Wetlands
Board
BULLETIN

THE COLLEGE OF WILLIAM AND MARY
SCHOOL OF MARINE SCIENCE
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Dr. Frank O. Perkins, Dean/Director

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CONTRACTORS AND THE WETLANDS BOARD

By Bernard M. Farmer, Jr.

Recent questions concerning licensing requirements of marine contractors have shown a need for better understanding of the state laws related to such work. Knowledge of these regulations and how to apply them can prove to be a valuable part of any wetland protection effort and assist staff persons in their enforcement programs. This article will provide some familiarity with laws related to contracts, licenses, permits and inspections.

The term "contractor" as defined under state law (Title 54) is any person, firm, association, or corporation that for a fixed price, commission, fee or percentage undertakes to bid upon, superintend, or perform modifications to "real property" in someone elses ownership. This definition applies whether the work is done in whole or in part, is an improvement to or a modification of any building, structure or land not owned by the person doing the work, and the value of all labor and materials exceeds $1500.00. As defined under state law, it isn't necessary to actually do work to be a "contractor". The mere act of advertising services or submitting a bid or proposal may mean someone has engaged in contracting. To engage in contracting it is a requirement of state law in Virginia to hold a license issued by the State Board for Contractors.

Two types of licenses are issued in Virginia, Class "A" and Class "B". The difference between them pertains to limitations on the value of work which one may undertake. Class "B" contractors are limited to a value of less than $40,000 for any job, and may not exceed three hundred thousand dollars combined value for any single year. Class "A" contractors have no dollar value limitations. Generally, the degree to which the Board for Contractors investigates competence and requires financial responsibility is the difference in their licensing process between Class "A" and "B".

The contracting laws establish the requirement that building inspectors or other authority either verify the proper licensure prior to issuing a permit, or obtain an affidavit that no license is required (e.g. the value is less than $1500.00 or an owner is doing the work for himself). Lists of registered contractors are published and there is a toll free number which local officials can use to call Richmond. In addition, each locality may have some requirement for registration or business licensure for taxation purposes. It is advisable to consult with the Commissioner of Revenue to see whether or not a business license is required prior to issuing permits to a contractor.

Section 105 of the Uniform Statewide Building Code requires that applications be made and permits issued for "constructing, repairing, enlarging or demolishing a building or structure". Piers, bulkheads, docks, sea walls, jettys, gabion revetments and similar facilities are "structures" that require permitting. The Building Official may waive plan submittal if work is of a minor nature, or authorize work to commence prior to plan submittal. Some descretion is usually exercised by most Building Officials regarding whether a permit is issued for minor work such as mooring piles, catwalks etc. However, if your Building Official is not presently requiring permits for bulkheads and piers, now is the time to begin. Permitting, inspection and licensing

checks will add another degree of oversight for local officials to insure protection is afforded the wetlands.

The State Board for Contractors also can be of assistance in enforcement actions. Any person may prefer charges under the contracting laws and the board has investigators who will take action based on reports of misconduct. Failure to follow the requirements of the Building Code or other laws and negligence in the practice of the profession constitute grounds for a contractor to have a license revoked. Contracting without a license is also a violation and could result in that person or corporation being charged with a misdemeanor, as well as being denied a license for future work. Usually, the board's investigator will make a determination whether or not a violation has occurred and if sufficient evidence exists refer the matter to the Commonwealth's Attorney for prosecution. Even if no case is prosecuted, the report of a violation may become part of future administrative action against repeat violators. It's important to remember that actions taken now may make future treatment of violations much easier.

In summary, the licensing of contractors doing pier and bulkhead construction work is a requirement of state law. Requiring that permits be obtained for such work under the Uniform Statewide Building Code can afford a local official the opportunity to verify licensure and inspect work in progress. Failure to comply with these laws can lead to both criminal and administrative procedures against violators, but only if we do our part in recording and reporting occurrences to the Board for Contractors.

Mr. Bernard Farmer, Jr. is the Zoning Adminstrator for James City County.

