

CHESAPEAKE BAY COMMISSION
Virginia Beach, Virginia
November 14-15, 2013

The Chesapeake Bay Commission held its fourth quarterly meeting of 2013 on Thursday and Friday, November 14-15, 2013, in Virginia Beach, Virginia

The following Commission members and staff were in attendance:

Acting Secretary Chris Abruzzo
Senator Mike Brubaker
Deputy Secretary Frank Dawson
Secretary Doug Domenech
Representative Garth Everett
Senator Emmett W. Hanger, Jr.
Delegate Scott Lingamfelter
Delegate Maggie McIntosh
Representative Ronald Miller
VA Citizen Representative John Reynolds
Admiral Dixon Smith
Representative Mike Sturla
Senator Frank Wagner
Delegate John F. Wood, Jr.

Staff: Ann Pesiri Swanson
Bevin Buchheister
Jack Frye
Marel Raub
Paula Hose

Members not in attendance:

PA Citizen Representative Warren Elliott
MD Citizen Representative Bernie Fowler
Senator Brian Frosh
Delegate James Hubbard
Delegate Lynwood Lewis
Senator Thomas "Mac" Middleton
Senator Mike Waugh
Vacant VA House of Delegates

Thursday, November 14, 2013

Thursday's meeting was held in Virginia Beach, Virginia. The meeting began at the Oceanaire Resort Hotel. The meeting was called to order by Chairman Maggie McIntosh at 10:00 A.M.

Following roll call, the Minutes for the September 2013 meeting were adopted and the agenda for the meeting was approved.

Ann Swanson, Executive Director, then provided an outline for the day's meeting and described where the members would be going during the day's field trip and what was to be discussed. It was made clear that the City of Virginia Beach is facing significant water related challenges including drinking water supply, coastal flooding, sea-level rise and stormwater management. Today's agenda will demonstrate what can be accomplished at the local level when citizens, local organizations and local governments combine forces to solve local problems.

Chairman McIntosh then introduced Karen Forget, Executive Director of Lynnhaven River NOW, and Clay Bernick, Environment & Sustainability Administrator, City of Virginia Beach, who provided details about the history of the Lynnhaven River and its pollution problems related to urban development within the watershed. The river's watershed has a population of 240,000 and is only 64 square miles, 1/1000 the size of the Chesapeake Bay watershed. One third of the City drains into the Bay, but half of the City population lives in the area draining to the Bay. Very little of their land is used for industry and most is used as single family residences so they are key to restoration efforts. Karen and Clay described their efforts to engage citizens in clean-up programs and educate them about how personal actions on their property affect water quality. They also described the City's 80 million dollar investment in sanitary sewer retrofits that have contributed to significant water quality improvements. The Lynnhaven River system, once closed to oyster harvest due to bacteria contamination, now has a rebounding private oyster industry. Work is ongoing to try to open other parts of the river and prevent closure of the open sections following heavy rainfall events.

To welcome the Commission to the City of Virginia Beach, Councilman Bob Dyer briefly thanked to Commission for choosing the City for the meeting. He mentioned the water challenges facing the City and how abundant, clean water is absolutely critical to support the tourism that is central to their economy.

Next, Chesapeake Bay Foundation President Will Baker and Hampton Roads Director Christy Everett spoke about their exciting new project underway at Pleasure House Point, a 118 acre property on the Lynnhaven River that was purchased with funds from the State, Va. Beach, CBF and private sources. This land featuring tidal marsh, sandy shores and maritime forest was the last open space in VA beach and had been planned for a housing development. The Brock Environmental Center will be an innovative example of environmentally sensitive and sustainable building—the first in Virginia to embrace a net-zero energy and net-zero water approach—and advance CBF's efforts to defend one of the nation's most valuable and threatened natural resources, the Chesapeake Bay. The Center will meet the strictest environmental standards in accordance with the Living Building Challenge™.

At 11:20 A.M. Chairman McIntosh thanked the Virginia Marine Resources Commission and especially Commissioner Jack Travelstead for providing the 3 vessels that will take the Commission on a tour of the Lynnhaven River. Members then boarded the bus for the Dockside Restaurant and upon arrival boarded the vessels for a one hour tour. Karen Forget and Clay Bernick provided details about the private oyster farming operations, sanctuary reefs of the U.S. Army Corps of Engineers, First Landing State Park and other notable river features.

