CODE OF VIRGINIA

Title 28.2

Fisheries and Habitat of The Tidal Waters

Title 28.2 - FISHERIES AND HABITAT OF THE TIDAL WATERS

Subtitle I - GENERAL PROVISIONS RELATING TO MARINE RESOURCES COMMISSION

Chapter 1 - ADMINISTRATION

Article 1 - COMMISSION; COMMISSIONER

§ 28.2-100. Definitions

As used in this title, unless the context requires a different meaning:

"Commission" means the Marine Resources Commission.

"Commissioner" means the Commissioner of Marine Resources.

"Fish" or "marine fish" means those finfish species which spend a major portion of their lives in marine or estuarine waters. Sunfish, crappies, and carp are not considered to be marine fish.

"Fishing", "fisheries" or "to fish" means all operations involved in (i) taking or catching, (ii) using, setting or operating apparatus employed in killing, taking or catching, or (iii) transporting or preparing for market marine fish, shellfish, and marine organisms.

"Habitat" means those state-owned bottomlands, tidal wetlands and coastal primary sand dunes which are subject to regulation under Subtitle III of this title.

"Marine organisms" means those species other than marine finfish or marine shellfish which inhabit marine or estuarine waters. Terrapin and marine mammals are considered to be marine organisms.

"Marine shellfish" or "shellfish" means such species of mollusca as oysters and clams, and such species of crustacea as crabs.

"Officer" means a member of the Virginia Marine Police.

"Territorial sea" means the waters within the belt, three nautical miles wide, that is adjacent to Virginia's coast and seaward of the mean low-water mark.

"Tidewater Virginia" means the following counties: Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York; and the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and Williamsburg.

Code 1950, § 28-1; 1962, c. 406, § 28.1-1; 1968, c. 746; 1972, c. 472; 1992, c. 836; 2002, c. 789.

§ 28.2-101. Jurisdiction of Commission

The jurisdiction of the Commission shall include the Commonwealth's territorial sea and extend to the fall line of all tidal rivers and streams except in the case of state-owned bottomlands where jurisdiction extends throughout the Commonwealth. The Commission shall have jurisdiction over all commercial fishing and all marine fish, marine shellfish, marine organisms, and habitat in such areas. In waters of the Albemarle and Currituck watersheds, the Commission's fisheries management jurisdiction is limited to the recreational and commercial harvest of blue crabs. The Commission's jurisdiction shall also include the power to exercise regulatory authority over all structures and improvements built or proposed by riparian property owners in the Potomac River appurtenant to the shore of the Commonwealth. The Commission shall exercise such regulatory authority in the Potomac River consistent with the provisions of Subtitle III (§ 28.2-1200 et seq.), and all regulations, guidance, and policies adopted thereunder.

Code 1950, § 28-3; 1950, p. 979; 1962, c. 406, § 28.1-3; 1968, c. 746; 1992, c. 836; 2005, c. 191; 2012, c. 595.

§ 28.2-102. Commission membership; chairman; qualifications; terms; meetings

A. The Commission shall consist of a chairman and eight additional members who, to the extent possible, shall be representative of all areas of interest in Virginia's marine resources, including commercial, recreational and environmental interests. At least one member shall, at the time of his appointment, have earned his livelihood for at least five years by working on Virginia waters and shall be licensed and registered as a commercial fisherman as defined in § 28.2-241, and one member shall be a representative of the sport fishing industry or a recreational fisherman who is not employed by the commercial fishing industry. The members, including the chairman, shall be appointed by the Governor and shall serve at his pleasure.

B. The chairman and two members of the Commission shall hold office for terms coincident with the term of the Governor making the appointments, or until their successors have been appointed and qualified. The terms of the remaining six members shall expire July 1, 1997, and these same six members shall be reappointed effective July 1, 1997, as successors. Their terms shall be as follows: two members shall be appointed for two-year terms, two members shall be appointed for three-year terms, and two members shall be appointed for four-year terms or until their successors are appointed and qualified. Thereafter, all appointments shall be for terms of four years or until their successors are appointed and qualified. No person, except the chairman, shall serve more than two consecutive four-year terms. Any vacancy shall be filled by the Governor for the unexpired term.

C. The chairman shall be an experienced administrator with knowledge of seafood and marine affairs. He shall serve as Commissioner of Marine Resources.

D. Five members shall constitute a quorum of the Commission.

E. The Commission shall meet on the call of the chairman or three members at such times as he or they may deem necessary, and at such places as he or they may designate.

Code 1950, §§ 28-11, 28-12, 28-17; 1956, c. 270; 1962, c. 406, §§ 28.1-4, 28.1-5, 28.1-10; 1968, c. 746; 1980, c. 387; 1987, c. 574; 1992, c. 836; 1997, c. 284; 1998, c. 161; 1999, c. 551.

§ 28.2-103. General powers of Commission; promulgation of regulations

The Commission shall exercise all of the powers herein conferred and may promulgate regulations and guidelines necessary to carry out the provisions of this title. Marine fisheries regulations shall be promulgated according to the procedures established in Article 2 (§ 28.2-209 et seq.) of Chapter 2 of this title. Habitat management regulations and guidelines shall be promulgated in accordance with the procedures established in Article 2 (§ 28.2-209 et seq.) of Chapter 2 of this title, unless specifically provided in subdivision A 8 or A 11 of § 2.2-4006 or subsection C of § 2.2-4011.

Code 1950, § 28-16; 1962, c. 406, § 28.1-9; 1972, c. 711, § 62.1-13.4; 1973, c. 148; 1982, c. 300; 1990, c. 811; 1992, c. 836; 1997, c. 845; 2010, c. 65.

§ 28.2-104. Commissioner; general powers and duties

The Commissioner shall:

1. Enforce the marine fishery and habitat laws and regulations;

2. Serve as chief executive officer of the Commission and devote full time to the duties of the office;

3. Appoint all personnel; and

4. Establish and equip a permanent office on the Virginia Peninsula.

For purposes of this section, "Virginia Peninsula" shall include the Cities of Hampton, Newport News, Williamsburg, and Poquoson, and the Counties of James City and York.

Code 1950, §§ 28-11, 28-16, 28-18, 28-19, 28-20; 1952, c. 177; 1962, c. 406, §§ 28.1-4, 28.1-9, 28.1-11, 28.1-12, 28.1-13, 28.1-23; 1968, c. 749; 1973, c. 148; 1983, c. 318; 1984, c. 463; 1992, c. 836; 2009, c. 103.

§ 28.2-104.1. Living shorelines; development of general permit; guidance

A. As used in this section, unless the context requires a different meaning:

"Living shoreline" means a shoreline management practice that provides erosion control and water quality benefits; protects, restores or enhances natural shoreline habitat; and maintains coastal processes through the strategic placement of plants, stone, sand fill, and other structural and organic materials.

B. The Commission, in cooperation with the Department of Conservation and Recreation, the Department of Environmental Quality, and local wetlands boards, and with technical assistance from the Virginia Institute of Marine Science, shall establish and implement a general permit regulation that authorizes and encourages the use of living shorelines as the preferred alternative for

stabilizing tidal shorelines in the Commonwealth. The regulation shall provide for an expedited permit review process for qualifying living shoreline projects requiring authorization under Chapters 12 (§ 28.2-1200 et seq.), 13 (§ 28.2-1300 et seq.), and 14 (§ 28.2-1400 et seq.). In developing the general permit, the Commission shall consult with the U.S. Army Corps of Engineers to ensure the minimization of conflicts with federal law and regulation.

C. The Commission, in cooperation with the Department of Conservation and Recreation and with technical assistance from the Virginia Institute of Marine Science, shall develop integrated guidance for the management of tidal shoreline systems to provide a technical basis for the coordination of permit decisions required by any regulatory entity exercising authority over a shoreline management project. The guidance shall:

1. Communicate to stakeholders and regulatory authorities that it is the policy of the Commonwealth to support living shorelines as the preferred alternative for stabilizing tidal shorelines;

2. Identify preferred shoreline management approaches for the shoreline types found in the Commonwealth;

3. Explain the risks and benefits of protection provided by various shoreline system elements associated with each management option; and

4. Recommend procedures to achieve efficiency and effectiveness by the various regulatory entities exercising authority over a shoreline management project.

2011, c. 885; 2014, cc. 112, 143.

§ 28.2-105. Legal representation for employees in criminal prosecution; compensation
If any Commission employee is prosecuted on any criminal charge arising out of any act committed in the discharge of his official duties, the Commissioner may employ special counsel approved by the Attorney General to defend the employee. The compensation for special counsel shall, subject to the approval of the Attorney General, be paid out of the funds appropriated for the administration of the Commission.

1980, c. 255, § 28.1-12.1; 1992, c. 836 .

Article 2 - SUPPORT ACTIVITIES

§ 28.2-106. Virginia Marine Police; law-enforcement responsibilities; qualifications; oath
A. The law-enforcement division of the Commission shall be designated as the Virginia Marine Police. It shall exercise such powers and duties as the General Assembly may confer upon it by law and as provided in regulations adopted pursuant to law, including but not limited to:

1. Patrolling the tidal waters and shoreline of the Chesapeake Bay, its tidal tributaries, and territorial sea;

2. Enforcing marine fishery and habitat conservation laws and regulations;

3. Enforcing health laws pertaining to the harvesting of seafood from condemned areas;

4. Enforcing or assisting other agencies in enforcing laws pertaining to the removal of obstructions and abandoned vessels from the water, to boating operation and navigation, and to larceny on the water;

5. Providing for water-borne safety;

6. Conducting search and rescue activities; and

7. Protecting from terrorist attack federal and state water-related installations and other water-related locations within the tidal waters of the Commonwealth as may be designated by federal or state officials as important to national security.

B. Officers of the Virginia Marine Police shall have the same powers as (i) sheriffs and other law-enforcement officers to enforce all of the criminal laws of the Commonwealth, and (ii) regular conservation police officers appointed pursuant to Chapter 2 (§ 29.1-200 et seq.) of Title 29.1.

C. A person shall be (i) at least twenty-one years old and (ii) a high school graduate or equivalent to qualify for appointment as an officer.

D. Each officer shall qualify before the clerk of the circuit court of the county or city in which he resides, or in which his district may be, by taking the oaths prescribed by law.

Code 1950, § 28-36; 1962, c. 406, §§ 28.1-41, 28.1-42; 1964, c. 115; 1972, c. 824; 1973, c. 19; 1990, c. 521, § 28.1-45.1; 1991, c. 338, § 28.1-45.2; 1992, c. 836; 2001, c. 232; 2002, c. 789.

§ 28.2-106.1. Patrol and enforcement of federal safety zones and restricted areas

Pursuant to federal authorization or upon request from a federal agency, the Virginia Marine Police, conservation police officers of the Department of Game and Inland Fisheries, and the marine patrol divisions of police departments located in Tidewater Virginia may patrol and enforce all federal security zones, federal safety zones, and federal restricted areas located within the tidal waters of the Commonwealth.

2002, c. 789; 2005, c. 516; 2007, c. 554; 2010, cc. 153, 500.

§ 28.2-106.2. Establishment, patrol, and enforcement of state water safety zones and restricted areas; penalty

A. The Commission is authorized, following consultation with the U.S. Coast Guard and the U.S. Army Corps of Engineers, to establish, by regulation, state water safety zones and restricted areas within the tidal waters of the Commonwealth wherein public access shall be restricted or prohibited in the interest of public safety. Such zones or areas shall be consistent with federal law and made effective immediately upon establishment by the Commission. When, in the judgment of the Commissioner, time is of the essence and circumstances require action before a meeting of the Commission may be convened, the Commissioner is authorized, following consultation with the U.S. Coast Guard and the U.S. Army Corps of Engineers, to establish state water safety zones or restricted areas, subject to ratification by the Commission at its next regularly scheduled meeting. The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) and §§ 28.2-209 through

28.2-215 shall not apply to regulations promulgated under this section. The Commission shall publicize the establishment and location of state water safety zones and restricted areas.

B. The Virginia Marine Police shall patrol and enforce all state water safety zones and restricted areas.

C. In times of officially declared national or state emergency, the Governor may adjust the boundaries of state water safety zones or restricted areas by executive order. Upon termination of emergency status, the boundaries shall return to those set forth in regulations.

D. A violation of any regulation promulgated under this section is a Class 1 misdemeanor.

2003, c. 389.

§ 28.2-107. Commission to implement radio system

The Commission shall take steps to implement an effective marine police radio dispatch system. In establishing and operating such a system on a permanent basis, the Commissioner may negotiate appropriate leases or other necessary agreements for base radio stations.

1972, c. 779, § 28.1-46.1; 1979, c. 670; 1992, c. 836; 2002, c. 789.

§ 28.2-108. Marine Patrols Fund continued

A. The Marine Patrols Fund is continued and hereinafter referred to as the Fund, which shall consist of moneys appropriated to it by the General Assembly. The Comptroller shall annually distribute moneys from the Fund for the following purposes:

1. To cover the Commission's costs for its operation of a marine police dispatch service.

2. To reimburse each county or city in Tidewater Virginia or any county abutting Smith Mountain Lake for its operation of a marine patrol or for providing marine patrol services in waters under the jurisdiction of the Commonwealth. The amount to be paid to each county or city shall be as specifically provided for in the General Appropriations Act. The Comptroller, upon certification by the Commissioner, shall make such payments no later than February 1. The total amount provided to any county or city shall not exceed twenty dollars per motorboat registered in the locality on January 1 of that year, as determined by the records of the Board of Game and Inland Fisheries.

B. If total distributions allowable under subsection A of this section exceed the amount of revenues appropriated to the Fund, each qualifying county or city shall receive a prorated share.

C. The Commissioner may obtain from any county or city seeking funds under this section any information he needs to determine the amount of funds to which such county or city may be entitled.

D. For the purposes of this section, the terms "marine patrol" and "marine patrol services" mean water-borne law-enforcement, safety, and rescue activities.

1979, c. 670, § 28.1-46.4; 1982, c. 127; 1986, c. 153; 1990, c. 168; 1992, c. 836; 2002, c. 789.

Article 3 - BALLAST WATER DISCHARGE

§ 28.2-109. Definitions

As used in this article, unless the context requires a different meaning:

"Ballast water" means any water or matter taken on board a vessel to control or maintain trim, draft, stability or stresses of the vessel, without regard to the manner in which it is carried.

"Commercial vessel" means a self-propelled ship in commerce of 300 gross tons or more. The term "commercial vessel" does not include a vessel of the United States Department of Defense or United States Coast Guard subject to the requirements of § 1103 of the National Invasive Species Act of 1996, or any vessel of the Armed Forces, as defined in 33 U.S.C. § 1322 (a)(14), that is subject to the uniform national discharge standards for vessels of the Armed Forces under 33 U.S.C. § 1322 (n).

"Federal guidelines" means the provisions of 33 C.F.R. Part 151, Subpart D, "Ballast Water Management for Control of Nonindigenous Species in Waters of the United States."

"Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a vessel.

2001, c. 312.

§ 28.2-110. Filing requirements; penalty

A. The operator, or a ship agent acting on behalf of the operator, of a commercial vessel that enters into Virginia waters shall file a Ballast Water Control Report form with the Virginia Maritime Association as the designated agent of the Commission (i) within seventy-two hours of the completion of the discharge of ballast water if the commercial vessel discharges ballast water into Virginia waters, or (ii) prior to the commercial vessel's departure from Virginia waters if the commercial vessel does not discharge ballast water into Virginia waters. The operator, or ship agent of an operator, shall not be required to file a Ballast Water Control Report form if the commercial vessel's previous port-of-call is located within the United States Exclusive Economic Zone and a ballast water control report was previously filed upon entering the first port-of-call within the United States Exclusive Economic Zone. A Ballast Water Control Report form shall be deemed to have been filed when it is hand delivered to the Virginia Maritime Association, sent by electronic mail or facsimile transmission and received by the Virginia Maritime Association, or sent to the Virginia Maritime Association by registered or certified mail, return receipt requested. The services of the Virginia Maritime Association shall be provided at no cost to the Commission. The fees assessed by the Virginia Maritime Association shall only be that amount necessary to cover the expenses for the reporting services provided to vessel operators and any associated recordkeeping related to the ballast water reporting requirements of this article. If in the judgment of the Commission or the Virginia Maritime Association, the Virginia Maritime Association is unable to satisfactorily perform its responsibilities, the Commission may (i) select another agent, provided

proper notice of the change in the designated agent has been given to operators, or (ii) assume responsibility for carrying out the provisions of this section.

B. For commercial vessels whose point of origin is located outside the United States Exclusive Economic Zone and whose first port of call within the United States Exclusive Economic Zone is within Virginia waters, the filing of a copy of the completed form submitted by the operator to the National Ballast Water Information Clearinghouse of the Smithsonian Environmental Research Center with the Virginia Maritime Association shall be deemed compliance with the reporting requirements of this section.

C. Any operator of a commercial vessel who knowingly fails to file a Ballast Water Control Report form with the Virginia Maritime Association within the applicable time period set forth in subsection A, or who knowingly makes any false statement in a Ballast Water Control Report form submitted to the Virginia Maritime Association, shall be guilty of a Class 1 misdemeanor.

2001, c. 312; 2002, c. 40; 2010, c. 815.

§ 28.2-111. Adoption of guidelines and forms

A. The Commission shall adopt the federal guidelines as the guidelines governing voluntary ballast water management practices to be followed by the operators of commercial vessels. The guidelines adopted by the Commission shall not require a commercial vessel to be operated in a manner that may threaten the safety of the commercial vessel, its crew or its passengers.

B. The Commission shall adopt Ballast Water Control Report forms, consistent with the form adopted by the United States Coast Guard and set forth in 33 C.F.R. Part 151, Subpart D, Appendix, to monitor compliance with the guidelines adopted pursuant to this section. The Commission shall adopt procedures to distribute the Ballast Water Control Report form to the operator of a commercial vessel, or to a ship agent for the operator, at the time the commercial vessel enters state waters or as soon thereafter as practicable.

C. The Commission shall submit copies of the forms received from operators of commercial vessels and ship agents acting on behalf of operators of commercial vessels with the National Ballast Water Information Clearinghouse of the Smithsonian Environmental Research Center on a quarterly basis. The Virginia Maritime Association shall submit such forms to the Commission monthly.

2001, c. 312; 2002, c. 40; 2010, c. 815.

Subtitle II - TIDAL FISHERIES

Chapter 2 - GENERAL PROVISIONS

Article 1 - POWERS AND DUTIES

§ 28.2-200. Definitions

As used in this subtitle, unless the context requires a different meaning:

"Cultured hard-shell clams" means hard-shell clams (Mercenaria mercenaria) that have been spawned in a hatchery or controlled setting for the purpose of producing seed clams (juveniles), and planted on leased grounds, floating structures, or other privately controlled growing areas, and covered with netting or otherwise protected from predators until harvested.

"Haul seine" means a net made of mesh webbing which may include a pocket and a wing net, set vertically in water and pulled by hand or power to capture and confine fish by encirclement.

"James River seed area" means that area in the James River and its tributaries above a line drawn from Cooper's Creek in Isle of Wight County on the south side of the James River to a line in a northeasterly direction across the James River to the Newport News municipal water tank located on Warwick Boulevard between 59th Street and 60th Street in the City of Newport News.

"Mouth of the Rappahannock River" means the area beginning at Stingray Point, Middlesex County, at the United States Army Corps of Engineers survey station "Bird," an aluminum disk set in the top of a concrete monument, being located at coordinates 453,785.17 North, 2,638,116.66 East, 1927 North American Datum -- Virginia South Zone; thence 12 degrees 52' 35" (grid azimuth) 20,846.73 feet to a point on the Eastern side of Windmill Point, Lancaster County, designated as Virginia Marine Resources Commission survey station "Windmill," a one and one-half inch iron pipe driven flush with the ground, being located at coordinates 474,107.68 North, 2,642,762.29 East, 1927 North American Datum -- Virginia South Zone.

"Pound net" means any net having a funnel mouth, round mouth or square mouth with the head exposed above the water.

"Resident" means any person who maintains his principal place of abode in Virginia with the intent to make Virginia his domicile.

"Shoals" means subaqueous elevations covered by water less than four feet deep at mean low water.

Code 1950, §§ 28-1, 28-46, 28-93, 28-93.1, 28-93.2, 28-112, 28-201.4; 1954, c. 38; 1958, cc. 182, 476; 1960, c. 517; 1962, c. 406, §§ 28.1-1, 28.1-51, 28.1-98, 28.1-148; 1966, c. 684; 1968, cc. 746, 747; 1972, c. 472; 1978, c. 208; 1980, c. 325; 1981, c. 52; 1986, c. 254; 1992, c. 836; 1994, c. 124; 2003, c. 604.

§ 28.2-201. Authority of Commission to make regulations, establish licenses, and prepare fishery management plans; accept federal grants; enforcement; penalty for violation of regulation

The Commission may:

1. Promulgate regulations, including those for taking seafood, necessary to promote the general welfare of the seafood industry and to conserve and promote the seafood and marine resources of the Commonwealth. The Commission may also promulgate regulations necessary for the conservation and reasonable use of surf clams.

2. Establish new licenses and fees commensurate with other licenses in an amount not to exceed $100 for any device used for taking or catching seafood in the tidal waters of the Commonwealth when the device (i) is not otherwise licensed in this title and (ii) is used for commercial purposes. The Commission may specify, when issuing such licenses, any restrictions or control over the devices or the persons operating the device.

3. Establish fees for permits required for delayed or limited entry fisheries, shellfish relaying, scientific collections, and for the administrative transfer of these permits among fisherman, where applicable.

4. Beginning July 1, 2004, and not more frequently than every three years thereafter, increase fees for tidal fisheries licenses and permits that are authorized under this title or by regulation promulgated pursuant to Article 2 (§ 28.2-209 et seq.) of this chapter. Any fee increase for such licenses and permits shall be capped at $5 or a percentage equal to the increase in the Consumer Price Index calculated from the time the fee was last set or adjusted, whichever is greater. Beginning July 1, 2004, any amounts generated from the increases in commercial fishing licenses and permits shall be paid into the Marine Fishing Improvement Fund for the purposes authorized by § 28.2-208, and any amounts generated from the increases in recreational fishing licenses shall be paid into the Virginia Saltwater Recreational Fishing Development Fund for the purposes authorized by § 28.2-302.3. The Commission may charge nonresidents a higher fee than residents for purchase of any of the fishing licenses issued pursuant to §§ 28.2-302.2, 28.2-302.2:1, 28.2-302.6, 28.2-302.7, 28.2-302.8, 28.2-302.10, and 28.2-302.10:1. The fee charged to a nonresident shall be no greater than twice the Virginia resident fee. The Commission may prohibit the sale of the private boat license established by § 28.2-302.7 to a nonresident whose boat is not registered in Virginia.

5. The Commission shall ensure that increases in licenses and fees are equitably distributed among resource user groups.

6. Prepare fishery management plans containing evaluations of regulatory management options, based upon scientific, economic, biological, and sociological information, and use them in the development of regulations. The Commissioner may appoint a fisheries advisory committee and its chairman, consisting of representatives of the various fishery user groups, to assist in the preparation and implementation of the fishery management plans. The Commission may expend funds to compensate the members of the committee pursuant to § 2.2-2825.

7. Provide for enforcement of any regulation governing surf clams by any law-enforcement officer of any agency of the Commonwealth or its political subdivisions or by any law-enforcement officer of any agency of the federal government. Enforcement agreements with other agencies or political subdivisions shall be stated in the regulation.

8. The Commonwealth hereby assents to the provisions of the Federal Aid in Sport Fish Restoration Act of August 9, 1950 (16 U.S.C. §§ 777-777k), as amended. The Commission is

authorized to perform all such acts as may be necessary for the establishment and implementation of cooperative fish restoration and management projects as defined by these federal statutes and the implementing regulations promulgated thereunder.

Code 1950, § 28-43; 1960, c. 517; 1962, c. 406, §§ 28.1-23, 28.1-48; 1966, c. 684; 1968, cc. 748, 749; 1972, c. 833; 1973, cc. 21, 411, § 28.1-120.1; 1976, c. 392; 1979, c. 274; 1981, c. 61; 1983, cc. 307, 318; 1984, c. 463; 1990, c. 445; 1992, c. 836; 1995, c. 136; 2004, c. 860; 2006, c. 5; 2009, c. 371.

§ 28.2-201.1. Commission to administer grants to individuals transferring oysters to a state-managed sanctuary; fund

For purposes of this section:

"Fund" means the Oyster Growing Activities Fund.

"Individual" means the same as that term is defined in § 58.1-302.

A. Beginning January 1, 2002, and ending 12:00 p.m. on December 31, 2011, any individual who (i) grows oysters during the calendar year pursuant to a valid Virginia Marine Resources Commission General Permit for Noncommercial Riparian Shellfish Growing Activities issued pursuant to regulations promulgated by the Commission according to the procedures established in Article 2 (§ 28.2-209 et seq.) of Chapter 2 of this title and (ii) is issued a written receipt from the Commission evidencing the transfer during such calendar year of at least five hundred oysters to a state-managed sanctuary reef, or to a designated organization or person authorized to take possession of such oysters for the purpose of depositing them on a state-managed sanctuary reef, shall be eligible for a grant from the Commonwealth.

B. The grant paid for such oysters transferred during the calendar year shall be equal to the lesser of $300 or the amount paid by the individual in such calendar year to grow such oysters, including but not limited to the amount paid for equipment, materials and training.

C. The Commission shall establish a process to issue a written receipt to any individual who grows and transfers oysters in accordance with the conditions of subsection A. Such receipt shall include the date and the number of such oysters transferred.

D. An individual eligible for a grant under this section shall file an application for such grant with the Commissioner in person or by mail no later than March 31 of the calendar year following the calendar year in which the oysters were transferred to a state-managed sanctuary reef or to a designated organization or person authorized to take possession of such oysters for the purpose of depositing them on a state-managed sanctuary reef (or such later date determined by the Commissioner in his sole discretion). Such application shall include sales receipts and such other evidence required by the Commissioner for purposes of determining the amount paid by the individual to grow such oysters in the previous calendar year. Failure to meet the filing deadline shall render the individual ineligible to receive a grant for such calendar year. For filings by mail, the postmark

cancellation shall govern the date of the filing determination. The Commissioner shall award grants only to those individuals who have been issued the written receipt described in subsection C.

E. Within ninety days after the filing deadline in subsection D, the Commissioner shall certify to (i) the Comptroller and (ii) each applicant the amount of the grant to which such applicant is entitled under the provisions of this section. Payment of such grant shall be made by check issued by the State Treasurer on warrant of the Comptroller within sixty days of such certification.

F. Grants shall be awarded in the order in which grant applications are filed with the Commissioner. The Commissioner may not award any grant unless there are sufficient funds in the Fund from which such grant shall be paid. Any individual growing and transferring oysters as required under this section, but not receiving a grant for such transfer because of insufficient funds in the Fund, shall have no priority or right to any future moneys that may be appropriated or deposited into the Fund based on such prior transfer of oysters.

G. There is hereby established the Oyster Growing Activities Fund to be administered by the Commission from which grants shall be paid to individuals for growing and transferring oysters to a state-managed sanctuary reef, or to a designated organization or person authorized to take possession of such oysters for the purpose of depositing them on a state-managed sanctuary reef, as provided in this section. The Fund shall consist of such funds as may be appropriated by the General Assembly from time to time. The Fund shall be established on the books of the Comptroller, and any funds, including interest, remaining in the Fund at the end of a fiscal year or a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund.

2001, c. 819.

§ 28.2-202. Commissioner; fishery powers

The Commissioner may:

1. Investigate all matters affecting the seafood industry; and

2. Provide for the development of programs designed to enhance and improve commercial and sport fisheries in Virginia's tidal waters.

Code 1950, §§ 28-16, 28-23; 1962, c. 406, §§ 28.1-9, 28.1-16; 1973, c. 148; 1992, c. 836 .

§ 28.2-203. Commission to prepare fishery management plans; standards

The Commission shall prepare and implement fishery management plans so as to preserve the Commonwealth's exclusive right to manage the fisheries within its territorial jurisdiction.

Any fishery management plan prepared, and any regulation promulgated to implement the plan, shall be consistent with the following standards for fishery conservation and management:

1. Conservation and management measures shall prevent overfishing while achieving the optimum yield from each fishery. The "optimum yield" of a fishery means the amount of fish or shellfish

which will provide the greatest overall benefit to the Commonwealth, with particular reference to commercial fishing for food production and to recreational fishing;

2. Conservation and management measures shall be based upon the best scientific, economic, biological and sociological information available;

3. To the extent practicable, an individual stock of fish shall be managed as a unit throughout the territorial waters of the Commonwealth, and interrelated stocks of fish shall be managed as a unit or in close coordination;

4. Conservation and management measures shall not discriminate among user groups. If it becomes necessary to allocate or assign fishing privileges among various user groups, such allocation shall be (i) fair and equitable to all fishermen; (ii) reasonably calculated to promote conservation; and (iii) carried out in such manner that no person acquires an excessive share of such privileges;

5. Conservation and management shall, where practicable, promote efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose;

6. Conservation and management measures shall take into account variations among, and contingencies in, fisheries, fishery resources, and catches;

7. Conservation and management measures shall, where practicable, minimize regulatory burdens which inhibit innovation, expansion, and normal business operations.

1984, c. 463, § 28.1-23.1; 1992, c. 836 .

§ 28.2-203.1. Blue crab fishery management plan

A. The Commission shall prepare, in consultation with the Virginia Institute of Marine Science, other educational institutions and representatives of industry and interested parties, and then implement a blue crab fishery management plan. The plan shall build upon previously developed plans, including consideration of plans adopted by the multi-state Chesapeake Bay Program, and shall be consistent with the standards for fishery conservation and management set out in § 28.2-203. The plan shall be designed to reverse any fishing practices, environmental stress and habitat deterioration negatively impacting the short and long term viability and sustainability of the crab stock in Virginia waters. The Commission shall consider the economic impact to Virginia of proposed legislative and regulatory changes. The protection of spawning stock, nursery areas and habitat shall be of prime consideration in the plan. At a minimum the plan shall include, but not be limited to:

1. Measures to protect and enhance crab habitat and nursery areas.

2. Suggested measures to assure water quality conditions necessary for blue crab survival and reproduction, including identification of areas where water quality is such that onshore mechanisms for water quality protection are needed to protect and restore crab populations and habitat areas.

3. A review of current and proposed regulations and restrictions relating to: (i) winter dredging; (ii) commercial licensing; (iii) spawning stock; (iv) nursing sanctuaries; (v) submerged aquatic vegetation; (vi) peeler and soft shell crabs; (vii) size limits; (viii) the use of cull rings and the use of crab pots; and (ix) time of day restrictions and closed seasons.

4. Recommended legislative changes if necessary to implement the plan.

B. The Commission shall, on or before December 1 of each year, report to the Governor and the General Assembly on the progress and implementation of the blue crab fisheries management plan.

1995, c. 356.

§ 28.2-204. Authority to collect fisheries statistics

A. The Commission may collect from any source any fisheries data and information necessary to develop fishery management plans and to evaluate management options. This information shall include, but not be limited to:

1. Statistics for catch and fishing efforts by species from commercial and recreational fishermen;

2. Statistics from fish processors and dealers;

3. Types of gear and equipment used;

4. Areas in which fishing has been conducted;

5. Landing places; and

6. The estimated capacity of fish processing facilities and the actual amount of fish processed at these facilities.

B. The Commission may enter into cooperative agreements with any other entity for the collection of statistics.

C. The information collected or reported shall not be disclosed in any manner which would permit identification of any person, firm, corporation or vessel, except when required by court order. The Commission may prescribe the form and manner in which this information is reported.

1986, c. 273, § 28.1-23.2; 1992, c. 836 .

§ 28.2-204.1. Limited sale of gear licenses and permits; regulations

A. The Commission may limit the number of gear licenses or permits to fish, except those licenses issued pursuant to subdivisions 1 and 2 of § 28.2-402, issued for use in a specific fishery. The Commission may, despite any such limits, issue such gear licenses or permits to fish to any person who has resided for at least five years on an island in the Commonwealth that is at least three miles from the mainland.

B. The Commission is authorized to promulgate regulations to carry out the provisions of this section. In determining whether to limit the sale of gear licenses or permits to fish, and determining

who receives licenses, the Commission shall consider all factors relevant to the Commonwealth's fishery management policy, including but not limited to:

1. Economic and social consequences;

2. Food production;

3. Dependence on the fishery by licensees;

4. Efficiency of gear used in the fishery;

5. Impact on species and fisheries; and

6. Abundance of the resource.

1992, cc. 492, 504; 1998, c. 114; 2013, cc. 59, 760.

§ 28.2-205. Scientific collection permits; penalty

A. Except as provided for in § 28.2-1101, it is unlawful for any person to remove from the waters of the Commonwealth under the jurisdiction of the Commission any marine fish, marine shellfish, or marine organisms for technical research, scientific, educational or museum purposes without having first obtained from the Commissioner a collection permit.

A violation of this subsection is a Class 3 misdemeanor.

B. Application for a permit shall be made in writing to the Commissioner. There shall be no charge for a permit, and the permit shall not be transferable. The issuance of the permit shall be governed by applicable Commission regulations and shall be subject to any reasonable terms and conditions imposed by the Commissioner. The Commissioner may, with the approval of the Commission, require an applicant for such permit to submit to the Commissioner any data or results acquired through the use of the permit.

C. Any person who has been issued a scientific collection permit shall be exempt from any licensing provision of this subtitle relating to the taking or catching of fish, shellfish, or marine organisms.

1977, c. 33, § 28.1-3.1; 1992, c. 836 .

§ 28.2-206. Virginia Saltwater Sport Fishing Tournament

The Commission shall promote and develop the Commonwealth's saltwater angling resources for their recreational and economic benefits. These efforts shall include, but not be limited to, a subprogram, the Virginia Saltwater Sport Fishing Tournament, which shall:

1. Publicize and document the quantity, quality, and variety of the Commonwealth's saltwater angling resources; and

2. Establish a system for securing and maintaining records of the largest of each marine game fish commonly taken in the Commonwealth's marine waters by anglers. When possible, fish caught or taken in the tournament shall be released alive.

1990, c. 364, § 28.1-22.1; 1992, c. 836 .

§ 28.2-207. Tournament Advisory Committee continued

A. The Virginia Saltwater Sport Fishing Tournament Advisory Committee is continued and shall hereinafter be known as the Committee. The Committee shall assist the Director of the Virginia Saltwater Sport Fishing Tournament, hereinafter referred to as the Director, with the development and operation of tournament programs.

B. The Committee shall consist of twelve members appointed by the Commissioner with the approval of the Secretary of Natural Resources. Committee members shall be selected from a list of nominees supplied by the Director.

C. The term of office of each member shall be for four years. Initially, four members shall be appointed for two years, four members appointed for three years, and four members appointed for four years. Appointments to fill vacancies shall be made to fill the unexpired term.

D. Members shall receive no compensation for their services but shall receive reimbursement for actual expenses. The Committee shall meet at the call of the Director.

1990, c. 364, § 28.1-22.2; 1992, c. 836 .

§ 28.2-208. Marine Fishing Improvement Fund continued

There is hereby continued a special, nonreverting fund in the state treasury to be known as the Marine Fishing Improvement Fund, hereinafter referred to as the Fund. The Fund shall consist of (i) that portion of the nonresident harvester's license fees which have not been allocated to the Virginia Marine Products Fund as provided for in § 28.2-227, (ii) fees collected from the registration of commercial fishermen under § 28.2-241, and (iii) fees collected from the sale of seafood landing licenses under § 28.2-228.1. The Fund shall be administered by the Commission and used solely for (i) managing and improving marine fisheries, (ii) seafood product promotion and development services, (iii) mandatory reporting and stock assessment, (iv) education of commercial fishermen, (v) conservation and management strategies identified by the General Assembly and the Commission, (vi) public information pamphlets and summaries of rules issued with gear licenses, and (vii) retaining commercial fishermen to engage in replenishment, research, and stock assessment activities.

1991, c. 411, § 28.1-47.2; 1992, c. 836; 1993, c. 10; 1994, c. 541; 1996, c. 214.

§ 28.2-208.1. Commercial Fishing Advisory Board established

A. There is hereby established the Commercial Fishing Advisory Board, which shall hereinafter be known as the Board. The Board shall advise the Commission on the expenditure of those moneys received.

B. The Board shall consist of nine members appointed by the Commissioner from a list of nominees submitted by organizations representing commercial fishing interests. The membership shall be representative of the geographic area covered by the commercial fishing license.

C. The term of each member shall be for three years, provided that initial appointments shall be three members appointed for three years, three members appointed for two years and three members appointed for one year. Appointments to fill vacancies shall be made to fill the unexpired terms.

D. Members shall receive no compensation for their services but shall receive reimbursement for actual expenses. The Board shall meet at the call of the Commissioner or at least four times yearly.

1993, c. 10 .

Article 2 - FISHERY REGULATIONS

§ 28.2-209. Publication of proposed regulations

No regulation of general application shall be promulgated until the express terms or a summary including a statement of purpose and substance of the proposed regulation has been published by and at the expense of the agency at least once in daily papers published and having general circulation in Richmond, Norfolk, and Newport News. If the regulation has only local application, a similar notice shall be published in daily or weekly papers, whichever have greater circulation in the locality in which the regulation applies. A copy of every regulation shall be filed in the office of the Commission and open to public inspection. Such publication and filing shall be not less than fifteen days prior to the day on which the public hearing is scheduled. The published notice shall state the time, place, and nature of the hearing.

1962, c. 406, § 28.1-24; 1984, c. 187; 1988, c. 364; 1992, c. 836; 2001, c. 599.

§ 28.2-210. Adoption of emergency regulations

If, in an emergency, the adoption of a regulation is necessary for the immediate preservation of the public peace, health, safety, and welfare, or the protection of the seafood industry, natural resources or marine organisms, the Commission may promulgate the necessary regulation. The regulation shall be published and filed as prescribed in § 28.2-209. No regulation adopted as an emergency regulation shall remain in effect longer than thirty days unless a public hearing is held as required in § 28.2-211 after being advertised as prescribed in § 28.2-209.

1962, c. 406, § 28.1-25; 1992, c. 836 .

§ 28.2-211. Hearing on proposed regulations

A public hearing shall be held by the agency at the time and place designated in the notice prescribed in § 28.2-209. An opportunity shall be afforded all interested persons to be heard and to submit objections, amendments, evidence and arguments.

1962, c. 406, § 28.1-26; 1992, c. 836 .

§ 28.2-212. Adoption of regulations

A regulation may be adopted in the form in which it was filed or as amended at the public hearing, provided the amendments do not alter the primary purpose of the regulation.

1962, c. 406, § 28.1-26; 1992, c. 836 .

§ 28.2-213. Distribution of new regulations

A copy of any regulation of general application adopted by the Commission shall be sent to the Registrar of Regulations, the clerks of the circuit courts of all counties and cities in Tidewater Virginia, and to all Commission officers.

