

Colonel Andrew M. Perkins, Jr.  
U.S. Army Corps of Engineers  
Norfolk District  
803 Front Street  
Norfolk, Virginia 23510-1096

Attn: Audrey Cotnoir  
Regulatory Branch

Re: City of Norfolk , Permit Application  
No. 94-5747-08, Chesapeake and  
Virginia Beach, Virginia

Dear Colonel Perkins:

The U.S. Fish and Wildlife Service (Service) has reviewed the Department of the Army (DOA) permit application 94-5747-08, submitted by the City of Norfolk to rehabilitate the existing dam at Stumpy Lake in Chesapeake and Virginia Beach, Virginia. Your April 7, 1995 request for formal consultation was received in this office on April 11, 1995. This document represents the Service's biological opinion on the effects of that action on the Dismal Swamp southeastern shrew (Sorex longirostris fisheri) in accordance with Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). It should be noted that the Dismal Swamp southeastern shrew has not been documented within the project site, but the applicant has chosen to assume this species is present in areas with appropriate habitat.

#### I. CONSULTATION HISTORY

- 06-20-94 The Service received a request from Maguire Associates, the project consultant, to review the proposed project for potential impacts to Federally listed species.
- 06-29-94 The Service sent Maguire Associates a letter recommending surveys be conducted for the Dismal Swamp southeastern shrew and the Virginia least trillium.



- 01-12-95      The Service received a request from the Corps to review the proposed project for potential impacts to Federally listed species.
- 01-20-95      The Service sent the Corps a letter recommending surveys be conducted for the Dismal Swamp southeastern shrew and the Virginia least trillium.
- 03-07-95      The Service participated in a site visit with the applicant and Maguire Associates.
- 04-11-95      The Service received the Corps' request to initiate formal consultation.
- 04-20-95      The Service received the Corps' request to receive a draft of the biological opinion.

## II. BIOLOGICAL OPINION

### DESCRIPTION OF PROPOSED ACTION

The permit applicant, City of Norfolk, has applied for a Federal permit to rehabilitate the existing dam at Stumpy Lake in Chesapeake and Virginia Beach, Virginia (Figure 1). Stumpy Lake is a water supply reservoir constructed around 1910 and is owned and operated by the City of Norfolk, Department of Utilities. It is located west of Indian River Road and northwest of Elbow Road. The western side of the spillway is in Chesapeake, the eastern side of the spillway is in Virginia Beach. The area of the planned improvements are located in Stumpy Lake itself, on the dam, and in the wetland area between the dam and Elbow Road (Figure 2). The stated project purpose is to correct deficiencies in the dam that were found during a dam safety review. The modifications should take approximately three months to complete.

The proposed modifications to the dam include the following activities: clearing trees from the dam, grading the dam crest to a uniform elevation, grading the dam slopes to a 3:1 slope, placement of a filtered riprap blanket on the upstream slope of the dam, placement of filtered seepage collection trench/ditch on the downstream slope of the dam, placement of filtered riprap downstream of the spillway, and placing a guardrail along the upstream side of Elbow Road. These modifications are proposed to correct the presence of trees on the embankment, seepage flows beneath the dam, susceptibility of the dam to overtopping, erosion by waves during flood events, lack of suitable erosion protection downstream of the spillway, and lack of protection from traffic that may veer off Elbow Road. The staging area for the construction equipment and materials will be an upland site near the intersection of Indian River Road and Elbow Road where the City of Norfolk pump station is located. Various types of construction equipment will be used including grade-alls, backhoes, front-end loaders, and small bulldozers. Strict sediment and erosion controls will be specified.