Upon returning to the Dockside Restaurant, the members disembarked and had lunch. They were joined by several local oyster farmers and Kim Huskey, Executive Director, Virginia Seafood Council.

At 1:45 P.M. Chairman McIntosh introduced Bruce Vogt, Coastal and Living Resources Manager for the NOAA Chesapeake Bay Program Office. He provided an overview of the history of the Bay's oyster industry and the oyster's life cycle. The oyster biomass in the Bay is currently believed to be less than 1% of historical levels. He explained the different activities involving oyster reef sanctuaries and management of public and private oyster grounds. There are numerous challenges facing oyster restoration including enforcement against poaching, developing harvest targets, improved monitoring and expanding aquaculture operations. Other concerns that will impact oyster recovery long term are the availability of oyster shell for reef building, locating and protecting suitable hard bottom and funding from all sources, public and private.

Mr. Vogt introduced the agency representatives that are leading the oyster restoration and management activities in the Bay. Colonel Paul B. Olsen, Commander Norfolk District, USACE described their mission to restore the native oyster within the Bay. They are spending millions of dollars to rebuild lost reef systems, including sanctuaries in the Lynnhaven River. Their primary role is the restoration of oyster reefs and tributaries in support of the 2009 Presidential Executive Order.

Tom O'Connell, Maryland's Fisheries Services Manager next addressed the challenges they are facing in their efforts to restore oysters and support industry. Much of the hard bottom needed for oyster attachment has been lost to sedimentation. Maryland is committed to establishing oyster sanctuaries to strengthen natural recruitment and help restore whole tributaries, such as the work being done in Harris Creek. Funding continues to be a challenge.

Next was Marty Gary, Executive Secretary, Potomac River Fisheries Commission, who is attending his first Commission meeting since replacing A.C. Carpenter during the summer. They have sanctuaries and a fledgling aquaculture effort. In April 2014 they will have the first harvest from the private investor's rotational harvest reefs. If successful, they intend to expand this program.

Jack Travelstead, Commissioner with the Virginia Marine Resources Commission shared the very good news about this year's oyster harvest of 406,000 bushels, up from 23,000 bushels just

12 years ago. With a dockside value of over \$16 million dollars they are seeing more poaching pressure as more oysters become available. The 3 year rotation program in Virginia is working very well and he believes this system is providing both ecological value and expanding industry opportunity. He expressed his concern that funding for the state's oyster replenishment program needs to be continued at the \$2,000,000 level and that the availability of oyster shell, a diminishing resource, will become a significant problem in the future. As shell prices increase, the available funding buys less and less material for reef restoration.

Chris Ludford, Owner, Ludford Brothers Oyster Company, described the growth of the private sector oyster farming industry in the Lynnhaven River. They are shipping 20,000 individual oysters per week year round and cannot meet the demand for product. Their business is totally reliant on clean water. Shellfish closures due to intense runoff events immediately stop production; they are committed to producing a safe consumer product. They have a "rain event system" in place to trigger closures in order to protect health and maintain consumer confidence.

Commission members asked about efforts to save and recycle oyster shell. All the fisheries managers expressed their support for expeditious use of shell in building new reefs. Mr. Ludford said oyster shell recycling by restaurants was desirable, but local health departments would not allow it. Frank Dawson said that Maryland will give a \$1 tax credit per bushel of recycled oyster shell. Mr. Vogt wrapped up by saying that the future will be shaped by collaboration, commerce and conservation between all involved in restoring and farming oysters in the Chesapeake Bay.

Members then heard from Carl Hershner, Director of the Center for Coastal Resources Management, VIMS-College of William and Mary, about climate change impacts on bay living resources. He expressed the need to better understand the changes coming in order to apply that knowledge to make sure we are investing in actions that have the greatest chances for success. Changing temperatures will impact both plants and animals bay-wide. Changing rainfall patterns and intensity will directly impact the delivery of nonpoint pollution to the Bay system. Goals we set should be realistic and consider both the positive and negative impacts associated with climate change.