1962, c. 406, § 28.1-27; 1984, c. 187; 1992, c. 836 .

§ 28.2-214. Right of petition to Commission

Any interested person may petition the Commission requesting the promulgation, amendment or repeal of any regulation.

1962, c. 406, § 28.1-28; 1992, c. 836 .

§ 28.2-215. Judicial review of validity of regulations

Judicial review of any regulation shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

1962, c. 406; 1986, c. 615, § 28.1-29; 1992, c. 836 .

Article 3 - PROCEEDINGS AND ACTIONS

§ 28.2-216. Hearings before Commission

A. Any person whose rights, duties, or privileges, including matters relating to licenses, shellfish planting grounds, or fishing stands, have been or may be affected by any action or inaction of the Commission or Commissioner without a formal hearing may demand in writing a formal hearing of his complaint. The Commission shall hold a hearing on the complaint as soon as practicable. All known interested parties shall be afforded an opportunity to be heard before the Commission. All persons who have noted their interest with the Commission shall be informed of the hearing by first class mail at least five days prior to the scheduled date of the hearing. The notice shall indicate the time and place of the hearing and the issues involved. All parties shall have the opportunity to present evidence and argument. The proponents for any regulation or matter shall be heard first, then the opponents. The Commissioner, if present, or any member of the Commission, in his absence, shall preside over the hearing. The rules of evidence shall apply insofar as possible.

Depositions may be taken and read as in actions at law.

B. The Commission or Commissioner shall have power to issue subpoenas and subpoenae duces tecum and, at the request of any party, shall issue such subpoena. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the Commission in the manner prescribed in § 2.2-4022.

1962, c. 406, § 28.1-30; 1992, c. 836 .

§ 28.2-217. Procedure of hearing

Every party shall have the right to cross-examine adverse witnesses including employees of the Commission and to submit rebuttal evidence.

The decision of the Commission shall be based only on evidence received at the hearing and matters of which a court of record could take judicial notice.

Any party may, at his own expense, have a stenographic report made of the hearing. A copy of the report shall be made available to the Commission, if it so requests, at cost to the Commission.

1962, c. 406, § 28.1-31; 1992, c. 836 .

§ 28.2-218. Finding, award, etc., of Commission

In all contested matters, the finding, award, action or judgment of the Commission shall be in writing and copies sent to the parties appearing at the hearing.

1962, c. 406, § 28.1-32; 1992, c. 836 .

§ 28.2-219. Judicial review in contested cases

Any person aggrieved by a final decision in a contested case is entitled to judicial review in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

1962, c. 406, § 28.1-33; 1986, c. 615; 1992, c. 836 .

§ 28.2-220. Appeals to Court of Appeals

An appeal of the final decision of the circuit court may be taken to the Court of Appeals.

1962, c. 406, § 28.1-34; 1984, c. 703; 1992, c. 836 .

§ 28.2-221. Proof of posting of notices

The return by any Commission employee as to the posting of any notices required under this subtitle or affecting any regulation shall be conclusive evidence of proper posting.

1962, c. 406, § 28.1-35; 1992, c. 836 .

Article 4 - OFFICERS, AGENTS, AND DISTRICTS

§ 28.2-222. Districts

The Commission shall divide and periodically redistrict the territory over which it has jurisdiction into the smallest number of districts commensurate with the efficient enforcement of the Virginia fish and shellfish laws.

Code 1950, § 28-33; 1962, c. 406, § 28.1-37; 1992, c. 836 .

§ 28.2-223. Appointment of officers

The Commissioner shall assign at least one officer to each district.

Code 1950, § 28-34; 1962, c. 406, § 28.1-39; 1992, c. 836 .

§ 28.2-224. Collection of license fees

The Commissioner may designate an officer assigned to a district or authorized agents in the districts to sell licenses, as circumstances require. Such persons shall be bonded in a sum that will protect the Commission from any loss.

Code 1950, § 28-38; 1952, c. 649; 1962, c. 406, § 28.1-43; 1992, c. 836 .

Article 5 - LICENSING GENERALLY

§ 28.2-225. Fishing license required; penalty

It shall be unlawful to fish in the tidal waters of the Commonwealth or those waters under the joint jurisdiction of the Commonwealth without first obtaining the required license, subject to the exemptions set out in § 28.2-226.

Any person who violates this section is guilty of a Class 1 misdemeanor.

Code 1950, §§ 28-42, 28-43, 28-61, 28-66; 1960, c. 517; 1962, c. 406, §§ 28.1-47, 28.1-48, 28.1-59, 28.1-64; 1966, cc. 684, 695; 1968, c. 748; 1972, c. 833; 1973, c. 21; 1974, c. 313; 1976, c. 392; 1978, cc. 347, 358; 1979, c. 274; 1980, c. 605; 1981, cc. 61, 525; 1982, c. 461; 1983, c. 307; 1988, c. 710; 1990, c. 445; 1992, cc. 493, 503, 836, 895 .

§ 28.2-226. Exemptions from licensing requirements

The following activities are exempt from the licensing requirements of this subtitle:

1. Except as otherwise provided by regulation, taking by dip net, hand line, or two crab pots, as much as one bushel of hard crabs and two dozen peeler crabs in any one day for personal use only.

2. Taking a maximum of one bushel of oysters in any one day for personal use, when taken by hand or with ordinary tongs during the legally prescribed oyster season on public oyster grounds open for harvest or unleased bottom open for harvest.

3. Taking a maximum of 250 clams in any one day for personal use, when taken by hand or with ordinary tongs.

4. Using one tank or float no greater than four feet in width and eight feet in length for shedding crabs for personal use.

Code 1950, §§ 28-80, 28-137, 28-170, 28-177; 1954, c. 368; 1956, c. 293; 1960, c. 517; 1962, c. 406, §§ 28.1-78, 28.1-120, 28.1-165, 28.1-174; 1964, c. 393; 1966, c. 684; 1968, c. 785; 1970, c. 726; 1979, c. 274; 1983, cc. 307, 603; 1985, c. 180; 1988, c. 75; 1990, c. 154; 1991, c. 285; 1992, c. 836; 1993, c. 11; 2001, c. 51; 2013, c. 38; 2016, c. 7.

§ 28.2-226.1. Recreational gear license required

A. Any person desiring to take or catch finfish or shellfish for recreational purposes in the tidal waters of the Commonwealth using commercial gear authorized under § 28.2-226.2, and for which an exemption is not provided in § 28.2-226, or included in § 28.2-302.1, shall first obtain the appropriate commercial gear license for recreational purposes. A license to use such gear for recreational purposes shall be issued to an individual for his exclusive use and shall not be transferable.

B. All gear licenses issued for recreational purposes shall be so marked.

C. Any person who has obtained a commercial gear license for recreational purposes only shall be exempt from the commercial fishing registration requirements of §§ 28.2-241 and 28.2-242.

D. For purposes of this section and §§ 28.2-226.2 and 28.2-232, "recreational purposes" means finfish or shellfish taken for personal use and not sold, traded, bartered or given to another in order to be sold, traded or bartered.

E. Holders of licenses under this section shall report catch and other data as is deemed necessary by the Commission for effective fisheries management.

1993, c. 219; 2005, c. 124; 2015, c. 468.

§ 28.2-226.2. Commission to establish requirements for commercial gear licenses used for recreational purposes

A. The Commission is authorized to establish the type and amount of commercial gear that can be used for taking finfish and shellfish for recreational purposes. The license fees for use of recreational gear shall be the same as fees charged for the particular gear when used commercially.

B. The Commission shall not issue to any licensee a recreational gear license that exceeds the following limitations:

1. One gill net up to 300 feet in length, $7.50;

2. Up to 10 crab pots with turtle excluder devices, $36; up to 10 crab pots without turtle excluder devices, $46;

3. One crab trap or crab pound, $5;

4. One crab scrape, $16; or

5. Two eel pots, $10.

C. All fees collected pursuant to this section shall be deposited in the state treasury and credited to the Virginia Marine Products Fund as established under § 3.2-2705.

D. The Commission may subsequently revise the cost of licenses pursuant to § 28.2-201.

1993, c. 219; 2001, c. 28; 2009, c. 9; 2016, c. 136.

§ 28.2-227. Special nonresident harvester's license; fee and oath; revocation; penalty

A. Any nonresident desiring to take or catch marine fish, crabs or any other seafood, except oysters, clams or other mollusks, from the tidal waters of the Commonwealth for which a license is required shall pay to any officer or agent a fee for a nonresident harvester's license. The fee, to be established by the Commission, shall be no less than $350 or more than $1,150 or as subsequently revised by the Commission pursuant to § 28.2-201. Three hundred fifty dollars of each fee shall be credited to the Virginia Marine Products Fund as provided under § 3.2-2705. The remainder of the fee shall be credited to the Marine Fishing Improvement Fund, as established pursuant to § 28.2-208.

B. The license shall be required of each boat used in Virginia's tidal waters and shall be in addition to any other licenses required for the activity involved.

C. The nonresident shall state under oath his true name and address, the name and number of the boat being licensed, and that he will not violate any of the laws of the Commonwealth governing the taking and catching of seafood.

D. A nonresident harvester's license shall be required prior to the purchase of any other license for the harvesting of seafood. Revocation of this license in accordance with § 28.2-232 shall constitute revocation of any other license held by the nonresident under the provisions of this subtitle. No commercial fishing license or permit shall be sold to a nonresident whose state of residence does not offer for sale the same or substantially similar license or permit to a resident of the Commonwealth.

E. Any Virginia resident who enters into a partnership or other agreement with the intent to defeat the object of this section is guilty of a Class 1 misdemeanor.

1983, c. 299, § 28.1-47.1; 1991, c. 411; 1992, c. 836; 1993, c. 245; 1994, c. 155; 2009, c. 9; 2010, cc. 12, 144.

§ 28.2-228. Licenses for purchase of fish, shellfish, or marine organisms from the catcher; fee

A. Any person purchasing from the catcher clams, crabs, fish, or other seafood, except oysters, caught from the waters of the Commonwealth or the Potomac River, shall pay a license fee of (i) $50 for each place of business and (ii) $25 for each boat or motor vehicle used for buying. The Commission may subsequently revise the cost of licenses pursuant to § 28.2-201.

B. Any person purchasing from the catcher oysters caught from the public grounds of the Commonwealth or the Potomac River shall pay a license fee of (i) $50 for a single place of business with one boat or motor vehicle used for buying oysters and (ii) $100 for a single place of business with multiple boats or motor vehicles used for buying oysters. The Commission may subsequently revise the cost of licenses pursuant to § 28.2-201.

C. No license shall be required of any person purchasing seafood for personal consumption, any place of business which is solely a restaurant, or any person who operates a business which is subject to local license taxes under § 58.1-3703 and who has in his possession no more than one bushel of peeler crabs to be sold as bait.

1970, c. 726, § 28.1-119.1; 1979, c. 274; 1980, c. 218; 1984, c. 316; 1988, c. 27; 1992, c. 836; 2009, c. 9; 2013, c. 38.

§ 28.2-228.1. Seafood landing licenses

A. The Commission may by regulation establish licenses for the landing of seafood in Virginia, the fee for which shall not exceed $150 or as subsequently revised by the Commission pursuant to § 28.2-201. The regulations may limit the number of such licenses that may be issued and may

establish eligibility criteria. Fees collected from the sale of seafood landing licenses shall be deposited to the Marine Fishing Improvement Fund established in § 28.2-208.

B. The Commission may grant exceptions to the license requirement established in subsection A to any person registered as a commercial fisherman under the provisions of § 28.2-241.

C. The following shall be Class 3 misdemeanors: (i) landing seafood without the license that may be required under this section and (ii) failure to produce or have available for inspection the license that may be required under this section when requested by any officer. Failure to produce the license is prima facie evidence that the person is landing seafood without a license.

1996, c. 214; 2009, c. 9.

§ 28.2-229. When licenses terminate; proration and refund not permitted

A. The Commission shall issue all licenses on an annual basis. All licenses shall be valid from January 1 of each year or their later date of purchase and expire on December 31 of the year in which issued.

B. Refunds shall not be made or prorated if the fishing effort is reduced, or seasons are closed (i) in order to promote conservation of the fisheries or (ii) due to natural conditions. Refunds shall not be made for any license that is suspended or revoked. However, if the license is no longer for sale due to fisheries management purposes, refunds shall be made to the license holder on a prorated basis.

Code 1950, §§ 28-10.1, 28-61, 28-71; 1952, c. 653; 1954, c. 179; 1960, c. 517; 1962, c. 406, §§ 28.1-21, 28.1-59, 28.1-70; 1966, c. 695; 1974, cc. 85, 313; 1978, cc. 347, 358; 1979, cc. 18, 274; 1980, c. 605; 1982, c. 461; 1983, c. 299, §§ 28.1-47, 28.1-47.1; 1988, c. 710; 1991, c. 411; 1992, c. 836; 2009, c. 384.

§ 28.2-230. Penalty for false statements or altering a fishing license; penalty

It shall be unlawful for any person to (i) subscribe to a materially false statement in applying to secure a license to fish or (ii) alter or change such license.

A violation of this section shall be a Class 1 misdemeanor.

Code 1950, § 28-66; 1962, c. 406, § 28.1-64; 1981, c. 525; 1992, c. 836 .

§ 28.2-231. Exhibition of license; display to officers; penalty

Any person engaged in fishing shall have the required license available for inspection and shall present such license when requested by an officer. Failure to present the license upon request of any officer is a Class 1 misdemeanor and prima facie evidence that the person is fishing without a license.

Code 1950, §§ 28-137, 28-157; 1960, c. 517; 1962, c. 406, §§ 28.1-120, 28.1-133; 1964, c. 393; 1966, c. 684; 1970, c. 726; 1979, c. 274; 1991, c. 285; 1992, c. 836 .

§ 28.2-232. Revocation of licenses

A. The Commission may revoke the fishing privileges within the Commonwealth's tidal waters and revoke, prohibit the issuance, reissuance, or renewal of any licenses if, after a hearing held after 10 days' notice to the applicant or licensee, it finds that the person has violated any provision of this subtitle.

B. The duration of the revocation and prohibition shall be fixed by the Commission up to a maximum of five years with the withdrawal of all fishing privileges conferred by this title during that period, taking into account (i) evidence of repeated or habitual disregard for conservation, health and safety laws and regulations; (ii) abusive conduct and behavior toward officers; and (iii) the severity of any damage that has occurred, or might have occurred, to the natural resources, the public health, or the seafood industry.

C. The Commission may assess a civil penalty of up to $10,000 against a person if it finds, after a hearing held after 10 days' notice, that the person has engaged in fishing, other than for recreational purposes as defined in § 28.2-226.1, while the person's licenses and fishing privileges have been revoked pursuant to this section or § 28.2-528. In setting the amount of the civil penalty, the Commission shall consider the person's history of violating the conservation, health, and safety laws and regulations of the Commonwealth.

D. If the person fails to pay the civil penalty within 180 days of the assessment of the civil penalty by the Commission, the Commissioner may transmit a true copy of the order assessing such civil penalty to the clerk of the court of any county or city wherein it is ascertained that the person owing the penalty has any estate, and the clerk to whom such copy is so sent shall record it, as a judgment is required by law to be recorded, and shall index the same as well in the name of the Commonwealth as of the person owing the penalty, and thereupon there shall be a lien in favor of the Commonwealth on the property of the person within such county or city in the amount of the civil penalty.

E. Civil penalties collected pursuant to this section shall be deposited into the Virginia Marine Products Fund established in § 3.2-2705.

An appeal from the Commission's decision may be taken to the courts as provided in Article 3 (§ 28.2-216 et seq.) of this chapter.

1962, c. 406, § 28.1-36; 1970, c. 610; 1989, c. 2; 1992, c. 836; 2013, c. 50; 2015, c. 468.

Article 6 - MARKING OF BOATS, NETS AND OTHER DEVICES

§ 28.2-233. License tags or identification generally

The Commission shall provide metal license tags or identification numbers to licensees in a form and manner prescribed by the Commission.

Code 1950, § 28-76; 1962, c. 406, §§ 28.1-73, 28.1-74; 1966, c. 684; 1992, c. 836 .

§ 28.2-234. License tags and identification numbers to be fastened; penalty

A. License tags or identification numbers shall be attached and displayed in the following manner:

1. License tags for fixed fishery devices, including pound nets, fyke nets, crab traps, and staked gill nets, shall be fastened to one of the offshore stakes.

2. License tags for anchored gill nets and drift gill nets shall be fastened to a flagstaff or a buoy that is visible from the surface.

3. License tags for vessels using haul seines, purse nets, trawl nets, crab pots, trotlines, and crab scrapes shall be fastened at a conspicuous place on the starboard side or the mast of the vessel.

4. License tags issued for businesses purchasing seafood shall be affixed in a conspicuous place on the business establishment, boat or motor vehicle.

5. Identification numbers when issued for particular devices shall be applied by the license holder and shall be in place at all times when the gear is deployed.

B. Any such licensee who fails to properly attach or display such a license tag or identification number is guilty of a Class 1 misdemeanor.

Code 1950, §§ 28-43, 28-77, 28-78, 28-175; 1960, c. 517; 1962, c. 406, §§ 28.1-48, 28.1-74, 28.1-76, 28.1-171; 1966, c. 684; 1968, cc. 748, 750, § 28.1-173.2; 1970, c. 726, § 28.1-119.1; 1972, c. 833; 1973, c. 21; 1976, c. 392; 1979, c. 274; 1980, c. 218; 1981, c. 61; 1983, c. 307; 1984, c. 316; 1988, c. 27; 1990, c. 445; 1992, c. 836 .

§ 28.2-235. Duty to apply for new tag in case of loss; penalty

Should the metal tag required by § 28.2-234 be removed or destroyed by accident, by the force of the sea, or in any other casual manner, the licensee shall apply for a new tag within twenty-four hours after the discovery of the destruction or loss of the original tag. Failure to do so is a Class 3 misdemeanor.

Code 1950, § 28-79; 1962, c. 406, § 28.1-77; 1992, c. 836 .

§ 28.2-236. Seizure of unmarked devices

Any fishing device not marked, tagged or identified in the required manner may be seized by an officer and held for any forthcoming legal proceeding.

Code 1950, § 28-77; 1962, c. 406, § 28.1-74; 1964, c. 393; 1966, c. 684; 1992, c. 836 .

§ 28.2-237. Removal of abandoned pole or stake; revocation of licenses for failure to remove stakes

A. Any person fishing a pound net or any other type of fishing device requiring the use of fixed poles or stakes shall remove all such abandoned poles or stakes; however, one pole or stake may be left standing at least four feet above mean high water at old stands as an identification marker.

Abandoned poles or stakes are considered to be poles or stakes which are not used for fishing.

B. The Commission may revoke any fishing licenses issued to such person, as set forth in § 28.2-232, if abandoned poles or stakes are not promptly removed. Failure to remove such poles or

stakes is a Class 1 misdemeanor. The most recent licensee for the fishing device is responsible for removing the poles or stakes.

1962, c. 406, § 28.1-79; 1964, c. 393; 1992, c. 836 .

§ 28.2-238. Concealing name or number of vessel; penalty

Any captain or owner who covers or conceals the name, registration number, or fishing license tag of any boat licensed and engaged in the fisheries under this subtitle is guilty of a Class 1 misdemeanor.

Code 1950, §§ 28-49, 28-214; 1962, c. 406, §§ 28.1-54, 28.1-190; 1992, c. 836 .

§ 28.2-239. Exemptions from article

Nothing in this article applies to boats used purely for recreation, or for taking fish or shellfish by rod and line or with hand lines, for family use only.

Code 1950, § 28-80; 1962, c. 406, § 28.1-78; 1992, c. 836 .

Article 7 - REGISTRATION OF COMMERCIAL FISHERMEN

§ 28.2-240. Repealed

Repealed by Acts 1993, c. 219 .

§ 28.2-241. Registration of commercial fishermen required; exemption; penalty

A. On and after January 1, 1993, holders of gear licenses, except those issued pursuant to § 28.2-402, issued January 1, 1992, through December 31, 1992, shall register as commercial fishermen as provided for in regulation.

B. [Repealed.]

C. On and after January 1, 1993, fishermen not registered as commercial fishermen but who desire to sell their catch shall apply to the Commission for registration as commercial fishermen. The effective date of status as a commercial fisherman shall be two years from the date the application is approved by the Commission. A person whose registration as a commercial fisherman is not effective shall not sell, trade or barter his catch or give his catch to another in order that it may be sold, traded or bartered.

D. For purposes of this section and §§ 28.2-242, 28.2-243 and 28.2-244, "commercial fisherman" means any person who fishes in tidal waters using any gear and who sells, trades or barters his catch or gives his catch to another in order that it may be sold, traded or bartered. The Commission shall provide, by regulation, for exemptions from the definition of "commercial fisherman" those persons who independently sell, trade or barter minnows and who are not part of, hired by, or engaged in a continuing business enterprise as may be defined by the Commission. Such regulation may include, but is not limited to, limits on the quantity of minnows that may be sold, traded or bartered by a person that may be exempted from the definition of commercial fisherman.

E. The cost of registration as a commercial fisherman shall be $150 annually, due no later than the effective date of registration; however, the cost of registration for a person seventy years of age or older shall be seventy-five dollars. All fees collected from the registration of commercial fishermen shall be deposited in the state treasury and credited to the Marine Fishing Improvement Fund as established in § 28.2-208. The Commission may subsequently revise the cost of licenses in this section pursuant to § 28.2-201.

F. Registrations of commercial fishermen shall not be transferable.

G. Whenever a court finds that a defendant has violated any of the provisions of this section, the court shall assess a civil penalty of $500. All civil penalties assessed pursuant to this section shall be paid into the Marine Fishing Improvement Fund as established in § 28.2-208.

H. Only commercial fishermen with valid registrations may purchase licenses pursuant to §§ 28.2-301, 28.2-501 and 28.2-702.

I. Persons who have obtained a recreational gear license pursuant to § 28.2-226.1 or § 28.2-302.1 are exempt from the provisions of this section.

1992, cc. 493, 503; 1993, c. 219; 1994, c. 121; 1996, c. 277; 2009, c. 9.

§ 28.2-242. Report of harvest required

All harvests shall be reported by either commercial fishermen, licensed buyers, or self marketers in the manner and form prescribed by the Commission.

1992, cc. 493, 503; 1993, c. 237 .

§ 28.2-243. Commission to promulgate regulations

The Commission shall promulgate regulations governing the registration of commercial fishermen. The regulations shall include (i) the procedure and manner for application for registration as a commercial fisherman, (ii) the manner and form of mandatory harvest reports by commercial fishermen, and (iii) exceptions to the delay requirements pursuant to subsection C of § 28.2-241 based on scientific, economic, biological, sociological and hardship factors.

1992, cc. 493, 503 .

§ 28.2-244. Purchase of shellfish or finfish; penalty

A person shall not purchase shellfish or finfish from any fisherman who is known by such person to have not registered as a commercial fisherman as required by § 28.2-241. Whenever a court finds that a defendant has violated the provisions of this section, the court shall assess a civil penalty of $500. All civil penalties assessed pursuant to this section shall be paid into the Marine Fishing Improvement Fund as established in § 28.2-208.

1992, cc. 493, 503 .

Article 8 - FISHERY RESOURCE GRANT PROGRAM

§ 28.2-245. Fishery Resource Grant Fund established; purpose; Consortium to award grants

A. (Effective until October 1, 2016) There is hereby established within the state treasury a special permanent, nonreverting fund, to be known as the Fishery Resource Grant Fund, which shall hereafter be known as the "Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of sums appropriated to it by the General Assembly as provided for under § 23-9.9:1 and such other moneys as may be made available from any other source, public or private, including any federal grants solicited or received for the specific purposes of the Fund, and all interest and income from investment of the Fund. Any sums remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for Fishery Resource Grants. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request of the Chairman of the Graduate Marine Science Consortium at the University of Virginia.

A. (Effective October 1, 2016) There is hereby established within the state treasury a special permanent, nonreverting fund, to be known as the Fishery Resource Grant Fund, which shall hereafter be known as the "Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of sums appropriated to it by the General Assembly as provided for under subsection D of § 23.1-208 and such other moneys as may be made available from any other source, public or private, including any federal grants solicited or received for the specific purposes of the Fund, and all interest and income from investment of the Fund. Any sums remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for Fishery Resource Grants. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request of the Chairman of the Graduate Marine Science Consortium at the University of Virginia.

B. The purpose of the Fishery Resource Grant Fund is to protect and enhance the Commonwealth's coastal fishery resources through the awarding of grants in the following areas:

1. New fisheries equipment or gear;

2. Environmental pilot studies on issues including water quality and fisheries habitat;

3. Aquaculture or mariculture of marine-dependent species; and

4. Seafood technology.

C. The Consortium shall advertise the availability of grant funds and shall solicit, receive, and review grant applications. Grants shall be awarded by the Consortium after consideration of the recommendations of the Fishery Resource Grant Advisory Board. The decisions regarding who receives the grant awards shall be the responsibility of the Consortium. In awarding grants for the aquaculture or mariculture of marine dependent species the Consortium shall consider the amount of private investment that has been made for the aquaculture or mariculture of a species, and shall

not award grants for the aquaculture or mariculture of a species in which significant private investment has been made, unless such grant is for new technology.

D. The Consortium may establish a peer review panel to assist in determining the relative merits of each proposal.

E. Any general funds for the Fishery Resource Grant Program shall be appropriated to the Consortium, which shall be reimbursed for the reasonable costs incurred in administering and monitoring the grant program. If funds remain at the end of a grant cycle, the Consortium may carry forward such funds to the next funding cycle.

1999, c. 719.

§ 28.2-246. Fishery Resource Grant Advisory Board established; membership; duties

A. The Fishery Resource Grant Advisory Board shall be composed of seven members to be selected in the following manner: four members shall be appointed by the Graduate Marine Science Consortium from nominations made by commercial watermen's associations, one member shall be appointed by the Graduate Marine Science Consortium from nominations made by the aquaculture association, one member shall be appointed by the Commissioner of the Marine Resources Commission, and one member shall be appointed by the Director of the Virginia Institute of Marine Science.

B. The Advisory Board shall (i) in cooperation with commercial fishermen and the Consortium, establish, by July 1 of each year, the priority areas in which grants shall be awarded and (ii) review each application and make its recommendation to the Consortium.

1999, c. 719.

§ 28.2-247. Graduate Marine Science Consortium to submit report

At the end of each grant cycle, the Graduate Marine Science Consortium shall submit a report to the House Committee on Chesapeake and Its Tributaries; the House Committee on Appropriations; the Senate Committee on Agriculture, Conservation and Natural Resources; the Senate Committee on Finance; the Marine Resources Commission; and the Virginia Department of Agriculture and Consumer Services describing the projects funded and moneys expended.

1999, c. 719.

Chapter 3 - FINFISH

Article 1 - LICENSES

§ 28.2-300. License application to fish with certain nets

Any person desiring to take or catch fish with any device shall apply to the Commissioner for a license. An applicant for a license to fish with a fixed device shall apply in writing to the officer assigned to the district in which the fixed device is proposed to be located. Every applicant shall state on oath his true name and address; the place where the net, seine, fyke, weir, or other device

is to be fished; and that he will not violate the laws of this Commonwealth in relation to the taking and catching of fish.

Code 1950, § 28-42; 1962, c. 406, § 28.1-47; 1983, c. 307; 1992, cc. 836, 895 .

§ 28.2-301. License fee for fishing in tidal waters

Every applicant for a license to catch or take fish shall pay the following license fee or such fee as it may be subsequently revised by the Commission pursuant to § 28.2-201 :

1. On each pound net, $25;

2. On each stake gill net of 1,200 feet in length or under with a fixed location, $15;

3. On all other gill nets up to 600 feet, $10;

4. On all other gill nets over 600 feet and up to 1,200 feet, $15;

5. On each person using a cast net or throw net or similar device, $8;

6. On each fyke net head, weir, or similar device, $8;

7. For up to 100 fish pots or eel pots, $12;

8. For over 100 but not more than 300 fish pots or eel pots, $20;

9. For over 300 fish pots or eel pots, $50;

10. For fish trotlines, $12;

11. On each person using or operating a fish dip net, $6;

12. On each haul seine under 500 yards in length used for catching fish, $29; or

13. On each haul seine from 500 yards up to 1,000 yards in length used for catching fish, $88.

Code 1950, § 28-43; 1960, c. 517; 1962, c. 406, § 28.1-48; 1966, c. 684; 1968, c. 748; 1972, c. 833; 1973, c. 21; 1976, c. 392; 1979, c. 274; 1981, c. 61; 1983, c. 307; 1990, c. 445; 1992, cc. 493, 503, 836; 1993, c. 11; 2009, c. 9.

§ 28.2-302. Commercial fishing pier; license fee; penalty

A. The owner of a commercial fishing pier shall pay an annual license fee of $50 or as subsequently revised by the Commission pursuant to § 28.2-201 for each pier that is over or upon the subaqueous beds of the Commonwealth.

B. Net fishing shall not be permitted within 300 yards of the sides or end of a commercial fishing pier. The Commission may decrease this distance if it considers 300 yards to be an excessive distance because of the size of the body of water where the pier is located. A violation of this subsection is a Class 3 misdemeanor.

C. The construction or erection of a commercial fishing pier on a subaqueous bed of the Commonwealth is subject to the permit requirements of § 28.2-1203.

D. For purposes of this section, a commercial fishing pier means any pier whose primary purpose is to allow fishing by the public for a fee. A public fishing pier operated by a political subdivision shall be considered to be a commercial fishing pier, although no fee is charged.

1976, c. 343, § 28.1-52.2; 1979, c. 274; 1992, c. 836; 2009, c. 9.

Article 1.1 - SALTWATER RECREATIONAL FISHING

§ 28.2-302.1. Recreational license required

Except in areas under the jurisdiction of the Department of Game and Inland Fisheries and as provided in § 28.2-302.5, a person shall not take or catch fish with rod and reel, hand line, by spearing or gigging, with a cast net, with a dip net, or by using up to two eel pots in the tidal waters of the Commonwealth under the jurisdiction of the Commission without first obtaining a saltwater recreational fishing license. The license required by this section and issued pursuant to § 28.2-302.2, 28.2-302.2:1, 28.2-302.6, 28.2-302.7, 28.2-302.8, 28.2-302.9 or 28.2-302.10 shall not be transferable.

1992, c. 895; 1993, c. 241; 2002, c. 215; 2004, c. 486; 2005, c. 124.

§ 28.2-302.1:1. Fisherman Identification Program

The Commission shall establish the Fisherman Identification Program, which shall be consistent with the National Saltwater Angler Registry Program. Those persons who purchase a license under this article shall not be required to register with the Fisherman Identification Program.

2010, c. 484.

§ 28.2-302.2. Recreational license fee; cooperative program

A. The annual fee for the saltwater recreational fishing license shall be seven dollars and fifty cents or as subsequently revised by the Commission pursuant to § 28.2-201. Agents of the Commission shall retain the agent's fee established by the Board of Game and Inland Fisheries pursuant to subsection B of § 29.1-327, except that the agent's fee shall be deducted from the license fee established by the Commission pursuant to subdivision 4 of § 28.2-201, as compensation for issuing each license.

B. All funds collected under this section shall be paid into the state treasury to the credit of the Virginia Saltwater Recreational Fishing Development Fund, as established in § 28.2-302.3.

C. The Commission shall enter into cooperative programs with the Department of Game and Inland Fisheries as are necessary to carry out the provisions of this section.

D. The Commission shall also have the power necessary to conduct and establish cooperative fish projects with the federal government as prescribed by Congress and in compliance with rules and regulations promulgated by the United States Secretary of the Interior.

E. Upon implementation of an automated point-of-sale licensing system, licenses issued under this section shall be valid for one year from their date of purchase.

1992, c. 895; 2001, c. 115; 2007, c. 30; 2009, c. 9.

§ 28.2-302.2:1. Special combined individual sportfishing licenses

A. Residents and nonresidents of the Commonwealth may obtain:

1. A special combined sportfishing license to fish in all inland waters and the tidal waters of the Commonwealth during the open season. For residents, this license shall be in lieu of the state resident freshwater fishing license required by subdivision A 2 of § 29.1-310, and the saltwater recreational license required by § 28.2-302.1. The cost of this license for residents shall be the sum of the costs of the two component resident licenses. For nonresidents, this license shall be in lieu of the state nonresident freshwater fishing license required by subdivision A 3 of § 29.1-310 and the saltwater recreational license required by § 28.2-302.1. The cost of this license for nonresidents shall be the sum of the costs of the two component nonresident licenses.

Agents of the Commission shall retain the agent's fee established by the Board of Game and Inland Fisheries pursuant to subsection B of § 29.1-327, except that the agent's fee shall be deducted from the license fee established by the Commission pursuant to subdivision 4 of § 28.2-201, as compensation for issuing each license. Of the funds collected under this subdivision, (i) the cost of the component saltwater license shall be paid into the state treasury to the credit of the Virginia Saltwater Recreational Fishing Development Fund, as established in § 28.2-302.3, and (ii) the cost of the component freshwater fishing license shall be paid into the state treasury to the credit of the Game Protection Fund, as established in § 29.1-101.

The two component licenses shall be independently priced by their respective agencies. The saltwater recreational license shall be priced by the Commission pursuant to § 28.2-201. The freshwater fishing license shall be priced by the Board of Game and Inland Fisheries pursuant to § 29.1-103.

2. A special combined sportfishing license to fish in all the tidal waters of the Commonwealth during the open season that covers the owner of a recreational boat not carrying anglers for hire, in any registered boat owned and operated by him, and his passengers. For residents, this license shall be in lieu of the state resident fishing license required by subdivision A 2 of § 29.1-310, the saltwater recreational license required by § 28.2-302.1, and the saltwater recreational boat license established by § 28.2-302.7. The cost of this license for residents shall be $125. For nonresidents, this license shall be in lieu of the state nonresident fishing license required by subdivision A 3 of § 29.1-310 and the saltwater recreational license required by § 28.2-302.1. The cost of this license for nonresidents shall be $200.

Agents of the Commission shall retain the agent's fee established by the Board of Game and Inland Fisheries pursuant to subsection B of § 29.1-327, except that the agent's fee shall be deducted from the license fee established by the Commission pursuant to subdivision 4 of § 28.2-201, as compensation for issuing each license. Of the funds collected under this subdivision, (i) $48 per resident license sold and $76 per nonresident license sold shall be paid into the state treasury to

the credit of the Virginia Saltwater Recreational Fishing Development Fund, as established in § 28.2-302.3, and (ii) $77 per resident license sold and $124 per nonresident sold shall be paid into the state treasury to the credit of the Game Protection Fund, as established in § 29.1-101.

B. Residents and nonresidents of the Commonwealth may obtain a special combined sportfishing trip license to fish in all inland waters and tidal waters of the Commonwealth during the open season. This license shall be in lieu of the trip fishing license specified in subsection A of § 29.1-311 and the saltwater recreational license required by § 28.2-302.1. The cost of the license shall be $10.50 for residents and $15.50 for nonresidents. The license shall be valid for five successive days as specified on the face of the license. Agents of the Commission shall retain the agent's fee established pursuant to subsection B of § 29.1-327, except that the agent's fee shall be deducted from the license fee established by the Commission pursuant to subdivision 4 of § 28.2-201, as compensation for issuing each license. Of the funds collected under this subsection, (i) $5 per license sold shall be paid into the state treasury to the credit of the Virginia Saltwater Recreational Fishing Development Fund and (ii) $5 per resident license sold and $10 per nonresident license sold shall be paid into the state treasury to the credit of the Game Protection Fund.

C. The Commission may subsequently revise the cost of licenses in this section pursuant to § 28.2-201.

2004, c. 486; 2007, c. 30; 2009, c. 9; 2011, c. 287; 2012, c. 579.

§ 28.2-302.3. Virginia Saltwater Recreational Fishing Development Fund established

There is hereby established a special, nonreverting fund in the state treasury to be known as the Virginia Saltwater Recreational Fishing Development Fund, hereafter referred to as the Fund. The interest earned on the principal of the Fund also shall not revert to the general fund. The Fund shall be administered by the Commission, to be used solely for the purposes of conserving and enhancing finfish species taken by recreational anglers; enforcing the provisions of §§ 28.2-302, 28.2-302.1, and 28.2-302.6 through 28.2-302.9 and regulations promulgated thereunder; improving recreational fishing opportunities; administrating the Virginia Saltwater Sport Fishing Tournament certificates program; obtaining necessary data and conducting research for fisheries management; and creating or restoring habitat for species taken by recreational fishermen. The Fund shall consist of moneys collected pursuant to §§ 28.2-302, 28.2-302.2, and 28.2-302.6 through 28.2-302.9.

1992, c. 895; 1995, c. 169.

§ 28.2-302.4. Virginia Recreational Fishing Advisory Board established

A. There is hereby established the Virginia Recreational Fishing Advisory Board, which shall hereinafter be known as the Board. The Board shall advise the Commission in the expenditure of moneys received in the Fund.

B. The Board shall consist of nine members selected from a list of nominees by organized groups, clubs, civic organizations or self-nominations and appointed by the Commissioner who are

representative of the interests associated with recreational fishing including representatives from organized recreational clubs and others interested in recreational fishing. The membership shall be representative of the geographic area covered by the license.

C. The term of office of each member shall be for three years, provided that initial appointments shall be three members appointed for three years, three members appointed for two years and three members appointed for one year. Appointments to fill vacancies shall be made to fill the unexpired term.

D. Members shall receive no compensation for their services but shall receive reimbursement for actual expenses. The Board shall meet at the call of the Commissioner or at least four times yearly.

1992, c. 895 .

§ 28.2-302.5. Exemptions to saltwater recreational fishing license

A. The following persons shall be exempt from the requirements of obtaining a saltwater recreational fishing license as set forth in § 28.2-302.1:

1. A person under the age of sixteen or a person who has attained the age of sixty-five.

2. A person fishing from private real property that he owns or rents, the nonpaying guest of such person, or a member of the immediate family of such person.

3. A person fishing from a licensed recreational boat licensed pursuant to § 28.2-302.7.

4. A person fishing from a licensed headboat, charterboat or pier licensed pursuant to § 28.2-302 or § 28.2-302.8.

5. A person fishing with gear licensed by the Commission.

6. The holder of a valid recreational fishing license issued by another state or jurisdiction, upon determination of reciprocity of the license by the Commissioner.

7. Members of the following groups, as determined by the Commissioner:

a. Organized groups of individuals with physical or mental limitations;

b. Organized groups of military veterans residing in veterans' hospitals; and

c. School groups, grades kindergarten through twelve, participating in school-sponsored trips.

8. A permanently and totally disabled person as defined in § 58.1-3217 holding a special lifetime saltwater recreational fishing license issued pursuant to § 28.2-302.10.