The proposed improvements to the dam will involve: removal of existing vegetation; excavation of soil; placement of fill, riprap, and stone; and re-routing of drainage patterns. The rehabilitation will result in

permanent fill of approximately 0.75 acres of forested wetlands and 0.47 acres of open water and temporary impacts to 0.25 acres forested wetlands. The fill in wetlands will occur from grading the dam slopes, clearing trees, and installation of a filtered seepage collection trench. The open water impacts will result from the placement of riprap on the upstream slope of the dam. The temporary wetland impacts include areas that will be cleared with little or no significant grading. The ground cover will be permitted to regenerate, but to maintain the integrity of the dam improvements, trees will be removed as necessary from the area. This will result in the conversion of 0.25 acres of forested wetlands to emergent or scrub-shrub wetlands. The project will not result in an increase in the area currently flooded by the dam.

The portion of the project on the west side of the spillway (in Chesapeake), is the only part of the project that is located in an area that contains habitat for the Dismal Swamp southeastern shrew (Figure 1). This portion of the project will result in a total of 0.76 acres of impacts to shrew habitat; 0.37 acres will be temporarily impacted (this includes 0.20 acres of forested wetlands) and 0.39 acres will be permanently impacted (this includes 0.22 acres of forested wetlands).

Because the remainder of the project to the east of the spillway in Virginia Beach does not provide appropriate habitat for the shrew, this portion of the project is not likely to affect the shrew and therefore, will not be considered in this biological opinion. The action area for this biological opinion has been determined by the Service to be the portion of the project west of the spillway (Figure 1). The action area includes the 0.76-acre construction area and any other areas cleared of vegetation to enable dam repair on the western portion of the spillway.

#### RANGEWIDE STATUS OF THE DISMAL SWAMP SOUTHEASTERN SHREW

The Dismal Swamp southeastern shrew is a small mammal that weighs less than 0.2 ounces and measures approximately four inches in length. Little is known about the life history of the shrew, except that in 1905, a litter of five young were found in a nest in the Dismal Swamp (U.S. Fish and Wildlife Service 1994). However, the species' life history is likely similar to that of the southeastern shrew (S. l. longirostris). Based on a few studies, it appears that southeastern shrews average approximately four young per litter (U.S. Fish and Wildlife Service 1994). Pregnant southeastern shrews have been found in Indiana from 8 April to 25 September and in Alabama and Georgia from 31 March to 6 October (U.S. Fish and Wildlife Service 1994). Shrews of the genus Sorex usually have at least two litters per year (Churchfield 1990). It is likely that young shrews remain in the nest for their entire period of growth and development and are nearly adult size when they leave the nest (U.S. Fish and Wildlife Service 1994).

Southeastern shrews feed mainly on small-sized invertebrates, but consume some vegetation (U.S. Fish and Wildlife Service 1994). Typically, shrews forage intermittently throughout the day and night in all seasons and seem to have highest levels of activity associated with rainfall and periods of high humidity. Much of their foraging occurs in the leaf litter or in tunnels in the upper layers of the soil (U.S. Fish and

Wildlife Service 1994). Predators of southeastern shrews include barred and barn owls, domestic cats, and occasionally snakes, domestic dogs, and opossums (French 1980).

The main reasons for the shrew's decline are habitat loss and modification and possible loss of genetic integrity through interbreeding with the more common upland subspecies (U.S. Fish and Wildlife Service 1994). "It is presumed that the Dismal Swamp southeastern shrew developed its distinctive size and coloration while geographically or ecologically isolated within the Great Dismal Swamp during the Holocene (Handley 1979). The recent human-induced progression toward homogenous mature hardwood forest, more representative of habitat conditions of the surrounding region, leads to the possibility that the more common and presumably more generally adapted . . . subspecies could invade the Dismal Swamp and genetically overwhelm the existing populations of *S. l. fisheri*, which are more specifically adapted to historic swamp conditions" (U.S. Fish and Wildlife Service 1994).