***Editor's Note:** Both the Gloucester County and Middlesex County Wetlands Boards have recently adopted operating procedures whereby they will forward a complaint to the State Board for Contractors on any contractor who undertakes work in wetlands without the proper permit or who does work in wetlands not in compliance with the permit issued. Other boards wishing to take similar action should send a letter stating the contractor's name along with a detailed description and history of the violations to:*

Director, Virginia State Board for Contractors
Department of Commerce
Seaboard Building - Fifth Floor
3600 West Broad Street
Richmond, Virginia 23230-4917

NATIONAL WETLANDS POLICY AND GOALS RECOMMENDED

Report of the National Wetlands Policy Forum

Wetlands, both tidal and nontidal, are presently receiving greater attention than they have since the initial environmental movement of the late 1960's and early 70's. On the national level interest has been stimulated by research results reporting huge losses of wetlands over time in the contiguous 48 states. The fish and Wildlife Service estimates that over one-half of all our wetlands (100 million acres) have been lost since this country was settled.[1] The same study reports that between the mid-1950's and mid-1970's wetlands losses in the United States averaged 400 to 500 thousand acres per year.

Stimulating interest in wetlands on the state level are the Chesapeake Bay Program, which is a multi-jurisdictional effort to restore the Bay, and the Chesapeake Bay Preservation Act (CBPA), legislation passed in Virginia as part of the effort to address the degradation of Bay waters. Those of you who attended the symposium at Hampton University were brought up to date on the status of this important Chesapeake Bay Program element at that time.

The huge wetland losses reported by the Fish and Wildlife Service prompted the EPA in 1987 to provide initial funding and ask The Conservation Foundation to convene a National Wetlands Policy Forum to address major policy questions with regard to how this nation should be managing and protecting its wetland resource. Their recommendations and EPA's reaction are the subject of this article.

The Forum was put together with a broadly based membership representing state and local government (including three state governors), environmentalists, leading businessmen, agricultural interests and academia. Governor Thomas H. Kean of New Jersey chaired the group.

The goals of the Forum were to develop sound recommendations on how wetlands management and protection could be improved at all levels of government. Input from all across the country was solicited through a series of regional public workshops. After more than a year of deliberations the policy group has made some interesting, some people might call them startling, recommendations. The following is a brief summary of these recommendations advanced in the final report of the National Wetlands Policy Forum.[2]

The nation should establish a national policy of no net loss of our existing wetlands base with the long term goal of increasing the quantity and quality of our wetlands resource.

It should provide better incentives to private wetlands owners to protect wetlands for the public benefit and expand both public and private programs of wetlands acquisition.

It should expand and improve wetlands acquisition programs, reduce wetlands losses due to government projects and policies which encourage private landowners to alter wetlands and we should implement more effective and fairer regulatory programs.

The report also recommends a stronger program of compensatory mitigation so that all permitted losses are fully offset by wetland restoration and creation. It should be noted here that the Forum is not calling for compensation and no wetlands loss on each and every project but that the **net** loss be zero combining all gains and losses. It urges that all government projects

fully compensate for any wetlands altered and that a National Wetlands Restoration Initiative be established along with an Agricultural Wetlands Reserve Program which would preserve and restore 2.5 million acres of former agricultural wetlands.

The Forum further recommends that all states prepare State Wetlands Compensation Plans which would be the basis for the future wetlands acquisition, regulation, protection and management activities. Also urged by the Forum is the education of wetlands owners and the general public to the values of wetlands and how they may best be protected. Further research needs are also emphasized.

Finally the report urges the delegation of primary responsibility for wetlands regulation to the states with qualified programs and the allocation of federal monies to the states to help them implement their programs. It also recommends additional incentives to encourage states to adopt federal wetlands programs.

In response to the Forum's recommendations the EPA has adopted the goal to achieve no overall net loss of the wetlands now remaining and where feasible, to create and restore in order to increase the quality and quantity of the nation's wetlands resource base over the long term.