9. A person holding a lifetime saltwater recreational fishing license issued pursuant to § 28.2-302.10:1.

10. A person fishing from a federally owned park or reserve with boundaries extending into an adjoining state that does not require a saltwater fishing license.

B. No saltwater recreational fishing licenses shall be required on days that are designated as free fishing days. The Commissioner shall designate no more than three free fishing days in any calendar year. This exemption shall not apply to headboats, charterboats, or rental boats.

1992, c. 895; 1993, c. 241; 1999, c. 107; 2000, cc. 110, 142; 2002, c. 215.

§ 28.2-302.6. Temporary license

A. The Commission shall provide for issuance of a temporary saltwater recreational fishing license, which shall be valid for a stated period of time not to exceed ten consecutive days. The fee for the temporary license shall be five dollars or as subsequently revised by the Commission pursuant to § 28.2-201. Agents shall retain fifty cents as compensation for issuing each license.

B. All funds collected pursuant to this section shall be paid into the state treasury to the credit of the Virginia Saltwater Recreational Fishing Development Fund, as established by § 28.2-302.3.

1992, c. 895; 2009, c. 9.

§ 28.2-302.7. Recreational boat; reporting of catch

A. The owner or operator of a recreational boat used for saltwater recreational fishing shall have the option of purchasing a saltwater recreational fishing license which covers his passengers and himself to meet the licensing requirements set forth in § 28.2-302.1. The cost of the license shall be $30 or as subsequently revised by the Commission pursuant to § 28.2-201 a year for boats; however, notwithstanding subdivision 4 of § 28.2-201, the Commission may institute a one-time fee increase of no more than $10 to purchase the license issued pursuant to this section. If the owner or operator of the boat does not purchase a license which covers all his passengers, individuals shall still purchase a license as required by § 28.2-302.1. Purchasers of licenses pursuant to this section will be issued an individual license, at no additional cost, as required in § 28.2-302.1.

B. Holders of licenses issued pursuant to subsection A shall report catch and other data as are deemed necessary by the Commission for effective fisheries management.

C. All funds collected pursuant to this section shall be paid into the state treasury to the credit of the Virginia Saltwater Recreational Fishing Development Fund, as established by § 28.2-302.3.

1992, c. 895; 1994, c. 559; 1999, c. 106; 2009, c. 9; 2010, c. 484.

§ 28.2-302.7:1. Reissuance of licenses for recreational boats

The Commission shall provide for the reissuance of a saltwater recreational fishing license to a person who holds a valid license for a recreational boat issued pursuant to § 28.2-302.7 and who owns or operates another recreational boat. The cost of reissuing a license shall be five dollars or as subsequently revised by the Commission pursuant to § 28.2-201. A reissued license shall be valid for the balance of the term of the original license.

1994, c. 163; 1999, c. 106; 2007, c. 30; 2009, c. 9.

§ 28.2-302.8. Headboat or charterboat; rental boats

A. The Commission may establish the sale of a fishing guide license. If established, such fishing guide license shall be required for each charterboat and headboat captain. The Commission may limit the sale of such licenses when deemed necessary by the Commission for effective fisheries management. The application for the license shall include a copy of the applicant's current U.S. Coast Guard license permitting him to carry passengers for hire. The fee for the license shall not exceed $100. The Commission may reduce the fee charged for the saltwater recreational fishing license under subsection B by an amount equal to the fee for the fishing guide license.

B. The owner of a headboat or charterboat annually shall purchase a recreational fishing license which covers his passengers and the captain and mate of the vessel to meet the requirements set forth in § 28.2-302.1. The annual cost of the license shall be $150 for uninspected vessels licensed by the United States Coast Guard to carry six fishing passengers or fewer and, for boats United States Coast Guard certified to carry a number of fishing passengers greater than six, $150 plus $4 for each passenger over six for which the boat is designed. A headboat or charterboat owner who has purchased the license required under this subsection shall be issued, at no additional cost, the saltwater recreational fishing license issued pursuant to § 28.2-302.1.

C. The owner of a boat rental service shall purchase a recreational fishing license which covers his customers to meet the requirements set forth in § 28.2-302.1. The annual cost of the license shall be $7.50 per boat with a maximum fee of $500, whichever is less.

D. Charterboat and headboat operators shall report such data as are deemed necessary by the Commission for the effective fisheries management as a condition of issuance of the license.

E. All funds collected pursuant to this section shall be paid into the state treasury to the credit of the Virginia Saltwater Recreational Fishing Development Fund, as established by § 28.2-302.3. The Commission may subsequently revise the cost of licenses in this section pursuant to § 28.2-201.

1992, c. 895; 1999, cc. 681, 1019; 2005, c. 198; 2009, c. 9.

§ 28.2-302.9. Commercial fishing pier

A. The owner of a commercial fishing pier, as defined in § 28.2-302, shall have the option of purchasing a saltwater recreational fishing license, covering his customers, in order to meet the licensing requirements set forth in § 28.2-302.1. The cost of the license shall be $450. If the owner of the pier does not purchase such a license, individuals shall still purchase a license as required by § 28.2-302.1.

B. Owners of commercial piers shall report catch and other data as are deemed necessary by the Commission for effective fisheries management.

C. All funds collected pursuant to this section shall be paid into the state treasury to the credit of the Virginia Saltwater Recreational Fishing Development Fund, as established by § 28.2-302.3.

The Commission may subsequently revise the cost of licenses in this section pursuant to § 28.2-201.

1992, c. 895; 2009, c. 9.

§ 28.2-302.10. Special lifetime saltwater recreational fishing license; permanently and totally disabled persons

A. Any resident who is permanently and totally disabled, as defined in § 58.1-3217, who applies for a special lifetime saltwater recreational fishing license shall receive such a license for a fee of five dollars or as subsequently revised by the Commission pursuant to § 28.2-201. The applicant shall provide proof of permanent and total disability acceptable to the Commissioner.

B. All funds collected pursuant to this section shall be paid into the state treasury to the credit of the Virginia Saltwater Recreational Fishing Development Fund, as established by § 28.2-302.3.

1993, c. 241; 2009, c. 9.

§ 28.2-302.10:1. Lifetime saltwater recreational fishing licenses for residents and non-residents

A. Any resident or nonresident individual may apply for and receive from the Commission a lifetime saltwater recreational fishing license after payment of a fee of $250, except as provided in subsection C. This license shall be valid for the life of the individual and shall not be transferable.

B. All funds collected pursuant to this section shall be paid into the state treasury to the credit of the Virginia Saltwater Recreational Fishing Development Fund, as established by § 28.2-302.3.

C. Any resident 45 years of age or older who applies for the lifetime license authorized by this section shall receive such a license for one of the following fees based on age: age 45 through 50, $120; age 51 through 55, $90; age 56 through 60, $60; age 61 through 64, $30; and age 65 and older, $5.

D. The Commission may subsequently revise the cost of licenses in this section pursuant to § 28.2-201.

1999, c. 107; 2009, c. 9; 2013, cc. 55, 344.

Article 2 - TAKING OF FISH, NET, AND DEVICE RESTRICTIONS

§ 28.2-303. Taking and sale of sturgeon prohibited; penalty

Except as otherwise provided by regulation, it shall be unlawful for any person to take, catch or possess any sturgeon. Any sturgeon caught by any person shall be immediately returned to the water.

It shall be unlawful for any dealer or wholesaler of fish for human consumption to buy from others or to otherwise possess for purposes of resale any sturgeon.

A violation of this section is a Class 1 misdemeanor.

1970, c. 629, § 28.1-49.1; 1981, c. 579; 1984, c. 13; 1985, cc. 546, 615; 1992, c. 836 .

§ 28.2-304. Repealed

Repealed by Acts 2014, cc. 108 and 142, cl. 1.

§ 28.2-305. Size of mesh and length and depth of certain nets; penalty

A. It is unlawful for any person to use the following nets:

1. A pound net or a mullet gill net that is less than 200 yards long having a smaller mesh than two inches, stretched measure, after having been tarred;

2. A haul seine longer than 1,000 yards and if over 200 yards long having mesh less than three inches, stretched measure; however, the mesh of up to 400 feet of the net shall be no less than two and one-half inches, stretched measure, when the haul seine is set from the beach whereby one end of the net is anchored to the shore and the other end is mechanically drawn, without the aid of a boat or vessel, to the shore; or

3. A mullet gill net deeper than 40 meshes.

B. It is unlawful to set a pound net or other fixed fishing device on an established and presently used haul seine area, except that this provision shall not affect a pound net stand presently licensed.

C. A violation of this section is a Class 3 misdemeanor.

Code 1950, § 28-46; 1962, c. 406, § 28.1-51; 1992, c. 836; 2012, c. 228.

§ 28.2-306. Use of certain fishing devices in certain waters; penalty

It is unlawful for any person to use any snatch hook, grab hook or gang hook for the purpose of taking or catching fish in the Rappahannock River below the Downing Bridge at Tappahannock between January 1 and March 15. Nothing in this section shall apply to any licensed fixed fishing device.

A violation of this section is a Class 3 misdemeanor.

1968, c. 748, § 28.1-51.1; 1976, c. 200; 1982, c. 632; 1992, c. 836 .

§ 28.2-307. Length of fixed fishing device; gill nets; penalty

A. It is unlawful for any person to use a single fixed fishing device having a total length greater than 1,200 feet. Clear and unobstructed intervals of at least 200 feet shall be maintained between successive fishing structures in the same row, and adjoining rows of fishing structures shall be at least 300 yards apart. In addition, a clear passageway at least 200 feet wide shall be maintained, reaching from all regular navigable channels to all established boat landings. All stakes shall project not less than four feet above the surface of the water at all stages of the tide. Any stake not complying with this condition shall be removed by the licensee.

B. The Commission shall, by regulation, establish the minimum distance between any net and the side or end of any fixed fishing device.

C. A violation of any provision of this section or any regulation adopted pursuant to subsection B is a Class 3 misdemeanor.

Code 1950, § 28-46.1; 1954, c. 215; 1962, c. 406, § 28.1-52; 1964, c. 393; 1974, c. 97; 1990, c. 494; 1992, c. 836; 2009, c. 28.

§ 28.2-308. Setting of gill nets in oceanfront; penalty

From the Friday immediately preceding Memorial Day through September 15 of each year, gill net operators along the southern oceanfront boundary of the United States Dam Neck Military Base south to the North Carolina border shall maintain unimpeded breaks of 500 feet between adjacent rows of nets. Gaps between such gill nets in the same row shall occur no less than every 2,000 feet. These gill nets shall be set at a minimum of 400 feet seaward from the mean high-water mark.

A violation of this section is a Class 3 misdemeanor.

Code 1950, § 28-46.1; 1954, c. 215; 1962, c. 406, § 28.1-52; 1964, c. 393; 1974, c. 97; 1990, c. 494; 1992, c. 836 .

§ 28.2-309. Distance nets may extend across body of water or channel; prohibition; regulations; penalty

A. It is unlawful to set or fish any net or nets across any river, bay, estuary, creek, or inlet which are longer than one-fourth the width of the body of water from mean low water to mean low water at the point where the net or nets are set or fished.

B. It is unlawful to set or fish any net, other than a menhaden net, in any portion of a marked channel of a river, bay, estuary, creek, or inlet which has navigation aids installed or approved by any agency of government. However, the prohibitions and restrictions on setting nets contained in this subsection shall not apply to any net set on the eastern or ocean side of the Counties of Accomack and Northampton. The Commission shall have the authority to promulgate regulations governing the setting of any net on the eastern or ocean side of the Counties of Accomack and Northampton.

C. It shall be unlawful to set or fish any net which is a hazard to navigation.

D. Any person who violates the provisions of this section is guilty of a Class 3 misdemeanor.

Code 1950, § 28-47; 1950, p. 981; 1962, c. 406, § 28.1-53; 1968, c. 748; 1990, c. 212; 1991, c. 683; 1992, c. 836 .

§ 28.2-310. Trotline prohibited on ocean side of Eastern Shore; penalty

It shall be unlawful to set a fish trotline on the ocean side of the Counties of Accomack and Northampton. The Commission officers may seize any fish trotline set in such an area.

A violation of this section is a Class 3 misdemeanor.

Code 1950, § 28-43; 1960, c. 517; 1962, c. 406, § 28.1-48; 1966, c. 684; 1968, c. 748; 1972, c. 833; 1973, c. 21; 1976, c. 392; 1979, c. 274; 1981, c. 61; 1983, c. 307; 1990, c. 445; 1992, c. 836 .

§ 28.2-311. Chickahominy River in Charles City; penalty

It is unlawful for any person to take or catch fish, shellfish, or marine organisms, on or within 500 yards below the Chickahominy Dam at Walker's, on the Chickahominy River, other than with rod and line or hand line.

A violation of this section is a Class 3 misdemeanor.

Code 1950, § 28-88.4; 1950, p. 471; 1956, c. 325; 1962, c. 406, § 28.1-80; 1992, c. 836 .

§ 28.2-312. Rappahannock River and certain of its tributaries; penalty

It is unlawful for any person to use any haul seine (i) within 100 yards of mean low-water mark or 3 feet of water in depth at mean low water, whichever is closer to the shore, or (ii) over any oyster ground held under lease from the Commonwealth and marked as required by law in the waters of the Rappahannock River east of Downing Bridge at Tappahannock, and in its tributaries east of Downing Bridge. The restriction set forth in clause (i) shall be inapplicable where the written consent of the adjacent landowner has been obtained.

A violation of this section is a Class 3 misdemeanor.

Code 1950, § 28-89; 1962, c. 406, § 28.1-81; 1992, c. 836 .

§ 28.2-313. Killing fish by means of explosives, drugs, or poisons; possession; penalty

A. It is unlawful to capture or kill any fish, shellfish, or marine organisms by means of explosives, drugs, or poisons in any waters of the Commonwealth or in any waters under its jurisdiction.

B. It is unlawful to possess, sell, or offer to sell, within the Commonwealth, any fish, shellfish, or marine organisms killed or captured by means of explosives, drugs, or poisons, whether killed or captured within or without the jurisdiction of Virginia.

A violation of this section is a Class 3 misdemeanor.

Code 1950, §§ 28-53, 28-54; 1962, c. 406, §§ 28.1-55, 28.1-56; 1992, c. 836 .

Article 3 - RESTRICTIONS ON TRAWLING

§ 28.2-314. Trawl nets and drag nets prohibited; sale of fish; penalty

Except as may be provided in § 28.2-315, it is unlawful for any person (i) to take or catch fish, shellfish, or marine organisms with a trawl net, drag net, or similar device drawn through the waters by a vessel, boat, or other craft or (ii) to buy, sell, or offer for sale any fish taken or caught in the waters of the Commonwealth, or under the jurisdiction of the Commonwealth, with a trawl net, drag net, or similar device.

A violation of this section is a Class 1 misdemeanor.

Code 1950, § 28-68; 1962, c. 406, § 28.1-67; 1973, c. 119; 1979, c. 18; 1992, c. 836 .

§ 28.2-315. Fishing with trawl net within three-mile limit; license fee

A. It is unlawful to catch fish, shellfish, or marine organisms within the three-mile limit of the Virginia Atlantic shoreline with trawl nets or similar devices. However, the Commission may issue licenses to trawl within the three-mile limit from Cape Charles north to the Maryland line, except during September and October and from 36 degrees 40' north latitude south to the North Carolina line at any time, and from Cape Henry south to 36 degrees 40' north latitude between October 1 and May 1.

B. The Commission, to protect or promote the fisheries, may close and open the area, or any part thereof, described in subsection A to trawling or restrict the manner, method, size, and season of catch.

C. The license fee to fish with a trawl net or similar device in the area described in subsection A shall be $100 or as subsequently revised by the Commission pursuant to § 28.2-201 for each boat so employed.

Code 1950, § 28-71; 1960, c. 517; 1962, c. 406, § 28.1-70; 1974, c. 85; 1979, c. 18, § 28.1-69.1; 1979, c. 274; 1981, c. 52; 1983, c. 307; 1992, c. 836; 2009, c. 9.

§ 28.2-316. Trawling boat not granted license for other fishing device; penalty

It is unlawful for any vessel, boat or other craft equipped for trawling and having a trawl net on board to be licensed for any other net or fishing device.

A violation of this section is a Class 1 misdemeanor.

Code 1950, § 28-69; 1962, c. 406, § 28.1-68; 1992, c. 836 .

§ 28.2-317. Prima facie evidence of violation; penalty

Any vessel, boat, or other craft found in the waters of the Commonwealth, or in the waters under the joint jurisdiction of the Commonwealth, equipped for trawling and having a trawling net, drag net, or a similar device aboard with fresh or live fish on deck or in any portion of such vessel, boat or craft shall constitute prima facie evidence that the operator and master and members of the crew are guilty of trawling.

Code 1950, § 28-72; 1962, c. 406, § 28.1-71; 1992, c. 836 .

§ 28.2-318. Exemption for certain trawling activity

Nothing in this article shall prohibit (i) the use of trawl nets to catch fish outside the territorial limits of Virginia or (ii) the transport of such fish into Virginia ports for sale.

Code 1950, § 28-75; 1962, c. 406, § 28.1-72; 1992, c. 836 .

§ 28.2-319. Forfeiture of fishing gear, etc

Any net, pot, or other fishing device or gear used in violation of any of the provisions of this article shall be seized and forfeited to the Commonwealth. The forfeiture shall be enforced as provided in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2. The officer or other person seizing the property shall immediately give notice to the attorney for the Commonwealth.

Code 1950, § 28-75; 1962, c. 406, § 28.1-72.1; 1981, c. 525; 1992, c. 836; 2012, cc. 283, 756.

Chapter 4 - USE OF PURSE NETS FOR TAKING MENHADEN

Article 1 - LICENSES

§ 28.2-400. Application for license for resident or nonresident to catch menhaden

A. Any nonresident owning or holding by lease or charter a purse net, seine, or vessel of any description used in the waters of this Commonwealth, or waters within the jurisdiction of this Commonwealth, to catch menhaden shall apply to the Commissioner for a license. A resident shall apply for a license to the Commissioner through the officer assigned to the district in which the fish processing factory is located, or in which the applicant resides or has its principal office.

B. If the applicant for a license is a corporation, the application shall be made by an officer or one of the directors of the corporation; if the applicant is a partnership, the application shall be made by a general partner; if the applicant is a joint venture or other firm, by a member thereof; and if the applicant is an individual, by such individual.

C. The application shall be in writing and sworn to by the applicant before a notary public or other person authorized to administer oaths and shall disclose:

1. The true name of the person, firm, or corporation owning the purse net, seine, or vessel, and all the related apparatus, and the true name of any persons, firms, or corporations holding the same by lease or charter, for which the license is desired; if it is a firm, the true names of all the members of the firm; and, if it is a corporation, whether it is a domestic or foreign corporation and the location of its principal office.

2. The name of each vessel for which such a license is desired.

3. The location of the factory which is to process the menhaden so taken and caught.

4. That, during the period of this license, the applicant will not violate any of the laws of the Commonwealth in regard to the taking and catching of fish.

Code 1950, § 28-63; 1962, c. 406, § 28.1-61; 1966, c. 684; 1978, c. 347; 1992, c. 836 .

§ 28.2-400.1. Criteria for qualifying for a limited entry purse seine menhaden bait license

A. The Commission shall establish and administer a limited entry purse seine menhaden bait license that meets the requirements of this section.

B. In order to qualify for a limited entry purse seine menhaden bait license, an applicant shall have held a purse seine license, as established in § 28.2-402, in 2011 and shall have landed menhaden in the Commonwealth in each of the years 2009, 2010, and 2011. Such person shall also have used purse seine gear to harvest menhaden in at least one of those three years. Proof of landings and gear usage shall be in the form of receipts, landing reports, or other verifiable documents as designated by the Commission.

2013, cc. 59, 760.

§ 28.2-400.2. Total allowable landings for menhaden

A. Except as provided for in subsections B, C, and D, the total allowable landings for menhaden shall be 158,700.12 metric tons per year.

B. If the total allowable landings specified in subsection A are exceeded in any year, the total allowable landings for the subsequent year will be reduced by the amount of the overage. Such overage shall be deducted from the sector of the menhaden fishery that exceeded the allocation specified in § 28.2-400.3.

C. The Commissioner may request a transfer of menhaden landings from any other state that is a member of the Atlantic States Marine Fisheries Commission. If the Commonwealth receives a transfer of menhaden in any year from another state, the total allowable landings for only that year shall increase by the amount of transferred landings. The Commissioner may transfer menhaden to another state only if there are unused landings after December 15.

D. Any portion of the one percent of the coast-wide total allowable catch set aside by the Atlantic States Marine Fisheries Commission for episodic events that is unused as of September 1 of any year shall be returned to Virginia and other states according to allocation guidelines established by the Atlantic States Marine Fisheries Commission. Any such return of this portion of the coast-wide total allowable catch to Virginia shall increase the total allowable landings for that year.

2013, cc. 59, 760; 2015, c. 493; 2016, c. 65.

§ 28.2-400.3. Allocation of the total allowable landings for menhaden

A. The total allowable landings for menhaden specified in § 28.2-400.2 shall be allocated among the purse seine menhaden reduction sector, purse seine menhaden bait sector, and non-purse seine menhaden bait sector in proportion to each sector's share of average landings in 2002 through 2011, and in proportion to each gear type landings within the non-purse seine bait sector during that period.

B. The Commission shall establish an Individual Transferable Quota System for any purse seine menhaden bait licensee that meets the requirements of § 28.2-400.1. The Commission shall not consider a limited entry purse seine menhaden bait licensee's landings of menhaden for reduction purposes for any purposes under the Individual Transferable Quota System required by this subsection.

C. Any landings of menhaden by a limited entry purse seine menhaden bait licensee at a qualified menhaden processing factory, as indicated on the mandatory daily landings reports required to be submitted under § 28.2-400.5, shall be attributed to the menhaden reduction sector for all purposes under this chapter. A qualified menhaden processing factory is one located in the Commonwealth and which has processed at least 100,000 metric tons of menhaden in each of the years 2009, 2010, and 2011.

2013, cc. 59, 760.

§ 28.2-400.4. Administration of the menhaden management program

A. Closure of the menhaden fishery shall occur when the Commissioner projects and announces that 100 percent of the total allowable landings have been taken. The Commissioner shall monitor the mandatory daily landings reports required to be submitted under § 28.2-400.5 by the:

1. Purse seine menhaden reduction sector and promptly announce the date of closure when the portion of the total allowable landings allocated to the purse seine menhaden reduction sector under § 28.2-400.3 are projected to be taken. The Commissioner shall also notify the operators of any qualified menhaden processing factory of the date of closure by the most convenient and expeditious means available;

2. Purse seine menhaden bait sector and promptly announce the date of closure when the portion of total allowable landings allocated to the purse seine fishery for bait under § 28.2-400.3 is projected to be taken. The Commissioner shall also notify the purse seine menhaden bait sector of the date of closure by the most convenient and expeditious means available; and

3. Non-purse seine menhaden bait sector and promptly announce the date of closure when the portion of total allowable landings allocated to the non-purse seine fishery for bait under § 28.2-400.3 is projected to be taken. The Commissioner shall also notify the operators of the non-purse seine bait fishery of the date of closure by the most convenient and expeditious means available. Once this closure is announced, any person licensed in the non-purse seine menhaden bait sector may possess and land up to 6,000 pounds of menhaden per day, provided that such person is fishing in accordance with all laws and regulations.

B. The Commissioner may reopen a fishery sector closed pursuant to this section if, after all reports have been received, the portion of the total allowable landings has not been harvested by that sector. The Commission may establish any regulations it deems necessary and advisable, including trip limits or a time-limited reopening, to ensure that the allowable landings for a reopened sector is not exceeded. Any such reopening and subsequent closure shall be done by direct notice to the relevant sector of the fishery.

C. The Commission shall maintain on its website a periodically updated tally of the menhaden harvest for each sector receiving an allocation under this section.

D. Except as provided in subdivision A 3, no person shall harvest menhaden for bait or reduction purposes after the portion of the total allowable landings for the sector in which that person holds a license has been closed. Any person violating this provision is guilty of a Class 1 misdemeanor.

2013, cc. 59, 760.

§ 28.2-400.5. Reporting requirements

A. Any person licensed for the purse seine menhaden reduction sector or purse seine menhaden bait sector shall submit landings reports to the Commissioner each non-weekend or non-holiday day that the applicable sector of the menhaden fishery is open for harvest utilizing the Captain's Daily Fishing Report produced by the National Marine Fisheries Service.

B. Persons licensed for the non-purse seine menhaden bait sector shall submit a report on a form and on a schedule established by the Commission. The reporting period established by the Commission shall be longer than one week.

C. The reporting form required to be developed by the Commission shall require the following information:

1. Trip start date;

2. Vessel identification number;

3. Individual fisherman identifier;

4. Identification of dealer purchasing landings;

5. Trip number;

6. Species harvested;

7. Quantity of fish landed and discarded in pounds or metric tons;

8. Disposition of the landings;

9. County or port landed;

10. Gear type used;

11. Quantity of gear used;

12. Number of sets made during each trip;

13. Time fishing gear is in the water;

14. Days or hours at sea;

15. Number of crewmembers;

16. Area fished; and

17. Date of unloading.

2013, cc. 59, 760.

§ 28.2-400.6. Biological sampling program and adult abundance index

A. The Commission shall:

1. Establish a biological sampling program to collect one 10-fish sample per 200 landed metric tons for length and weight-at-age data from the commercial menhaden harvest; and

2. Initiate a program to add Atlantic menhaden to the Virginia Marine Resources Commission's finfish biological sampling program in order to develop an adult menhaden survey index from Virginia pound nets.

B. By no later than December 1, 2013, the Commission shall submit a report to the General Assembly and the Governor that (i) describes progress in establishing the biological sampling program and development of the adult menhaden survey index called for by this section, (ii) discusses any difficulties in implementing the requirements of this section, including a lack of resources to properly implement the program, and (iii) provides a list of resources the Commission believes are necessary to properly implement the sampling program and index, with detailed justification, including an estimate of the cost of each item requested.

2013, cc. 59, 760.

§ 28.2-401. Service of process for nonresident individuals, foreign corporations, general and limited partnerships

A. A nonresident applicant who is an individual shall by written power of attorney appoint the Secretary of the Commonwealth his agent, upon whom shall be served all lawful process against or notice to such licensee, and who shall be authorized to enter an appearance in his behalf. The service shall only be made in duplicate upon the Secretary of the Commonwealth. The power of attorney shall be filed with the Secretary of the Commonwealth, and copies certified by him shall be received as evidence in all the courts of this Commonwealth. No judgment shall be entered against the licensee until after the process has been served for at least ten days.

Whenever lawful process against, or notice to, any such individual is served, the Secretary of the Commonwealth shall immediately mail a copy of such process or notice to such individual. The Secretary of the Commonwealth shall collect the fee prescribed in § 2.2-409 for the service of process or notice, which shall be paid by the plaintiff at the time of such service. The costs shall be recoverable by the plaintiff as a part of the taxable costs if he prevails in the suit or action.

A judgment, decree or order of the court entered or made against any such individual shall be as valid and binding on such individual as if he had been a resident and served with process or notice.

B. The service of process on (i) a nonresident firm or corporation shall be as provided in § 13.1-766, (ii) a general partnership shall be as provided in § 8.01-304 and (iii) a limited partnership shall be as provided in § 50-73.7.

Code 1950, § 28-62; 1962, c. 406, § 28.1-60; 1976, c. 384; 1978, c. 347; 1992, c. 836 .

§ 28.2-402. License fee to take menhaden with purse nets

Any person desiring to take or catch menhaden with purse nets shall pay to the officer or agent a license fee as follows or as subsequently revised by the Commission pursuant to § 28.2-201:

1. On each boat or vessel under 70 gross tons fishing for the purse seine menhaden reduction sector, $249.

2. On each vessel 70 gross tons or over fishing for the purse seine menhaden reduction sector, $996.

3. On each boat or vessel under 70 gross tons fishing for the purse seine menhaden bait sector, $249.

4. On each vessel 70 gross tons or over fishing for the purse seine menhaden bait sector, $996.

Any person purchasing more than one of these licenses for the same vessel shall pay a fee equal to that for a single license.

Code 1950, § 28-61; 1960, c. 517; 1962, c. 406, § 28.1-59; 1966, c. 695; 1974, c. 313; 1978, cc. 347, 358; 1979, c. 274; 1980, c. 605; 1982, c. 461; 1988, c. 710; 1992, c. 836; 2009, c. 9; 2013, cc. 59, 760; 2014, cc. 104, 133.

§ 28.2-403. (Effective until July 1, 2016) Action of Commissioner on such application; transfer of license of disabled vessel; delegation of authority; appeals

A. If the Commissioner is satisfied that the disclosures required by § 28.2-400 have been made and that the application conforms in other respects to the provisions of that section or to § 28.2-400.1, and upon payment of the license fee specified in § 28.2-402, the Commissioner, or the officer through whom or in whose district the application was made, shall issue to the applicant a license for each of the purse seines, vessels, or other watercraft specified in the application. The license shall state the name of the licensee and the name of the vessel or other watercraft licensed.

If any vessel or other watercraft so licensed becomes disabled during the period of such license, the licensee may, with the consent of the Commissioner, hire or charter a vessel or other craft belonging to a nonresident to replace the disabled one for the unexpired period of such license. In such a case, the officer shall transfer the license issued for the disabled vessel or other craft to the one so hired or chartered without requiring any additional license.

B. The Commissioner may delegate to the officers his authority under this section. However, any person aggrieved by any action of an officer exercising such delegated authority shall have the right to appeal to the Commissioner for a review and correction of the actions of the officer. The appeal may be made by mailing a statement of the officer's action, together with the appellant's objections and the grounds for his objections, to the Commissioner. Upon receipt of such appeal, the Commissioner shall immediately notify the officer involved, who shall, within three days, deliver to the Commissioner all papers in his possession concerning the subject matter of the appeal, together with a written statement of and reasons for his actions. The Commissioner shall issue his ruling granting, transferring, refusing, or refusing to transfer the license within ten days after receipt by him of the appeal.

Code 1950, §§ 28-64, 28-65; 1962, c. 406, § 28.1-62; 1992, c. 836; 2013, cc. 59, 760.

§ 28.2-403. (Effective July 1, 2016) Action of Commissioner on such application; transfer of license of disabled vessel; delegation of authority; appeals

A. If the Commissioner is satisfied that the disclosures required by § 28.2-400 have been made and that the application conforms in other respects to the provisions of that section, and upon

payment of the license fee specified in § 28.2-402, the Commissioner, or the officer through whom or in whose district the application was made, shall issue to the applicant a license for each of the purse seines, vessels, or other watercraft specified in the application. The license shall state the name of the licensee and the name of the vessel or other watercraft licensed.

If any vessel or other watercraft so licensed becomes disabled during the period of such license, the licensee may, with the consent of the Commissioner, hire or charter a vessel or other craft belonging to a nonresident to replace the disabled one for the unexpired period of such license. In such a case, the officer shall transfer the license issued for the disabled vessel or other craft to the one so hired or chartered without requiring any additional license.

B. The Commissioner may delegate to the officers his authority under this section. However, any person aggrieved by any action of an officer exercising such delegated authority shall have the right to appeal to the Commissioner for a review and correction of the actions of the officer. The appeal may be made by mailing a statement of the officer's action, together with the appellant's objections and the grounds for his objections, to the Commissioner. Upon receipt of such appeal, the Commissioner shall immediately notify the officer involved, who shall, within three days, deliver to the Commissioner all papers in his possession concerning the subject matter of the appeal, together with a written statement of and reasons for his actions. The Commissioner shall issue his ruling granting, transferring, refusing, or refusing to transfer the license within ten days after receipt by him of the appeal.

Code 1950, §§ 28-64, 28-65; 1962, c. 406, § 28.1-62; 1992, c. 836 .

§ 28.2-404. Appeals from actions of Commissioner

Any person aggrieved by any action of the Commissioner taken under the provisions of § 28.2-403 shall have the right to petition the circuit court of the county or city in which the factory where the fish were to be processed is located, or in which the applicant resides or has his principal office, for a review and correction of the ruling of the Commissioner as provided in Article 3 (§ 28.2-216 et seq.) of Chapter 2 of this subtitle.

Code 1950, § 28-64; 1962, c. 406, § 28.1-63; 1992, c. 836 .

§ 28.2-405. Carrying patent tongs, etc., while fishing for menhaden; penalty

It shall be unlawful for any captain or owner to carry or permit to be carried aboard his vessel, when fishing for menhaden, any scrape, dredge, or patent tongs.

A violation of this section is a Class 1 misdemeanor.

Code 1950, § 28-49; 1962, c. 406, § 28.1-54; 1992, c. 836 .

§ 28.2-406. Reserved

Reserved.

§ 28.2-407. Forfeiture of fishing gear

Any net, pot, or other fishing device or gear used in violation of any of the provisions of this article shall be seized and forfeited to the Commonwealth. The forfeiture shall be enforced as provided in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2. The officer or other person seizing the property shall immediately give notice to the attorney for the Commonwealth.

Code 1950, § 28-66; 1962, c. 406, § 28.1-64; 1981, c. 525; 1992, c. 836; 2012, cc. 283, 756.

Article 2 - AREA AND SEASONAL RESTRICTIONS

§ 28.2-408. Food fish not to be taken, bought, or sold; percentage allowable; penalty

A. It is unlawful to take, catch or round up with purse net, for any purpose, food fish in an amount greater than one percent of the whole catch. If food fish represent more than one percent of the whole catch, the net shall be opened immediately and the food fish released while alive.

B. It is unlawful for any vessel licensed for the purpose of menhaden fishing to catch any food fish for the purpose of marketing; for any person to have in his possession food fish in an amount greater than one percent of the bulk for the purpose of manufacturing them into fertilizer, fish meal, or oil; or for any person to use in any manner any food fish, in an amount greater than one percent of the bulk for the purpose of fertilizing or improving the soil.

C. Any person violating any provision of this section is guilty of a Class 1 misdemeanor, and the license on such person's boat or net shall be revoked by court order for the remainder of the season.

Code 1950, § 28-60; 1962, c. 406, § 28.1-58; 1964, c. 393; 1966, c. 696; 1992, c. 836 .

§ 28.2-409. Menhaden fishing prohibited in certain areas; exception

A. Except as provided in subsection B of this section, it shall be unlawful to take or catch menhaden with purse nets in the following waters:

1. In the Piankatank River and its tributaries above and west of a line beginning at the northernmost, as measured from the low-water mark, edge of land known as Gwynn's Island at or near the mouth of Kibble Pond, thence in a northerly direction in a straight line to the easternmost edge of high land on Stingray Point;

2. In the Rappahannock River and its tributaries above and west of the R.O. Norris, Jr., Bridge;

3. In the York River and its tributaries above and west of a line extending northwardly from the western line of Goodwin Islands through the western line of Ellen Island to the northern bank of the York;

4. In the East, North, Ware and Severn Rivers and their tributaries; and

5. In Cape Charles harbor eastward of a line from the western tip of the jetty on the southern side of the channel to the westernmost tip of the jetty on the northern side of the channel; in Kings Creek and Cherrystone inlet eastward of a line from the western end of the jetty on the north side of Cape Charles harbor to the southern end of Wescoat Point; in Mattawoman and Hungars Creek

eastward of a line from the northwesternmost tip of land in Old Town Neck to Great Neck Point; in Nassawadox Creek eastward of a line from Shooting Point to Nassawadox Point; in Occohannock Creek eastward of a line from Sparrow Point to the southernmost tip of Powells Bluff; in Nandua Creek eastward of a line from the northernmost point of Milbys Point to the southwesternmost point of land in Hacks Neck, said line having a true bearing of 027 degrees; in Pungoteague Creek eastward of a line from Bluff Point to the southeasternmost point of Finneys Island; in Onancock Creek eastward of a line from Thicket Point to Ware Point; in Chesconessex Creek eastward of a line from the northernmost point of Sound Beach to the northwesternmost point of Beach Island; in Deep Creek, Hunting Creek and Guilford Creek eastward of a line from the easternmost tip of Russel Island to Halfmoon Point to Peters Point to Simpson Point to Flood Point to Ebb Point to the mouth of Great Gut; in Messongo Creek eastward of a line from South Point to North Point in the Virginia portion of the Pocomoke River northeast of a line from Long Point to Virginia-Maryland spar buoy "A"; in the Great Wicomico River from the mouth of Whay's Creek to Sandy Point; in Dividing Creek, Prentice Creek and Jarvis Creek westward of a line from Hughlett Point to Jarvis Point; in Indian Creek and Henrys Creek westward of a line from the southeasternmost point of land on the eastern side of the mouth of Henrys Creek to the easternmost point of Fleets Bay Neck; in Dymers Creek westward of a line from the southernmost point of Grog Island to the easternmost point of Poplar Neck; in Tabbs Creek westward of the line across the mouth of the creek at its narrowest point; in Horn Harbor and Dyer Creek westward of a line from the southernmost tip of Beach Point to the northernmost point on the south side of the mouth of Dyer Creek; in Back Creek, Clarkston Creek, Chisman Creek, Poquoson River, Bennett Creek, and adjacent waters westward of a line from the southeasternmost point of Goodwin Islands to the westernmost point of Cow Island; in Back River westward of a line from Plumtree Point to the westernmost point of Northend Point; in Little Creek southward of a line from the north point of the west jetty to the north point of the east jetty; in Lynnhaven Bay southward of the Lynnhaven Inlet Bridge on U. S. Route 60.

B. During the period from the first Monday in May through the third Friday in November, vessels under seventy gross tons which are licensed in accordance with subdivision 1 of § 28.2-402 are authorized to take or catch menhaden in the following waters: in the Rappahannock River eastward and southward from a line extending from Towles Point to Burnham Wharf and from Orchard Point to Towles Point; in Dividing Creek eastward from a line extending from Jarvis Point to Ditchley Pump House; in Indian Creek eastward from a line directly across the creek at Rappahannock Oyster Company; in Dymers Creek eastward from a line directly across the creek at the eastern end of Standard Products dock.

Code 1950, § 28-61; 1960, c. 517; 1962, c. 406, § 28.1-59; 1966, c. 695; 1974, c. 313; 1978, cc. 347, 358; 1979, c. 274; 1980, c. 605; 1982, c. 461; 1988, c. 710; 1992, c. 836 .

§ 28.2-410. Closed season for menhaden fishing; forbidden nets; penalty

Except as provided in § 28.2-409, it is unlawful for any person to take or catch with a purse net in the waters of this Commonwealth, or waters within its jurisdiction, menhaden between the Saturday following the third Friday in November and the Sunday preceding the first Monday in May. However, in the waters east of the Chesapeake Bay Bridge Tunnel within the three-mile limit of the Virginia shoreline such prohibition shall be between the Friday before Christmas and the Sunday preceding the first Monday in May. It is also unlawful for any person to use any purse net or other net having a stretched mesh of less than 1 3/4 inches. Any person violating any of the provisions of this section is guilty of a Class 1 misdemeanor.