The Dismal Swamp southeastern shrew's distribution is considered coincidental with the boundaries of the historic Dismal Swamp, an extensive contiguous wetland complex that once occupied most of the low-lying land between Norfolk, Virginia and the Albemarle Sound in North Carolina. Historically, this wetland complex was maintained in a variety of successional stages (such as marshes, canebrakes, pocosins, and forest) by natural fires. The original Dismal Swamp ecosystem has been greatly reduced in size as a result of urban development and the clearing and draining of land for agriculture and silviculture. Most of the remaining wetlands are forested. Approximately 197,680 acres of these wetlands still remain, more than half of which are preserved by the Service as the Great Dismal Swamp National Wildlife Refuge, created in 1974, which is located in Virginia and North Carolina. The Service is attempting to restore some of the vegetational and successional diversity to the portion of the Dismal Swamp ecosystem within the Refuge. The Great Dismal Swamp State Park in North Carolina provides an additional 22 square miles of shrew habitat. There are additional areas of protected shrew habitat such as the North Landing River Preserve and the Northwest River Park in Virginia and Elizabeth City State University's Dismal Swamp Wetland in North Carolina.

Outside the protected areas, remnants of the Dismal Swamp are rapidly disappearing in southeastern Virginia due to development associated with the Hampton Roads metropolitan area (U.S. Fish and Wildlife Service 1994). In North Carolina, agricultural and silvicultural conversion are the main causes of habitat loss. "In the vicinity of Elizabeth City, North Carolina, for example, two tracts totaling some 32,000 acres of swamp have been cleared and drained within the past 20 years. Besides these contiguous tracts, many smaller areas within the historic Dismal Swamp of North Carolina have been ditched and cleared in a piecemeal fashion. In Virginia, a comparison of U.S.G.S. 7.5-minute topographic maps to recent aerial photography revealed a collective loss of some 2,600 acres of forested land, scattered over four maps portraying the Dismal Swamp (S. Martin, U.S. Army Corps of Engineers, pers. comm. 1993)" (U.S. Fish and Wildlife Service 1994).

Within the historic Dismal Swamp boundaries, the Dismal Swamp southeastern shrew is found in a range of habitats including recent clearcuts, regenerating forests, young pine plantations, grassy and

brushy roadsides, young forests with shrubs and saplings, and mature pine and deciduous forests (U.S. Fish and Wildlife Service 1994). The shrew is likely to exist at highest densities in early successional wetland habitats, such as cane stands; shrub-dominated areas; and young, open forests that retain a fairly dense herbaceous understory. The shrew also occurs at high densities within cleared right-of-ways, such as those used for utility lines, as these areas often contain early successional habitats such as scrub-shrub wetlands. Mature wetland forests also provide habitat diversity important to the integrity and dynamic structure of the shrew population as a whole. Rose (1983) found that the shrew was most abundant in mid-successional, 12 to 15 year-old regenerating forests having a dense understory, moist organic soils, and moderate leaf litter.

Recently, new evidence suggests that the Dismal Swamp southeastern shrew may occur throughout the coastal plain of North Carolina, at least as far south as Wilmington (U.S. Fish and Wildlife Service 1994). However, until this can be substantiated through additional distribution and taxonomy studies, the shrew will remain on the Service's list of endangered and threatened wildlife and plants. As such, the shrew, and its habitat, will continue to receive protection pursuant to the Endangered Species Act until it is removed from this list.

## ENVIRONMENTAL BASELINE

Status of the Species - The existing dam structure consists of a 100-foot wide broad-crested concrete weir spillway with an embankment on both sides. The embankment is constructed primarily of sandy clay fill and is 2,000 feet in length, with a maximum height of 12 feet. A paved, two-lane road secondary road, Elbow Road, runs parallel to and about eight feet downstream of the dam toe. Across Elbow Road and downstream from the dam is Gum Swamp.

Habitat in the project area includes open water within Stumpy Lake, forested wetlands along the lake and between the impoundment and Elbow Road, and the forested upland area along the embankment. Dominant plant species in the wetland area along the edge of Stumpy Lake include weeping willow (Salix babylonica), black gum (Nyssa sylvatica), water oak (Quercus nigra), laurel oak (Quercus laurifolia), bald cypress (Taxodium distichum), red maple (Acer rubrum), swamp cotton-wood (Populus heterophylla), green ash (Fraxinus pennsylvanica), American elm (Ulmus americana), swamp rose (Rosa palustris), poison ivy (Toxicodendron radicans), catberry (Nelumbo lutea), Japanese honeysuckle (Lonicera japonica), switch cane (Arundinaria gigantea), and common greenbrier (Smilax rotundifolia). The soil is saturated at the surface in most areas.