In addition, the EPA is taking a number of steps which could potentially have significant effects on state wetlands programs such as Virginia's. Probably most important among these is EPA's intention to work with Congress and other agencies in examining provisions of the Clean Water Act including: broadening the coverage of the permits program; increasing the incentives for states to assume the entire permit program; increasing enforcement against unpermitted activities; taking actions which reflect a policy that all **unavoidable** wetland impacts be fully offset by wetlands restoration or creation; developing and testing methods of assessing cumulative impacts; identifying areas appropriate for restoration; and initiating projects to restore and create wetlands.[3]

There has also been a legislative response to the Wetland Forum's recommendations in the form of the Wetlands No Net Loss Act of 1989. This bill was introduced in the lower chamber of Congress by Rep. Charles Bennett (D-FLA.). The proposal has three purposes: (1) To achieve the goal of no overall net loss of the remaining wetlands resource, (2) to restore and create wetlands and (3) to promote the conservation of wetlands to maintain the aesthetic, economic and environmental benefits they provide.

1 Frayer, W.E. 1983. Status and Trends of Wetlands and Deepwater Habitats in the Coterminus United States, 1950's to 1970's. Colorado State University: Fort Collins, Colo. 32pp.

2 National Wetlands Policy Forum. 1988. Protecting Americas Wetlands: An Action Agenda. Published by the Conservation Foundation. 1250 Twenty-fourth Street, N.W. Washington, D.C. 69pp.

3 U.S. Environmental Protection Agency. 1989. Wetlands Action Agenda: EPA's Short Term Agenda in Response to Recommendations of the National Wetlands Policy Forum. Washington, D.C. 21pp.

A great deal of momentum appears to have been created in favor of a new overall national policy toward wetlands. There could be much fallout to the states. The **Bulletin** will endeavor to keep you informed. Send your questions to: Editor, **Wetlands Board Bulletin**, Virginia Institute of Marine Science, Gloucester Pt., VA 23602.

Tom Barnard is an Associate Marine Scientist, Assistant Professor of Marine Science, and Head of the Wetlands Advisory Program at the Virginia Institute of Marine Science.

NEW FACE IN VIMS WETLANDS GROUP

The VIMS Wetlands Advisory Program is very pleased to have Maryann Wohlgemuth join us as of 3 April 1989. Maryann fills the vacancy created when Chuck Roadley took a position with the Habitat Management Division of VMRC.

Maryann worked in the wetlands/marine science field for five years before coming to VIMS/William and Mary School of Marine Science where she has earned her Masters in Marine Science with a concentration in wetlands ecology. During those five years she worked for both the Chesapeake Bay Program and the National Oceanic and Atmospheric Administration (NOAA). She has a Bachelor's Degree in Biology from St. Mary's College, Maryland.

Maryann will be working with the wetlands boards on the Eastern Shore and the Peninsula. We are fortunate to have a person of Maryann's experience and capabilities in our group and Maryann is looking forward to meeting and working with all of you.

SPECIAL FEATURE

The following section is an ongoing feature on specific counties and cities and their wetlands board members.

PORTSMOUTH

The Tidal Marsh Inventory report for the City of Portsmouth is presently being prepared for publication later this year. This publication should be a useful tool for wetland resource management. Ground-truthing was completed last fall and digitizing, map preparation, and data reduction are now being done. The City has 423 acres of tidal vegetated marsh. Most of the marshes are found along the tributaries of larger systems such as the James River (Hampton Roads) and the Western and Southern Branches of the Elizabeth River.

The largest marsh complex in the City is located along Hoffler Creek near the Corps of Engineer's Craney Island Dredged Disposal Area. The marshes of this creek system total 97.5 acres and are dominated