Code 1950, §§ 28-64, 28-67; 1962, c. 406, § 28.1-65; 1966, c. 684; 1972, c. 424; 1976, c. 384; 1978, c. 347; 1982, c. 461; 1988, c. 710; 1992, c. 836 .

§ 28.2-411. Season for vessels of less than seventy gross tons; penalty

Except from the first Monday in March to, but not including, the first Monday in May, it is unlawful for vessels with a gross weight of less than seventy tons to use purse nets to take or catch menhaden for purposes other than use as fish meal or oil.

A violation of this section is a Class 1 misdemeanor.

1982, c. 461, § 28.1-65.1; 1988, c. 710; 1992, c. 836 .

Chapter 5 - OYSTERS AND CLAMS

Article 1 - LICENSES

§ 28.2-500. Residency and certain oyster licenses

No residence restriction shall prohibit any person from obtaining any required license for buying fish or shellfish or for shucking oysters. In dredging or scraping private planting grounds on permission of the Commissioner, the residence restriction shall not apply to the crew, captain, or owner of any boat engaged by the leaseholder to dredge or scrape private planting grounds for oysters only.

Code 1950, § 28-138; 1962, c. 406, § 28.1-121; 1983, c. 306; 1992, c. 836 .

§ 28.2-501. Application for license to take or catch oysters or clams

A. Any resident of this Commonwealth who desires to take or catch oysters or clams by any device other than a scrape or dredge shall apply to the Commissioner for a license.

B. Any resident desiring to dredge or scrape for oysters shall apply in writing to the officer assigned to the district in which he resides. The application shall be sworn to and shall state the name of his vessel, the owner or owners, the captain or person in charge, and the length of vessel or gross tonnage at which it is rated. The application shall further state the district in which the owner resides; that the applicant is a resident qualified under the requirements of this section; that no nonresident owns the vessel, in whole or in part; and that it is not held with any intention, or under any agreement, to return it at any subsequent time to a nonresident.

Code 1950, §§ 28-137, 28-150; 1960, c. 517; 1962, c. 406, §§ 28.1-120, 28.1-129; 1964, c. 393; 1966, c. 684; 1970, c. 726; 1979, c. 274; 1991, c. 285; 1992, c. 836 .

§ 28.2-502. License fees for taking oysters or clams in tidal waters

Every resident who applies for a license to take or catch oysters and clams shall pay as follows or as subsequently revised by the Commission pursuant to § 28.2-201 :

1. For each person taking or catching oysters by hand or with ordinary tongs, $10;

2. For each single-rigged patent tong boat taking oysters, $35;

3. For each double-rigged patent tong boat taking oysters, $70;

4. For each person taking or catching clams by hand or with ordinary tongs, $15;

5. For each single-rigged patent tong boat taking clams, $35;

6. For each double-rigged patent tong boat taking clams, $70; and

7. For each dredge used for taking or catching clams, $50.

Code 1950, §§ 28-137, 28-157; 1960, c. 517; 1962, c. 406, §§ 28.1-120, 28.1-133; 1964, c. 393; 1966, c. 684; 1970, c. 726; 1979, c. 274; 1991, c. 285; 1992, c. 836; 1993, c. 11; 2009, c. 9.

§ 28.2-503. License for taking clams with tongs

The license for taking clams, by ordinary or patent tongs, shall entitle the holder to take only clams from the public bottoms in the waters of the Commonwealth but not from the public oyster rocks, beds, and shoals or from leased oyster grounds. Such a license does not permit the taking of oysters. The Commission may authorize the taking of clams from the public oyster rocks, beds, and shoals of (i) the lower York River below the patent tong line and (ii) that area in the Poquoson River contained within Public Ground Tract No. 1 and Public Ground Tract No. 9, west of a line connecting York Point and Hunt's Point and northeast of a line connecting Hunt's Point and survey Station "Spit" when it determines that commercial quantities of oysters are not present and are not likely to return due to the presence of oyster diseases. However, the Commission shall annually review the conditions in the area designated under clause (ii) to determine whether to authorize the taking of clams.

Code 1950, § 28-137; 1960, c. 517; 1962, c. 406, § 28.1-120; 1964, c. 393; 1966, c. 684; 1970, c. 726; 1979, c. 274; 1991, c. 285; 1992, cc. 246, 836; 1993, c. 238 .

§ 28.2-504. License fee graduated; penalty

A. Every person engaged in the business of shucking or packing oysters in Virginia shall pay a license fee based on the amount of oysters shucked or packed by him during the previous year.

B. The license fees to engage in the business of shucking or packing oysters are the following or as such fees may be subsequently revised by the Commission pursuant to § 28.2-201 :

1. For under 1,000 gallons, $7.50;

2. For 1,000 gallons up to 10,000, $20;

3. For 10,000 gallons up to 25,000, $45;

4. For 25,000 gallons up to 50,000, $75;

5. For 50,000 gallons up to 100,000, $125;

6. For 100,000 gallons up to 200,000, $175; and

7. For 200,000 gallons or more, $275.

Any person violating this section is guilty of a Class 1 misdemeanor.

C. The required license fee shall be collected in the same manner as other license fees collected under Virginia oyster laws.

Code 1950, § 28-136; 1950, p. 976; 1954, c. 178; 1960, c. 517; 1962, c. 406, § 28.1-119; 1968, c. 747; 1979, c. 274; 1992, c. 836; 2009, c. 9.

§ 28.2-505. Sale of shells to Commission

A. Each shucker or packer of oysters shall sell to the Commission at the prevailing market price up to twenty percent of the shells, unless the shells are planted in Virginia waters.

B. On or before December 1 of each year, the Commission shall notify each shucker or packer whether it will purchase by the following June 1 the shells so set aside. If notice is not given, the shucker or packer may dispose of such shells as he sees fit.

Code 1950, § 28-190.1; 1952, c. 648; 1962, c. 406, § 28.1-142; 1992, c. 836 .

Article 2 - FISHING FOR OYSTERS AND CLAMS; DEVICE RESTRICTIONS

§ 28.2-506. Season for taking oysters from public rocks; penalty

A. The season for taking oysters by shaft tongs or by hand from the public oyster beds, rocks, or shoals shall be as follows:

1. James River seed area, from October 1 until July 1. The Commission may set an alternate date, no earlier than June 1, for the completion of this season in any year in which such an action can be expected to improve the quality of seed oysters.

2. All other areas, from October 1 until June 1.

B. The season for taking oysters by patent tongs from the public oyster beds, rocks, or shoals shall be from October 1 to March 1. The Commission may set an alternate opening date, no later than November 1, for any area in the Commonwealth where the use of patent tongs is permitted, when in its opinion the condition of the oysters warrants.

C. It shall be unlawful for any person to take or catch oysters from the public rocks or shoals of this Commonwealth at any time other than that provided in subsections A and B of this section except as set forth in Chapter 8 of this subtitle and except as provided in § 28.2-507.

D. The possession of patent tongs and oysters in a boat at any time other than the season for patent tongs as specified in subsections A and B of this section is prima facie evidence of a violation of this section.

E. Taking oysters or having patent tongs or any other device for taking or catching oysters on public rocks, beds, or shoals, except during the seasons specified in subsections A and B of this section, is prima facie evidence of a violation of this section.

F. The possession of oysters while taking or catching clams during the prohibited season to take or catch oysters from the public rocks, beds, or shoals, is prima facie evidence of a violation of this section.

A violation of this section is a Class 1 misdemeanor.

Code 1950, §§ 28-92, 28-137; 1960, c. 517; 1962, c. 406, §§ 28.1-82, 28.1-120; 1964, c. 393; 1966, c. 684; 1970, c. 726; 1977, c. 387; 1978, c. 208; 1979, c. 274; 1980, c. 32; 1981, c. 72; 1991, c. 285; 1992, c. 836 .

§ 28.2-507. Opening and closing public rocks

The Commission, in order to protect or promote the growth of oysters, may (i) close and open any area or restrict the manner or method of taking oysters in any area of the public rocks, grounds, or shoals, (ii) establish seed beds and plant shells and other culch, or (iii) take any other restorative measures. Before closing any such area, an officer shall post notice of the closing for at least 30 days in two or more public places in the district in which the area is located. Such notice requirement shall not apply to those public rocks closed by the Virginia Department of Health or state replenishment programs. In addition, when the Commissioner finds it necessary, the area may be marked by a uniform system of buoys or signs indicating that such area is closed and that oystering by any means is prohibited. Any area which has been closed and reopened at a later time may be closed by the Commission or Commissioner at any time without notice.

Code 1950, § 28-98.1; 1956, c. 313; 1962, c. 406, § 28.1-85; 1981, c. 52; 1992, c. 836; 1996, c. 842; 2011, c. 221.

§ 28.2-508. Prohibited area for patent tongs; penalty

It is unlawful for any person to use or employ patent tongs to take or catch oysters from the public rocks, beds, or shoals in the following areas:

1. In the Piankatank River and its tributaries above a line beginning at the extreme westernmost point on a wooden jetty (point "A") on the south property line of lot 9-A owned by E. B. Bottom and lot 8-A of Gwynn's Island Estate subdivision, Mathews County (Deed Book 55; page No. 279), said point located north 57 degrees 07', west 176.00 feet from the east side of said lot 8-A and 9-A. Said point is located on the extreme northwest section of Gwynn's Island known as Cherry Point, Mathews County; thence 71 degrees 00' west approximately 10,140 feet, to a survey point known as the Stove R, located on the extreme south end of Stove Point, Middlesex County; thence north 38 degrees 00' east approximately 14,960 feet to point "X," or the east gable of hotel,

located on the extreme easternmost point of Stingray Point, Middlesex County. This area is to include all of Piankatank River and its tributaries from Cherry Point of Gwynn's Island to Stove Point in Middlesex County, and all of the area of Jackson Creek and its tributaries from Stove Point to Stingray Point;

2. In the Rappahannock River and its tributaries, above a line drawn from the southernmost point of Belle Island, which line begins at latitude 37 degrees 46' 37" north, longitude 76 degrees 35' 40" west; thence south 27 degrees 47' 25.82" west 14,292.65 feet to the easternmost point of Punchbowl Point, which is located at latitude 37 degrees 44' 32" and longitude 76 degrees 37' 03" west;

3. Beginning on the south shore of the James River at Pig Point, located at the east mouth of Nansemond River opposite the westernmost tank of two tanks on Pig Point; thence in a northerly direction to a light at the extreme north end of abandoned Pig Point pier; thence in a northerly direction to a fish trap buoy designated as N "H11" located on the northeast side of the Fish Trap Reservation; thence in a northwest direction along the northeast boundary of the Fish Trap Reservation along a line of buoys designated as C "1" and C "H15"; buoy C "H15" being located on the east side of an area set aside in subdivision 5 of this section prohibiting the use of patent tongs in James River; thence following in a southwest direction along the area described in subdivision 5 of this section to Cooper's Creek, located on the south side of James River in Isle of Wight County. In addition to this described area, the use of patent tongs shall be prohibited in Batten Bay and its tributaries, Chuckatuck Creek and its tributaries, and Nansemond River and its tributaries;

4. In the Mobjack Bay and its tributaries above a line beginning at Bush Point on the south side of the mouth of the Severn River, Gloucester County; thence in a northeasterly direction across the mouth of the Severn River to Seven Cedar Point; thence in a southeasterly direction to buoy S "1"; thence in an east southeasterly direction to a point of land on the northwest side of the mouth of Pepper Creek in Mathews County;

5. In the James River and its tributaries above a line drawn from Cooper's Creek in Isle of Wight County on the south side of James River to a line in a northeasterly direction across James River to the Newport News municipal water tank located on Warwick Boulevard between 59th Street and 60th Street in the City of Newport News;

6. In the Corrotoman River above a line beginning at point on Corrotoman Point, which line begins at latitude 37 degrees 39' 56" north, longitude 76 degrees 28' 21" west; thence north 70 degrees 02' 46.79"; thence west 4,338.37 feet to a point on Millenbeck Point which is located at latitude 37 degrees 40' 10" north and longitude 76 degrees 29' 12" west. This line, as described, is to include all of the Corrotoman River and its tributaries from Corrotoman Point to Millenbeck Point.

A violation of this section is a Class 1 misdemeanor.

Code 1950, §§ 28-93, 28-93.1, 28-93.2; 1954, c. 38; 1958, cc. 182, 476; 1960, c. 517; 1962, c. 406, § 28.1-83; 1968, c. 747; 1978, c. 208; 1980, c. 325; 1981, c. 52; 1986, c. 254; 1992, c. 836 .

§ 28.2-509. Maximum weight for patent tongs; teeth length; penalty

It is unlawful for any person to use patent tongs exceeding 100 pounds in gross weight, including any attachments other than rope, for the taking or catching of oysters. The teeth of the patent tongs shall not exceed four inches in length. The possession of patent tongs exceeding this weight or teeth length while oysters are in the boat shall constitute prima facie evidence of a violation of this section.

A violation of this section is a Class 3 misdemeanor.

1962, c. 406, § 28.1-84; 1992, c. 836 .

§ 28.2-510. Buying, selling, or possessing unculled oysters; penalty

It is unlawful for any person to buy, sell, or possess oysters under the prescribed size and over the shell allowance taken from the public rocks, beds, and shoals. If upon trial for this offense the accused person asserts the claim or defense that the unculled oysters were taken from private planting grounds, the burden of proving such a defense or fact shall be upon the accused.

A violation of any provision of this section is a Class 3 misdemeanor.

Code 1950, §§ 28-142, 28-146; 1960, c. 517; 1962, c. 406, §§ 28.1-125, 28.1-127; 1985, c. 125; 1992, c. 836 .

§ 28.2-511. Culling oysters; penalty

A. In addition to any other penalty prescribed by law, any person charged with violating any regulation governing the culling of oysters shall be required, by the officer making the charge, to scatter the entire cargo of oysters on the public rocks under the supervision of the officer and at the expense of the person charged with the violation. In lieu of throwing the cargo overboard, the person charged with the violation may post cash bond with the officer in an amount approximately equal to the value of the entire load as determined by the officer. The refusal to either dump the oysters overboard or post a cash bond is a distinct and separate offense from any other violation. A person who has posted a cash bond and is acquitted shall be refunded the cash bond. If the person is found guilty, the cash bond shall be forfeited and deposited to the credit of the Oyster Replenishment Fund.

Any person charged with such a violation who posts cash bond shall properly cull the entire cargo of oysters immediately after the officer has found them to be in violation of such regulation and before they can be sold, planted, or disposed of by him or by any other person.

B. The requirement to scatter the entire cargo of oysters on the public rocks shall only apply to a cargo of oysters taken by any catcher from the public oyster grounds and shall not apply to oysters which have been purchased by and are in the possession of a buyer.

A violation of any provision of this section is a Class 3 misdemeanor.

Code 1950, § 28-141; 1960, c. 517; 1962, c. 406, § 28.1-124; 1964, c. 393; 1966, c. 684; 1968, c. 747; 1979, c. 606; 1981, c. 52; 1985, c. 125; 1992, c. 836; 2013, c. 38.

§ 28.2-512. Interfering with oyster inspections; penalty

It is unlawful for any person possessing unshucked oysters to (i) resist or interfere with an officer while he examines oysters suspected of being unculled or (ii) refuse to admit an officer to a boat or oyster house for the purpose of such inspection.

A violation of this section is a Class 1 misdemeanor.

Code 1950, § 28-146; 1962, c. 406, § 28.1-127; 1985, c. 125; 1992, c. 836 .

§ 28.2-513. Prima facie evidence of culling violation; defense

It is unlawful for a person to have any oysters or shells on the culling board, deck, washboard, or other receptacle above the hold of the boat or in the deckhouse of the boat when the boat is not at anchor, is off the public rocks, or is approaching a buy boat or a landing. The attempt of any person to escape, to throw oysters or shells into the water other than in the ordinary process of culling, or to place oysters or shells on the culling board or deck from the hold, upon the approach of the officer, shall be prima facie evidence of the violation of the Commission's culling regulations.

Code 1950, § 28-146; 1962, c. 406, § 28.1-127; 1985, c. 125; 1992, c. 836 .

§ 28.2-514. Possession of shucked oysters; penalty

It is unlawful for any person to possess more than one-half gallon of shucked oysters on board a boat harvesting on the public rocks.

A violation of this section is a Class 3 misdemeanor.

Code 1950, § 28-141; 1960, c. 517; 1962, c. 406, § 28.1-124; 1964, c. 393; 1966, c. 684; 1968, c. 747; 1979, c. 606; 1981, c. 52; 1985, c. 125; 1992, c. 836 .

§ 28.2-515. Dredging or scraping on private ground; permit required

Any resident of the Commonwealth holding under legal assignment an oyster-planting ground of at least three acres in one tract or adjoining tracts and having paid the rent may dredge or scrape his tracts at any time from sunrise until sunset, except on Sunday if the resident has obtained from the Commission a permit for each boat so used. The permit shall show the name of the lessee and the name or number of the boat, date of issue, and date of expiration. The expiration date shall not be more than 12 months from the date of issue and may be renewed for like periods. A special exemption may be granted on such a permit to allow dredging or scraping one hour prior to sunrise from June 15 to September 1, provided that the resident notify the Commission at least 24 hours prior to such activity. The Commission may, after a hearing, refuse to grant or renew a permit to dredge or scrape any oyster-planting ground unless it is proved that the holder has planted seed oysters or shells and is using the planting ground for the cultivation of oysters. The Commission may refuse to grant the permit if it appears at the hearing that the holder of the ground is a habitual violator of the seafood laws. An applicant for the permit shall have the right

of appeal from any decision of the Commission refusing to grant the permit as provided in Article 3 (§ 28.2-216 et seq.) of Chapter 2 of this subtitle.

Code 1950, § 28-158; 1950, p. 988; 1952, c. 643; 1954, c. 43; 1958, c. 477; 1962, c. 406, § 28.1-134; 1964, c. 393; 1968, c. 747; 1972, c. 644; 1979, c. 274; 1986, cc. 171, 184; 1992, c. 836; 2003, c. 778.

§ 28.2-516. Oyster dredging or oyster dredging equipment on boat; penalty

It is unlawful for any person to have on board a boat, a dredge or equipment normally used for dredging oysters, unless he has a license or permit to dredge. The license or permit shall be available for inspection on board the boat.

It is unlawful to carry or transport an oyster dredge or oyster dredging equipment on board a licensee's, permittee's, or his employee's boat, except when the boat is traveling to or from (i) the ground on which dredging is permitted or licensed to take place or (ii) docks for maintenance and repair of the boat or equipment.

Any person who violates this section is guilty of a Class 6 felony.

Code 1950, § 28-158; 1950, p. 988; 1952, c. 643; 1954, c. 43; 1958, c. 477; 1962, c. 406, § 28.1-134; 1964, c. 393; 1968, c. 747; 1972, c. 644; 1979, c. 274; 1986, cc. 171, 184; 1992, c. 836 .

§ 28.2-517. Marking ground

A person shall not dredge or scrape his oyster-planting ground unless he has first properly designated and marked the oyster-planting ground as prescribed by the Commission in accordance with § 28.2-607. The initials of the lessee shall be displayed on all lease corners in black letters on a white background not less than five inches in length. If it appears to the inspector that such ground is not properly marked, he may immediately suspend the dredging permit until the ground is properly marked.

Such initials shall also be placed upon each side of the prow of any boat or craft used or employed in dredging or scraping the planting ground.

Code 1950, § 28-158; 1950, p. 988; 1952, c. 643; 1954, c. 43; 1958, c. 477; 1962, c. 406, § 28.1-134; 1964, c. 393; 1968, c. 747; 1972, c. 644; 1979, c. 274; 1986, cc. 171, 184; 1992, c. 836 .

§ 28.2-518. Dredging for oysters in James River; penalty

It shall be unlawful for any person to dredge for oysters in the James River during the open season for taking oysters from the public rocks and shoals. However, the Commission may grant a permit to applicants to dredge in specified areas.

A violation of this section is a Class 6 felony.

Code 1950, § 28.1-201.2; 1952, c. 181; 1962, c. 406, § 28.1-146; 1964, c. 393; 1992, c. 836 .

§ 28.2-519. Use of rakes or scrapes on ocean side of Eastern Shore; penalty

It shall be unlawful for any person to use dredges, scrapes, rakes other than hand rakes, or other like devices to take or catch crabs, clams, or shells from the public rocks, beds, or shoals on the ocean side of the Counties of Accomack and Northampton.

A violation of this section is a Class 3 misdemeanor.

Code 1950, § 28-198; 1962, c. 406, § 28.1-143; 1992, c. 836 .

§ 28.2-520. Use of hydraulic dredges prohibited; exceptions; penalty

A. It shall be unlawful for any person, unless he has been issued a permit by the Commission pursuant to subsection B, to (i) take or catch clams through the use of a hydraulic dredge or (ii) have on board his boat a hydraulic dredge designed for harvesting seafood.

B. The Commission may issue a permit authorizing the possession and use of a (i) hydraulic dredge for the purpose of (a) transiting state waters or (b) conducting legitimate aquaculture research and (ii) handheld hydraulically operated device for harvesting cultured clams from leased grounds.

C. Notwithstanding the provisions of clause (ii) of subsection A, a person may have on board his boat a hydraulic dredge designed for harvesting seafood when traveling to or from docks for maintenance or repair of the boat or equipment, or when off-loading catches made in federal waters.

D. The Commission and the Virginia Institute of Marine Science may possess and use hydraulic dredges to take and catch shellfish on an experimental basis.

E. Any person who violates this section is guilty of a Class 1 misdemeanor.

1981, c. 138, § 28.1-128.01; 1992, c. 836; 2001, c. 377; 2015, c. 675.

§ 28.2-521. Revocation of license or permit to dredge

The Commission, on testimony of an officer at a hearing that he has personally observed a person having dredging cable or dredging equipment overboard or in any way engaged in dredging in any area other than where a person holds a lawful permit or license to dredge, may revoke all permits and licenses held by the person to dredge on public or private grounds and may refuse to issue any licenses or permits for such purposes for a period of one year. Before the Commission holds a hearing pursuant to this section, it shall provide at least five days' written notice to the permittee or licensee. Notice shall be served either by a Commission officer or by certified mail addressed to the permit or license holder at the address given on the permit or license. Any subsequent, identical notice that is sent by the Commission may be sent by regular mail.

Code 1950, § 28-153; 1962, c. 406, § 28.1-135; 1992, c. 836; 2011, c. 566.

§ 28.2-522. Prima facie evidence of violation

In any prosecution for the violation of any sections of this article against the captain or crew of a vessel or any person on board, proof that the vessel was equipped with a crank, dredge, or scrape shall be prima facie evidence of the violation of such section.

Code 1950, § 28-155; 1962, c. 406, § 28.1-131; 1992, c. 836 .

§ 28.2-523. Penalty

Any person who takes or catches oysters with a dredge, scrape, or instrument other than ordinary or patent oyster tongs or by hand, in any of the waters of the Commonwealth except as provided by law, or regulations of the Commission, is guilty of a Class 6 felony.

Code 1950, §§ 28-154, 28-156; 1962, c. 406, § 28.1-132; 1968, c. 747; 1992, c. 836 .

§ 28.2-524. Taking oysters or clams in certain areas; limitations

The Commission, in order to protect and promote the oyster or clam fishery, may open and close the following areas, or any parts thereof, for the taking of oysters or clams or prescribe the manner, method, size, and season of oyster or clam catch:

1. That portion of Pocomoke Sound and Tangier Sound contained within the boundaries of a line commencing at buoy "A" on the Commonwealth of Virginia and State of Maryland line, thence 114 degrees true 2.17 miles to Long Point, thence 137 degrees true 3.40 miles to beacon number "2" off Ebb Point, thence 208 degrees true 2.15 miles to beacon number "2" off Halfmoon Point, thence 216 degrees true 1.78 miles to beacon number "11" off Deep Creek, thence 285 degrees true 2.67 miles to beacon number "1" off Camp Island, thence 238 degrees true 1.77 miles to beacon number "6" off Beach Island, thence 155 degrees true 2.75 miles to beacon number "2" off Chesconessex Creek, thence 223 degrees true 2.49 miles to beacon number "1" off Ware Point, thence 275 degrees true 3.13 miles to bell buoy number R "2," thence 276 degrees true 7.08 miles to can buoy number C "34," thence 049 degrees true 3.09 miles to can buoy number C "1," thence 049 degrees true 1.73 miles to Tangier Island Light House, thence 011 degrees true 2.70 miles to beacon number "3" off Tangier Island, thence 319 degrees true 0.62 miles to beacon number "1" off Tangier Island, thence 332 degrees true 3.15 miles to mean low-water mark on North East point on Fishbone Island, thence 005 degrees true 2.68 miles to mean low-water mark on south end of Horse Hammock, thence following mean low water northerly to the State of Maryland and the Commonwealth of Virginia line, thence, following the Maryland and Virginia state boundary line back to the point of beginning.

The Commission shall also have authority over the area as contained within the boundaries of a line commencing at buoy "A" on the Commonwealth of Virginia and State of Maryland line; thence, in a northeasterly direction approximately 1.74 miles along the said Virginia-Maryland line to a point which is approximately 260 feet northeast of buoy "C" on said line; thence, in a southwesterly and southern direction along the eastern boundary line of Public Ground No. 12 and Public Ground No. 13 approximately 1.73 miles to the northern line of the Fisheries Management Area running from buoy "A" to Long Point; thence, in a northwesterly direction approximately 1.07 miles to buoy "A" and point of beginning.

2. That portion of Chesapeake Bay between Smith Point and Windmill Point contained within the boundaries of a line commencing at Smith Point Lighthouse, thence southerly through a line of nun buoys numbered "C79," "C77," "C73," "C71," "C69," "C67," "C65," to a beacon designated BR "R," all as they are now positioned or as they may be subsequently repositioned by the United

States Coast Guard, thence northwesterly to Windmill Point Lighthouse, thence continuing northwesterly along a sector line to the mean low-water line on Windmill Point, thence northerly along the mean low-water line around Fleets Island to a point which is south of a beacon numbered 5M, thence north to the beacon numbered 5M, thence northeasterly to a beacon numbered 6M"B," thence northerly to corner 4 of Public Ground No. 28, thence along the western and northern line of Public Ground No. 28 through corners 3, 2 and 1 to corner 8 thereof, thence northeasterly to corner 1 of Public Ground No. 29, thence along the western and northern line of Public Ground No. 29 through corner 4 thereof to an intersection point of Public Ground No. 29 and Public Ground No. 117, thence northerly to the mean low-water line on Bull Neck, thence northerly along the mean low-water line to Smith Point, thence southeasterly to Smith Point Lighthouse, the point of beginning.

3. That portion of Piankatank River contained within the boundaries of a line commencing at the southern-most point of Stove Point; thence, in a southeasterly direction to the extreme northwestern-most point of Gwynn Island known as Cherry Point; thence, in a southwesterly direction along the shoreline of Gwynn Island to the No. 3 light at the mouth of Narrows Point; thence, in a northwesterly direction to No. 10 light at Stove Point; thence, in a northeasterly direction to Stove Point and the point of beginning.

1978, c. 85, §§ 28.1-128.1, 28.1-128.3, 28.1-128.4; 1981, cc. 52, 63; 1982, c. 77; 1984, cc. 224, 242; 1992, c. 836 .

§ 28.2-525. Fishing in Chesapeake Bay immediately west of Tangier Island

The Commission, in order to protect and promote the fishery in that area of the Chesapeake Bay described herein, may open and close such area or any part thereof, or prescribe the manner, method, size and season of catch. Such area is contained within the boundaries of a point beginning at the southeastern point of Tangier Island, thence, in a southeastern direction to Tangier Sound Light; thence, in a southwestern direction to can buoy C "1"; thence continuing in a southwestern direction to nun buoy N C "34"; thence, in a northwestern direction to nun buoy N "2"; thence, continuing the same direction to the 36-foot deep contour; thence, along the 36-foot deep contour to the Virginia-Maryland Boundary Line; thence, in a northeastern direction to Smith Island, Hog Neck; thence, in a southeastern direction along the western side of Smith Island, Cheesman Island, Shank Island, Goose Island and Tangier Island to the point of beginning.

1982, c. 121, § 28.1-128.2; 1992, c. 836 .

§ 28.2-526. Oyster measures; standards; penalty

A. Except as provided in subsection B, C, or D, it is unlawful for any person to buy or sell oysters in the shell by any measure other than:

1. One-half bushel or one bushel metallic measures. Such containers shall be metallic circular tubs with straight sides and straight bottoms and may have holes for draining one inch in diameter. A half-bushel tub shall have the following dimensions, all measured from inside to inside: 15 inches

across the top, 13 inches across the bottom, and 17 inches diagonally from the inside chine to the top; and a bushel tub shall measure 18 1/2 inches across the top, 17 inches across the bottom, and 21 1/2 inches diagonally from the inside chine to the top. Oysters harvested from the public rocks in the Potomac River or its tributaries may be bought or sold in one bushel metallic measures which shall measure 18 inches across the top, 16 1/2 inches across the bottom, and 21 inches diagonally from the inside chine to the top. Such containers shall be level full across the entire top of the container to be considered a full measure; or

2. A container of not less than 2,500 cubic inches and not more than 3,000 cubic inches, the make and model of which has been approved by the Commission.

Any seller of oysters or oyster shells who fails to furnish at the point of landing a full measure as defined in this section, or a buyer of any seed oysters or oyster shells who accepts less than a full measure as defined in this section, is guilty of a Class 1 misdemeanor.

B. Oysters may be sold in containers of a size greater than 18 1/2 inches across the top, 17 inches across the bottom, and 21 1/2 inches diagonally from the inside chine to the top if such container has been approved by the Commissioner and its use to measure oysters has been approved by both the buyer and seller.

C. On the eastern or ocean side of the Eastern Shore, oysters may be sold without being measured if both the buyer and the seller agree to the number of bushels of oysters in the transaction.

D. Cultured oysters in the shell may be sold in any measure or container agreeable to the buyer and seller.

Code 1950, § 28-188; 1960, c. 517; 1962, c. 406, § 28.1-136; 1970, c. 132; 1980, c. 33; 1992, cc. 239, 836; 1996, c. 434; 2007, c. 36; 2011, c. 627; 2014, c. 132.

§ 28.2-527. Theft of oysters, clams, shells, etc.; penalty

Any person who steals, or takes or carries away without permission of the owner, (i) bedded, naturally occurring, or planted oysters or clams, (ii) oysters deposited by any person making up a cargo for market, or (iii) shells or seed planted for formation of oyster or clam beds by the Commonwealth or any person, is guilty of larceny.

Code 1950, § 28-191; 1960, c. 517; 1962, c. 406, § 28.1-137; 1966, c. 684; 1968, c. 747; 1992, c. 836; 2004, c. 475.

§ 28.2-528. Revocation of licenses for theft of oysters

The Commission, without notice and hearing required by § 28.2-232, shall revoke all licenses and the fishing privileges within the Commonwealth's tidal waters to take or catch fish, shellfish, or marine organisms, issued to any person convicted of unlawfully taking oysters or other mollusca from the public grounds, any riparian oyster planting grounds assigned pursuant to Article 1 (§ 28.2-600 et seq.) of Chapter 6 of this title, or any general oyster planting ground leased pursuant to Article 2 (§ 28.2-603 et seq.) of Chapter 6 of this title. No new licenses shall be issued to such

person for a minimum of six months or a maximum of five years after such conviction in the discretion of the Commission.

Code 1950, § 28-191; 1960, c. 517; 1962, c. 406, § 28.1-137; 1966, c. 684; 1968, c. 747; 1992, c. 836; 1993, c. 216; 2015, c. 468.

§ 28.2-529. Converting shells into lime; penalty

It shall be unlawful for any person to take or catch oysters or shells for conversion into lime, unless the person has obtained permission from the Commission.

A violation of this section is a Class 3 misdemeanor.

Code 1950, § 28-192; 1962, c. 406, § 28.1-138; 1992, c. 836 .

§ 28.2-530. Taking oysters or loading on vessel on Sunday or at night; penalty

A. It shall be unlawful for any person to take oysters, from either public or private grounds, on Sunday or between sunset and sunrise; nor shall any person load any vessel or boat for such purpose with any oysters from any of the waters of the Commonwealth on Sunday or between sunset and sunrise.

B. Shucking oysters taken from the public grounds other than from designated seed areas may be unloaded on shore at packinghouses or loaded on trucks or motor vehicles one-half hour after sunset and one-half hour before sunrise. Those oysters which have been inspected by an officer and purchased by the packer or planter, and the oysters owned by the packer or planter, may be unloaded at any time except Sunday within the discretion of the packer.

C. The provisions of subsection A shall not apply to (i) the taking or catching by hand during the prescribed hours of daylight on Sunday during the legally prescribed public oyster harvest season on public oyster grounds open for harvest or unleased bottom open for harvest, of not more than one bushel of oysters for personal use or (ii) the taking or catching of cultured oysters during the prescribed hours of daylight on Sunday. The presence on board a boat or other vehicle being used during any Sunday harvesting, except as part of an oyster aquaculture operation, of any gear normally associated with the harvesting of oysters other than by hand is prima facie evidence of a violation of the provisions of this section.

A violation of this section is a Class 3 misdemeanor.

Code 1950, § 28-195; 1958, c. 471; 1960, c. 517; 1962, c. 406, § 28.1-139; 1966, c. 684; 1975, c. 185; 1981, c. 119; 1992, c. 836; 1996, c. 434; 2016, c. 7.

§ 28.2-531. Taking clams on Sunday or at night; exception; penalty

It shall be unlawful for any person to take clams from either public or private grounds, on Sunday or between sunset and sunrise. This section shall not apply to (i) the taking of clams on Sunday by hand or hand rake between sunrise and sunset if the clams are for personal use only and not for planting or commercial use, or (ii) the taking of cultured hard-shell clams on Sunday.

A violation of this section is a Class 3 misdemeanor.

1975, c. 185, § 28.1-139.1; 1992, c. 836; 1994, c. 124.

§ 28.2-532. Protection of oysters and clams of Virginia; labeling; penalty

It shall be unlawful for any person to offer for sale, sell or distribute for direct consumption oysters or clams as Virginia oysters or clams unless such oysters and clams have been in the waters of the Commonwealth or the Potomac River for a period of at least six months.

Any oysters or clams imported into Virginia, either shucked or unshucked, when sold or distributed, shall not be designated or labeled in any manner indicating they came from Virginia waters or that they are Virginia oysters or clams.

The name, address and Department of Health certificate number on the package or container of the packer or distributor shall not be considered illegal designation or labeling.

A violation of this section is a Class 3 misdemeanor.

1962, c. 406, § 28.1-140; 1964, c. 393; 1992, c. 836; 1996, c. 434.

§ 28.2-533. Oysters on crab dredging boat; penalty

It shall be unlawful for any person licensed to catch crabs with a dredge to possess aboard a boat more than one bushel of oysters. Any person violating this section shall be guilty of a Class 1 misdemeanor.

Code 1950, § 28-196.2; 1952, c. 654; 1954, c. 446; 1962, c. 406, § 28.1-141; 1992, c. 836 .

§ 28.2-534. Possession of oysters while taking clams; penalty

The possession of oysters while taking or catching clams during the season in which it is unlawful to take or catch oysters from the public rocks, beds, or shoals, is prima facie evidence of a violation of the law against taking or catching oysters during the prohibited season. A violation of this section is a Class 1 misdemeanor.

Code 1950, § 28-178; 1954, c. 177; 1960, c. 517; 1962, c. 406, § 28.1-160; 1968, c. 747; 1970, c. 726; 1992, c. 836 .

§ 28.2-535. Permit to buy or carry seed oysters from certain grounds; penalty

A. It is unlawful for any person to buy or carry oysters from the eastern side of the Counties of Accomack and Northampton or from the James River seed area, whose shells measure less than three inches in length without first obtaining a permit. A permit shall be required for each boat, vessel, or motor vehicle used to carry such cargo. The applicant shall obtain the permit from the officer assigned to the district where the cargo is loaded. The permit shall state the name and tonnage of the boat, vessel, motor vehicle, or other conveyance; the name of the owner and captain; the destination of the oysters; and the identity of the permit applicant. The cargo may be loaded under the supervision of the officer, in the order of the presentation of the permit to the officer in the district in which the boat, vessel, motor vehicle, or other conveyance is to obtain its cargo.

B. Any such permittee who takes seed oysters to a place not specified in his permit and does not notify the Commissioner within twenty-four hours of the change in planting location is guilty of a

Class 1 misdemeanor. The owner or captain of any boat, vessel, motor vehicle, or other conveyance found buying or carrying seed oysters from these public grounds without a permit is guilty of a Class 1 misdemeanor.

Code 1950, § 28-111; 1954, c. 447; 1962, c. 406, § 28.1-97; 1966, c. 642; 1992, c. 836 .

§ 28.2-536. Taking clams in certain areas; penalty

It is unlawful to take or catch clams in Pocomoke Sound above a line drawn from Drum Bay Point, in the County of Accomack, and running a north-northwest course to the line between the States of Maryland and Virginia, except upon such grounds in those waters as may be set aside by the Commission for public clamming.

Any person who violates this section is guilty of a Class 1 misdemeanor.

Code 1950, § 28-137; 1960, c. 517; 1962, c. 406, § 28.1-120; 1964, c. 393; 1966, c. 684; 1970, c. 726; 1979, c. 274; 1991, c. 285; 1992, c. 836 .

§ 28.2-537. Restriction on size of clams; penalty

It is unlawful for any person to harvest or ship clams smaller in size than the legal size established by the Commission.

Any person who violates this section is guilty of a Class 1 misdemeanor.

Code 1950, § 28-137; 1960, c. 517; 1962, c. 406, § 28.1-120; 1964, c. 393; 1966, c. 684; 1970, c. 726; 1979, c. 274; 1991, c. 285; 1992, c. 836 .

Article 3 - OYSTER RECORDS AND RESOURCE USER FEES

§ 28.2-538. Record of oysters handled; penalty

All licensed oyster harvesters, buyers, shucking houses, and aquaculture operations shall record all fisheries data and information required by the Commission as provided in § 28.2-204. Such records shall be open for inspection by the Commissioner and a copy available to him or any employee designated by him to inspect or receive the same. A failure to keep such a record is a Class 1 misdemeanor.

Code 1950, § 28-100; 1960, c. 517; 1962, c. 406, § 28.1-87; 1966, c. 684; 1975, c. 199; 1976, c. 255; 1988, c. 313; 1992, c. 836; 2013, c. 38.

§§ 28.2-539, 28.2-540. Repealed

Repealed by Acts 2013, c. 38, cl. 2.