The wetland area between Elbow Road and the dam embankment is dominated by the following plant species: sweet gum (Liquidambar styraciflua), American elm, cherry-bark oak (Quercus falcata), red maple, loblolly pine (Pinus taeda), water oak, bayberry (Myrica cerifera) common greenbrier, and Japanese honeysuckle. The soil is saturated in the upper 12 inches for most of the area. There is also a small drainage swale near Elbow Road.

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The upland embankment is also forested and contains the following species: southern red oak, red maple, loblolly pine, sweet gum, black cherry (Prunus serotina), sycamore (Platanus occidentalis), American hornbeam (Carpinus caroliniana), common greenbrier, Japanese

honeysuckle, poison ivy (Toxicodendron radicans), and switch cane. The embankment has no indicators of wetlands hydrology.

The entire action area contains habitat appropriate for the Dismal Swamp southeastern shrew. The shrew has been documented adjacent to the action area in previous studies (Webster, pers. comm.). Adjacent to the action area is a large, contiguous wooded area that contains habitat appropriate for the shrew.

Effects of the Action - In evaluating the effects of the Federal action under consideration in this consultation, 50 CFR 402.2 and 402.14(g)(3) require the Service to evaluate the direct effects of the action on the species. Direct impacts to the shrew associated with this project include the potential to crush shrews with construction vehicles and heavy equipment while clearing vegetation and repairing the dam, resulting in death or injury.

In addition, during vegetation clearing and repair of the dam, cleared areas within the 0.76-acre construction area will be unusable to shrews. It is possible that during clearing and/or repair, areas outside the 0.76-acre construction area may be cleared of vegetation and/or traversed by heavy equipment and vehicles. Additionally, the shrew will be directly affected by the permanent loss of 0.39 acres of habitat and the temporary loss of 0.37 acres. The permanent habitat loss will occur at the edge of the appropriate shrew habitat, therefore no habitat fragmentation is expected. Temporarily impacted areas will result in early successional vegetation and will be maintained as such. These areas will provide good shrew habitat since shrews are found in high densities in early successional habitats.

While there is likely to be a loss of individual shrews, because there will only be minor (0.39 acres) permanent habitat loss and no fragmentation, this loss should not affect the genetic viability or range of the species. Shrews from areas adjacent to the action area should be able to recolonize the portion of this site where temporary impacts will occur. "Because these shrews have a high reproductive potential and rapid maturation rate, limited collection of individuals is not detrimental to healthy populations, although more widespread mortality associated with loss or permanent alteration of habitat continues to constitute the primary threat to the survival of this subspecies." (U.S. Fish and Wildlife Service 1994).

Cumulative Effects - Cumulative effects include the effects of future State, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to Section 7 of Endangered Species Act.

One future activity that may affect the shrew is vegetation management at the dam. This maintenance activity may result in death or injury to shrews from crushing by vehicles. However, it will result in a successional vegetation stage used by shrews and is not likely to cause habitat fragmentation. The majority of future activities in this area will require a permit from the Corps and will be reviewed when a Federal permit is applied for.

## CONCLUSION

After reviewing the current status of Dismal Swamp southeastern shrew throughout its range and in the action area, the environmental baseline for the action area, the effects of the proposed dam repair and the cumulative effects, it is the Service's biological opinion that the issuance of a DOA permit for this project, as proposed, is not likely to jeopardize the continued existence of the Dismal Swamp southeastern shrew. No critical habitat has been designated for this species, therefore, none will be affected.