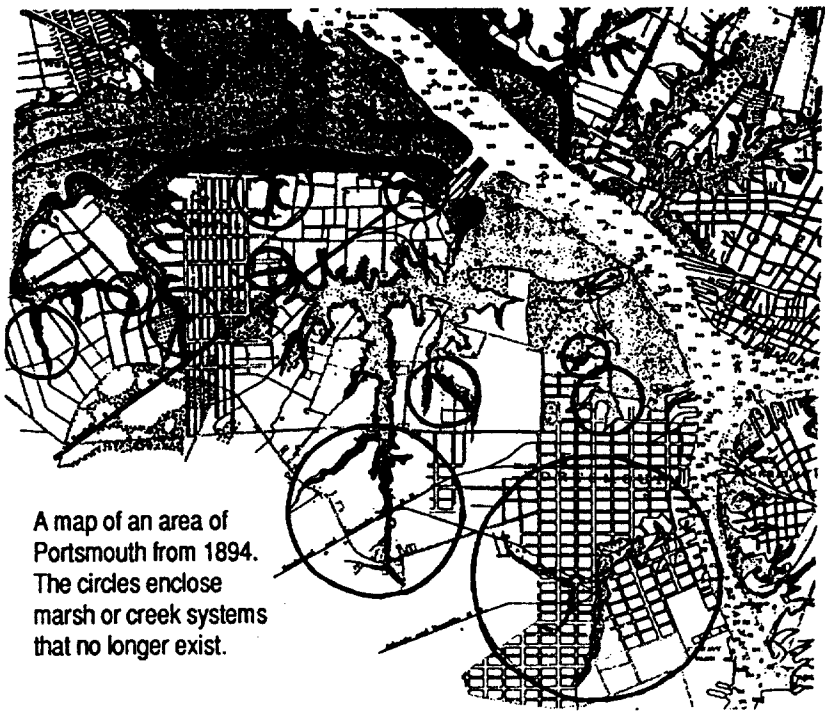
by saltmarsh cordgrass (*Spartina alterniflora*). Saltmarsh cordgrass is considered to be one of the most important species in coastal wetlands, contributing greatly to the estuarine food web. Hoffler Creek is an anomaly in the Tidewater urban environment in that it is relatively undisturbed by development. Most of the larger marsh systems in the City have been disturbed or modified through the years.

Craney Island Creek also supports a significant amount of marsh with nearly 67 acres. Saltmarsh cordgrass also dominates this system, but nearly one third of the marsh area is vegetated by reed grass (*Phragmites australis*), an aggressive, less desirable species that invades disturbed marshes.

After the turn of the century a number of wetland waterways have been lost through filling promoted by urban, industrial and military reservation expansion. Based on archival information (Map of Hampton Roads, U.S. Geodetic Survey, 1894), the City has lost hundreds of acres of tidal marshes over the last 95 years. Entire tributaries of the Western and Southern Branches of the Elizabeth River have been lost without a trace.

Urban wetlands, such as the Portsmouth marshes, support a surprising amount of wildlife. A number of water birds were observed during inventory field operations. Yellow Crown, Little Green, and Great Blue Herons were particularly plentiful. Tidal wetlands often offer a city dweller an opportunity to see wildlife that could normally only be seen in the country or a refuge. These marshes also have other values such as buffering against shoreline erosion and trapping sediment during periods of runoff.

(This article provided by Dr. Gene Silberhorn, Professor of Marine Science and Head of the Tidal Wetlands Inventory Program).



A map of an area of Portsmouth from 1894. The circles enclose marsh or creek systems that no longer exist.

PORTSMOUTH WETLANDS BOARD

H. Cliff Page, Sr., Chairman

Mr. Page feels that the public is becoming increasingly more aware of the importance of protecting wetlands and, he adds, "I'm very encouraged by this." However, he believes the average citizen needs more education on how to solve their wetlands problems. He says the board spends much of its time simply "educating the public as to the requirements concerning wetlands."

John Hill

"I think the public perception of wetlands is not clear," says Mr. Hill. He adds that "water quality is a vital issue and the general public does not seem to understand that wetlands preservation helps insure good water quality." Mr. Hill believes more emphasis is needed on project design, enforcement, and public education. He also feels that one of the biggest problems facing wetlands boards is that a majority of personnel on boards are inhabitants of a locality in which a fellow inhabitant is coming before them to improve their property. "It is difficult to tell a fellow resident that he can't do something he feels will improve his property."

Arden Pfeiffer

Mr. Pfeiffer believes that the public is more aware of wetlands as a vital resource and says "We must really look hard at our wetlands land use. We must find the best use of our wetlands." He feels economic pressure is the hardest issue facing the board. "Because the City is growing there is more need to use it (wetlands) and we must weigh the natural value versus the economic benefit." Mr. Pfeiffer hopes that in the future there will be better coordination between those involved in environmental issues. "I would like to see private industries, government agencies, and private citizens working together and focusing on environmental issues."