§ 28.2-541. Oyster resource user fees

A. There are imposed upon all oysters taken from the public rocks, beds, or shoals the following oyster resource user fees, per year: (i) on any licensed commercial fisherman harvesting oysters by hand, a fee of $50; (ii) on the use of any type of gear to harvest oysters, a fee of $300; (iii) on any business shucking or packing (a) no more than 1,000 gallons of oysters, a fee of $500; (b) more than 1,000 but no more than 10,000 gallons of oysters, a fee of $1,000; (c) more than 10,000 but

no more than 25,000 gallons of oysters, a fee of $2,000; and (d) more than 25,000 gallons of oysters, a fee of $4,000; and (iv) on any oyster buyer using (1) a single truck or location, a fee of $100 and (2) multiple trucks or locations, a fee of $300.

B. Any commercial aquaculture operation taking oysters pursuant to § 28.2-603 from a riparian assignment or general oyster planting ground shall pay an oyster resource user fee of $50.

C. Any harvester shall pay only one oyster resource user fee per year for oyster gear used under clause (ii) of subsection A.

D. The Commission may revoke the permit or license of any person who fails to comply with this section.

Code 1950, § 28-137.1; 1952, c. 650; 1954, c. 663; 1960, c. 517; 1962, c. 406, § 28.1-93; 1964, c. 393; 1966, c. 173; 1978, c. 583; 1983, c. 18; 1988, c. 313; 1992, c. 836; 2013, c. 38.

§ 28.2-542. Oyster Replenishment Fund

All oyster resource user fees collected by the Commission shall be deposited in the state treasury and credited to the Oyster Replenishment Fund, to be used only for administration of the program and for replenishment, planting, and replanting the public oyster rocks, beds, and shoals of the Commonwealth, with seed oysters, oyster shells, or other material that will catch, support, and grow oysters. These funds shall be withdrawn and expended for such purposes on the order of the Commission. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrant of the Comptroller issued on vouchers signed by persons designated by the Commission.

1962, cc. 406, 636, §§ 28.1-94, 28.1-94.1; 1992, c. 836; 2013, c. 38.

§§ 28.2-543, 28.2-544. Repealed

Repealed by Acts 2013, c. 38, cl. 2.

§ 28.2-545. Reserved

Reserved.

§ 28.2-546. Permit to carry oysters out of state

A. It shall be unlawful for any person to carry, attempt to carry, or buy for the purpose of carrying out of the Commonwealth any seed oysters taken from the public rocks, beds, or shoals until he has first obtained for each cargo a permit to do so from the Commission.

B. The permit shall state the name of the boat or license number of the motor vehicle and the name and address of the owner or captain of the boat or owner or operator of the motor vehicle. The permit shall state the name and address of the person to whom the cargo of oysters is to be delivered. The permit shall specify the number of bushels to be carried out of the Commonwealth.

Code 1950, § 28-110; 1960, c. 517; 1962, c. 406, §§ 28.1-89, 28.1-96; 1964, c. 393; 1966, cc. 252, 684; 1968, c. 747; 1976, c. 255; 1981, c. 52; 1992, c. 836; 2006, c. 33; 2013, c. 38.

§ 28.2-547. Authority to inspect oysters when loaded on conveyance

Any officer is authorized to inspect as to the quality, size and measure of any of the oysters taken or purchased, loaded on any boat, vessel, motor vehicle, or other conveyance, or sold to any person.

Code 1950, § 28-101; 1962, c. 406, § 28.1-88; 1992, c. 836 .

§ 28.2-548. Duty to inspect

It shall be the duty of the officer in whose district a cargo of oysters is to be loaded to inspect the oysters as they are loaded and to ensure that all measurements are a full measure of oysters as defined in § 28.2-526 and that the oysters are properly culled.

Code 1950, §§ 28-103, 28-105; 1954, c. 367; 1960, c. 517; 1962, c. 406, § 28.1-90; 1992, c. 836; 2006, c. 33; 2013, c. 38.

§ 28.2-549. Violations; recovery of oyster resource user fees; penalties

Any person who violates any provision of this article is guilty of a Class 1 misdemeanor. Any person willfully failing to pay oyster resource user fees to the Commission in the manner required by this article is guilty of a Class 1 misdemeanor. The Commission may maintain an action at law against any person required to pay oyster resource user fees to the Commission for the amount of oyster resource user fees due, plus interest, and a penalty to be added to the oyster resource user fees in the amount of six percent if the failure is for not more than one month, with an additional six percent for each additional month, or fraction thereof, during which the failure continues, not to exceed 30 percent in the aggregate.

Code 1950, § 28-109; 1962, c. 406, § 28.1-95; 1988, c. 313; 1992, c. 836; 2013, c. 38.

§ 28.2-550. Authority of Commissioner to make certain contracts; funds received to be paid into Oyster Replenishment Fund

A. The Commissioner, with the approval of the Commission, may contract with any person to take or dredge submerged oyster shells or any other subaqueous materials from the tidal waters of the Commonwealth, and shall have the authority to plant, use, or sell such shells or other materials in whatever manner the Commission deems to be in the best interest of the Commonwealth.

B. The Commissioner, with the approval of the Commission, may contract with any commercial fisherman to engage in replenishment, research, and stock assessment activities in the Commonwealth. The Commission may promulgate regulations establishing criteria for awarding such contracts, including a preference for commercial fishermen actively engaged in the taking or catching of fish or shellfish who have suffered an adverse economic impact resulting from the implementation of regulations of the Commission regulating the seafood and marine resources of the Commonwealth. In determining whether a person is a commercial fisherman actively engaged in the taking or catching of fish or shellfish, the Commission shall consider, among other relevant evidence, (i) his possession of a license issued pursuant to Article 1 (§ 28.2-500 et seq.) or (ii) his voluntary reporting of shellfish catches to the Commission.

C. The Commission, when it makes a determination in writing that competitive bidding or competitive negotiation is not feasible or fiscally advantageous to the Commonwealth, may authorize other methods of purchasing and contracting for seed oysters, house shells, reef shells, shell bed turning, or other goods and services for oyster ground replenishment, including contracts with commercial fishermen for replenishment, research, and stock assessment activities as provided in subsection B, which are in the best interest of the Commonwealth and which are fair and impartial to suppliers. It may establish pricing for its awards and purchases; use selection methods by lot; and open, close, and revise its purchases according to changing conditions of the natural resources, markets, and sources of supply.

1962, c. 636, § 28.1-94.1; 1989, c. 428; 1992, c. 836; 1994, c. 541; 2013, c. 38.

Article 4 - SURVEYS AND RESURVEYS

§ 28.2-551. Surveys and reports as conclusive evidence

The surveys of the natural oyster beds, rocks, and shoals of the Commonwealth, made pursuant to Chapter 511 of the 1892 Acts of Assembly, shall continue to be the surveys defining and determining the natural oyster beds, rocks, and shoals of the Commonwealth. The surveys and reports filed in accordance with this Act of Assembly are conclusive evidence of the boundaries and limits of all the natural oyster beds, rocks, and shoals and that there are no other public oyster beds, rocks, or shoals. The surveys of the public oyster beds, rocks, or shoals of the Commonwealth referred to in this section shall not extend inshore of the mean low-water mark of such body of water, notwithstanding any surveys, plats, markers, or lines to the contrary.

Code 1950, § 28-117; 1962, c. 406, § 28.1-100; 1964, c. 624; 1992, c. 836 .

§ 28.2-551.1. Continuing or reestablishing historic Baylor Survey lines

When private leaseholds granted by the Commission or its predecessors appear within the Baylor Survey continuing pursuant to § 28.2-551 or as reestablished pursuant to § 28.2-553, if it shall be established to the satisfaction of the Commission, by petition duly filed prior to January 1, 2015, that the present or former leaseholders or their predecessors in title were granted the leaseholds within the area shown on "Atlantic Coast Chart No. 25" of the "Public Oyster Grounds, State of Virginia, 1895" in good faith more than five years previously and have made substantial improvements in such leasehold bottoms since that time, the Commission shall reestablish the lines of the Baylor Survey along the survey lines between the private leaseholds previously approved. Any notice to vacate such leaseholds shall be of no effect.

In reestablishing Baylor Survey lines pursuant to this section, the Commission may adjust the boundaries to facilitate ease of protection for the public grounds, provided that such adjustment shall neither reduce nor enlarge the area of public grounds, nor materially reduce or increase the value of the private grounds whose boundaries are being adjusted.

2014, c. 138.

§ 28.2-552. Resurvey on motion of Commission or on application of citizens

The Commission may select and appoint any surveyor to survey or resurvey any oyster-planting grounds either in his own or any other county, and to reestablish and permanently mark any line or lines of the Baylor survey of natural oyster rocks which the Commission finds necessary to define.

Code 1950, § 28-117; 1962, c. 406, § 28.1-100; 1964, c. 624; 1992, c. 836 .

§ 28.2-553. Reestablishment of lines of Baylor survey; procedure; evidence of reestablished lines

The Commission may reestablish, relocate, and remark all lines of the Baylor survey which cannot be otherwise relocated because of the loss or destruction of previous marks. In reestablishing any such lines, the line surveyed by Fred E. Ruediger shall be followed wherever such line exists or was surveyed. Where no former line can be reestablished the Commission may establish a new line.

When such grounds or lines have been reestablished and relocated, the reestablishment and relocation shall be conclusive evidence in all courts of the Commonwealth that such grounds are public oyster rocks, beds, or shoals and that all grounds lying outside of such boundaries are rental grounds. Plats shall be made under the direction of the Commission showing the reestablishment of such lines, and shall be recorded in the appropriate clerk's office.

Code 1950, § 28-118; 1962, c. 406, § 28.1-101; 1964, c. 393; 1992, c. 836 .

§ 28.2-554. Sale of Baylor survey charts and plats

The Commissioner shall have available to sell at five dollars per copy to the public copies of the Baylor survey charts and plats, in such manner as the Commissioner may determine.

Code 1950, § 28-118; 1962, c. 406, § 28.1-101; 1964, c. 393; 1992, c. 836 .

§ 28.2-555. Crossings of Baylor survey

The Department of Transportation may maintain, repair, reconstruct, or replace any existing crossings of the Baylor survey. Such authorization is granted for any Baylor survey crossing determined by the Commonwealth Transportation Board to be necessary across the Hampton Roads from Newport News to Portsmouth, across the Elizabeth River at Norfolk, and construction parallel to an existing crossing of the James River from Newport News to Isle of Wight County.

1974, c. 93, § 28.1-101.2; 1992, c. 836; 2013, cc. 585, 646.

§ 28.2-556. Erosion control devices within the Baylor survey

The public oyster beds, rocks, and shoals shall not include any area needed for an erosion control structure if the Commission, after considering the comments of the Virginia Institute of Marine Science and the Department of Conservation and Recreation, and any other relevant evidence, finds that: (i) shoreline erosion has occurred at the site and is expected to continue; (ii) such erosion is increasing the sediment load to public waters, causing degradation of water quality; (iii) the proposed project is a technically and environmentally acceptable way to control erosion at the site unless such Baylor ground is productive under § 28.2-630 of the Code of Virginia in which

case the environmentally preferable erosion control shall be utilized; and (iv) the Commonwealth's interest in protecting water quality by controlling erosion at the site outweighs the value of the portion of the natural oyster beds, rocks, and shoals affected by the erosion control structure. Whenever the area of the natural oyster beds, rocks, and shoals is so changed, the Commission shall make the changes on its Baylor survey charts.

1988, c. 308, § 28.1-101.4; 1989, c. 656; 1992, c. 836; 2001, c. 46.

§ 28.2-557. Unlawful to threaten or hinder surveyor; rights of surveyor; penalty

It is unlawful for any person to threaten, resist, or in any manner interfere with a surveyor in the performance of duties relating to oyster grounds. The surveyor shall have the right to enter upon any person's lands in the performance of his duties.

A violation of this section is a Class 3 misdemeanor.

Code 1950, § 28-119; 1962, c. 406, § 28.1-102; 1992, c. 836 .

§ 28.2-558. Placing permanent markers

Whenever the Commission makes or directs any surveys of Virginia's public oyster rocks, prominent and permanent concrete markers shall be placed on the shores fixing the survey stations; and, whenever possible, prominent and permanent range markers shall be placed on the shores or lands. The Commission shall pay the cost of such markers.

Code 1950, § 28-120; 1962, c. 406, § 28.1-103; 1992, c. 836 .

§ 28.2-559. Removal of oysters planted by mistake

When, by any resurvey of oyster-planting ground or survey reestablishing the lines of the Baylor survey made under the direction of the Commission, it appears that any holder, by mistake of any employee of the Commission, has had assigned to him and included in the plat of his assignment any portion of the public oyster beds, rocks, or shoals, the holder shall file a petition with the Commission for permission to remove such oysters or shells from such ground. The Commission may allow the holder a reasonable time, not exceeding three years, within which to remove such oysters, their progeny and their shells.

Code 1950, § 28-113; 1962, c. 406, § 28.1-104; 1987, c. 43; 1992, c. 836 .

§ 28.2-560. Larceny of oysters and shells; penalty

Any person other than the holder of an oyster-planting ground or his agents or employees who goes upon such ground and takes oysters and shells is guilty of larceny.

Code 1950, § 28-114; 1962, c. 406, § 28.1-105; 1992, c. 836 .

§ 28.2-561. Removal of markers of planting grounds; penalty

It is unlawful for any person to intentionally or knowingly injure, remove, or displace any boundary oyster stake, range monument, signal beacon, post or buoy, or any part thereof, erected to designate, locate, survey, or map any shellfish grounds.

A violation of this section is a Class 3 misdemeanor.

Code 1950, § 28-121; 1962, c. 406, § 28.1-106; 1992, c. 836 .

§ 28.2-562. Maps to be filed; evidential value

All maps of the bays, rivers, and creeks of this Commonwealth made by the Commission showing the location of oyster-planting grounds shall be filed in the office of the Commission.

Any such map and the areas of the individual assignments of platted oyster-planting grounds shall be evidence in all the courts of this Commonwealth of all the oyster-planting grounds leased by the Commonwealth to private individuals at the time the survey and map were made.

Code 1950, § 28-122; 1962, c. 406, § 28.1-107; 1984, c. 4; 1992, c. 836 .

Chapter 6 - PLANTING GROUNDS

Article 1 - RIPARIAN OYSTER-PLANTING GROUNDS

§ 28.2-600. Riparian planting ground assignments; eligibility; fee

Any owner of land bordering on a body of water in the oyster-growing area of this Commonwealth whose shore front measures at least 205 feet at the low-water mark, who has not had as much as one-half acre of ground already assigned him on the front, or whose lease has terminated and is not to be renewed, may apply for planting grounds to the Commissioner. The Commissioner shall assign to him such ground wherever the owner may designate within his riparian waters, provided the ground does not encroach into an existing oyster-planting ground lease assigned under Article 2 (§ 28.2-603 et seq.) of this chapter. The fee for such assignment shall be $1.50. Such ground shall not exceed one-half acre, and shall not be less than 105 feet wide along the shore, beginning at low-water mark, extending out not more than 210 feet, or to the middle of the channel or body of water, whichever is the shorter distance. The grounds shall be surveyed, plotted, marked, assigned, and recorded as provided for assignments to persons in Article 2 (§ 28.2-603 et seq.) of this chapter. Any riparian assignment that was duly recorded in the clerk's office of the county or city where the grounds are located, or at the Commission office prior to July 1, 1986, shall continue in effect.

Code 1950, §§ 28-39, 28-123; 1950, p. 987; 1952, c. 649; 1956, c. 586; 1958, c. 184; 1960, c. 517; 1962, c. 406, §§ 28.1-44, 28.1-108; 1964, c. 393; 1968, c. 747; 1972, c. 644; 1976, c. 256; 1978, c. 548; 1984, cc. 100, 244, 259; 1986, cc. 168, 184; 1992, c. 836 .

§ 28.2-601. Riparian assignments; entitlements; obligations

The riparian leaseholder shall have the exclusive right to the use of such ground for planting or gathering oysters and clams.

The assignment made pursuant to § 28.2-600 shall pass with the transfer of the adjacent highland to the subsequent owner of highland and cannot be held separated from the highland. A transfer of highland ownership shall require a transfer of the riparian assignment within eighteen months after the transfer of the highland ownership under the following conditions:

1. The application for transfer shall be in the form prescribed by the Commission and shall be filed with the Commissioner.

2. The Commissioner shall require a new survey if there is not a survey of the exact parcel or parcels of grounds to be transferred.

3. The cost of any new surveys required under this section shall be borne by the person making the transfer, and the cost and fees shall be the same as for surveys of general oyster-planting ground.

4. The application shall be accompanied by a transfer fee of five dollars.

5. The Commissioner shall return the approved application for transfer and plat with any correction to the applicant. A copy of the transfer and plat shall be recorded at the Commissioner's office.

6. If no application for transfer is received by the Commissioner within eighteen months after the transfer of the highland ownership, the riparian assignment shall become vacant and open to assignment.

Code 1950, § 28-123; 1950, p. 987; 1956, c. 586; 1958, c. 184; 1960, c. 517; 1962, c. 406, § 28.1-108; 1964, c. 393; 1968, c. 747; 1972, c. 644; 1976, c. 256; 1978, c. 548; 1984, cc. 100, 244, 259; 1986, c. 168; 1992, c. 836 .

§ 28.2-602. Riparian assignments; special terms and conditions

The provisions of this article apply to all Virginia counties and cities bordering on bodies of water in oyster-growing areas, except they shall not apply to riparian lands located above the James River bridge in the James River or its tributaries. In any Virginia county or city where more than one-half acre of ground per waterfront tract has been assigned to a riparian owner, the ground in excess of one-half acre shall be ground held under a regular lease and assignment, and not a riparian assignment.

For Northampton County, however, § 6 of Chapter 254 of the 1883-1884 Acts of Assembly, not this article, shall govern the quantity of land to be assigned to and held by riparian owners. Nothing in this article authorizes a rental of a lesser amount per acre than that provided by law for riparian owners in Northampton County of the land assigned them as such riparian owners. Nothing in the section which restores to riparian owners in Northampton County one-fourth of their waterfronts suitable for planting oysters, permits the owners of waterfronts to compel occupants of the fronts to remove their oysters from any fourth of the shores, if the residue of the shore is already in the landowner's possession or is unoccupied.

Riparian landowners may erect wharves, landings, or other structures as otherwise permitted by law.

Code 1950, § 28-123; 1950, p. 987; 1956, c. 586; 1958, c. 184; 1960, c. 517; 1962, c. 406, § 28.1-108; 1964, c. 393; 1968, c. 747; 1972, c. 644; 1976, c. 256; 1978, c. 548; 1984, cc. 100, 244, 259; 1986, c. 168; 1992, c. 836 .

Article 2 - GENERAL OYSTER-PLANTING GROUNDS

§ 28.2-603. General oyster planting grounds

Waterfront that is not already assigned or reserved for the riparian owners, and the beds of the bays, rivers, and creeks and shores of the sea lying outside the limits of navigation projects adopted and authorized by the Congress and not required for the disposal of materials dredged incident to the maintenance of such projects, and grounds other than public oyster beds, rocks, or shoals, as defined by law and included in the Baylor survey, may be occupied for the purpose of planting or propagating oysters, including the use of temporary protective enclosures in compliance with this chapter and Commission regulations, and may be leased by the Commissioner upon the receipt of a proper application.

Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(1); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1986, c. 171; 1992, c. 836; 2007, cc. 28, 170; 2010, c. 27; 2011, c. 314.

§ 28.2-603.1. Temporary enclosures on leased ground

The Commission shall, pursuant to its authority to regulate marine fisheries and commercial fishing, establish a general permit regulation authorizing the use of temporary protective enclosures to grow shellfish on grounds leased pursuant to § 28.2-603. In developing the general permit, the Commission shall consider those factors set forth in subsection A of § 28.2-1205. In addition to such other requirements as the Commission may prescribe for the protection of public safety, navigation, natural resources, and the environment, the general permit shall include the following provisions:

1. Leaseholders shall comply with any Commission requirements pertaining to aquaculture licensing;

2. Enclosures shall be constructed of nontoxic materials;

3. Leaseholders shall not place enclosures (i) in or upon submerged aquatic vegetation, (ii) in any marked navigation channel or in any other area that would create a hazard, or (iii) in any area that would impede customary access to navigable waters from any riparian property, public or commercial landing, or marina facility;

4. The location of enclosures shall be clearly marked to alert boaters and to allow the leaseholder or other authorized persons to retrieve the enclosures if necessary. The general permit regulation shall specify acceptable means and devices for complying with this requirement;

5. Leaseholders shall maintain a list identifying those leases on which enclosures are placed during the term of the lease and provide, upon request, a current copy of the list to authorized

representatives of the Commission. Leaseholders shall also submit such list to be filed with any application for lease renewal made pursuant to § 28.2-613;

6. Leaseholders shall promptly remove any enclosure that is not actively in use for the planting and propagating of shellfish, and, upon expiration or termination of a lease or of the leaseholder's aquaculture license, the leaseholder shall promptly remove all enclosures placed on the leasehold; and

7. At his discretion, the Commissioner may order the removal or relocation of any enclosure that interferes with navigation, creates a hazard, or otherwise fails to comply with the conditions of the general permit.

2007, cc. 28, 170.

§ 28.2-603.2. Commissioner to provide notice

A. At least 30 days before placing temporary protective enclosures on a leasehold pursuant to § 28.2-603.1, the leaseholder shall provide written notification to the Commissioner that identifies the leasehold, the approximate maximum number of enclosures to be placed on the leasehold at any given time, and the estimated date such placement will begin. No later than 30 days after receiving such notification, the Commissioner may publish notice of the proposed placement in a newspaper of general circulation serving the area in which the leasehold is located. In determining whether to publish such notice, the Commissioner shall consider the potential effect on existing uses of waters proximate to the leasehold and the potential for conflict between the proposed placement and such uses. The public notice shall invite written comment on the proposed placement and include information concerning the submission of written comments. The Commission may receive written comments for no more than 30 days following publication of notice.

B. If, on the basis of written comments, the Commissioner finds significant and substantive opposition from persons residing on or using the waters proximate to the leasehold, the Commissioner shall convene a public meeting on the proposal no more than 30 days after the close of the comment period. No later than 15 days after the public meeting, the Commissioner shall (i) approve the proposal, (ii) approve the proposal with conditions, or (iii) deny the proposal. If the Commissioner denies the proposal, the leaseholder may request approval of the proposal before a hearing of the Commission.

C. If the Commissioner determines not to publish public notice, the Commissioner shall, no later than 30 days after receiving written notification of the proposal, advise the leaseholder to proceed in accordance with the requirements of the general permit. If the Commissioner publishes public notice but does not find significant and substantive opposition by persons residing on or using the waters to the leasehold, the Commissioner shall, no later than 15 days after the close of the comment period, advise the leaseholder to proceed in accordance with the requirements of the general permit.

2007, cc. 28, 170.

§ 28.2-604. Eligible applicants

Application for assignment of general oyster-planting ground may be made by (i) any resident of the Commonwealth, (ii) any county, municipality, or political subdivision of the Commonwealth, or (iii) any firm, or corporation chartered under the laws of this Commonwealth for the purpose of oyster culture and the oyster business provided that at least sixty percent of the stock of any such corporation is wholly owned by residents of the Commonwealth.

Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(2); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1986, c. 171; 1992, c. 836 .

§ 28.2-605. Application for assignment

All applications for assignment of general oyster-planting grounds shall be made in writing, in duplicate, to the Commission. Applications shall be considered in the same order in which they are received, except that no application for any ground then under lease shall be valid for that portion under lease. The application shall state, as nearly as possible, the number of acres applied for and definite location, with the name of one or more prominent points or objects adjacent to such ground. It shall be the duty of any resident, firm, or corporation desiring to obtain a location for planting or propagating oysters to apply to have the location determined, designated, surveyed, and assigned.

Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(3); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1986, c. 171; 1992, c. 836 .

§ 28.2-606. Posting of notice of applications

Notice of the application shall be (i) posted by the Commission for not less than sixty days at the courthouse of the county or city in which the ground applied for lies, and in at least two or more prominent places in the vicinity of the ground and (ii) published at least once a week for four consecutive weeks in a newspaper of general circulation in that county or city.

Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(4); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836 .

§ 28.2-607. Survey and marking of ground

If a protest is not filed in the Commission office within sixty days after posting of the notice of application, the Commissioner shall select a surveyor to survey the grounds and make a plat in duplicate. The surveyor shall forward the plat of survey to the Commissioner. If no protest to the application or surveying of ground is made within thirty days after the plat of survey is recorded in the Commissioner's office, the ground applied for shall be assigned provided that:

1. The application and assignment complies with all applicable provisions of law and, in the judgment of the Commissioner, the assignment is in the public interest.

2. All fees, costs, and the annual rent have been paid for the lease of the ground. The ground shall be marked at the expense of the applicant.

The grounds shall be marked in accordance with Commission regulations for marking oyster grounds.

Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(6); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836 .

§ 28.2-608. Application, surveying, and recording fees

Any applicant for general oyster-planting ground or for riparian oyster ground shall pay (i) an application fee of twenty-five dollars; (ii) the Commission's surveying costs including the cost of the survey and of preparing the original and one copy of the plat; and (iii) the cost of recording each assignment or transfer and plat in the Commission office. The fee for recording each assignment shall be $1.50. No ground shall be assigned until all the prescribed fees have been paid.

Code 1950, §§ 28-39, 28-124; 1952, c. 649; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, §§ 28.1-44, 28.1-109(7); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836 .

§ 28.2-609. Restrictions on assigned acreage and applications

No assignment, except in the Chesapeake Bay, shall exceed 250 acres. An applicant, after having 250 acres of general oyster-planting ground assigned to him, shall not apply for another assignment of oyster grounds within six months from the day his assignment was recorded and completed. If an assignment is not made within six months after the expiration of the notice, the application shall, upon the expiration of six months, lapse and become void, unless the Commissioner allows an extension. When a protest has been filed with the Commission against the granting of an application, the application shall not lapse until the Commission has finally acted upon the application.

Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(8); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836 .

§ 28.2-610. Restriction on acreage owned or operated

No person shall own or operate more than 3,000 acres of general oyster-planting grounds in the waters of this Commonwealth other than in the Chesapeake Bay. If ground in excess of 3,000 acres is acquired, the person has a right to lawfully hold the ground for one year and shall have a legal right to assign it. If no assignment is made within one year, the ground in excess of 3,000 acres shall revert to the Commonwealth and may be applied for by any person having a legal right to do so.

Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(9); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836 .

§ 28.2-611. Application for general planting ground in Chesapeake Bay; acreage allowed; annual rental

Application for general planting ground in the Chesapeake Bay in waters from fifteen feet deep or more shall be made to the Commissioner. The Commissioner shall have the right to accept or reject any application. No more than 5,000 acres may be assigned to any applicant. The assignment shall not interfere with the established fishing rights. Any such application, surveying, and marking shall conform to the law pertaining to oyster-planting grounds. The annual rent per acre in the Chesapeake Bay shall be determined by the Commission, but in no case shall be less than seventy-five cents annually per acre.

Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(10); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836 .

§ 28.2-612. Payment of annual rental; penalty for default

The applicant shall pay to the Commission annual rent of $1.50 per acre or any fraction thereof, except as provided for the Chesapeake Bay and for bathing ground. Such payment shall be due on September 1 of each year after the date of assignment, plus a ten percent penalty if not paid on or before December 5.

Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(11); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836 .

§ 28.2-613. Duration of lease

Each assignment of general oyster-planting ground shall continue in force for ten years from the date of assignment, unless the assignment is terminated; however, assignments issued between July 1, 1976, and July 1, 1980, shall continue in force for twenty years from the date of assignment. The interest in such ground is chattel real.

Upon the death of the renter, testate as to the lease, it shall vest in the named beneficiary subject to the rights of creditors, if he is a resident of this Commonwealth, provided that he files an application for transfer with the Commission within eighteen months after the date of death. If the named beneficiary is not a resident he shall have eighteen months after the date of death to transfer the lease to a qualified holder.

Upon the death of the renter, intestate as to the lease, the lease shall vest in the personal representative, who shall transfer the lease to a qualified holder within eighteen months.

If there is no qualification on the renter's estate within one year of his death, the Commission may within six months thereafter transfer the lease to a qualified holder upon receipt of a transfer duly executed by all of the lawful heirs of the renter.

If there is no transfer under any of the above, the ground shall become vacant and open to assignment.

Upon expiration of the initial or any subsequent term of the assignment, the Commission shall, on application of the holder, renew the assignment for an additional ten-year term. The Commission shall not renew or extend an assignment where there has been no significant production of oysters or clams, no reasonable plantings of oysters, clams or cultch or no significant oyster or clam aquaculture operation, during any portion of the ten-year period immediately prior to the application for renewal, unless the Commission finds that there was good cause for the failure to produce or plant oysters, clams or cultch or finds that the assignment is directly related to and beneficial to the production of oyster-planting grounds immediately adjacent to the assignment. In determining whether there was good cause for the failure to produce or plant oysters, clams, or cultch, in addition to other factors, the Commission shall consider the prevalence of the diseases MSX and Dermo, and whether the oyster-planting ground has traditionally produced commercial quantities of oysters or clams.

Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(12); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836; 1996, c. 985; 1997, c. 259.

§ 28.2-614. Requiring lessee or transferor to have ground surveyed and plat recorded; canceling lease for failure of lessee to have survey

If the Commissioner determines that in any past assignment of or in any attempt to transfer oyster ground, a survey, or a recorded plat, does not accurately describe the metes and bounds of the leased ground, the Commissioner shall require the lessee, the transferor, or both to have the ground surveyed and the plat recorded.

If the lessee fails to order the survey or resurvey within six months after date of notification to the lessee or transferor, by certified mail, the Commissioner shall cancel the lease and may accept applications for this ground from the general public.

Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(12b); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836 .

§ 28.2-615. Payment of costs for service, etc

The cost of the surveys and recording fees required by § 28.2-614 shall be borne by the lessee or transferor and the cost and fees shall be the same as for surveys made by the Commission.

Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(12c); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836 .

§ 28.2-616. Possession gives no preference as to assignment

Any person in possession of any general oyster-planting ground which has not been assigned according to law shall have no preference as to having it assigned to him. The ground shall be open to the first applicant.

Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(13); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836 .

§ 28.2-617. Recordation of plat

The plat and assignment, as soon as practicable after completion, and after the ground has been assigned to the applicant, shall be filed for record in the office of the Commission.

Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(14); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836 .

§ 28.2-618. Commonwealth guarantees rights of renter subject to right of fishing

The Commonwealth shall guarantee to any person who has complied with ground assignment requirements the absolute right to continue to use and occupy the ground for the term of the lease, subject to:

1. Section 28.2-613;

2. Riparian rights;

3. The right of fishing in waters above the bottoms, provided (i) that no person exercising the right of fishing shall use any device which is fixed to the bottom, or which, in any way, interferes with the renter's rights or damages the bottoms, or the oysters planted thereon, and (ii) that crab pots and gill nets which are not staked to the bottom shall not be considered devices which are fixed to the bottom unless the crab pots and gill nets are used over planted oyster beds in waters of less than four feet at mean low water on the seaside of Northampton and Accomack Counties; and

4. Established fishing stands, but only if the fishing stand license fee is timely received from the existing licensee of the fishing stand and no new applicant shall have priority over the oyster lease. However, a fishing stand location assigned prior to the lease of the oyster ground is a vested interest, a chattel real, and an inheritable right which may be transferred or assigned whenever the current licensee complies with all existing laws.

Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(15); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836 .

§ 28.2-619. When leases become vacant

When the Commission finds that a lessee is dead or unknown, and no one claims such property as an heir or assignee, the ground shall become vacant and open to assignment.

Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(16); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836 .

§ 28.2-620. Delinquent ground

Any ground or area which becomes delinquent shall be open and available to be leased, after the following conditions have been met:

1. The Commissioner has notified the person in writing on or about September 1 of that year of the amount of rent due;

2. If the rent becomes delinquent, the Commissioner has mailed a second notice by certified mail on or about June 1 of the following year; and

3. The person holding the lease does not pay all rents and penalties due on or before June 30 of the following year.

Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(17); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836 .

§ 28.2-621. Effect of proposal for navigation project

When the Commissioner receives information that the Secretary of the Army has been authorized by congressional action to conduct a survey on a specified navigation improvement project, the Commissioner shall obtain the consent and approval of the Governor before leasing any public oyster-planting grounds which may be required for dredging operations or spoil disposal areas in connection with the project. If after the completion of the survey and submission of the district engineers' report to the Chief of Engineers, United States Army, the proposed navigation improvement project is not authorized, the affected ground will again become available for lease and assignment.

Nothing in this section shall prohibit the renewal of any lease already in existence at the time the Commissioner receives information as to the authorization of a survey.

Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(18); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836 .

§ 28.2-622. Consolidation of lease

Upon written request by a leaseholder, the Commission may consolidate into one lease contiguous leases held by the same leaseholder. The consolidation, upon approval by the Commission, shall be considered a new lease.

Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(19); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836 .

Article 3 - ASSIGNMENT, TRANSFER, CONDEMNATION; OTHER GROUNDS

§ 28.2-623. Excusing rent payment on condemned oyster grounds in the Lynnhaven River and tributaries

Whenever leased oyster ground in the Lynnhaven River and its tributaries has been condemned by the Commissioner of the State Department of Health for not less than 180 consecutive days, other than regular seasonal condemnation, the lessee, after prior written notice to the Commission, may choose not to pay the rent on the condemned acreage for the year immediately following the year in which the one hundred eightieth day of condemnation occurs. This choice may continue until the condemnation is terminated. However, if the lessee makes such a choice, (i) oysters or clams shall not be taken from such leased area by the lessee for any reason during the condemnation period; (ii) the lease shall continue to run; and (iii) the lessee may renew the lease as provided by law. The Commissioner may not make a new lease assignment or transfer an existing lease that lies wholly or partially within a condemned area unless the applicant executes a release that he will not exercise his rights under this section for the duration of the lease.

1976, c. 557, § 28.1-109.1; 1992, c. 836 .

§ 28.2-624. Public rocks, etc., not to be used or staked off; penalty

It is unlawful for any person to stake, use, or occupy for the purpose of propagating or planting oysters or shells any public oyster bed, rock, or shoal, or any bottom which has not been assigned to him, or any public clamming grounds which have been set aside as such. The officer for that district or any other officer of the Commission shall require any such person to remove all stakes, watchhouses, or other obstructions from the public beds, rocks, or shoals or from any bottom which has not been assigned to him. The failure of any person to remove such stakes or other obstructions within ten days of receiving the written notice is a separate and additional unlawful act and violation of this section. The stakes or other obstructions shall be removed by the officer at the cost of the person unlawfully placing or having placed the stakes or other obstructions.

A violation of this section is a Class 3 misdemeanor.

Code 1950, § 28-125; 1962, c. 406, § 28.1-111; 1992, c. 836 .

§ 28.2-625. Transfer or assignment

A person holding an existing lease of oyster-planting ground may transfer or assign all or any part of the lease to another under the following conditions and provisions:

1. The transfer or assignment may be made only to a resident of the Commonwealth, or a firm or corporation authorized by Virginia laws to occupy and hold oyster-planting ground.

2. The application for transfer or assignment shall be in the form prescribed by the Commissioner and shall be filed with the Commission.

3. The Commissioner shall require a new survey if no survey exists of the exact parcel or parcels of grounds to be transferred or assigned.

4. The cost of any new surveys required under this section shall be borne by the person making the transfer, and the cost and fees shall be the same as for surveys made by the Commissioner.

5. The application shall be accompanied by the transfer fee of five dollars if the parcel or parcels are ten acres or less and ten dollars if the parcel or parcels are more than ten acres.

6. The Commissioner shall record in his office the application for transfer or assignment with any correction or new plat he deems necessary.

7. The transfer or assignment shall constitute a new lease of the tract or parcel assigned and any ground remaining under the old lease.

Code 1950, § 28-126; 1962, c. 406, § 28.1-112; 1984, cc. 100, 259; 1992, c. 836 .

§ 28.2-626. Refund of rent paid under mistake

Whenever the Commissioner finds that a person has mistakenly paid to the Commonwealth any money that he is not legally obligated to pay, the Commissioner may refund the money. All amounts refunded under this section shall be paid out of the then current appropriations made for the Commissioner's use.

Code 1950, § 28-127; 1962, c. 406, § 28.1-113; 1992, c. 836 .

§ 28.2-627. Relief from rent

The Commissioner may forgive ground rent for oyster leases in any area declared a disaster area for oyster culture. A disaster area may be declared when any natural or man-made condition arises which precludes satisfactory culture of oysters in that area. Such declaration for an area shall be made by the Commissioner upon the advice of the Director of the Virginia Institute of Marine Science on or before July 1 of each year, and ground rent due and payable in September following such declaration may be forgiven for the ensuing tax year. Such relief may continue until the Commissioner with the approval of the Virginia Institute of Marine Science declares the area again productive.

Code 1950, § 28-128; 1962, c. 406, § 28.1-114; 1992, c. 836 .

§ 28.2-628. Condemnation of oyster bottoms and grounds

The Department of Transportation and any locality shall have the right by eminent domain, to acquire any right or interest, partial or complete, in and to any oyster bottoms, oyster-planting grounds, or interest therein necessary for the purpose of such Department or locality. The procedure in such cases shall conform to the provisions of Chapter 3 (§ 25.1-300 et seq.) of Title 25.1. However, a locality shall not exercise the right by eminent domain to acquire any right or interest, partial or complete, in and to any oyster-planting grounds leased pursuant to Article 1 (§ 28.2-

600 et seq.) or 2 (§ 28.2-603 et seq.) of Chapter 6, other than a water-dependent linear wastewater project where there is no practical alternative and the project is subject to permitting under the State Water Control Law (§ 62.1-44.2 et seq.).

The Department of Conservation and Recreation shall have the same right of eminent domain against the same properties as previously described, where the purpose of the condemnation is to provide for a navigational improvement benefiting the Commonwealth and not limited to purposes of any particular locality.

Code 1950, § 28-122.1; 1950, p. 92; 1962, c. 406, § 28.1-115; 1989, c. 656; 1992, c. 836; 2003, c. 940; 2014, cc. 162, 591.

§ 28.2-629. Rights of owner to waters within lawful survey

If any creek, cove, or inlet within the jurisdiction of this Commonwealth flows into or runs through the lands of any person, is less than 100 yards in width at mean low water, and is comprised within the limits of his lawful survey, as defined in § 28.2-1202, such person or other lawful occupant shall have the exclusive right to use the creek, cove, or inlet for sowing or planting oysters or other shellfish. However, in the County of Mathews the owners or lawful occupants of land on both sides of any creek, cove, or inlet, except Horn Harbor, Winter Harbor, and Milford Haven, suitable for the planting of oysters, above the point where such creek, cove, or inlet is 100 yards in width, shall have the exclusive right to use such creek, cove, or inlet for planting oysters. The right of the owners or occupants of land on the opposite sides of such creek, cove, or inlet extends to the middle of the channel.

Code 1950, § 28-132; 1962, c. 406, § 28.1-116; 1964, c. 393; 1966, c. 656; 1968, cc. 659, 747; 1972, c. 539; 1992, c. 836 .