## III. INCIDENTAL TAKE STATEMENT

Sections 4(d) and 9 of the Endangered Species Act, as amended, prohibit taking (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct) of listed species of fish or wildlife without a special exemption. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering. Harass is defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns, which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is any take of listed animal species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant. Under the terms of Section 7(b)(4) and Section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered a prohibited taking provided that such taking is in compliance with the terms and conditions of this incidental take statement.

The measures described below are nondiscretionary, and must be implemented by the Corps so that they become binding conditions of any permit issued to the applicant in order for the exemption in Section 7(o)(2) to apply. The Corps has a continuing duty to regulate the activity covered by this incidental take statement. If the Corps (1) fails to require the applicant to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit, and/or (2) fails to retain oversight to ensure compliance with these terms and conditions, the protective coverage of Section 7(o)(2) may lapse.

## AMOUNT OR EXTENT OF TAKE

The extent of incidental take of the Dismal Swamp southeastern shrew anticipated from this project is difficult to quantify because the population density of the shrew within the project area has not been determined, and any shrews that are killed during clearing of vegetation, and project construction will be difficult to observe or locate due to their coloring, small body size, and tendency to remain beneath the leaf litter or underground. However, the level of take of this species can be anticipated by the areal extent of the potential habitat affected. This incidental take statement anticipates the taking of Dismal Swamp southeastern shrews from at least 0.76 acres on

the west side of the spillway (Figure 1) resulting from vegetation removal, construction activities, and loss of habitat.

### EFFECT OF THE TAKE

In the accompanying biological opinion, the Service determined that the level of anticipated take is not likely to result in jeopardy to the species or destruction or adverse modification of critical habitat.

### REASONABLE AND PRUDENT MEASURES

The Service believes the following reasonable and prudent measures are necessary and appropriate to minimize take:

1. Vegetation clearing should be minimized. This will reduce soil and leaf litter disturbance and will enhance revegetation of the construction area.
2. Impacts to wetlands should be minimized. This will lessen the impacts to shrew habitat and enhance revegetation of the site after repair.
3. Avoid use of herbicides and pesticides. This will minimize impacts to the shrew and its habitat.

### TERMS AND CONDITIONS

In order to be exempt from the prohibitions of Section 9 of Endangered Species Act, the Corps and the City of Norfolk must comply with the following terms and conditions, which implement the reasonable and prudent measures described above. These terms and conditions are nondiscretionary.

1. The following measures will be taken during clearing, construction, and maintenance activities associated with the project:
  - a. No use of vehicles or heavy equipment will occur outside the 0.76-acre construction area on the western portion of the spillway.
  - b. No placement or stockpiling of materials will occur outside the 0.76-acre construction area on the western portion of the spillway.
  - c. No ground disturbance or vegetation clearing will occur outside the 0.76-acre construction area on the western portion of the spillway.
  - d. Maintenance clearing of vegetation will be done by hand where practicable.

- e. No use of broad scale or aerial herbicide or pesticide applications.
- 2. The applicant is required to notify the Service before initiation of construction and upon completion of the project at the address given below. All additional information to be sent to the Service should also be sent to the following address:

Virginia Field Office  
U.S. Fish and Wildlife Service  
P.O. Box 480  
White Marsh, VA 23183  
(804) 693-6694

- 3. Care must be taken in handling any dead specimens of the Dismal Swamp southeastern shrew that are found in the project area to preserve biological material in the best possible state. In conjunction with the preservation of any dead specimens, the finder has the responsibility to ensure that evidence intrinsic to determining the cause of death of the specimen is not unnecessarily disturbed. Upon locating a dead specimen, initial notification must be made to the following Service Law Enforcement office:

Division of Law Enforcement  
U.S. Fish and Wildlife Service  
P.O. Box 187  
Yorktown, VA 23690  
(804) 890-0003

Please note that the finding of dead specimens does not imply enforcement proceedings pursuant to the Endangered Species Act. The reporting of dead specimens is required to enable the Service to determine if incidental take is reached or exceeded and to ensure that the terms and conditions in this biological opinion are appropriate and effective.