Members then asked about how consideration of climate change might be integrated into the Bay Program decision system. Dr. Hershner suggested that the Science and Technical Advisory Committee could be used to evaluate management strategies with climate change impacts in mind. He believes the Bay model could also have climate change impacts incorporated into how it forecast future progress. The Pennsylvania Climate Change Action Plan was mentioned as an example of how one should work to establish a range of uncertainty to aid decision-making.

The Commission meeting now moved to Great Neck Middle School to hear from Mr. Tim Cole, Sustainability Coordinator, City of Virginia Beach. He explained that the City has committed to making all its facilities more sustainable. They also are working to integrate the conservation elements of these building systems into the daily education of the students. Virginia Beach has

completed eight LEED building projects and can demonstrate that they can build them for less cost than conventional schools. Energy generation and monitoring usage, lighting, rainwater harvesting and use, indoor air quality, green roofs are all providing information that enriches the educational opportunity. Also, they are collecting information to help determine if better buildings improve student scores and health and reduces absenteeism. The members asked questions about the City's program and were intrigued to learn that sustainable buildings can be more cost effective than is generally known. At 5:15 P.M. members boarded the bus and returned to the hotel for dinner. Newly elected Virginia Senator John Cosgrove was recognized for his service on the Commission while a member of the House of Delegates and wished well by all.

Friday, November 15, 2013

The meeting was called to order by Chairman Maggie McIntosh at 9:30 A.M.

Chairman's Update:

Chairman McIntosh informed members that at our next meeting in Maryland in January we will have Governor O'Malley, who will be the new Chair of the Bay Program Executive Committee speak to us for about one hour at the Statehouse. We will also tour the spot where George Washington resigned his commission as Commander of the Continental Army and hear an update from George Hawkins on Blue Plains.

Chairman McIntosh reminded the Commission members of the September meeting in Gettysburg, Pennsylvania where they had visited the EnergyWorks "manure-to-energy" facility. There had been a discussion of the need for federal approvals to enable the beneficial use of the ash product as fertilizer and also for use as an animal feed supplement. She directed members to draft letters in their packets to be sent to USDA for the fertilizer approval and to FDA for the feed supplement approval. Hearing no objections from members, staff was directed to send the letters on behalf of the Commission.

Ann Swanson Executive Director then updated the Commission on the status of efforts to secure funding for the innovative stormwater financing project which members had supported at the May, 2013 meeting. She noted that all three Commission states had sent letters of support for this grant and member expressed her disappointment that the request for funding from the National Fish and Wildlife Foundation was not granted. However, staff will continue to consider other options for advancing innovative stormwater financing and private sector involvement.

Jack Frye, Virginia Director, briefed the Commission about the opportunity to advance the knowledge about fish movement and habitat in the Bay through the use of the Navy's VEMCO Fish Acoustic Array. The Navy project to gather information on ship strikes of slow moving sturgeon, turtles and other fish will last two years and afterward, the fisheries scientist and managers are hopeful that the equipment can remain in place and continue to be operated. It will require funding and development of a supporting partnership to extend and expand the use of the array. Admiral Smith confirmed that the Navy's project was for two years. Delegate Lingamfelter supported the continuing of the array and the new information it can provide for fisheries management.

Members were then briefed on the status of the beneficial use of dredged material at the Chesapeake Bay Foundation's Port Isobel environmental education facility. Port Isobel Island not only is an important educational resource for CBF, it also shelters the eastern approach channel and Tangier Island from shore erosion. The Town of Tangier has requested that the U.S. Army Corps of Engineers consider Port Isobel as a placement site for future dredged material. The Corps has agreed to begin the evaluation process leading to possible permitting of Port Isobel to receive material. If approved, no placement of suitable dredged material is expected for 3-5 years as a result of channel dredging needs. The Commission is scheduled to hold their September meeting at Port Isobel in 2014.

Chairman McIntosh then opened the discussion of state delegation priorities in support of each jurisdiction's Watershed Implementation Plans. Over breakfast, each delegation had reviewed the staff document and discussed which actions were of most interest to them that might be integrated into the Commission's 2014 Work Plan.