§ 28.2-630. Rights of riparian owners to build bulkhead or wharf

All assignments or leases of oyster or clam grounds under this chapter shall be subject to the rights vested in riparian claimants under Article 1 (§ 28.2-600 et seq.) of this chapter and also to the following condition: That any landowner who desires to erect a bulkhead or wharf in front of his property or to open a channel, and who is not a lessee or riparian holder of suitable bottoms for that purpose, shall give the lessee or other holder of oyster or clam grounds in front of his property twelve months' notice of such intention; and upon the expiration of that time, the rights of the lessee or holder of so much of the oyster or clam grounds as are reasonably needed for building the bulkhead, wharf, or channel shall cease. This twelve-month notice and waiting period shall not apply if, at the time the landowner provides notice to the lessee or other holder of the oyster or clam grounds in front of his property, the landowner provides the Commissioner sufficient information describing the dimensions and location of the bulkhead, wharf or channel and the Commissioner subsequently finds, in writing, that the proposed bulkhead, wharf or channel will not adversely impact commercially productive oyster or clam grounds. For purposes of this section "commercially productive oyster or clam grounds" are those areas which can be demonstrated to have (i) suitable substrate for oyster or clam production and (ii) evidence of commercial oyster or

clam production within the past three years. If the bulkhead, wharf, or channel has not commenced as specified in the notice within three months after the oyster or clam grounds were vacated, the former lessee or holder shall have the right to resume possession of the oyster or clam grounds he has vacated in favor of such landowners, subject to the provisions of this chapter. Any person constructing a channel under this section shall compensate the lessee of any oyster or clam grounds for all losses or damages including the value of the ground taken for the construction of the channel. The lessee shall have recourse under action of the law in the court of the proper jurisdiction of the Commonwealth of Virginia to recover damages.

Code 1950, § 28-134; 1962, c. 406, § 28.1-118; 1992, c. 836; 2000, c. 167.

§ 28.2-631. Grounds for clams

The provisions in this chapter referring or relating to the leasing of oyster grounds include the right of the Commissioner to lease grounds for planting, growing, storing, and harvesting clams. The Commissioner may use the same application and assignment forms and procedures for leasing grounds for producing clams as provided for leasing grounds for producing oysters.

1962, c. 406, § 28.1-110; 1970, c. 726; 1992, c. 836 .

§ 28.2-632. Public clamming grounds

Any ground in the waters of this Commonwealth not assigned to anyone for planting or bathing purposes may be, on application of twenty or more citizens to the officer assigned to the district in which the land lies, laid off and designated as public clamming grounds; or the Commissioner may do so without such petition, provided in his opinion no oyster interests will suffer thereby and the clams are of sufficient quantity for a person to realize at least 225 clams or $1.50 per day catching and taking clams from such ground. If the ground is laid off, the Commissioner shall designate by stakes the metes and bounds of such ground and also have a plat made, to be recorded in the clerk's office of the county where the ground lies. All costs of surveying, platting, and recording shall be paid by the applicant. Such ground shall be set apart and remain a public clamming ground for the common use of the citizens of Virginia for so long as the Commissioner determines, and shall not be assigned to anyone during such period.

Code 1950, § 28-180; 1962, c. 406, § 28.1-162; 1992, c. 836 .

§ 28.2-633. Bathing grounds; assignment; rental

Any person desiring to obtain a location for bathing grounds shall apply to the Commissioner to have the location designated, surveyed, and assigned. An annual rental fee of $7.50 per acre shall be charged for obtaining such a location. The cost for the assignment of bathing grounds shall be three dollars. Any such application, surveying, assigning, and marking shall conform to the law pertaining to oyster-planting grounds. Such licenses shall be for public or commercial bathing grounds only.

If any lessee of bathing ground has his ground or any portion thereof resurveyed or if he reassigns any or all of the ground, the resurvey or reassignment shall not be considered a twenty-year

renewal of his lease, or as a new assignment of the ground, but shall be a continuation of the original assignment, subject to all the limitations and conditions under which the ground was originally assigned.

The lessee of any bathing ground, the rent of which is to be paid to the following September of any year, may abandon his holdings at any time without being liable for the payment of the rent for the following year, provided he notifies an officer or the Commissioner in writing of his intention to do so before September 1. This notice, when received by the officer, shall be immediately forwarded by him to the office of the Commissioner.

Code 1950, §§ 28-39, 28-187; 1952, c. 649; 1960, c. 517; 1962, c. 406, §§ 28.1-44, 28.1-118.1; 1984, c. 100; 1986, c. 184; 1992, c. 836 .

Article 4 - RESTRICTIONS

§ 28.2-634. Nonresidents; taking, planting oysters prohibited; penalty

If any person other than a resident, as defined in § 28.2-200, takes or catches oysters or clams in any of the waters of this Commonwealth, or in any of the waters under the Commonwealth's jurisdiction, for market or profit, he is guilty of a Class 1 misdemeanor. If any person other than a resident, as defined in § 28.2-200, or a corporation authorized to occupy and hold oyster-planting grounds, rents any oyster-planting grounds or plants oysters or clams in any of the waters of the Commonwealth, or waters under the Commonwealth's jurisdiction, he is guilty of a Class 1 misdemeanor, and such rental, lease or assignment is void. The burden of proof of residency under this section is the defendant's. This section shall not apply to any oyster-planting ground against which foreclosure proceedings have been instituted or title to which is acquired because of the lessee's death. Any property interest so acquired shall not extend longer than twelve months from the time the title vests.

Code 1950, § 28-139; 1962, c. 406, § 28.1-122; 1992, c. 836 .

§ 28.2-635. Residents not to be associated with nonresident

Any resident who is associated for market or profit with any nonresident in taking or catching oysters or clams in any of the waters of the Commonwealth, or in waters under the jurisdiction of the Commonwealth, or in planting oysters or clams, or who knowingly participates with any nonresident in any such business in his name for market or profit, is guilty of a Class 1 misdemeanor. The residence restrictions in this section shall not prevent a resident from owning stock in a corporation in which nonresidents are stockholders, if such corporation is authorized by law to occupy oyster-planting grounds.

Code 1950, § 28-140; 1962, c. 406, § 28.1-123; 1983, c. 307; 1992, c. 836 .

§ 28.2-636. Leasing of certain bottoms in Rappahannock River prohibited

No part of the bottom of the Rappahannock River, lying in or near the center of the river and running from the mouth of the river to and including Morattico bar, which is designated on the

Baylor survey and resurveys as assignable bottom and is commonly known as "deep water planting grounds," may be leased or assigned. The bottom is declared to be a part of the public oyster beds and rocks of the Rappahannock River.

Code 1950, § 28-201; 1962, c. 406, § 28.1-144; 1992, c. 836 .

§ 28.2-637. Repealed

Repealed by Acts 1993, c. 217 .

§ 28.2-638. Authority of Governor to authorize dredging of channel in navigable waters

When the approval, consent, or authorization of the Commonwealth is necessary or expedient for any person to dredge a channel of any navigable stream, the bed of which is owned by the Commonwealth, for the purpose of deepening, widening, or relocating such channel and making related improvements, the Governor may, on behalf of the Commonwealth, grant such approval upon such terms and conditions as he deems appropriate after the receipt of advisory reports from the Virginia Institute of Marine Science, the State Water Control Board, the Commission, the Board of Game and Inland Fisheries, the Director of the Department of Conservation and Recreation, the Director of the Department of Historic Resources, the State Port Authority, and the Commonwealth Transportation Board.

Code 1950, § 28-201.3; 1958, c. 302; 1962, c. 406, § 28.1-147; 1964, c. 350; 1989, c. 656; 1992, c. 836 .

§ 28.2-639. Certain public oyster rocks in Rappahannock River

Russ' Rock and Little Carter's Rock are declared to be public oyster rocks, beds, and shoals and unassignable to any person for private use, in the same manner and to the same extent as if the rocks, beds, and shoals had been within the original Baylor survey.

Code 1950, § 28-203; 1962, c. 406, § 28.1-149; 1992, c. 836 .

§ 28.2-640. Declaring certain grounds in Mobjack Bay public oyster rocks

The following grounds in Mobjack Bay, in the County of Gloucester, to wit: First, a lot of oyster-planting ground containing 218.75 acres surveyed by Fred E. Reudiger, civil engineer, and assigned to F. W. Darling by George B. Taliaferro, oyster inspector, by an assignment recorded in oyster plat book number 4, page 31, in the clerk's office of Gloucester County, Virginia; second, those portions of a lot of oyster ground surveyed by Fred E. Reudiger, civil engineer, and assigned to J. Weymouth by George B. Taliaferro, oyster inspector, by his assignment recorded in oyster plat book number 4, page 35, in the clerk's office of Gloucester County, Virginia, and a lot of oyster ground surveyed by Fred E. Reudiger, civil engineer, and assigned to S. J. Watson by George B. Taliaferro, oyster inspector, by an assignment recorded in oyster plat book number 4, page 31, in the clerk's office of Gloucester County, Virginia, which 2 portions of the 2 plats adjoin the 218.75-acre lot of oyster ground above described, which was assigned to F. W. Darling and which portions are cut off from the residue of the Weymouth and Watson lots of oyster ground above described, by a line beginning where the boundary of J. Weymouth's ground, which runs north 47 degrees,

32' east, 78.61 chains, intersects the boundary of F. W. Darling's ground, which runs south 42 degrees east, 30 chains, and from this point of intersection running south 42 degrees east, until it intersects with the line of S. J. Watson's ground, which runs south 51 degrees, 26' west, 113.79 chains (these portions of the Weymouth and Watson lots of oyster ground are cut off by the boundary line previously described without regard to acreage; the acreage is estimated not to exceed 50 acres), are declared public oyster rocks, beds, and shoals as if the same had originally been included within the limits and boundaries of the Baylor survey of the public rocks, beds, and shoals in the waters of the Commonwealth, and subject in all respects to the laws of the Commonwealth in relation to public oyster rocks, beds, and shoals, and the taking of oysters. Such grounds shall be subject, also, to the existing rights of any lessees.

Code 1950, § 28-204; 1962, c. 406, § 28.1-150; 1992, c. 836 .

§ 28.2-641. Declaring certain areas in Hill's Bay, Mathews County, public oyster rocks, beds, and shoals

The following ground in Hill's Bay on the west side of Gwynn's Island, Mathews County, contained within the following boundaries is declared to be public oyster rocks, beds, and shoals and unassignable to any person for private use: Beginning at corner No. 8, Public Ground No. 5 of Mathews County; thence along Public Ground line to corners Nos. 9, 10, 11, 12, 13, and 14 in a northeasterly direction; thence a due east course to the low-water mark on the west side of Gwynn's Island; thence following the meanders of the low-tide line in a southwesterly direction to corner No. 5 of J. R. Forrest's oyster lease of 2.01 acres; thence following said oyster lease in a westerly direction to corner No. 4 of said lease; thence in a westerly direction to the point of beginning. The oyster lease of O. V. Sparrow's 10.51 acres, near Cherry Point, is excluded from the previously described area.

Code 1950, § 28-204.1; 1954, c. 63; 1962, c. 406, § 28.1-151; 1992, c. 836 .

§ 28.2-642. Declaring certain other areas in Hill's Bay, Mathews County, public oyster rocks, beds, and shoals

The following ground in Hill's Bay, Mathews County, contained within the following boundaries is declared to be public oyster rocks, beds, and shoals and unassignable to any person for private use.

The point of beginning is located at the low-tide line on the west side of the Gwynn's Island Bridge, said bridge connecting the mainland and Gwynn's Island; thence following the west right-of-way of said Gwynn's Island Bridge to a point on the south side of Public Ground No. 5, Mathews County; thence along the south side of Public Ground No. 5 in a southwest direction to Public Ground corner No. 2; thence in a generally west direction along said Public Ground corner No. 3; thence in a generally northwest direction along said Public Ground to Public Ground corner No. 4; thence in a generally northwest direction along said Public Ground to Public Ground corner No. 5; thence in a generally northwest direction on the west side of Public Ground No. 5 to a point; thence in a northwest direction along the south side of C. M. Forrest's 4.10-acre oyster

ground lease to a point; thence in a northwesterly direction along the southwest side of J. E. Forrest's 10.17-acre oyster ground lease to a point; thence in an easterly direction along the northern side of J. E. Forrest's 10.17-acre oyster ground lease to a point on the south side of Public Ground No. 5, Mathews County; thence in a northwesterly direction along the south side of Public Ground No. 5 to Public Ground corner No. 6; thence in a generally north direction along the western side of said Public Ground No. 5 to Public Ground corner No. 5; thence in a northerly direction along said Public Ground to Public Ground corner No. 4; thence in a northerly direction along the west side of Public Ground No. 5 to a point; thence following the south edge of Shelton Rowe's, Julian Rowe's and Robert Callis' oyster ground lease of 100 acres in a generally west direction to a point, said point being due north of survey station "Burton," located on Burton's Point to low-tide line; thence following the low-tide line in a generally southeasterly direction to the west side of the mouth of Queen's Creek; thence in a southeasterly direction across the mouth of Queen's Creek to a point; thence along the low-tide line in a generally easterly direction to the point of beginning.

Code 1950, § 28-204.1:1; 1958, c. 299; 1962, c. 406, § 28.1-152; 1992, c. 836 .

§ 28.2-643. Declaring certain areas in Chesapeake Bay, Mathews County, public oyster rocks, beds, and shoals

The following ground in Chesapeake Bay, Mathews County, contained within the following boundaries is declared to be public oyster rocks, beds, and shoals and unassignable to any person for private use:

Beginning, as a point of reference, at survey station "Sand," located near the south end of Gwynn's Island; thence due east to the low-water mark on the east side of Gwynn's Island to the true point of beginning; thence due east along the south end of Gwynn's Island; thence due east to the low-water mark on the east Public Ground No. 6, Mathews County; thence following the west side of Public Ground No. 6, Mathews County, in a northerly direction to Public Ground corner No. 8; thence following said Public Ground in a northerly direction to Public Ground corner No. 7; thence following said Public Ground in a northerly direction to Public Ground corner No. 6; thence in a northerly direction, following said Public Ground to Public Ground corner No. 5; thence in a northerly direction following said Public Ground to Public Ground corner No. 4; thence in a northerly direction following said Public Ground to Public Ground corner No. 3; thence in a generally west direction following the south side of Public Ground No. 6 to Public Ground corner No. 2; thence in a generally westerly direction following said Public Ground to Public Ground corner No. 1; thence in a southwesterly direction to the intersection of Public Ground No. 5, Mathews County; thence following the northeast side of Public Ground No. 5 in a southeasterly direction to the low-tide line at Cherry Point on the north side of Gwynn's Island; thence following the low tide on the north side of Gwynn's Island to a point; thence following the low-tide line on the east side of Gwynn's Island in a southerly direction to the true point of beginning.

Code 1950, § 28-204.1:2; 1958, c. 204; 1962, c. 406, § 28.1-153; 1992, c. 836 .

§ 28.2-644. Declaring certain areas near Hole in the Wall, in Mathews County, public oyster rocks, beds, and shoals

The following ground near Hole in the Wall, Mathews County, contained within the following boundaries is declared to be public oyster rocks, beds, and shoals and unassignable to any person for private use:

1. Beginning at Virginia Marine Resources Commission's survey Station Marsh, located in the marsh on the south side of Hole in the Wall; thence in a northeasterly direction to corner No. 3 of Carroll Lee Forrest and Vernon Rowe, Junior's, oyster lease of 13.02 acres; thence in a northwesterly direction along said lease to corner No. 2; thence along the east side of R. Herbert Callis' lease of 6.69 acres to corner No. 3 of said lease; thence along the north side of said lease in a westerly direction to corner No. 2, said corner No. 2 in on line of Public Ground No. 7, Mathews County; thence in a northerly direction to Public Ground corner No. 11; thence in a northwesterly direction along Public Ground line to a point opposite corners Nos. 8 and 9 of Maywood L. Callis' 24.69 acres; thence in a northeasterly direction to corner No. 9 of said lease; thence to corner No. 10 of said lease; thence in a northeasterly direction to Virginia Marine Resources Commission's survey Station Sand; thence in a due east course to the intersection of Public Ground No. 6, Mathews County; thence following along west side of said Public Ground in a southeasterly direction to a point due east of Station Marsh; thence due west to Station Marsh, or point of beginning.

2. Beginning at the northeast corner of Haufler's survey No. 6565; thence in an easterly direction along the line of Milford Haven to a point which is on Public Ground No. 7; thence in a southerly direction along the boundary line of Public Ground No. 7 to a point; thence due west to a point which is the southeastern corner of Callis Ground No. 7222; thence in a northerly direction along Callis Ground No. 7222 and Callis Ground No. 10447 to a point where the eastern boundary of Callis Ground No. 10447 intersects the eastern boundary of Haufler's Ground No. 6565; thence in a northerly direction to the point of beginning.

Code 1950, § 28-204.2; 1954, c. 111; 1962, c. 406, § 28.1-154; 1981, c. 128; 1992, c. 836 .

§ 28.2-645. Declaring certain areas in Pocomoke Sound, Accomack County, public oyster rocks, beds, and shoals

The following area in Pocomoke Sound, Accomack County, contained within the following boundaries is declared to be public oyster rocks, beds, and shoals and unassignable to any person for private use:

Beginning at a point on the low-water mark on the north end of Saxis Island, said point being due south from the low-water mark and marked by a concrete marker designated as survey point "B" on a map of Pocomoke Sound; thence from the true point of beginning at low water following in a southwesterly direction the low-water mark on the northwest side of Saxis Island to a point, said point being the northeast side of Starling Creek; thence southwesterly across the mouth of Starling Creek to a point; thence following the low-water mark in a southwesterly direction to a

point on the northeast side of the mouth of Fishing Creek; thence in a generally westerly direction across the mouth of Fishing Creek to a point; thence following the low-water mark around Drum Bay to a point due north of a concrete survey marker named "Drum"; thence due north to Public Ground No. 11; thence easterly to Public Ground corner No. 13; thence southeasterly to Public Ground corner No. 14; thence easterly to Public Ground corner No. 15; thence southeasterly to Public Ground corner No. 16; thence easterly to Public Ground corner No. 17; thence northeasterly to Public Ground corner No. 18; thence northwesterly to Public Ground corner No. 19; thence northeasterly to Public Ground corner No. 1; thence in a northerly direction to Public Ground corner No. 14 of Public Ground No. 9; thence northerly to Public Ground corner No. 15; thence northeasterly to Public Ground corner No. 16; thence northeasterly toward Public Ground corner No. 17 to a point due north to the true point of beginning; thence due south to the point of beginning.

However, nothing in this section shall prohibit the assignment of a portion of such area to riparian owners under Article 1 (§ 28.2-600 et seq.) of this chapter.

Code 1950, § 28-204.3; 1956, c. 135; 1962, c. 406, § 28.1-155; 1992, c. 836 .

§ 28.2-646. Declaring certain areas in Piankatank River near Stove Point, Middlesex County, public oyster rocks, beds, and shoals

The following area, in the Piankatank River around and near Stove Point, Middlesex County, is declared to be public oyster rocks, beds, and shoals and unassignable to any person for private use:

Beginning at survey station "R" on extreme southern tip of Stove Point as a point of reference; thence in a southerly direction to the low-water mark on the southern tip of Stove Point; thence in a northerly direction following the low-water mark on the west side of Stove Point to a point due west of survey station "Billy"; thence in a due west course to Public Ground No. 3, Middlesex County; thence in a southerly direction to Public Ground corner No. 6 of said Public Ground; thence in a southerly direction to Public Ground corner No. 5; thence in an easterly direction to Public Ground corner No. 4; thence in a southeasterly direction to Public Ground corner No. 3; thence in a southeasterly direction to a point, said point being on Public Ground No. 5, of Mathews County; thence in a northeasterly direction, following Public Ground No. 5, Mathews County, to a point; thence in a northwesterly direction to Public Ground corner No. 14 of Public Ground No. 2, Middlesex County; thence in a north-northwesterly direction to Public Ground corner No. 13 of said Public Ground; thence in a westerly direction to corner No. 4 of J. T. Ward's 57.48-acre lease; thence in a northerly direction following the west side of said J. T. Ward's lease to corner No. 5 of the hereinabove mentioned lease; thence in a due west course to the low-water mark on the eastern side of Stove Point; thence following in a southerly direction the low-water mark of the east side of Stove Point to the point of beginning.

However, nothing in this section shall affect any oyster ground assignments that are now in effect or prohibit assignment of a portion of such area to riparian owners under Article 1 (§ 28.2-600 et seq.) of this chapter.

Code 1950, § 28-204.4; 1956, c. 142; 1962, c. 406, § 28.1-156; 1992, c. 836 .

§ 28.2-647. Declaring certain areas near the mouth of the Poquoson River, in York County, public oyster rocks, beds and shoals

The following ground near the mouth of the Poquoson River in York County, contained within the following boundaries is declared to be public oyster rocks, beds, and shoals and unassignable to any person for private use.

Tract No. 1. Beginning at low-water mark on the extreme east side of Goodwin Islands at a point known as Tues Point; thence following the low-water mark on the eastern side of Goodwin Islands in a general southerly direction to the extreme southern point of said Goodwin Islands; thence in a southerly direction to corner No. 7 of the 27.72 acre oyster lease of C. E., W. T. and J. T. Crockett, H. H. Hansford and S. E. Wescott; thence in a general easterly direction to corner No. 6 of said oyster lease; thence in a southerly direction to corner No. 5 of said oyster lease; thence in a general westerly direction to corner No. 4 of said oyster lease; thence due south to the low-water mark on the east side of Crab Neck; thence following the low-water mark on the east side of said Crab Neck in a general southerly direction to the extreme tip of said Crab Neck, known as York Point; thence in a general south-southwesterly direction to corner No. 3 of Public Ground No. 9, York County; thence in a southeasterly direction along the northeast side of said Public Ground to Public Ground corner No. 4; thence in a general southerly direction on the east side of said Public Ground to corner No. 1 of said Public Ground; thence in a general southeasterly direction to Public Ground corner No. 3 of Public Ground No. 8, York County; thence in a northeasterly direction following the west side of Public Ground No. 8 to Public Ground corner No. 2; thence in an easterly direction along the northern side of Public Ground No. 8 to Public Ground corner No. 1; thence in a southwest direction along the east side of Public Ground No. 8 to Public Ground corner No. 4; thence in a due east course to the low-water mark on the east side of the mouth of Bennett's Creek; thence following the low-water mark in a general easterly direction to Marsh Point, said point is located at the extreme southeast side of the mouth of the Poquoson River; thence in a general northwesterly direction on a line toward Tues Point to a point on the southeast side of Public Ground No. 7, York County; thence in a southwest direction along the southeast side of Public Ground No. 7 to Public Ground corner No. 4; thence in a northwesterly direction along the southwest side of said Public Ground No. 7 to Public Ground corner No. 1; thence in a northeasterly direction along the northwest side of said Public Ground No. 7 to a point; thence following the south line of the oyster ground of C. E. Crockett and A. P. Thomas, said lease containing 12.70 acres, in a general westerly direction to corner No. 3 of said oyster lease; thence following the west side of said oyster lease in a general northerly direction to corner No. 2 of said lease; thence in a northeasterly direction along the northwest side of said oyster

lease to a point, said point being located on a line from Tues Marsh to Marsh Point; thence in a northwesterly direction to the low-water mark to Tues Point, or the point of beginning.

Tract No. 2. Beginning at the low-water mark on the extreme east side of Plumtree Point, said point located on the north side of the mouth of Back River, said point is the eastmost point on said side of river; thence in a general north-northwesterly direction toward corner No. 3 of Public Ground No. 7, York County, to a point on the south side of M. F. Quinn's 90.40 acre oyster ground lease; thence in a westerly direction along the south line of M. F. Quinn's oyster lease to a point, said point being located on the southeast side of York County, Public Ground No. 7; thence in a southwesterly direction along the southeast side of Public Ground No. 7, York County, to a point, said point is located along a line from Tues Point to Marsh Point; thence in a general southeasterly direction along the heretofore described line to the low-water mark on Marsh Point, said Marsh Point being the extreme east point of the south side of the mouth of Poquoson River; thence in a general southeasterly direction along the low-water mark to the point of beginning.

Code 1950, § 28-204.5; 1958, c. 175; 1962, c. 406, § 28.1-157; 1992, c. 836 .

§ 28.2-648. Declaring certain ground in Mobjack Bay, in Gloucester and Mathews Counties, to be public oyster rocks, beds, and shoals

The following grounds in Mobjack Bay, Gloucester-Mathews Counties, contained within the following boundaries are declared to be public oyster rocks, beds, and shoals and unassignable to any person for private use, in the same manner and to the same extent as if the rocks, beds, and shoals had been within the original Baylor survey:

Beginning at the westmost corner of W. E. Belvin's 79.25 acre oyster ground lease, designated as corner No. 2 of said lease, said point of beginning also being the northmost corner of additional Public Ground area of 1928, Gloucester County (Deep Rock); thence in a northerly direction along the west side of the said Belvin lease to corner No. 1 of said lease, corner No. 1 also being the southmost corner of John Carr's 84.85 acre oyster ground lease; thence in a northwesterly direction along the southwest side of John R. Carr's 84.85 acre oyster ground lease to corner No. 1 of said oyster ground lease; thence in a general northeasterly direction along the northwest side of John R. Carr's oyster lease to corner No. 2 of said lease, said corner also being the westmost corner of W. E. Belvin's 27.71 acre oyster ground lease; thence in a northeasterly direction along the northwest side of W. E. Belvin's oyster ground lease to corner No. 10 of said lease; thence in a southeasterly direction along the northeast side of W. E. Belvin's oyster ground lease to corner No. 6 of said lease; thence in a northeasterly direction to the southwest side of Public Ground No. 2, Mathews County; thence in a northwesterly direction along the southwest side of Public Ground No. 2, Mathews County, to a point, said point being the intersection of an additional area of Public Clamming Grounds, Gloucester County, with Public Oyster Ground No. 2, Mathews County; thence in a southwest course along additional area of Public Clamming Grounds, Gloucester County; thence in a southwesterly direction along the edge of additional area of Public Clamming

Grounds in Gloucester County to a point; thence in a southeasterly direction along the additional area of Public Clamming Grounds, Gloucester County, to the point of beginning.

Code 1950, § 28-204.6; 1958, c. 475; 1962, c. 406, § 28.1-158; 1992, c. 836 .

§ 28.2-649. Acts which remain in force

The following acts of the General Assembly are continued in force:

Chapter 632 of the Acts of Assembly of 1901-1902, relating to the natural oyster rocks, beds, and shoals in Nomini and Currioman Bays, in the County of Westmoreland.

Chapter 294 of the Acts of Assembly of 1901-1902, declaring certain grounds in the James River, in the County of Isle of Wight, known as Day's Point Long Rock, to be a natural oyster bed, rock or shoal.

Chapter 319 of the Acts of Assembly of 1901, including Surry County within the oyster territory of the Commonwealth, etc.

Chapter 855 of the Acts of Assembly of 1895-1896, and Chapter 263 of the Acts of Assembly of 1897-1898, declaring certain portions of ground in York River to be natural oyster rocks.

Chapter 862 of the Acts of Assembly of 1897-1898, relating to the natural oyster rocks, beds, and shoals in York River in King and Queen County.

Chapter 279 of the Acts of Assembly of 1930, relating to certain natural oyster beds, rocks and shoals in Mathews County.

Code 1950, § 28-205; 1962, c. 406, § 28.1-159; 1992, c. 836 .

§ 28.2-650. Dredging clams in polluted areas for replanting in public clamming grounds

The Commissioner may dredge clams or have the clams dredged in polluted areas for the purpose of replanting them in public clamming grounds.

Code 1950, § 28-179; 1962, c. 406, § 28.1-161; 1992, c. 836 .

Chapter 7 - CRABS

Article 1 - GENERAL PROVISIONS

§ 28.2-700. Definitions

As used in this chapter, unless the context requires a different meaning:

"Crab dredge" means a device, which may have teeth on the bar, that is designed and used to catch crabs buried in the bottom.

"Crab pot" means a device made of wire or thread net used to catch crabs.

"Peeler crab", until the Commission promulgates a different definition, means a crab that has a soft shell fully developed under the hard shell, or a crab on which there is a pink or white line or rim on the edge of that part of the back fin next to the outer section of this fin.

"Peeler pot" means a wire mesh pot baited with only live adult male (jimmy) blue crabs.

Code 1950, §§ 28-170, 28-173; 1954, c. 368; 1956, c. 293; 1960, c. 517; 1962, c. 406, §§ 28.1-165, 28.1-169; 1964, c. 393; 1966, c. 684; 1968, c. 785; 1970, c. 726; 1979, c. 274; 1983, cc. 307, 603, § 28.1-165.1; 1985, c. 180; 1990, c. 154; 1992, c. 836; 1995, c. 129; 1996, c. 229.

§ 28.2-701. Crab traps, crab pots and crab pounds; regulations; penalty

A. The Commission shall promulgate regulations governing the use, placement, and maintenance of crab traps and crab pounds.

B. The Commission may promulgate regulations establishing the mesh size of crab pots and peeler pots. The regulation may provide for the interchangeable use of the two types of pots, provided that each respective gear is appropriately marked and cull rings in conformance with Commission requirements are installed in each pot.

C. Any person convicted of violating any provision of a regulation promulgated under this section is guilty of a Class 3 misdemeanor.

1990, c. 446, § 28.1-173.3; 1992, c. 836; 1999, c. 550.

Article 2 - LICENSES

§ 28.2-702. Licenses to take crabs; shedding operations; amount of fee

Any person desiring to take or catch crabs for market or profit from the waters of this Commonwealth, or waters under its jurisdiction, or any person desiring to engage in the business of buying or marketing crabs for packing or canning crabs, shall pay to any officer the following fees or as such fees may be subsequently revised by the Commission pursuant to § 28.2-201 :

1. For each person taking or catching crabs by dip nets, $8;

2. For ordinary trotlines, $8;

3. For patent trotlines, $31;

4. For up to 100 crab pots, $29;

5. For over 100 but not more than 300 crab pots, $48;

6. For over 300 but not more than 500 crab pots, $100;

7. For over 500 crab pots, $250;

8. For each boat used for taking or catching hard crabs with dredges, $58;

9. For each crab trap or crab pound, $5;

10. For each single-rigged crab-scrape boat, $16;

11. For each double-rigged crab-scrape boat, $32;

12. For up to 20 tanks and floats for shedding crabs, $7.50;

13. For more than 20 tanks or floats for shedding crabs, $15; and

14. For taking or catching peeler crabs using peeler pots, $29.

Code 1950, § 28-170; 1954, c. 368; 1956, c. 293; 1960, c. 517; 1962, c. 406, § 28.1-165; 1964, c. 393; 1966, c. 684; 1968, c. 785; 1970, c. 726; 1979, c. 274; 1983, cc. 307, 603; 1985, c. 180; 1990, c. 154; 1992, c. 836; 1993, c. 11; 2009, c. 9.

§ 28.2-703. License for certain assistants not required

During June through August, any person fifteen years of age or under may be an assistant to a boat operator catching blue crabs by crab pots without obtaining a license.

Code 1950, § 28-170; 1954, c. 368; 1956, c. 293; 1960, c. 517; 1962, c. 406, § 28.1-165; 1964, c. 393; 1966, c. 684; 1968, c. 785; 1970, c. 726; 1979, c. 274; 1983, cc. 307, 603; 1985, c. 180; 1990, c. 154; 1992, c. 836 .

§ 28.2-704. Sale of crabbing licenses

The Commission may require the purchase of licenses before each crab season begins. It may set time periods for the sale of licenses for taking crabs in order to determine the appropriateness of instituting seasonal conservation measures and may grant extensions to individual applicants when it finds exceptional circumstances exist.

1985, c. 165, § 28.1-172.1; 1992, c. 836 .

Article 3 - RESTRICTIONS ON HARVESTING CRABS

§ 28.2-705. License restrictions; exemption; penalty

A. It is unlawful to:

1. Take crabs with a rake which is pulled or pushed by a boat;

2. Use a crab pot which has a mesh less than 1 1/2 inches, unless a different mesh size is promulgated pursuant to subsection B of § 28.2-701;

3. Place food, except as may be provided for in regulations of the Commission, for adult male (jimmy) crabs in a peeler pot. A peeler pot is exempt from mesh size limitations, unless a peeler pot mesh size is promulgated pursuant to subsection B of § 28.2-701;

4. Use a boat when buying crabs which is also used to take or catch hard crabs with dredges, when the Commission has limited the taking of crabs under § 28.2-713.

B. Any person who violates any provision of this section is guilty of a Class 3 misdemeanor.

Code 1950, § 28-170; 1954, c. 368; 1956, c. 293; 1960, c. 517; 1962, c. 406, § 28.1-165; 1964, c. 393; 1966, c. 684; 1968, c. 785; 1970, c. 726; 1979, c. 274; 1983, cc. 307, 603; 1985, c. 180; 1990, c. 154; 1992, c. 836; 1995, c. 129; 1998, c. 88; 1999, c. 550.

§ 28.2-706. Restrictions on crab scraping; penalty

It is unlawful for any person to:

1. Use a crab scrape having a mouth longer than four feet and a toothed bar;

2. Haul a scrape, except by hand;

3. Have more than two scrapes overboard; or

4. Possess hard crabs while having a crab scrape on board.

A violation of any provision of this section is a Class 3 misdemeanor.

1983, c. 603, § 28.1-165.1; 1987, cc. 90, 159; 1992, c. 836 .

§ 28.2-707. Restrictions on crab dredging; penalty

A. It is unlawful for any boat licensed to dredge crabs to use more than two dredges at any time when dredging for crabs. Such boat may use only one dredge on each side of the boat or join two dredges together for use over the stern of the boat. The size of dredges shall not exceed limits established by the Commission. The Commission is authorized to promulgate regulations limiting the size of dredges.

B. It is unlawful to dislodge crabs from the bottom with a crab dredge using hydraulic methods.

C. It is unlawful to use a crab dredge on Saturday.

D. It is unlawful to use a dredge for catching crabs between April 1 and December 1; however, the Commission, when in its judgment it is advisable due to weather conditions or for purposes relating to the conservation of the blue crab and it is not contrary to the public interest, may close a season in its entirety, may open any season as early as November 16, may delay opening any season, may extend any season until April 16 and may close any season early.

E. It is unlawful to use dredges to take crabs in any of the rivers, or their estuaries, inlets, or creeks, except on the ocean side of Accomack and Northampton Counties.

Any person who violates any provision of this section is guilty of a Class 3 misdemeanor.

Code 1950, § 28-171; 1960, c. 517; 1962, c. 406, § 28.1-166; 1981, c. 52; 1983, c. 603, § 28.1-165.1; 1992, cc. 122, 836; 1994, c. 492; 1996, c. 433.

§ 28.2-708. Limitations on sizes of crabs to be taken; inspection of catch; exemption; penalty

A. It is unlawful for any person to catch, take or have in his possession more than ten hard crabs per United States standard bushel or thirty-five hard crabs per barrel, which measure less than five inches across the shell from tip to tip of the longest spikes, or to destroy them in any manner. Those undersized crabs in excess of the allowance level shall be immediately returned to the water alive. Adult female crabs, peeler crabs and soft crabs are exempt from these limitations.

B. Any officer may grade or cull any number of barrels, baskets or containers of crabs in any person's possession.

If the officer finds more than ten undersize hard crabs per United States standard bushel or thirty-five per barrel, he shall seize the entire quantity of crabs in or from each such container, and the

person who possessed the crabs shall immediately return them to the water. Refusal to return the crabs to the water is a separate offense from any other violation.

C. The requirement in subsections A and B to return crabs to the waters shall apply to crabs taken and in possession of a crabber or catcher but shall not apply to crabs which have been purchased by and are in the possession of a buyer, nor shall it apply to crabs which have been transported at least five miles from the nearest salt water.

D. The Commission may change such size restrictions for a period not to exceed sixty days to respond to significant ecological changes.

E. A violation of this section is a Class 3 misdemeanor.

Code 1950, § 28-172; 1960, c. 517; 1962, c. 406, § 28.1-167; 1966, c. 684; 1970, cc. 610, 726; 1977, c. 35; 1978, c. 369; 1981, c. 52; 1985, c. 166; 1992, c. 836; 1996, cc. 136, 333.

§ 28.2-709. Closed season for taking crabs in certain area; penalty

It is unlawful for any person to take or catch crabs for resale from the following area except during those periods established pursuant to regulations adopted by the Commission. Ownership of a current license to take or catch crabs shall be prima facie evidence that such taking or catching of crabs was for resale. The limits of the area are defined as follows:

Beginning at the point of origin of the center line of the Hampton Roads Bridge Tunnel facility where such facility commences in the City of Norfolk, Virginia, and following the shoreline in a general easterly direction, and also extending 200' out from the mean low-water mark of such shoreline into the Chesapeake Bay, to Ocean View Fishing Pier, and thence in a general northerly direction to Thimble Shoal Lighthouse; thence running in approximately a northeasterly direction to Cape Charles Lighthouse, located on Smiths Island; and thence in approximately a southwestern direction to Cape Henry Lighthouse, and bounded by the shoreline; and thence following the shoreline in a general westerly direction back to the point of beginning.

A violation of this section is a Class 3 misdemeanor.

Code 1950, § 28-174; 1962, c. 406, § 28.1-170; 1977, c. 262; 1978, cc. 107, 278; 1979, c. 128; 1992, c. 836; 2009, c. 170; 2011, c. 217.

§ 28.2-710. Unlawful to place crab, eel, or fish pots in certain channels; penalty

It is unlawful to place or maintain any crab, eel, or fish pot in a navigable channel which has navigation aids installed or approved by any agency of the United States government or in any portion of a government marked channel of a river, bay, estuary, creek or inlet. The owner or user of any crab, eel, or fish pot who has located such pot in accordance with this section shall be relieved of civil liability for any damages resulting from the location of such pot.

A violation of this section is a Class 3 misdemeanor.

1968, c. 785, § 28.1-173.1; 1981, c. 23; 1990, c. 493; 1992, c. 836 .

§ 28.2-711. Crab pots; unlawful activities; penalty

It is unlawful to knowingly place, set, or leave any crab pot in any of the tidal tributaries of the Commonwealth between January 1 and January 31. The Commission may change the time period during which such activities are prohibited. Proof that any crab pot was located in any such tributary during the prohibition period constitutes a rebuttable presumption that such pot was knowingly placed, set, or left in that location.

A violation of this section is a Class 4 misdemeanor.

1988, c. 315, § 28.1-173.1:1; 1989, c. 431; 1992, cc. 202, 836 .

§ 28.2-712. Identification of crab pots and eel pots; penalty

On and after January 1, 1993, any person owning or using a crab pot or eel pot, for whom a license is required by this subtitle, shall display and maintain an identification number, issued by the Commissioner, on the float or stake attached to each such crab pot or eel pot, in a legible and visible manner and in figures of not less than one inch in height. The identification of the owner of such crab pot or eel pot by the number above described shall not result in liability on its owner for its location so long as the crab pot or eel pot is placed in the waters of this Commonwealth in compliance with Virginia law.