The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize incidental take that might otherwise result from the proposed action. With implementation of these measures the Service believes that only shrews located within the 0.76-acre construction area will be incidentally taken. If, during the course of the action, this minimized level of incidental take is exceeded, such incidental take would represent new information requiring review of the reasonable and prudent measures provided. The Corps must immediately provide an explanation of the causes of the taking and review with the Service the need for possible modification of the reasonable and prudent measures.

#### IV. CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of Endangered Species Act directs Federal agencies to utilize their authorities to further the purposes of Endangered Species Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to further minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans and other recovery activities, or to develop information to benefit the species.

The Service recommends that the Corps conduct before and after surveys for the Dismal Swamp southeastern shrew within the action area. This will allow our agencies to determine the exact effects of clearing and construction from this type of project on the shrew. If one or two surveys were conducted before the clearing and construction are initiated and several annual surveys are conducted after project completion, valuable information could be obtained regarding the rate of recolonization of cleared areas and the extent to which shrews are impacted. This information could be used in future consultations to better determine the extent of project impacts and evaluate the effectiveness of the terms and conditions that are provided in biological opinions. Additionally, the Technical/Agency Draft of the Recovery Plan (U.S. Fish and Wildlife Service 1994) for this species indicates that "more information is needed on the distribution and abundance" of the shrew outside of the Refuge. Any information on shrew distribution or abundance obtained from the action area would enhance the recovery of this species. The Service would be pleased to work with the Corps to design such a study.

In order for the Service to be kept informed of actions minimizing or avoiding adverse effects or benefitting listed species or their habitats, the Service requests notification of the implementation of any of these conservation recommendations by the Corps.

#### V. REINITIATION - CLOSING STATEMENT

This concludes formal consultation on the action outlined in the Corps' request. As provided in 50 CFR 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

Unless information in this biological opinion is protected by national security or contains confidential business information, the Service recommends that you forward a copy of to the Virginia Department of Game and Inland Fisheries at the following address:

Nongame and Endangered Species

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Virginia Department of Game and Inland Fisheries  
P.O. Box 11104  
Richmond, VA 23230

If this opinion is not provided by the Corps and does not contain national security or confidential business information, the Service will provide a copy to this State agency ten business days after the date of this opinion.

The Service appreciates this opportunity to work with the Corps in fulfilling our mutual responsibilities under the Endangered Species Act. Please contact Cindy Schulz of this office at (804) 693-6694 if you require additional information.

Sincerely,

Karen L. Mayne  
Supervisor  
Virginia Field Office

Enclosures

## LITERATURE CITED

- Churchfield, S. 1990. The natural history of shrews. Cornell University Press; Ithaca, NY.
- French, T.W. 1980. Natural history of the southeastern shrew, Sorex longirostris Bachman. American Midland Naturalist 104:13-31.
- Handley, C.O., Jr. 1979. Mammals of the Dismal Swamp; a historical account. Pages 297-357 in P.W. Kirk, Jr., eds., The Great Dismal Swamp. University Press of Virginia; Charlottesville, VA.
- Rose, R.K. 1983. A study of two rare mammals endemic to the Virginia/North Carolina Dismal Swamp. Unpublished report prepared for U.S. Fish and Wildlife Service; Newton Corner, MA.
- U.S. Fish and Wildlife Service. 1994. Dismal Swamp southeastern shrew (Sorex longirostris fisheri) recovery plan. Technical/agency draft. Hadley, MA. 51pp.
- Webster, D. 1995. Personal Communication. University of North Carolina. Wilmington, NC.

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bcc: ARD-ES, Region 5  
Endangered Species Coordinator, Region 5  
CBFO Reading File  
Endangered Species Biologist, CBFO  
Law Enforcement, Yorktown  
(Attn: Dan Hurt)  
Law Enforcement, Richmond  
(Attn: Senior Resident Agent)

10 business days after the date of this letter, mail copies to:  
VDGIF, Richmond  
(Attn: Endangered Species and Nongame Coordinator)  
DNH, Richmond  
(Attn: Tom Smith)