Senator Brubaker reported on the items of interest to Pennsylvania. These included a better accounting of voluntarily implemented agriculture best management practices, expanding the nutrient credit trading program and coordination of water quality monitoring. The General Assembly is currently considering the urban nutrient management legislation. Representative Sturla mentioned legislation that could increase funding for conservation in their key watersheds by placing a fee on consumptive use of water. Secretary Abruzzo mentioned the Agricultural Summit that will be held on January 9, 2014 during the Farm Show.

For Maryland, Frank Dawson noted that several MD members were absent so this was a preliminary report out. He reported their concern that the stormwater utility fee legislation would be challenged and possibly rolled back next session. For agriculture, they may consider limiting the amount of animal manure that can be applied to farmland, but are also concerned about "stranding" manure on farms if restrictions limit application. A concern about reductions in federal agricultural BMP funding was expressed and commonly supported across all delegations. Since all of the states are relying on a significant level of federal BMP funding to achieve Bay clean-up goals, staff were asked to continue to work on BMP funding at the federal level. Improvements are needed in tracking and reporting of both agricultural and urban BMP implementation to show progress and verify implementation. There was recognition that climate change and sea-level rise impacts are already occurring and that we may need to adjust bay cleanup actions accordingly. Offsets in pollution to account for new growth was another area to focus on. Chairman McIntosh expressed her concern about the efforts to roll back the stormwater utility fee and asked members to support the existing law.

Delegate Lingamfelter reported on the Virginia delegation priorities. He supported the adoption of state-wide stormwater programs by localities and their need for funding to get a program up and running. The \$2,000,000 annually for oyster replenishment is important to continue. The delegation did not finalize their list of priorities and instead plan to determine priorities ahead of the next CBC meeting on January 2, 2014. Staff was requested to provide greater analysis in order to support their decision-making. Delegate Lingamfelter did express support for land conservation but questioned if future success would require a change in focus and incentives to improve participation. He also supported improved BMP verification and accountability and

better use of technology. Senator Hanger also expressed an interest in greater use of technology to track BMP implementation and monitor for results.

Chairman McIntosh asked members if they recognized any common threads among the delegations' interests. Senator Brubaker felt the discussion was beneficial and asked that staff complete their delegation work and refine a priority list for the January meeting. Make sure the focus is on what we want staff to advance during 2014. Representative Sturla expressed his concern about the challenges facing states as they work to achieve their two year milestones. He asked the Commission to consider how we could help states meet those targets.

Chairman McIntosh then moved to the discussion on the new Bay Agreement and mentioned the upcoming Executive Council meeting scheduled for December 12. Ann Swanson then presented on the discussions and decisions made during the Principal Staff Committee meeting on September 24, where staff voted on behalf of the Commission on numerous agreement Outcomes. There were cases where CBC votes in favor of an outcome were not in agreement with how member states voted. Following a brief discussion of how voting decisions are made, no further objections were raised. It was clear that the introduction of the regulatory water quality requirements into the voluntary Bay Program had created much uncertainty and changed the atmosphere of collaboration and consensus that previously existed. Additional discussion centered on Bay Program governance issues and the lack of clarity about how future decisions and funding would be handled if the headwater states became signatories to the new agreement. Representative Miller requested that the CBC staff draft a letter to Mayor Gray, Executive Council Chair, suggesting that understanding governance is critical and should be a part of the new Bay Agreement. The letter should also point out the importance of an agreement built upon aspirational goals that challenge us to push beyond our comfort zones to achieve great things. CBC approved drafting of a letter and Senator Brubaker asked that each member get to review the letter before sending.

Frank Dawson noted that the management strategies that are to be developed following the signing of the agreement will allow organizations to participate to the level they choose. Ann Swanson noted that we plan to have a fuller discussion of the management strategies and CBC's role in them at the January 2, 2014 meeting. Chairman McIntosh asked members and staff to keep the agreement moving forward to enable its signing as early in 2014 as possible.

Chairman McIntosh asked if there was any new business and noted that at our next meeting we would elect a new CBC Chairman. The meeting adjourned at 11:55