A violation of this section is a Class 1 misdemeanor.

1968, c. 750, § 28.1-173.2; 1992, cc. 235, 836 .

§ 28.2-713. Limiting the taking of crabs by one boat in one day; penalty

Whenever the interest of conservation or the crabbing industry requires, the Commission may limit the taking or catching of crabs by one boat in one day. Violation of such a regulation is a Class 1 misdemeanor.

Possession of crabs in excess of the amount provided by such regulation shall be prima facie evidence of violation; however, the provisions of this section shall not apply to crab buy boats.

Code 1950, § 28-172.1; 1956, c. 357; 1958, c. 449; 1962, c. 406, § 28.1-168; 1992, c. 836 .

Chapter 8 - HEALTH AND SANITATION PROVISIONS

Article 1 - GENERAL PROVISIONS

§ 28.2-800. Definitions

As used in this chapter, unless the context requires a different meaning:

"Crustacea" means all edible species of crab, lobster and shrimp, whether raw or processed.

"Depuration" means the process that uses a controlled aquatic environment to reduce the level of bacteria or viruses in live shellfish.

"Establishment" means any vehicle, vessel, property or premises where crustacea, finfish or shellfish are transported, held, stored, processed, packed, repacked, or pasteurized in preparation for marketing.

"Finfish" means any cold-blooded, strictly aquatic, water-breathing craniate vertebrate with fins, including cyclostomes, elasmobranchs and higher-gilled aquatic vertebrates with cartilaginous or bony skeletons or any parts thereof.

"Relay" means to move shellfish for the purpose of natural purification from water which is not approved to water which is approved or conditionally approved by the State Health Commissioner.

"Shellfish" means all species within the phylum Mollusca including but not limited to oysters, clams, mussels, scallops, conchs and whelks, whether raw or processed.

1979, c. 714, § 28.1-175.1; 1992, c. 836 .

§ 28.2-801. Authority to promulgate regulations; enforcement

A. The State Health Commissioner and the Commissioner of Marine Resources shall enforce the provisions of this chapter and regulations promulgated thereunder.

B. The State Board of Health and the Marine Resources Commission may promulgate regulations necessary to carry out the provisions of this chapter.

C. The Marine Resources Commission, whenever it determines that an emergency exists, may promulgate regulations which relate to shellfish in condemned areas, in order to protect the health of the public, without complying with the requirements of §§ 28.2-209 and 28.2-210. Such regulations shall become effective upon their passage by the Marine Resources Commission. These regulations shall be enforced by revoking any permits which may have been issued.

Code 1950, §§ 28-162.1, 28-168; 1960, c. 517; 1962, c. 406, §§ 28.1-179, 28.1-180; 1966, c. 684; 1968, c. 745; 1979, c. 274; 1981, c. 52; 1986, c. 184; 1988, c. 600; 1992, c. 836 .

§ 28.2-802. Powers of officers charged with enforcement; entry to establishment; seizure; destruction

A. For the purpose of carrying out the provisions of this chapter, the State Health Commissioner and the Commissioner of Marine Resources or their designees may enter any establishment located in the Commonwealth, where crustacea or shellfish may be found, and if it appears that any provision of this chapter has been violated, may, with or without a warrant, arrest any person who is or has been, or is believed to be or have been, in charge of the crustacea or shellfish and may seize, in the name of the Commonwealth, and take possession of such crustacea or shellfish.

B. The State Health Commissioner and the Commissioner of Marine Resources, or their designees, may seize and take possession of any boat, vessel, barge, car, motor vehicle or other conveyance used in violation of any provision of this chapter. Such boat, vessel, barge, car, motor vehicle or other conveyance may be held only until the accused has been admitted to bail as provided by Chapter 9 (§ 19.2-119 et seq.) of Title 19.2 or has been served with and released on summons.

C. When any crustacea or shellfish of an accused are seized pursuant to the provisions of this section, they may be destroyed at the discretion of the State Health Commissioner, the Com-

missioner of Marine Resources or their designees. If the accused is acquitted of the charges, he shall be compensated for their value, based on the average selling price on the day of seizure.

Code 1950, § 28-166; 1962, c. 406, § 28.1-183; 1966, c. 684; 1989, c. 2; 1992, c. 836 .

Article 2 - CONTROL OF CRUSTACEA, FINFISH AND SHELLFISH; VIOLATIONS AND PENALTIES

§ 28.2-803. Examination, analysis and inspection

A. The State Health Commissioner may in his discretion, or shall at the request of the Governor, the Marine Resources Commission, or the Commissioner of Marine Resources, conduct an examination or analysis of crustacea, finfish and shellfish, whether on the planting grounds, in an establishment, or in any other place in this Commonwealth, from which the products are to be taken or sold for food purposes.

B. The State Health Commissioner in making such examination may analyze the water and bottom sediment in and adjacent to the crustacea, finfish, or shellfish growing areas for evidence of pollution, and he may survey the sanitary conditions and pollution hazards adjacent to shellfish growing areas, both in the water and on shore.

C. The State Health Commissioner in conducting his analysis shall examine the establishments in which crustacea, finfish and shellfish are handled and the sanitary conditions surrounding the establishment. At that time, he may analyze the crustacea, finfish and shellfish in the establishment.

Code 1950, § 28-159; 1962, c. 406, § 28.1-175; 1992, c. 836 .

§ 28.2-804. Polluted ground; crustacea, finfish or shellfish

When the State Health Commissioner determines, as a result of an examination, analysis or inspection, that (i) the crustacea, finfish, or shellfish upon such ground, or in such establishment or other places where they are sold or offered for sale, are or may be unfit for market; or (ii) such growing area is polluted or has a pollution hazard so great as to render it an unfit ground from which to take crustacea, finfish or shellfish for processing or consumption; or (iii) such establishment or other place is so insanitary as to render it an unfit place in which to prepare crustacea, finfish or shellfish for market, he shall notify the Commissioner of Marine Resources and the owner or operator of such grounds, establishment or other place that the crustacea, finfish or shellfish are unfit for market.

Code 1950, § 28-160; 1962, c. 406, § 28.1-176; 1992, c. 836 .

§ 28.2-805. Notice to cease activity

Upon receipt of such notice, the owner or operator of such grounds, establishment, or other place shall cease to take crustacea, finfish, or shellfish from such ground, except as is hereinafter provided, and shall cease to prepare for market, or to sell or offer for sale, or to dispose of crus-

tacea, finfish, or shellfish in such establishments or other places until the cause for such notice has been removed or relieved to the satisfaction of the State Health Commissioner.

Code 1950, § 28-160; 1962, c. 406, § 28.1-176; 1992, c. 836 .

§ 28.2-806. State Health Commissioner to establish standards

The State Health Commissioner may establish and change standards, examinations, analyses and inspections which control the taking and marketing from a health standpoint, of crustacea, finfish or shellfish. He shall be the sole judge of whether or not such crustacea, finfish or shellfish are sanitary and fit for market.

Code 1950, § 28-160; 1962, c. 406, § 28.1-176; 1992, c. 836 .

§ 28.2-807. Condemnation of polluted growing area; procedure

If, after examination of the crustacea, finfish or shellfish in a growing area, or the bottom in or adjacent to such area, or the water over such area, or the sanitary or pollution conditions adjacent to or in near proximity to a growing area, the State Health Commissioner determines that the crustacea, finfish or shellfish are unfit for market, he shall, after notifying the Commissioner of Marine Resources, establish boundaries of the area in which the crustacea, finfish or shellfish are located or planted. This area shall be condemned and remain so until the Health Commissioner finds such crustacea, finfish or shellfish, or area, sanitary and not polluted. The Commissioner of Marine Resources, with instructions from the State Health Commissioner, shall erect markers or signs designating condemned areas. The necessary markers or signs shall be supplied to the Commissioner of Marine Resources by the State Health Commissioner.

Code 1950, § 28-161; 1962, c. 406, § 28.1-177; 1979, c. 714; 1992, c. 836 .

§ 28.2-808. Periods of condemnation

A crustacea, finfish or shellfish growing area and the crustacea, finfish or shellfish, located thereon may be condemned for the following periods:

1. For an indefinite period, based upon water quality and sources of pollution.

2. Seasonally, where recreation or certain other activities in or adjacent to the area may cause pollution of the growing area during certain seasons of the year.

3. Conditionally, for finite periods of time, based on predictable pollution events. Such conditionally condemned areas may be closed by the State Health Commissioner without advance notice or a prior hearing, provided that a hearing is held within thirty days after the area is condemned, unless it is reopened within this period.

Areas not condemned are in effect approved.

Code 1950, § 28-161; 1962, c. 406, § 28.1-177; 1979, c. 714; 1992, c. 836 .

§ 28.2-809. Emergency closing of ground

The State Health Commissioner may close any crustacea, finfish or shellfish growing area without a hearing or an investigation, if he has substantial evidence or information that such area is polluted or likely to be polluted. In such event, the State Health Commissioner shall, within thirty days after such closure or declaration, either reopen the area or make the examination, inspection, and analysis provided for in §§ 28.2-803 through 28.2-808. If such grounds or area is not reopened or declared not polluted within thirty days after closure or declaration of pollution, any leaseholder in the growing area may demand and have a public hearing as to the conditions of the ground or area.

Code 1950, § 28-162; 1962, c. 406, § 28.1-178; 1992, c. 836 .

§ 28.2-810. Removal, transportation, etc., from polluted ground; penalty

A. It is unlawful for any person to take, catch, transport, sell, offer for sale, remove, receive, keep or store shellfish from condemned areas, or relay shellfish taken from such areas, until the Commissioner of Marine Resources or his designee has issued a special permit. The permittee shall carry the permit when engaged in such operation.

B. It is unlawful for any person to take or remove shellfish from private grounds in condemned areas without written authority in his possession from the owner or lessee, in addition to the permit required by subsection A of this section.

C. It is unlawful for any person to transport, relay, or move shellfish from condemned areas after sunset or before sunrise, except by motor vehicle properly sealed as required by § 28.2-812. It is unlawful to mix clean shellfish and shellfish from condemned areas in the same cargo.

Code 1950, § 28-162.1; 1960, c. 517; 1962, c. 406, § 28.1-179; 1966, c. 684; 1968, c. 745; 1979, c. 274; 1981, c. 52; 1986, c. 184; 1988, c. 600; 1992, c. 836 .

§ 28.2-811. Permits for transporting, relaying or depurating; revocation

A. Permits for transporting and relaying shall only be issued to (i) persons that catch shellfish from condemned areas and that want to move such shellfish to an approved area and (ii) those persons who buy shellfish from condemned areas from the catcher and who transport or relay the shellfish to approved grounds. Permits for transporting shellfish for depuration in a facility approved by the State Health Commissioner shall be issued only to persons who purchase from the catcher or catch shellfish taken from certain condemned areas identified by the State Health Commissioner.

B. Upon evidence of a permit holder offering for sale and not planting shellfish from condemned areas, the Commissioner of Marine Resources shall promptly revoke all permits held by such person.

C. The special permit, after having been issued, may be revoked at any time by the Commissioner of Marine Resources, when in his judgment, it is in the best interest of the industry. Any person having his permit revoked may demand a hearing before the Marine Resources Commission at its next scheduled meeting.

Code 1950, § 28-162.1; 1960, c. 517; 1962, c. 406, § 28.1-179; 1966, c. 684; 1968, c. 745; 1979, c. 274; 1981, c. 52; 1986, c. 184; 1988, c. 600; 1992, c. 836 .

§ 28.2-812. Sealing motor vehicles used in transporting

Permits shall not be issued to any motor vehicle transporting or relaying shellfish from condemned areas unless the motor vehicle has an enclosed body with doors which can be sealed by an officer. An officer may refuse to issue such a permit if he determines the motor vehicle cannot be properly sealed.

If shellfish from condemned areas are to be transported for depuration or relaying by a motor vehicle, an officer shall seal the body of the motor vehicle before departure. It is unlawful for the seal to be broken by anyone except an officer at the location where the cargo is to be discharged for relaying or depuration. After the seal has been broken, an officer shall supervise the relaying of the shellfish from the motor vehicle to the approved area or the unloading of the motor vehicle at the depuration facility.

Code 1950, § 28-162.1; 1960, c. 517; 1962, c. 406, § 28.1-179; 1966, c. 684; 1968, c. 745; 1979, c. 274; 1981, c. 52; 1986, c. 184; 1988, c. 600; 1992, c. 836 .

§ 28.2-813. Maintenance of records

Any person holding a valid permit to remove, transport, relay, or transport for depuration shellfish from condemned areas shall keep accurate records and submit monthly reports to the Commissioner of Marine Resources. The reports shall include the following information: (i) the areas from which the shellfish were removed; (ii) the areas to which the shellfish were relayed; (iii) the name of the depuration facility to which the shellfish were delivered; (iv) the dates of the removal, delivery to the depuration facility or relaying; (v) the number of bushels or number by count of shellfish removed, delivered for depuration or relayed; (vi) the name of the permit holder; (vii) the name and address of each person employed and engaged in the operation; (viii) the names or numbers of the boats; and (ix) the license numbers of the motor vehicles used in the operation.

Code 1950, § 28-162.1; 1960, c. 517; 1962, c. 406, § 28.1-179; 1966, c. 684; 1968, c. 745; 1979, c. 274; 1981, c. 52; 1986, c. 184; 1988, c. 600; 1992, c. 836 .

§ 28.2-814. Submission of reports

During any month covered by permit in which no removal, relaying or depuration activity occurs, a report shall be submitted to the Commissioner of Marine Resources indicating that no shellfish were removed, relayed or depurated. It shall be the responsibility of the permit holder to keep accurate records and make reports of the removal, relaying or depuration, to the Commissioner of Marine Resources on or before the tenth day of the month following the month of operation. The permit shall set out the expiration date.

Code 1950, § 28-162.1; 1960, c. 517; 1962, c. 406, § 28.1-179; 1966, c. 684; 1968, c. 745; 1979, c. 274; 1981, c. 52; 1986, c. 184; 1988, c. 600; 1992, c. 836 .

§ 28.2-815. Application for special permit

Application for the special permit provided for in §§ 28.2-810 and 28.2-811 shall be made on forms provided by the Commissioner of Marine Resources before the removal, transportation or relaying of shellfish from condemned areas. This permit shall not be transferable.

Code 1950, § 28-162.1; 1960, c. 517; 1962, c. 406, § 28.1-179; 1966, c. 684; 1968, c. 745; 1979, c. 274; 1981, c. 52; 1986, c. 184; 1988, c. 600; 1992, c. 836 .

§ 28.2-816. Supervision of removal, relaying or depuration; seasons established

A. Shellfish removal or relaying from condemned areas shall be under the supervision of the Commissioner of Marine Resources and the State Health Commissioner.

B. The season for the removal or relaying of shellfish shall be:

1. April 1 to November 1 from private grounds.

2. May 1 to August 15 from public grounds.

The dates for the opening and closing of seasons may be changed by the Marine Resources Commission, and the Marine Resources Commission may refuse to grant permits for removal of shellfish from condemned areas of the waters of the Commonwealth.

C. The Marine Resources Commission, after consultation with the Department of Health, shall establish the season for removal of shellfish for depuration from certain condemned areas designated by the State Health Commissioner.

Code 1950, § 28-162.1; 1960, c. 517; 1962, c. 406, § 28.1-179; 1966, c. 684; 1968, c. 745; 1979, c. 274; 1981, c. 52; 1986, c. 184; 1988, c. 600; 1992, c. 836 .

§ 28.2-817. Displaying identification when transporting shellfish

Any conveyance engaged in transporting shellfish which have been caught within condemned areas for relaying or depuration to another area, or depuration facility where they may be cleansed and made fit for market, shall display a yellow flag of not less than thirty inches in length and eighteen inches in width before any shellfish are placed thereon. The flag shall be displayed during the entire relaying and transporting operation.

Code 1950, § 28-162.1; 1960, c. 517; 1962, c. 406, § 28.1-179; 1966, c. 684; 1968, c. 745; 1979, c. 274; 1981, c. 52; 1986, c. 184; 1988, c. 600; 1992, c. 836 .

§ 28.2-818. Identification of relay areas

Officers and employees of the Department of Health shall examine the area to which shellfish from condemned areas are relayed and ensure that adequate and proper corner stakes or buoys have been put in place by the lessee before a permit is issued to transport to or plant the area. When shellfish from condemned grounds are relayed onto approved grounds, a twenty-five-foot open area shall be maintained between each bed. Each corner stake or buoy shall be marked by a yellow flag or bunting of not less than fifteen inches by fifteen inches, and the marking shall remain until a special permit to remove the shellfish for sale or shipment has been obtained from the State Health Commissioner.

Code 1950, § 28-162.1; 1960, c. 517; 1962, c. 406, § 28.1-179; 1966, c. 684; 1968, c. 745; 1979, c. 274; 1981, c. 52; 1986, c. 184; 1988, c. 600; 1992, c. 836 .

§ 28.2-819. Movement and unloading of shellfish from condemned area

A. It shall be unlawful for any person to discharge, or cause to be discharged, any part of the shellfish from any conveyance engaged in transporting shellfish from condemned areas at any place other than to approved areas for cleansing. Shellfish removed from condemned areas shall be taken directly to (i) the approved planting ground, (ii) conveyances holding a proper permit for relaying to cleansing areas designated in the permit or (iii) a depuration facility approved by the State Health Commissioner.

B. The loading and unloading, ashore, of shellfish taken from condemned areas shall only be at locations designated by the Marine Resources Commission. In the instance of an emergency unloading of any conveyance engaged in transporting shellfish from a condemned area, the Marine Resources Commission shall be notified immediately and disposition of the cargo shall be made under the supervision of an officer.

Code 1950, § 28-162.1; 1960, c. 517; 1962, c. 406, § 28.1-179; 1966, c. 684; 1968, c. 745; 1979, c. 274; 1981, c. 52; 1986, c. 184; 1988, c. 600; 1992, c. 836 .

§ 28.2-820. Harvesting, transporting, handling or transplanting of seed-stock shellfish

The Commission shall promulgate regulations for the harvesting, transporting, handling and transplanting of wild and cultured seed-stock shellfish from condemned areas. The Commission shall consider limitations based on the size of seed-stock shellfish that may be harvested, methods of handling, controls on the methods of transportation, and restrictions on the transplanting process necessary to protect the health of the public. The Commission shall consult with the State Health Commissioner prior to the adoption of any such regulation.

Code 1950, § 28-162.1; 1960, c. 517; 1962, c. 406, § 28.1-179; 1966, c. 684; 1968, c. 745; 1979, c. 274; 1981, c. 52; 1986, c. 184; 1988, c. 600; 1992, c. 836; 2001, c. 103.

§ 28.2-821. Violations; penalty

A. It is unlawful for any person to have in his possession, to store, to sell, or to offer for sale any shellfish which have been removed or taken from a condemned area other than as provided in § 28.2-810. Any person who violates this section or any provision of this chapter is guilty of a Class 1 misdemeanor.

B. Upon conviction of violating any provision of this chapter any boat, vessel, motor vehicle or equipment used in committing the violation may be forfeited as provided by Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2.

Code 1950, § 28-165; 1962, c. 406, § 28.1-181; 1992, c. 836; 2012, cc. 283, 756.

§ 28.2-822. Suspension or revocation of licenses

The Commissioner of Marine Resources may immediately suspend any licenses of any license holder who has committed more than one violation of this chapter. The suspension shall be effective until the day following the next meeting of the Commission to take place after ten days' notice to such person. The Commissioner, at the request of the person, shall, within forty-eight hours, provide an opportunity for him to show why the suspension is unjust, and for good cause shown the Commissioner shall vacate such suspension. No person whose license is suspended pursuant to this section shall engage in any fishery.

1989, c. 2, § 28.1-36.01; 1992, c. 836 .

§ 28.2-823. Certification of shellfish from outside the Commonwealth

All shellfish in the shell imported or transported into Virginia for processing or consumption within the Commonwealth shall have a certificate from the appropriate agency of the state of origin that the shellfish came from clean, approved areas of water of that state. Shellfish which are not accompanied by such certificate are deemed to have come from polluted waters; shall not be sold or processed for consumption within Virginia; and shall be replanted in compliance with the provisions of this chapter, destroyed or returned to the state of origin.

1962, c. 406, § 28.1-182; 1992, c. 836 .

§ 28.2-824. Common carriers

Common carriers transporting seafoods designated in this chapter shall carry a bill of lading listing the seafood cargo, the shipper and the consignee. If such cargo is in violation of any of the provisions of this chapter or regulations promulgated thereunder, it shall be taken possession of as provided in § 28.2-802, the shipper shall be held liable and the common carrier shall be relieved of the violations and penalties set forth in this chapter.

1962, c. 406, § 28.1-183.1; 1992, c. 836 .

§ 28.2-825. Importing fish, shellfish or crustacea for introduction into waters of the Commonwealth; penalty

A. It shall be unlawful for any person to import any fish, shellfish or crustacea into the Commonwealth with the intent of placing such fish, shellfish or crustacea into the waters of the Commonwealth unless one of the following conditions exists:

1. The fish, shellfish or crustacea are coming from within the continental United States from a state or waters which are on the Marine Resources Commission's list of approved states and waters, and are species which are on the Marine Resources Commission's list of approved species; or

2. The person has notified the Commissioner of Marine Resources of such intent and has received written permission from the Commissioner of Marine Resources.

The list of approved states and waters shall be published by the Commissioner of Marine Resources, and a state or water shall be placed on or removed from such list only with the

concurrence of the Director of the Virginia Institute of Marine Science. The Commissioner of Marine Resources, with the concurrence of the Director of the Virginia Institute of Marine Science, is authorized to change the list when he determines that it is necessary for the protection of the waters of the Commonwealth.

The list of approved species shall be published by the Commissioner of Marine Resources, and a species shall be placed on or removed from such list only with the concurrence of the Director of the Virginia Institute of Marine Science. The Commissioner of Marine Resources, with the concurrence of the Director of the Virginia Institute of Marine Science, is authorized to change the list when he determines that it is necessary for the protection of the waters of the Commonwealth.

B. The notification of intent to import shall be in writing and submitted to the Commissioner of Marine Resources at least thirty days prior to the date of importation. The notice shall state: (i) the specific fish, shellfish or crustacea to be imported, (ii) from what waters the fish, shellfish or crustacea are being taken, (iii) the period of time over which importation is to be accomplished, (iv) the quantities involved, and (v) into what waters the fish, shellfish or crustacea are to be placed.

A violation of this section is a Class 1 misdemeanor.

1974, c. 327, § 28.1-183.2; 1992, c. 836 .

§ 28.2-826. Crassostrea ariakensis

A. The Commissioner, after consultation with the Director of the Virginia Institute of Marine Science and the Fisheries Management Division of the Commission, and subject to the provisions of this section, may authorize, in writing, the placement of oysters of the species Crassostrea ariakensis on state-owned bottomlands as described in § 28.2-600 or 28.2-603.

B. The Commissioner's authorization for placement of C. ariakensis on state-owned bottomlands pursuant to this section shall be conditioned upon, and subject to, compliance with the following requirements:

1. All nonnative oysters placed on state-owned bottomlands pursuant to this section shall be placed within the bounds of sites established by survey and specifically designated and approved by the Commissioner for the placement of C. ariakensis. Before approving any site for the placement of C. ariakensis, the Commissioner shall determine that such use of the site shall not conflict with Virginia's native oyster restoration program. The Commissioner shall not approve any submerged aquatic vegetation site designated pursuant to § 28.2-1204.1 for the placement of C. ariakensis. Sites designated and approved for the placement of C. ariakensis shall be marked as provided in § 28.2-517 or as otherwise specified by the Commissioner in granting the authorization.

2. C. ariakensis oysters placed on state-owned bottomlands pursuant to this section shall not be relayed or transferred to other state-owned bottomlands except in compliance with this section.

3. C. ariakensis oysters placed on state-owned bottomlands pursuant to this section shall originate at a hatchery located in the Chesapeake Bay region and be certified by the Virginia Institute of Marine Science to be currently in compliance with applicable protocols established by the International Council for the Exploration of the Sea. Documentation of compliance with this requirement shall be submitted to the Commissioner prior to the placement of such oysters on state-owned bottomlands pursuant to this section.

4. C. ariakensis oysters placed in state-owned bottomlands pursuant to this section prior to July 1, 2007, or the completion of the Environmental Impact Statement under preparation by the U.S. Army Corps of Engineers and sponsored by Maryland and Virginia concerning the introduction of nonnative oysters, whichever is sooner, shall be rendered incapable of reproduction by a method that has been determined by the Virginia Institute of Marine Science as reliably producing not more than one diploid oyster per 1,000 of triploid oysters produced, and shall be deployed in a manner determined by the Virginia Institute of Marine Science to protect against inadvertent fertilization. On and after July 1, 2007, or the completion of the Environmental Impact Statement under preparation by the U.S. Army Corps of Engineers and sponsored by Maryland and Virginia concerning the introduction of nonnative oysters, whichever is sooner, the Commissioner, with the concurrence of the Director of the Virginia Institute of Marine Science, may authorize the placement of diploid or fertile C. ariakensis oysters on state-owned bottomlands.

C. At the request of any person authorized by the Commissioner to place C. ariakensis oysters on state-owned bottomlands, the Commissioner may direct that placement of the oysters be undertaken by or under the direction of the Commission provided that the requestor agrees to reimburse the Commission for all direct costs of such placement and provides a bond, escrow, or other financial assurance for payment of such costs in a form and amount satisfactory to the Commissioner.

D. Requests for approval and accompanying certifications required by this section shall be submitted in such form as prescribed by the Commissioner. The Commissioner may, by regulation, establish a reasonable fee sufficient to defray the costs of processing requests for approval. Approvals granted pursuant to this section shall not be transferred without the written authorization of the Commissioner.

E. C. ariakensis oysters that are placed on state-owned bottomlands in violation of this section shall, upon written order of the Commissioner, be removed immediately by the person responsible for their placement. Should such person be unwilling or unable to remove them, the Commissioner shall have the oysters removed and may recover the costs thereof from the person responsible for their placement.

F. The provisions of Title 28.2 shall apply to C. ariakensis oysters grown on state-owned bottomlands except as otherwise provided in this section.

G. Not more than 60 and not less than 30 days before the Commissioner commences the exercise of his authority to allow placement of C. ariakensis on state-owned bottomland, the Commission shall hold at least one public hearing for the purpose of receiving data, views and argument concerning the placement of C. ariakensis in state waters. Not more than 60 and not less than 30 days before the Commissioner commences the exercise of his authority to allow placement of diploid or fertile C. ariakensis on state-owned bottomland, the Commission shall hold at least one public hearing for the purpose of receiving data, views and argument concerning the placement of diploid or fertile C. ariakensis in state waters.

2005, c. 551.

Chapter 9 - ENFORCEMENT OF SUBTITLE II; JURISDICTION

§ 28.2-900. Arrest with or without warrant; larceny; violations of boating laws and Title 62.1

A. Officers may, with or without warrant, (i) arrest any person violating any provision of this subtitle, (ii) seize any net, pot, or other fishing device or gear used in violating such laws and (iii) seize fish, shellfish or marine organisms taken or handled in violation of this subtitle. Each seized property shall be forfeited to the Commonwealth. The forfeiture shall be enforced as provided in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2. The officer seizing the property to be forfeited shall immediately give notice to the attorney for the Commonwealth.

B. All officers may arrest, with or without a warrant, any person who commits in his presence (i) any larceny committed upon or adjacent to the waters of the Commonwealth, (ii) any violation of the provisions of Chapter 7 of Title 29.1, or any regulations promulgated thereunder, or (iii) any violation of the provisions of Chapter 18 (§ 62.1-187 et seq.) or 20 (§ 62.1-194 et seq.) of Title 62.1.

Code 1950, §§ 28-206, 28-208; 1962, c. 406, § 28.1-185; 1980, c. 567, § 28.1-185.1; 1981, c. 525; 1987, c. 84; 1992, c. 836; 2012, cc. 283, 756.

§ 28.2-901. Summons issued instead of being taken into custody; failure to appear

A. Whenever any person is detained by or is in the custody of an arresting officer for any violation of the laws enforceable pursuant to § 28.2-900, the arresting officer shall take the name and address of each person detained and issue a summons or otherwise notify him in writing to appear at a time and court to be specified in the summons or notice. When the person gives his written promise to appear at the designated time and place, the officer shall immediately release him from custody.

B. If the arresting officer (i) believes a detained person is likely to disregard a summons issued under the provisions of this section or (ii) reasonably believes a detained person is likely to harm himself or another, or if the person refuses to give his written promise to appear, the officer may take the offender, vessel and property into custody. The person shall be brought before the nearest or most accessible judicial officer or other person qualified to admit bail having jurisdiction.

C. The failure of any person to appear as required by a summons issued under the provisions of this section shall suspend all licenses issued to the person pursuant to this subtitle until such time as he appears to answer the charges against him. Failure to appear shall bar the issuance of any further license to the person until he appears.

1983, c. 591, § 28.1-185.2; 1992, c. 836 .

§ 28.2-902. Procedure after arrest and seizure

Any person arrested may be (i) taken before a court of competent jurisdiction for trial, (ii) committed to jail pending trial, (iii) admitted to bail or released on recognizance as provided by general law, or (iv) issued a summons requiring him to appear for trial. The time specified in the summons shall not be less than five days from the date of arrest unless such person requests an earlier hearing. Any person failing to appear as directed in the summons shall be guilty of a Class 1 misdemeanor, regardless of the disposition of, and in addition to, the charge upon which he was originally arrested. If the person fails to appear, a warrant for his arrest may be issued.

Any property seized under the provisions of subsection A of § 28.2-900 may be held by the officer or other official who made the seizure, pending final outcome of the legal proceedings.

Code 1950, § 28-209; 1950, p. 978; 1962, c. 406, § 28.1-186; 1992, c. 836 .

§ 28.2-903. Violations constitute misdemeanor

A violation of any provision of this subtitle or regulation promulgated thereunder, unless otherwise specifically provided, is a Class 3 misdemeanor. A second or subsequent violation of any provision of this subtitle or regulation promulgated thereunder committed by the same person within twelve months of a prior violation is a Class 1 misdemeanor.

1962, c. 406, § 28.1-187; 1989, c. 421; 1992, c. 836 .

§ 28.2-903.1. Impeding lawful fishing in tidal waters; penalty

A. It is unlawful for any person to willfully and intentionally impede the lawful fishing of any species of fish or shellfish. "Fishing" means those activities defined in § 28.2-100 as "fishing," "fisheries" or "to fish."

B. Notwithstanding any other provision of law, any person convicted of a violation of this section shall be guilty of a Class 3 misdemeanor.

1997, c. 703.

§ 28.2-904. Pursuit and detention across the Maryland-Virginia line

When, in the opinion of the legally constituted authorities of the Commonwealth, there has occurred on the waters of Virginia a violation of the laws of the Commonwealth enforceable pursuant to § 28.2-900, or when, in the opinion of the legally constituted authorities of Maryland, there has occurred on the waters of Maryland a violation of any provision of the Natural Resources Article, Annotated Code of Maryland, the offender may be pursued by the legally constituted authorities of the state where the offense was committed up to and across the Maryland-Virginia

boundary into the state where the offender flees. If a capture is made in continuous pursuit, the offender, vessel and property shall be dealt with as authorized by the laws of the state where the offense was committed.

The provisions of this section shall be effective as long as the State of Maryland has in force similar provisions authorizing legally constituted authorities of Virginia to make pursuit and arrests in Maryland for violations of the laws of Virginia.

1983, c. 323, § 28.1-188.1; 1992, c. 836 .

§ 28.2-905. Resistance to officer or authorized person, etc.; penalty

Any person found guilty of resisting or impeding an officer or other person authorized to make arrests, seizures, examinations or other performances of duties under this subtitle, shall be guilty of a Class 1 misdemeanor.

Code 1950, § 28-215; 1962, c. 406, § 28.1-191; 1992, c. 836 .

§ 28.2-906. Failure to perform duty; penalty

The failure of any officer or other person to perform any duty required of him by any provision of this subtitle is a Class 1 misdemeanor.

Code 1950, § 28-216; 1962, c. 406, § 28.1-192; 1992, c. 836 .

§ 28.2-907. Jurisdiction of courts

Any proceeding under any section of this subtitle shall be before a court of competent jurisdiction in the county or city (i) in which the offense was committed or (ii) adjacent to the waters in which the offense was committed.

Code 1950, § 28-218; 1962, c. 406, § 28.1-193; 1992, c. 836 .

Chapter 10 - COMPACTS AND JOINT LAWS WITH OTHER STATES

Article 1 - ATLANTIC STATES MARINE FISHERIES COMPACT.

§ 28.2-1000. Atlantic States Marine Fisheries Compact

ARTICLE I

The purpose of this compact is to promote the better utilization of the fisheries, marine, shell and anadromous of the Atlantic seaboard by the development of a joint program for the promotion and protection of such fisheries, and by the prevention of the physical waste of the fisheries from any cause. It is not the purpose of this compact to authorize the states joining herein to limit the production of fish or fish products for the purpose of establishing or fixing the price thereof, or creating and perpetuating monopoly.

ARTICLE II

This agreement shall become operative immediately as to those states executing it whenever any two or more of the states of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut,

New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida have executed it in the form that is in accordance with the laws of the executing state and the Congress has given its consent. Any state contiguous with any of the aforementioned states and riparian upon waters frequented by anadromous fish, flowing into waters under the jurisdiction of any of the aforementioned states, may become a party hereto as hereinafter provided.

ARTICLE III

Each state joining herein shall appoint three representatives to a Commission hereby constituted and designated as the Atlantic States Marine Fisheries Commission. One shall be the executive officer of the administrative agency of such state charged with the conservation of the fisheries resources to which this compact pertains or, if there be more than one officer or agency, the official of that state named by the governor thereof. The second shall be a member of the legislature of such state designated by the Commission or Committee on Interstate Cooperation of such state, or if there be none, or if said Commission on Interstate Cooperation cannot constitutionally designate the said member: such legislator shall be designated by the governor thereof; provided, that if it is constitutionally impossible to appoint a legislator as a commissioner from such state, the second member shall be appointed by the governor of said state in his discretion. The third shall be a citizen who shall have a knowledge of and interest in the marine fisheries problem, to be appointed by the governor. The Commission shall be a body corporate with the powers and duties set forth herein.

ARTICLE IV

The duty of the said Commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the consideration of the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Atlantic seaboard. The Commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the aforementioned states.

To that end the Commission shall draft and, after consultation with the Advisory Committee hereinafter authorized, recommend to the governors and legislatures of the various signatory states legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Atlantic seaboard. The Commission shall, more than one month prior to any regular meeting of the legislature in any signatory state, present to the governor of the state its recommendations relating to enactments to be made by the legislature of that state in furthering the intents and purposes of this compact.

The Commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable.

The Commission shall have power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs, or joint stocking by some or all of the states party hereto, and when two or more of the states shall jointly stock waters the Commission shall act as the coordinating agency for such stocking.

ARTICLE V

The Commission shall elect from its number a chairman and a vice-chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provision of this compact into effect, and shall fix and determine their duties, qualifications and compensation. Said Commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place but must meet at least once a year.

ARTICLE VI

No action shall be taken by the Commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting states present at any meeting. No recommendation shall be made by the Commission in regard to any species of fish except by the affirmative vote of a majority of the compacting states which have an interest in such species. The Commission shall define what shall be an interest.

ARTICLE VII

The Fish and Wildlife Service of the Department of the Interior of the Government of the United States shall act as the primary research agency of the Atlantic States Marine Fisheries Commission, cooperating with the research agencies in each state for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the Commission.

An Advisory Committee to be representative of the commercial fishermen and the salt water anglers and such other interest of each state as the Commission deems advisable shall be established by the Commission as soon as practicable for the purpose of advising the Commission upon such recommendations as it may desire to make.

ARTICLE VIII

When any state other than those named specifically in Article II of this compact shall become a party thereto for the purpose of conserving its anadromous fish in accordance with the provisions of Article II the participation of such state in the action of the Commission shall be limited to such species of anadromous fish.

ARTICLE IX

Nothing in this compact shall be construed to limit the powers of any signatory state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state imposing additional conditions and restrictions to conserve its fisheries.

ARTICLE X

Continued absence of representation or of any representative on the Commission from any state party hereto shall be brought to the attention of the governor thereof.

ARTICLE XI

The states party hereto agree to make annual appropriations to the support of the Commission in proportion to the primary market value of the products of their fisheries, exclusive of cod and haddock, as recorded in the most recent published reports of the Fish and Wildlife Service of the United States Department of the Interior, provided no state shall contribute less than two hundred dollars per annum and the annual contribution of each state above the minimum shall be figured to the nearest one hundred dollars.

The compacting states agree to appropriate initially the annual amounts scheduled below, which amounts are calculated in the manner set forth herein, on the basis of the catch record of 1938. Subsequent budgets shall be recommended by a majority of the Commission and the cost thereof allocated equitably among the states in accordance with their respective interests and submitted to the compacting states.

SCHEDULE OF INITIAL STATE CONTRIBUTIONS

Maine	$700
New Hampshire	200
Massachusetts	2,300
Rhode Island	300
Connecticut	400
New York	1,300
New Jersey	800
Delaware	200
Maryland	700
Virginia	1,300
North Carolina	600
South Carolina	200
Georgia	200
Florida	1,500

ARTICLE XII

Section 1. This compact shall continue in force and remain binding upon each compacting state until renounced by it. Renunciation of this compact must be preceded by sending six months' notice in writing of intention to withdraw from the compact to the other states party hereto.

Section 2. Without further submission of said compact, the consent and approval of Congress is hereby given to the states of Connecticut, North Carolina, South Carolina, Georgia, and Florida, and for the purpose of the better utilization of their anadromous fisheries, to the states of Vermont and Pennsylvania, to enter into said compact as signatory states and as parties thereto, in addition to the states which have now ratified the compact.

Section 3. The Atlantic States Marine Fisheries Commission constituted by the compact shall make an annual report to Congress not later than sixty days after the beginning of each regular session thereof. Such report shall set forth the activities of the Commission during the calendar year ending immediately prior to the beginning of such session.

Section 4. The right to alter, amend, or repeal the provision sections 1, 2 and 3 is hereby expressly reserved, provided that nothing in this compact shall be construed to limit or add to the powers of the proprietary interest of any signatory state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by a signatory state imposing additional conditions and restrictions to conserve its fisheries.

AMENDMENT NUMBER 1

The states consenting to this amendment agree that any two or more of them may designate the Atlantic States Marine Fisheries Commission as joint regulatory agency with such powers as they may jointly confer from time to time for the regulation of the fishing operations of the citizens and vessels of such designating states with respect to specific fisheries in which such states have a common interest. The representatives of such states on the Atlantic States Marine Fisheries Commission shall constitute a separate section of such Commission for the exercise of the additional powers so granted provided that the states so acting shall appropriate additional funds for this purpose. The creation of such section as a joint regulatory agency shall not deprive the states participating therein of any of their privileges or powers or responsibilities in the Atlantic States Marine Fisheries Commission under the general compact.