Sue Scribner

"The public is slow on learning. A lot of education needs to be done with just the main masses", says Ms. Scribner. "People who are informed seem willing to cooperate." She reiterates that one of the biggest problems facing the board is "Ignorance. Some people just don't understand how to go about what is requested of them and some simply don't care." She adds, "Man's destruction of his own environment is horrible. Capt. Page is doing a very good job at directing people gently in the right direction."

Editor's Note: *The following is a proposed checklist for use by wetlands board members and staff to help in evaluating compensation or restoration projects, It may be helpful to fill this out or have the applicant/agent fill it out and include it with the project file. Any comments or questions are welcome and should be directed to Editor, Wetlands Board Bulletin, VIMS.*

WETLAND COMPENSATION/RESTORATION CHECKLIST

(compiled by Jim Perry and Kirk Havens)

APPLICANTS NAME: _____

LOCATION: _____ VMRC Number _____

NATURE OF ACTION (check one):

☐ Compensation ☐ Restoration ☐ Both

Who is doing the work? _____

Has a plan view drawing been provided that shows:

a tidal datum ☐ b. existing elevations ☐
c. proposed elevations ☐ d. benchmark reference points ☐
e. planting zone(s) with appropriate type of vegetation ☐
f. tie-down distances to locate marsh ☐

Has a cross section drawing been provided that shows:

a. tidal datum ☐ b. existing elevations ☐
c. proposed elevations ☐
d. planting zone(s) with appropriate type of vegetation ☐

What tidal datum mark is being used?

☐ Mean Low Water (MLW) ☐ Mean High Water (MHW)
☐ Mean Sea Level (MSW) ☐ Other (explain) _____

What planting density is required? (on centers of:)

12" ☐ 18" ☐ 24" ☐ Other ☐

What type and how much wetland will be impacted (compensation only) or was impacted (restoration only)? (Use square feet, acres, etc. for units in following tables.)

COMPENSATION (area impacted)

SPECIES	SIZE	UNITS

COMMUNITY TYPE

_____

RESTORATION (area impacted)

COMMUNITY TYPE	SIZE	UNITS

What type and how much wetland will be compensated/restored? (Use square feet, acres, etc. for units in following table.)

COMPENSATION/RESTORATION

SPECIES	SIZE	UNITS

COMMUNITY TYPE

_____

What is the (Restoration/Compensation) ratio (wetland mitigated to wetland lost, i.e. 1:1, 2:1)_____

Is a security bond required?

❒ yes ❒ no ❒ 1 year ❒ 2 years ❒ Other_____

Is the (Restoration/Compensation) work to be conducted on site?

❒ yes ❒ no If no will it be done in the same watershed? _____

Has the Virginia Institute of Marine Science reviewed the compensation\restoration plan?

❒ yes ❒ no

Jerome Nickerson

"One of our biggest problems is that we've (the Portsmouth Wetlands Board) just got started." Mr. Nickerson adds, "The people of Portsmouth don't know there is a wetlands board to deal with." Mr. Nickerson feels that there is a general acceptance of wetlands protection by the public. "Once you have presented the case for wetlands, there isn't much resistance. The public is very supportive of wetlands protection once they know what wetlands are all about." Mr. Nickerson is concerned about being "on the back side of the power curve. We are trying to protect existing wetlands that are being depleted by pollution. There needs to be an incentive for people to increase their wetlands. We cannot just work on trying to protect what we have, we need to actively begin planting marsh, maybe with State support, into areas that are compatible for the development of wetlands." In the future Mr. Nickerson would like to see more articles in the local newspapers discussing the importance of wetlands and what people can do to protect them.

Pete Darden

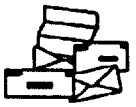
According to Mr. Darden, finding out about violations is one of the larger problems faced by the board. "The board does not know about them and the citizens are not reporting them." Mr. Darden feels that wetlands protection is very well accepted by the public. "They know how important wetlands protection is and as they become more knowledgeable they will begin reporting violations."

