watermen, anglers, recreational boaters, and tourists should be designed and instituted to raise awareness to the sensitive resources of the ungranted state lands and to encourage visitors to respect requests for protecting these resources. A major thrust of educational endeavors should be information about the sensitivity of nesting birds and persuasion of visitors to honor the recommended seasonal restricted areas.

The media or public education may include posters displayed at public boat landings and other community gathering places (libraries, schools, etc.), brochures or "fact sheets" distributed with salt water fishing licenses, brochures sent to tourists and tour guides, brochures distributed at the parks and refuges of the area, and public service announcements on local radio stations.

9. Visitation management policy. Effects of increased public use on the ungranted state lands will be monitored.

As public use of lands on the Eastern Shore of Virginia increases, the effects of tours and visits to or near the ungranted state lands and their sensitive biological resources should be determined. It may be possible to monitor and, if necessary, manage public use through mechanisms established by existing regulations.

10. Nonindigenous species policy. Intentional introductions of nonindigenous plants and animals on the ungranted state lands shall be opposed unless environmental and economic evaluations are conducted and reviewed in order to ensure that risks associated with the introduction are acceptably low. Unintentional introductions of nonindigenous plants and animals on the ungranted state lands shall be prevented. Prevention of unintentional introductions should rely on education and monitoring.

Previous intentional and unintentional introductions should be examined regarding impact to native wildlife and, if necessary, control or eradication measures should be pursued.

Introductions of nonindigenous species may present a threat to native wildlife and native habitats. Introductions into sensitive areas have been known to cause serious ecosystem dysfunction. On the ungranted state lands, nonindigenous wetland plants could significantly alter the wetland habitat and nonindigenous animals could directly or indirectly affect indigenous species.

Under this management plan, intentional introductions should be opposed, unless environmental and economic evaluations ensure that the risks associated with the introduction are low. In accordance with the policy of the Chesapeake Bay Program regarding the participation of other jurisdictions in the introduction of nonindigenous species, first-time introductions should also be evaluated by other jurisdictions within the bay region. Final decision, however, lies with the appropriate Virginia agency (VMRC or DGIF). As the threat of unintentional introductions is as great as intentional ones, efforts to prevent such introductions should be pursued through education and monitoring programs.

The control or eradication of a nonindigenous species may become an important issue. If a species which has been accidentally or intentionally introduced is determined to be a threat to native wildlife or habitat, methods of control or eradication should be evaluated in regard to best protecting the natural environment. Such operations (e.g., trapping, spraying, and/or burning) should be carefully carried out by the VMRC, or other designated agency, in accordance with state and federal laws and regulations.

11. Dredging. Dredging through or next to the ungranted state lands shall be coordinated with the U.S. Army Corps of Engineers and other dredging authorities.

Dredging through or next to ungranted state lands poses a threat to wetlands habitats, birds and other wildlife. The VMRC shall coordinate with the U.S. Army Corps of Engineers and other dredging authorities regarding the planning and implementation of dredging projects.

The VMRC shall review all proposals and permit applications for dredging and/or placing of dredged material in the immediate vicinity or adjacent to the ungranted state lands. Surveys for dredging and other projects should be conducted in a manner designed to avoid or minimize the disruption of bird nesting colonies.

12. Research and monitoring. A detailed research and monitoring plan for the ungranted state lands should be developed.

A research and monitoring plan which addresses national, state, ecosystem-wide and site-specific research and monitoring needs must be developed. This will require a determination of which national, state, ecosystem-wide, and site-specific priorities are appropriate for consideration on the ungranted state lands. To accomplish this, the VMRC, in coordination with various state agencies, shall solicit input from national and state resource management agencies, affected local governments, and individual citizens.

Under this management plan, the VMRC will work with state and local agencies, interest groups, and local citizens of the Eastern Shore to identify problem areas or concerns associated with the ungranted state lands, and to list and prioritize research and monitoring needs. Some research and monitoring needs have already been identified and should be pursued through appropriate federal and/or state funding. These are:

a. Water quality, geology, habitats and wildlife. In order to improve the management of ungranted state lands, site-specific information on water quality, geology, habitats and wildlife of the ungranted state lands should be researched to more accurately characterize the state lands on both the seaside and bayside of the Eastern Shore. A complete species list for the ungranted state lands should be prepared that includes rare, endangered, threatened or nearly extinct species encountered on these lands.

b. Periodic surveys of the ungranted state lands. The barrier islands and the extensive lagoon system between the barrier islands and the mainland undergo nearly constant change and modification through natural forces such as wave dynamics, storms and sea level rise. The movement and drift of the barrier islands and the changes in the lagoonal system behind the barrier islands should be closely monitored. The VMRC intends to periodically re-survey and re-map the ungranted state lands on the Eastern Shore. Updated maps will be filed with the county clerks of Accomack and Northampton Counties.

c. Colonial nesting bird monitoring. A large interagency effort was recently completed in which all the bird nesting colonies of eastern Northampton and Accomack Counties were surveyed in a single nesting season. Although this study has provided valuable comprehensive information on bird nesting patterns of the area, this one-year study represents only a "snapshot" of bird nesting patterns. Additional comprehensive surveys are needed to identify changes in bird nesting patterns from year to year. Continued comprehensive colonial nesting bird surveys of the seaside marsh islands, including monitoring in the ungranted state lands, is recommended.

d. Archaeological and cultural surveys. It has not been determined that the area of the ungranted state lands contains any material of archaeological importance. The Eastern Shore was inhabited by small Indian tribes when the English arrived in the 17th Century. The early inhabitants were primarily farmers and fishermen. Without further study, it is not known whether early inhabitants left remains or artifacts in the area of the ungranted state lands. Before conducting any ground disturbing activities, the possibility of the existence of archeological remains or artifacts should be considered. A survey of the ungranted state lands should be conducted in an effort to identify any sites of potential archeological significance.

e. Impacts of public use on the ungranted state lands. The impacts of man's influence and the effects of visitation should be monitored to determine the need for limitations and restrictions to protect and conserve the natural resources of the ungranted state lands.

Statutory Authority

§§ 28.2-103 and 28.2-1504 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 15, Issue 15, eff. March 15, 1999.

Website addresses provided in the Virginia Administrative Code to documents incorporated by reference are for the reader's convenience only, may not necessarily be active or current, and should not be relied upon. To ensure the information incorporated by reference is accurate, the reader is encouraged to use the source document described in the regulation.

As a service to the public, the Virginia Administrative Code is provided online by the Virginia General Assembly. We are unable to answer legal questions or respond to requests for legal advice, including application of law to specific fact. To understand and protect your legal rights, you should consult an attorney.