Stephen Knox

"I think one of our biggest problems is getting people interested," says Mr. Knox. "We are new and people don't know we are here or what we do." Mr. Knox feels that public opinion for wetlands protection is strong. However, he adds, "As with most things, people are enthuiastic about protecting wetlands until it gets to a personal level, then people aren't as excited about it." Mr. Knox would like to see a better relationship between the public and the wetlands board. In the future he hopes to see the board giving talks at civic groups informing them about wetlands and the wetlands board's purpose.

A NOTE FROM THE VIRGINIA MARINE RESOURCES COMMISSION

Mr. Tony Watkinson, Deputy Chief of Habitat Management, reports that over 200 participants (a record amount) attended the annual Virginia Wetlands Management Symposium held at Hampton University in February.



LETTERS TO THE EDITOR

QUESTION: Can a wetlands board hold a public hearing even though they take no action when a quorum is not present?

ANSWER: No. (Mr. Bob Grabb, Chief of Habitat Management, VMRC.)

***Editor's Note**: Since all evidence must be presented before a majority of the Board members (a quorum), a board meeting should be adjourned until a quorum is available.*

WETLAND RECIPES

PERIWINKLE SNAILS (*Littorina* sp.)

The periwinkle snail has a rather thick, squat, conical shell that varies from brownish olive to black or yellowish in color. The periwinkle grows to about an inch in length and about half that size in width. It is generally found clinging to salt marsh grasses or sedges and sometimes on rocks and jetties.

Sauteed Periwinkle

periwinkles — *garlic salt or dried leek leaves*
butter

Periwinkles should be eaten the day they are collected. Melt the butter in a frying pan, add a little garlic salt or leek leaves to taste, then saute' the snails for 3 to 5 minutes. Serve hot, using toothpicks to extricate the animals from their shell. (Steward and Kronoff, 1975, **Eating from the Wild**).

THE HARD CLAM (*Mercenaria mercenaria*)

The hard clam is found along the East and Gulf Coasts from Nova Scotia to the Yucatan Peninsula and is also known as the "quahog" or "round clam". Depending upon size, the hard clam is known by various "grade" names. "Chowders" generally run over 3 1/2 inches in width, "cherrystones" are 2 1/2 to 3 1/2 inches, "top necks" are 2 to 2 1/2 inches and "little necks" measure around 2 inches.

CLAMS SOUTHSIDE

1 qt. shucked cherrystones or chowders — *cream sauce*
1/2 pt. cream — *salt to taste*
dash of red pepper — *1 small onion*

Cut black place out of clams. Put onion and clams through food chopper. Cook 20 minutes in double boiler. Fifteen minutes before serving add thick cream sauce. Just before serving add cream to cream sauce. Bake in 350 degree F oven just long enough to brown on top. Serves four.

(Sea Grant Marine Advisory Service, VIMS)

THIS ISSUE'S QUOTES

"Wherever we turn on the coast we confront the awful destruction of its magnificent natural system. We can no longer escape the results of years of short-sighted use but must, for the first time ever, witness the dying coast and wonder if we can still save it. Knowing what we know makes ours the crucial generation." Anne Simon, 1978.

"It requires only a visit into this swamp territory to overcome such prejudices that reclamation is impracticable. Millions of dollars are being put into good roads. Everywhere one sees dredge boats eating their way through the soil, making channels for drainage." R.E. Norgress, 1947.

"More than a million acres of swaying reeds, fluttering flags, clumps of wild rice, thick-crowding lily pads, soft beds of cool green mosses, shimmering ponds and black mire and trembling bogs - such is Kankakee Land. These wonderful fens, or marshes, together with their wide-reaching lateral extensions, spread themselves over an area far greater than that of the Dismal Swamp of Virginia and North Carolina." Charles Bartlett, 1904.

Editor's Note: *Conversion to cropland and pasture and ditching for drainage all but eliminated the Great Kankakee Swamp by 1938.*

Readers are asked to submit questions concerning wetland ecology to:
Editor, Wetlands Board Bulletin
Virginia Institute of Marine Science
Wetlands Program
Gloucester Point, VA 23062
The editors reserve the right to edit letters for clarity and space.

Wetlands Board BULLETIN

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