Code 1950, §§ 28-254, 28-255; 1962, c. 406, § 28.1-202; 1992, c. 836.

§ 28.2-1000.1. Repealed

Repealed by Acts 2015, c. 493, cl. 4, effective March, 23, 2015.

§ 28.2-1000.2. Annual closure of the Chesapeake Bay purse seine fishery for Atlantic menhaden

A. For the purpose of this section:

"Chesapeake Bay" means the territorial waters of the Commonwealth lying west of the Chesapeake Bay Bridge-Tunnel.

"Purse seine fishery for Atlantic menhaden" means those vessels licensed pursuant to § 28.2-402 that harvest menhaden for the purpose of manufacturing them into fertilizer, fish meal, or oil.

B. Upon a determination that the purse seine fishery for Atlantic menhaden meets the annual menhaden harvest cap in the Chesapeake Bay, the Commissioner shall promptly publish a notice in the Virginia Register announcing the date of closure. The Commissioner shall also notify the operators of the purse seine fishery for Atlantic menhaden by the most convenient and expeditious means available. The date of closure shall be based on mandatory daily landings reports required to be submitted under § 28.2-400.5 by the purse seine fishery for Atlantic menhaden.

C. The annual menhaden harvest cap for the purse seine fishery for Atlantic menhaden shall be 87,216 metric tons, subject to annual adjustment for underages or overages as specified in subsection D. In no event, however, shall the harvest of this fishery exceed 98,192 metric tons in any one year.

D. If the harvest of the purse seine fishery for Atlantic menhaden does not exceed 87,216 metric tons in any year to which the harvest cap applies, then the difference between the actual harvest and the harvest cap shall be applied as a credit applicable to the allowable harvest for the purse seine fishery for Atlantic menhaden for the following year. The credit may be used only for the subsequent annual harvest and shall not be spread over multiple years. Any annual harvest in excess of the harvest cap shall be deducted from the harvest cap, as modified pursuant to this subsection and subsection C for the subsequent annual harvest.

E. No person shall take Atlantic menhaden by purse seine for reduction purposes from the Chesapeake Bay after the later of the date of closure implemented pursuant to subsection B or the date that actual notice is provided of such closure pursuant to subsection B. Any person violating this provision shall be guilty of a Class 1 misdemeanor.

2007, c. 41; 2010, cc. 178, 728; 2013, cc. 59, 760.

Article 2 - POTOMAC RIVER COMPACT; RELATED LAWS

§ 28.2-1001. Potomac River Compact

PREAMBLE

Whereas, Maryland and Virginia are both vitally interested in conserving and improving the valuable fishery resources of the Tidewater portion of the Potomac River, and

Whereas, certain provisions of the Compact of 1785 between Maryland and Virginia having become obsolete, Maryland and Virginia each recognizing that Maryland is the owner of the Potomac River bed and waters to the low-water mark of the southern shore thereof, as laid out on the Mathews-Nelson Survey of 1927, and that Virginia is the owner of the Potomac River bed and waters southerly from said low-water mark as laid out, and that the citizens of Virginia have certain riparian rights along the southern shore of the river, as shown on said Mathews-Nelson Survey, and, in common with the citizens of Maryland, the right of fishing in said river, Maryland and

Virginia have agreed that the necessary conservation and improvement of the Tidewater portion of the Potomac fishery resources can be best achieved by a Commission comprised of representatives of both Maryland and Virginia, charged with the establishment and maintenance of a program to conserve and improve these resources, and

Whereas, at a meeting of the Commissioners appointed by the Governors of the State of Maryland and the Commonwealth of Virginia, to wit: Carlyle Barton, M. William Adelson, Stephen R. Collins, Edward S. Delaplaine and William J. McWilliams, Esquires, on the part of the State of Maryland, and Mills E. Godwin, Jr., Howard H. Adams, Robert Y. Button, John Warren Cooke and Edward E. Lane, Esquires, on the part of the Commonwealth of Virginia, at Mount Vernon, Virginia, on the twentieth day of December, in the year one thousand nine hundred and fifty-eight, the following Potomac River Compact of 1958 between the Commonwealth of Virginia and the State of Maryland was mutually agreed to by the said Commissioners:

Now, therefore, be it resolved by the Commissioners appointed by the Governors of the State of Maryland and the Commonwealth of Virginia, meeting in joint session, that they do unanimously recommend to the said respective Governors that there be a new compact, to be designated as the "Potomac River Compact of 1958," and that the said new compact be referred as promptly as possible to the legislatures of the State of Maryland and the Commonwealth of Virginia for appropriate action, and to the end and after ratification and adoption by said legislatures the same be submitted to the Congress of the United States for approval.

ARTICLE I

COMMISSION -- MEMBERSHIP AND ORGANIZATION

§ 1. Commission created. -- The Potomac River Fisheries Commission, hereinafter designated as "Commission," is hereby created.

§ 2. Members. -- The Commission shall consist of eight members, four from Maryland and four from Virginia. The Maryland members shall be the Secretary of the Department of Natural Resources of Maryland or its successor agency or the Secretary's designee, and three members at large to be appointed by the Governor of Maryland with the advice and consent of the Senate of Maryland. The Virginia members shall be three members of the Virginia Marine Resources Commission or its successor agency, and one member at large, to be appointed by the Governor of Virginia. If the membership of the Virginia Marine Resources Commission exceeds three, then the three Commission members from the Virginia Marine Resources Commission shall be selected by the Governor of Virginia; and if the membership of the Virginia Marine Resources Commission is less than three, the four Commission members from Virginia shall be the member or members of the Virginia Marine Resources Commission, and such additional person or persons who shall be appointed by the Governor as may be necessary to constitute a total of four Commissioners.

§ 3. Term, vacancies. -- The term of Commissioners who are members of the Virginia Marine Resources Commission shall be coterminous with their term on the Virginia Marine Resources

Commission. The Secretary of the Department of Natural Resources of Maryland or the Secretary's designee shall serve ex officio. The term of all other Commissioners shall be four years. Vacancies on the Commission shall be filled by appointment of the Governor of the State entitled to fill the vacancy, except that if the Virginia Marine Resources Commission has three members, the person filling a vacancy on the Virginia Marine Resources Commission shall ex officio become a member of the Commission.

§ 4. Chairman. -- The chairman of the Commission shall alternate from year to year between the representatives of Maryland and Virginia. Subject to such alternation, the chairman shall be elected by the Commissioners for a term of one year.

§ 5. Compensation, expenses. -- Commissioners shall be entitled to receive from the General Fund of the Commission compensation not to exceed two hundred and fifty dollars ($250.00) for each day or portion thereof spent in the performance of their duties, but in no event to exceed one thousand five hundred dollars ($1,500) in any year, and reimbursement of reasonable expenses incident to the performance of their duties.

§ 6. Meetings, quorum. -- Commission meetings shall be held at least once each quarter, and at such other times as the Commission may determine.

In order to constitute a quorum for the transaction of any business at least two of the four members from each State must be present and must vote on the business being transacted.

§ 7. Office and employees. -- The Commission shall establish and maintain an office at such locations as it may select, and may employ an executive secretary who shall serve at the pleasure of the Commission, and such other administrative, clerical, scientific, and legal personnel as it deems necessary. The powers, duties and compensation of all employees shall be as prescribed by the Commission, and the employees shall not be subject to the provisions of Division I of the State Personnel and Pensions Article of the Annotated Code of Maryland that govern the Maryland State Personnel Management System nor to the provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.), as the same may be from time to time in effect. The Commission may extend to any employee or employees membership in the Virginia Retirement System or the Maryland Employees' Retirement System, whichever is applicable, subject to the laws relating to each such retirement system. Employees and retirees of the Commission shall also be eligible for the health and related insurance for state employees and retirees in § 2.2-2818 of the Code of Virginia or Title 2, Subtitle 5 of the State Personnel and Pensions Article of the Annotated Code of Maryland, whichever is applicable.

ARTICLE II

JURISDICTIONAL BOUNDARIES

The territory in which the Potomac River Fisheries Commission shall have jurisdiction shall be those waters of the Potomac River enclosed within the following described area:

Beginning at the intersection of mean low-water mark at Point Lookout and an established line running from Smiths Point to Point Lookout, marking Chesapeake Bay waters; thence following the mean low-water line of the shore northwesterly across the respective mouths of all creeks to Gray Point at the westerly entrance into Rowley Bay; thence in a straight line northwesterly to the southerly extremity of Kitts Point; thence along the mean low-water line to the southwesterly point of St. Inigoes Neck; thence in a straight line westerly to the most easterly point of St. Georges Island; thence following the mean low-water line in a general northwesterly direction, across the respective mouths of all creeks and inlets to the southwesterly point of Huggins Point; thence in a straight line southwesterly to the eastern extremity of the sandbar known as Heron Island; thence northwesterly following the ridge of Heron Island Bar to its westerly extremity; thence southwesterly in a straight line to the most southerly point of Blackiston Island; thence in a straight line northwesterly to the southern extremity of Colton's Point; thence following the mean low-water line, westerly, excluding all creeks and inlets, to the point marking the southeasterly entrance into St. Catherine Sound; thence westerly in a straight line to the southern extremity of St. Catherine Island Sandbar; thence northwesterly, along the westerly edge of said sandbar continuing along the mean low-water line of the southwesterly side of St. Catherine Island to the northwesterly point of said island; thence westerly in a straight line to Cobb Point Bar Lighthouse; thence northwesterly along the ridge of Cobb Point Sandbar to the southerly extremity of Cobb Point; thence following the mean low-water line in general northwesterly and northerly directions across the respective mouths of all creeks and inlets to a point at the easterly entrance into Port Tobacco River, due east of Windmill Point; thence in a straight line westerly to Windmill Point; thence southwesterly following the mean low-water line across the respective mouths of all creeks and inlets to Upper Cedar Point; thence southwesterly in a straight line across the mouth of Nanjemoy Creek to a point on shore at the village of Riverside; thence following the mean low-water line, southwesterly, northwesterly and northerly across the respective mouths of all creeks and inlets to Smiths Point; thence northerly in a straight line to Liverpool Point; thence northerly in a straight line to Sandy Point; thence following the mean low-water line northerly, across the respective mouths of all creeks and inlets to Moss Point; thence northerly in a straight line across Chicamuxen Creek to the southernmost point of Stump Neck; thence following the mean low-water line northeasterly, across the respective mouths of all creeks and inlets, to a point at the southerly entrance into Mattawoman Creek; thence in a straight line northeasterly across the mouth of Mattawoman Creek to the southwesterly point of Cornwallis Neck; thence following the mean low-water line northeasterly, across the respective mouths of all creeks and inlets, to Chapman Point; thence in a straight line northeasterly to Pomonkey or Hillis Point; thence following the mean low-water line in a northerly direction across the respective mouths of all creeks and inlets, to a point on Marshall Hall shore, due south of Ferry Point; thence northeasterly in a straight line to Bryan Point; thence northeasterly in a straight line to the northwest extremity of Mockley Point; thence northeasterly in a straight line to Hatton Point; thence northerly in a straight line to the southwesternmost point of Indian Queen Bluff; thence following the

mean low-water line northerly across the respective mouths of all creeks and inlets, to Rosier Bluff Point; thence in a straight line northerly to the intersection with the District of Columbia line at Fox Ferry Point; thence following the boundary line of the District of Columbia southwesterly to a point on the lower or southern shore of the Potomac River, said point being the intersection of the boundary line of the Commonwealth of Virginia with the boundary line of the District of Columbia; thence following the mean low-water line of the Potomac River on the southern, or Virginia shore, as defined in the Black-Jenkins Award of 1877 and as laid out in the Mathews-Nelson Survey of 1927, beginning at the intersection of the Potomac River and the District of Columbia line at Jones Point and running to Smiths Point; and thence in a straight line across the mouth of the Potomac River on the established line from Smiths Point to Point Lookout, to the mean low-water mark at Point Lookout, the place of beginning.

ARTICLE III

COMMISSION POWERS AND DUTIES

§ 1. Oyster bars. -- The Commission shall make a survey of the oyster bars within its jurisdiction and may reseed and replant said oyster bars as may from time to time be necessary.

§ 2. Fish and seafood. -- The Commission may by regulation prescribe the type, size and description of all species of finfish, crabs, oysters, clams and other shellfish which may be taken or caught, within its jurisdiction, the places where they may be taken or caught, and the manner of taking or catching.

§ 3. Research. -- The Commission shall maintain a program of research relating to the conservation and repletion of the fishery resources within its jurisdiction, and to that end may cooperate and contract with scientists and public and private scientific agencies engaged in similar work, and may purchase, construct, lease, borrow or otherwise acquire by any lawful method such property, structures, facilities, or equipment as it deems necessary.

§ 4. Licenses. -- (a) The Commission shall issue such licenses as it may prescribe which shall thereupon be required for the taking of finfish, crabs, oysters, clams or other shellfish from the waters within the jurisdiction of the Commission, and for boats, vessels and equipment used for such taking. Recognizing that the right of fishing in the territory over which the Commission shall have jurisdiction is and shall be common to and equally enjoyed by the citizens of Virginia and Maryland, the Commission shall make no distinction between the citizens of Virginia or Maryland in any rule, regulation or the granting of any licenses, privileges, or rights under this compact.

(b) Licenses for the taking of oysters and clams and the commercial taking of finfish and crabs within the jurisdiction of the Commission shall be granted only to citizens of Maryland or Virginia who have resided in either or both States for at least twelve months immediately preceding the application for the license. Within six months after the effective date of this compact, the Commission shall adopt a schedule of licenses, the privileges granted thereby, and the fees therefor, which may be modified from time to time in the discretion of the Commission.

(c) The licenses hereby authorized may be issued at such place, by such persons, and in accordance with such procedures as the Commission may determine.

§ 5. Expenditures. -- The Commission is authorized to expend funds for the purposes of general administration, repletion of the fish and shellfish in the Potomac River, and the conservation and research programs authorized under this compact, subject to the limitations provided in this compact.

§ 6. Grants, contributions, etc. -- The Commission is authorized to receive and accept (or to refuse) from any and all public and private sources such grants, contributions, appropriations, donations, and gifts as may be given to it, which shall be paid into and become part of the General Fund of the Commission, except where the donor instructs that it shall be used for a specific project, study, purpose, or program, in which event it shall be placed in a special account, which shall be administered under the same procedure as that prescribed for the General Fund.

§ 7. Cooperation of state agencies. -- The Commission may call upon the resources and assistance of the Virginia Institute of Marine Science, the University of Maryland System, and all other agencies, institutions and departments of Maryland and Virginia which shall cooperate fully with the Commission upon such request.

§ 8. Regulations. -- The Commission shall have the power to make, adopt and publish such rules and regulations as may be necessary or desirable for the conduct of its meetings, such hearings as it may from time to time hold, and for the administration of its affairs.

§ 9. Inspection tax. -- The Commission may impose an inspection tax, in an amount as fixed from time to time by the Commission, which inspection tax may not exceed two dollars ($2.00) per bushel, upon all oysters caught within the limits of the Potomac River. The tax shall be paid by the buyer at the place in Maryland or Virginia where the oysters are unloaded from vessels and are to be shipped no further in bulk in vessel, to an agent of the Commission, or to such officer or employee of the Virginia Marine Resources Commission or of the Maryland Department of Natural Resources, as may be designated by the Commission, and by him paid over to the Commission. The Commission shall use the proceeds of the oyster inspection tax solely for planting seed or shell oyster on working bottom.

ARTICLE IV

COMMISSION REGULATIONS -- PROCEDURE AND REVIEW

§ 1. (Contingent expiration date -- see Editor's note) Notice, hearing, vote. -- No regulation shall be adopted by the Commission unless:

(a) A public hearing is held thereon;

(b) Prior to the hearing the Commission has given notice of the proposed regulation by publication thereof at least once a week for three successive weeks in at least one newspaper published, or having a general circulation in each county of Maryland and Virginia contiguous to the waters within

the Commission's jurisdiction, the first such publication to be at least thirty days but not more than forty-five days prior to the date of the hearing;

(c) A copy of the proposed regulation is mailed at least thirty days but not more than forty-five days prior to the hearing, to the clerk of the court of each county of Maryland and Virginia contiguous to the waters within the Commission's jurisdiction, who shall post the same in a conspicuous place at or in the courthouse; and

(d) The regulation is approved by at least six members of the Commission.

§ 1. (Contingent effective date -- see Editor's note) Notice, hearing, vote. -- No regulation shall be adopted by the Commission unless:

(a) A public hearing is held thereon;

(b) Prior to the hearing the Commission has given notice of the proposed regulation by publication thereof at least once a week for three successive weeks in at least one newspaper published, or having a general circulation in each county of Maryland and Virginia contiguous to the waters within the Commission's jurisdiction, the first such publication to be at least thirty (30) days but not more than forty-five (45) days prior to the date of the hearing;

(c) A copy of the proposed regulation is mailed at least thirty (30) days but not more than forty-five (45) days prior to the hearing, to the clerk of the court of each county of Maryland and Virginia contiguous to the waters within the Commission's jurisdiction, who shall post the same in a conspicuous place at or in the courthouse; and

(d) The regulation is approved by at least six members of the Commission.

§ 2. Recording, effective date. -- (a) Regulations of the Commission shall be exempt from the provisions of Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia (1950 Edition, as amended from time to time), and of §§ 10-106 and 10-107 of the State Government Article of the Annotated Code of Maryland (1957 Edition, as amended from time to time). Copies of Commission regulations shall be kept on public file and available for public reference in the office of the Commission, the office of the clerk of court in each county of Maryland and Virginia contiguous to the waters within the Commission's jurisdiction, the office of the Virginia Registrar of Regulations, the office of the Maryland Department of Legislative Reference, the office of the Virginia Marine Resources Commission, and the office of the Maryland Department of Natural Resources.

(b) No regulation of the Commission shall become effective until thirty (30) days after the date of its adoption, or such later date as may be fixed by the Commission.

(c) Leasing, dredging or patent tonging shall be authorized by the Commission only if such authorization is granted by joint action of the Legislatures of Maryland and Virginia.

§ 3. Review. -- Any person aggrieved by any regulation or order of the Commission may at any time file a petition for declaratory judgment with respect to the validity or construction thereof, in the circuit court of any county in Maryland or Virginia contiguous to the waters within the Commission's jurisdiction. A review of the final judgment of the circuit court may be appealed to the court of highest appellate jurisdiction of the State in accordance with the rules of procedure in such state.

§ 4. Revision by legislative action. -- Regulations of the Commission may be amended, modified, or rescinded by joint enactment of the General Assembly of Maryland and the General Assembly of Virginia.

§ 5. Revision of compact. -- At any time subsequent to the adoption of this compact the Governor or Legislature of either Maryland or Virginia may call for the appointment of a Commission to make further study and recommendations concerning revision and amendments to this compact, at which time the Governors of the respective States shall act forthwith in compliance with the request for the appointment of said Commission.

ARTICLE V

ENFORCEMENT OF LAWS AND REGULATIONS; PENALTIES

§ 1. Responsibility for enforcement. -- The regulations and orders of the Commission shall be enforced by the joint effort of the law-enforcement agencies and officers of Maryland and Virginia.

§ 2. (Contingent expiration date -- see Editor's note) Penalties. -- The violation of any regulation of the Commission shall be a misdemeanor. Unless a lesser punishment is provided by the Commission, such violation shall be punishable by a fine not to exceed one thousand dollars ($1,000.00) or confinement in a penal institution for not more than one (1) year, or both, in the discretion of the court, and any vessel, boat, or equipment used in the taking of finfish, crabs, oysters, clams, or other shellfish from the Potomac River in violation of any regulation of the Commission or of applicable laws may be confiscated by the court, upon the abandonment thereof or the conviction of the owner or operator thereof.

§ 2. (Contingent effective date -- see Editor's note) Penalties. -- The violation of any regulation of the Commission shall be a misdemeanor. Unless a lesser punishment is provided by the Commission, such violation shall be punishable by a fine not to exceed three thousand dollars ($3,000.00) or confinement in a penal institution for not more than one (1) year, or both, in the discretion of the court, and any vessel, boat, or equipment used in the taking of finfish, crabs, oysters, clams, or other shellfish from the Potomac River in violation of any regulation of the Commission or of applicable laws may be confiscated by the court, upon the abandonment thereof or the conviction of the owner or operator thereof.

§ 3. (Contingent expiration date -- see Editor's note) Jurisdiction of court. -- The officer making an arrest or preferring a charge for violation of a regulation of the Commission or an applicable State

law respecting the waters within the Commission's jurisdiction shall take the alleged offender to a court of competent jurisdiction in either State, in a county adjacent to the portion of the Potomac River where the alleged offense occurred, which shall thereupon have jurisdiction over the offense.

§ 3. (Contingent effective date -- see Editor's note) Jurisdiction of court. -- The officer making an arrest or preferring a charge for violation of a regulation of the Commission or an applicable State law respecting the waters within the Commission's jurisdiction shall take the alleged offender to a court of competent jurisdiction in the state in which he resides if he is a resident of Virginia or Maryland, or if the offender is not a resident of either state, in a county adjacent to the portion of the Potomac River where the alleged offense occurred, which shall thereupon have jurisdiction over the offense.

§ 4. Disposition of fines and forfeitures. -- All fines imposed for violation of regulations of the Commission or applicable State laws respecting the waters within the Commission's jurisdiction shall be paid into the court in which the case is prosecuted, and accounted for under the laws applicable to that court. Any property confiscated under the provisions of this compact shall be turned over to the Commission, which may retain, use or dispose of it as it deems best.

ARTICLE VI

COMMISSION FINANCES

§ 1. Budget. -- The Commission shall approve and adopt a proposed annual budget showing estimated income, revenues, appropriations, and grants from all sources, and estimated necessary expenditures and shall send a copy thereof to the Governors of Maryland and Virginia.

§ 2. Appropriations. -- The said Governors shall place in the proposed budget of their respective States for each year the sum of not less than fifty thousand dollars ($50,000.00) for the expenses and the other purposes of the Commission for that year, except that none of the sum so appropriated shall be used for law-enforcement purposes; and the General Assembly of each of the two States agrees to appropriate annually not less than this sum to the Commission.

§ 3. General Fund. -- (a) The General Fund shall consist of:

(1) All income and revenue received from the issuance of licenses under this compact;

(2) The proceeds of the disposition of property confiscated pursuant to the provisions of this compact;

(3) The proceeds of the inspection tax upon oysters imposed pursuant to this compact; and

(4) The funds appropriated to the Commission by the two States.

(b) The General Fund of the Commission shall be kept in such bank or depository as the Commission shall from time to time select. The General Fund shall be audited annually by the Auditor of Public Accounts of Virginia and the State Auditor of Maryland acting jointly, and at such other times as the Commission may request.

ARTICLE VII

EFFECT ON EXISTING LAWS AND PRIOR COMPACT

§ 1. Existing rights. -- The rights, including the privilege of erecting and maintaining wharves and other improvements, of the citizens of each State along the shores of the Potomac River adjoining their lands shall be neither diminished, restricted, enlarged, increased nor otherwise altered by this compact, and the decisions of the courts construing that portion of Article VII of the Compact of 1785 relating to the rights of riparian owners shall be given full force and effect.

§ 2. Existing laws. -- The laws of the State of Maryland relate to finfish, crabs, oysters, and clams in the Potomac River, as set forth in former Article 66C of the Annotated Code of Maryland and as in effect on December one, nineteen hundred fifty-eight, shall be and remain applicable in the Potomac River except to the extent changed, amended, or modified by regulations of the Commission adopted in accordance with this compact.

§ 3. Existing licenses. -- The rights and privileges of licensees to take and catch finfish, crabs, oysters, clams, and other shellfish in the Potomac River, which are in effect at the time this compact becomes effective, shall continue in force for a period of six months at which time every such license and every such right and privilege shall be abrogated.

ARTICLE VIII

EFFECT OF RATIFICATION

These articles shall be laid before the Legislatures of Virginia and Maryland, and their approbation being obtained, shall be confirmed and ratified by a law of each State, never to be repealed or altered by either, without the consent of the other.

ARTICLE IX

EFFECTIVE DATE

(Contingent expiration date -- see Editor's note) This compact, which takes the place of the Compact of 1785 between Maryland and Virginia, shall take effect at the expiration of sixty days after the completion of the last act legally necessary to make it operative, and thereupon the said Compact of 1785 shall no longer have any force or effect.

ARTICLE IX

EFFECTIVE DATE

(Contingent effective date -- see Editor's note) This compact, which takes the place of the Compact of 1785 between Maryland and Virginia, shall take effect at the expiration of sixty (60) days after the completion of the last act legally necessary to make it operative, and thereupon the said Compact of 1785 shall no longer have any force or effect.

Code 1950, § 28-218.1; 1959, Ex. Sess., cc. 5, 28; 1962, c. 406, § 28.1-203; 1984, c. 637; 1985, c. 102; 1992, c. 836; 1995, c. 257; 1998, c. 216; 2007, c. 885; 2013, cc. 635, 688.

§ 28.2-1002. Cooperation of agencies of Commonwealth

All governmental agencies of the Commonwealth of Virginia are authorized to cooperate with the Potomac River Fisheries Commission created by the Potomac River Compact approved by this article, it being the policy of this Commonwealth to perform and carry out the compact and accomplish its purposes.

Code 1950, §§ 28-218.2, 28-218.3; 1959, Ex. Sess., cc. 5, 28; 1962, c. 406, § 28.1-203.1; 1992, c. 836 .

§ 28.2-1003. Authority to regulate dredging of soft shell clams

The Potomac River Fisheries Commission shall have the power to make, adopt and publish such rules and regulations as may be necessary or desirable for authorizing and regulating the dredging of soft shell clams in areas within its geographical jurisdiction and may levy license fees for such dredging in amounts to be set in its discretion.

1964, Ex. Sess., c. 24, § 28.1-227; 1992, c. 836 .

§ 28.2-1004. Authority to authorize and regulate experimental oyster hatchery program

The Potomac River Fisheries Commission shall have the power to make, adopt and permit such rules and regulations and to take such action as may be necessary or advisable for authorizing and regulating a pilot program for experimental oyster hatchery seed planting, growing, and harvesting with private planters and public and private scientific agencies engaged in similar work in its jurisdiction, and may set aside available barren natural oyster rocks for this purpose and to allow dredging of same for inspection, sampling and harvesting under the supervision and control of the Potomac River Fisheries Commission and in cooperation with the Maryland or Virginia public scientific agencies, Chesapeake Biological Laboratory and Virginia Institute of Marine Science.

The provisions of this section shall not take effect until a similar act becomes effective in the State of Maryland, whereupon the Governor of Virginia shall issue a proclamation declaring the provisions of this section to be effective.

1974, c. 89, § 28.1-228; 1992, c. 836 .

§ 28.2-1005. Authority to regulate dredging of oysters

The Potomac River Fisheries Commission shall have the power to make, adopt and publish such rules and regulations as may be necessary or desirable for authorizing and regulating the dredging of oysters in areas of the Potomac River within its geographical jurisdiction and may levy license and repletion fees for same.

1974, c. 89, § 28.1-229; 1982, c. 116; 1992, c. 836 .

§ 28.2-1006. Lawfully harvested finfish and shellfish; possession, storage, marketing and disposal

Notwithstanding any provision of law to the contrary, finfish, crabs, oysters, clams, and other shellfish caught in the waters within the jurisdiction of the Potomac River Fisheries Commission, in compliance with the regulations prescribed by the Commission pursuant to the Potomac River Compact of 1958, may be possessed, stored, marketed, and otherwise disposed of elsewhere in the Commonwealth.

2001, c. 233.

§ 28.2-1007. Authority to regulate leasing

The Potomac River Fisheries Commission shall have the power to make, adopt, and publish such rules and regulations as may be necessary or desirable for authorizing and regulating the leasing of the river bottom or the water column in areas of the Potomac River within its geographical jurisdiction and may levy license, leasing, and repletion fees for same.

2007, c. 885.

Chapter 11 - VIRGINIA INSTITUTE OF MARINE SCIENCE

Article 1 - GENERAL PROVISIONS

§ 28.2-1100. Virginia Institute of Marine Science continued; duties

The Virginia Institute of Marine Science shall hereafter be referred to as the Institute. The Institute shall:

1. Conduct studies and investigations of the seafood and commercial fishing and sport fishing industries;

2. Consider ways to conserve, develop and replenish fisheries resources and advise the Marine Resources Commission and other agencies and private groups on these matters;

3. Conduct studies of problems pertaining to the other segments of the maritime economy;

4. Conduct studies of marine pollution in cooperation with the State Water Control Board and the Department of Health and make the data and their recommendations available to the appropriate agencies;

5. Conduct hydrographic and biological studies of the Chesapeake Bay, its tributaries, and all the tidal waters of the Commonwealth and the contiguous waters of the Atlantic Ocean;

6. Engage in research in the marine sciences;

7. Conduct such special studies and investigations concerning these subjects as requested by the Governor;

8. Engage in research and provide training, technical assistance and advice to the Board of Conservation and Recreation on erosion along tidal shorelines, the Soil and Water Conservation Board on matters relating to tidal shoreline erosion, and to other agencies upon request; and

9. Develop comprehensive coastal resource management guidance for local governments to foster the sustainability of shoreline resources by December 30, 2012. The guidance shall identify preferred options for shoreline management and taking into consideration the resource condition, priority planning, and forecasting of the condition of the Commonwealth's shoreline with respect to projected sea-level rise.

These studies shall include consideration of the seafood and other marine resources, such as the waters, bottoms, shorelines, tidal wetlands, and beaches, and all matters related to marine waters and the means by which marine resources might be conserved, developed and replenished.

Code 1950, §§ 28-248, 28-250, 28-250.1; 1962, c. 406, § 28.1-195; 1979, c. 294; 1980, c. 369; 1992, c. 836; 2003, cc. 79, 89; 2011, c. 885.

§ 28.2-1101. Use of services of other agencies; solicitation, etc., of funds; taking fish and other marine organisms

A. In conducting its studies and investigations under § 28.2-1100, the Institute may:

1. Use the services of any public or private agency;

2. With the prior written approval of the Governor and subject to other provisions of law, solicit, accept and use funds available from any public or private source; and

3. Cooperate with appropriate state agencies and with similar agencies and institutions in other states and the federal government.

B. The Institute, its officers, agents, and employees, or persons operating under its direction may take for scientific purposes, any fish, shellfish or marine organism from the waters of Virginia, and with the consent of the Commission, may sell such fish, shellfish or marine organisms or parts thereof as may not be necessary for such scientific purposes.

1962, c. 406, § 28.1-196; 1968, c. 237; 1992, c. 836 .

§ 28.2-1102. Destroying, etc., property of Institute a misdemeanor

It shall be unlawful and constitute a Class 1 misdemeanor for anyone without authority to destroy, remove, damage, or molest any property of the Institute.

1962, c. 406, § 28.1-200; 1992, c. 836 .

Article 2 - VIRGINIA ESTUARINE AND COASTAL RESEARCH RESERVE SYSTEM

§ 28.2-1103. Virginia Estuarine and Coastal Research Reserve System created; purpose; Virginia Institute of Marine Science to administer

A. There is hereby created the Virginia Estuarine and Coastal Research Reserve System (the System) for the purpose of establishing a system of protected sites representative of the

Commonwealth's estuarine and coastal lands in which research and long-term monitoring will be conducted in support of the Commonwealth's coastal resource management efforts.

B. The System shall be established and administered by the Virginia Institute of Marine Science of The College of William and Mary. The Institute shall consult with and seek the advice of the Virginia Coastal Program and of those state agencies responsible for administering programs of the Virginia Coastal Program; the Marine Resources Commission; the Department of Game and Inland Fisheries; the Department of Conservation and Recreation; the Department of Health; and the Department of Environmental Quality.

C. Sites included within the System shall be within any jurisdiction included in Tidewater Virginia as defined in § 62.1-44.15:68.

D. The Institute may accept the dedication, by voluntary act of the owner, of areas it deems suitable for the System. Dedication may include transfer of fee simple title or other interest in land to the Commonwealth or may be in the form of voluntary agreement with the owner to include the area within the System. Estuarine and Coastal Research Reserve System sites may also be acquired by gift, grant, or purchase.

E. The instrument of dedication may:

1. Contain restrictions and other provisions relating to management, use, development, transfer, and public access, and may contain any other restrictions and provisions as may be necessary or advisable to further the purposes of this article;

2. Define, consistent with the purposes of the article, the respective rights and duties of the owner and of the Commonwealth and provide procedures to be followed in case of violations of the restriction;

3. Recognize and create reversionary right, transfers upon conditions or with limitations, and gifts over; and

4. Vary in provisions from one System site to another, in accordance with differences in the characteristics and conditions of the several areas.

F. Public departments, commissions, boards, counties, municipalities, corporations, colleges, universities and all other agencies and instrumentalities of the Commonwealth and its political subdivisions may enter into agreements with the Institute to dedicate suitable areas within their jurisdictions as Estuarine and Coastal Research Reserve System sites.

G. Subject to the approval of the Governor and the Attorney General, the Commonwealth may enter into amendments to the instrument of dedication upon finding that the amendment will not permit an impairment, disturbance, use, or development of the area that is inconsistent with the provisions of this article. If a fee simple estate in the Estuarine and Coastal Research Reserve System is not held by the Institute under this article, no amendment may be made without the written consent of the owner of the other interests therein.

H. The Institute is empowered to enter into agreements with federal agencies holding title to lands within Tidewater Virginia to include suitable portions of agency holdings in the Virginia Estuarine and Coastal Research Reserve System.

I. All lands within the system shall be used primarily for research and education. Other public uses such as hunting and recreation on those research reserve lands owned by the Institute shall be allowed, consistent with these primary uses. Improvements and alterations to research reserve lands owned by the Institute shall be limited to those consistent with these uses.

1999, c. 553; 2005, c. 41.

§ 28.2-1104. Coordination

A. To the extent feasible, this system shall be carried out in coordination with the National Estuarine Research Reserve System established by 16 U.S.C. § 1461.

B. To the extent feasible, lands within the Virginia Estuarine and Coastal Research Reserve System shall be dedicated as part of the Commonwealth's natural area preserves components pursuant to § 10.1-213.

1999, c. 553.

Chapter 11.1 - MARINE TOURISM ACTIVITY LIABILITY

§ 28.2-1105. Definitions

As used in this chapter, unless the context requires a different meaning:

"Inherent risks of a marine tourism activity" means those dangers or conditions that are an integral part of a marine tourism activity, including certain hazards, such as surface and subsurface conditions; natural conditions of water; natural behaviors and dangers of varied marine products; and ordinary dangers of boats, structures, or equipment ordinarily used in commercial fishing operations. Inherent risks of marine tourism activities also includes the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the marine tourism professional or failing to exercise reasonable caution while engaging in the marine tourism activity.

"Marine products" means any marine fish, shellfish, or organism that inhabits marine or estuarine waters. Terrapin and marine mammals are considered to be marine organisms.

"Marine tourism activity" means any activity carried out by a marine tourism professional that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy marine activities related to the historic and contemporary culture, practice, and industry of commercial fishermen. Marine tourism activities may take place on land or water and shall include aquaculture and fishing, as defined in § 28.2-100. An activity is a marine tourism activity whether or not the participant paid to participate in the activity.

"Marine tourism professional" means any commercial fisherman, as defined in subsection D of § 28.2-241, or any person supervised by a commercial fisherman who is engaged in the business of providing one or more marine tourism activities, whether or not for compensation.

"Participant" means any person, other than a marine professional, who engages in marine tourism activities.

2009, c. 329.

§ 28.2-1106. Liability limited; liability actions prohibited

A. Except as provided in subsection B, a marine tourism professional is not liable for injury to or death of a participant resulting from the inherent risks of marine tourism activities, so long as the warning contained in § 28.2-1107 is posted as required, and, except as provided in subsection B, no participant or participant's representative is authorized to maintain an action against or recover from a marine tourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of marine tourism activities; provided that in any action for damages against a marine tourism professional for marine tourism activities, the marine tourism professional shall plead the affirmative defense of assumption of the risk of the marine tourism activity by the participant.

B. Nothing in subsection A shall prevent or limit the liability of a marine tourism professional if the marine tourism professional does any one or more of the following:

1. Commits an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant;

2. Has actual knowledge or reasonably should have known of a dangerous condition on the land or water, or in the facilities or equipment used in the activity, or the dangerous propensity of a particular marine product used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant; or

3. Intentionally injures the participant.

C. Any limitation on legal liability afforded by this section to a marine tourism professional is in addition to any other limitations of legal liability otherwise provided by law.

2009, c. 329.

§ 28.2-1107. Warning required

A. Every marine tourism professional shall post and maintain signs that contain the warning notice specified in subsection B. The sign shall be placed in a clearly visible location at the entrance to and the site of the marine tourism activity. The warning notice shall consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by a marine tourism professional for the providing of professional services, instruction, or the rental of equipment to a participant, whether or not the contract involves marine

tourism activities on or off the location or at the site of the marine tourism activity, shall contain in clearly readable print the warning notice specified in subsection B.

B. The signs and contracts described in subsection A shall contain the following notice of warning:

"WARNING: Under Virginia law, there is no liability for an injury to or death of a participant in a marine tourism activity if such injury or death results from the inherent risks of a marine tourism activity. Inherent risks of a marine tourism activity include, among others, risks of injury to property and the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this marine tourism activity."

C. Failure to comply with the requirements concerning warning signs and notices provided in this section shall prevent a marine tourism professional from invoking the privileges of immunity provided by this chapter.

2009, c. 329.

Subtitle III - HABITAT

Chapter 12 - SUBMERGED LANDS

Article 1 - OWNERSHIP AND USES OF SUBMERGED LANDS

§ 28.2-1200. Ungranted beds of bays, rivers, creeks and shores of the sea to remain in common

All the beds of the bays, rivers, creeks and the shores of the sea within the jurisdiction of the Commonwealth, not conveyed by special grant or compact according to law, 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, hunting, and taking and catching oysters and other shellfish. No grant shall be issued by the Librarian of Virginia to pass any estate or interest of the Commonwealth in any natural oyster bed, rock, or shoal, whether or not it ebbs bare.

Code 1950, § 62-1; 1960, c. 533; 1968, c. 659, § 62.1-1; 1992, c. 836; 1995, c. 850; 1998, c. 427.

§ 28.2-1200.1. Conveyance of state-owned bottomlands

A. In order to fulfill the Commonwealth's responsibility under Article XI of the Constitution of Virginia to conserve and protect public lands for the benefit of the people, the Commonwealth shall not convey fee simple title to state-owned bottomlands covered by waters. However, the Commonwealth may grant a lease, easement, or other limited interest in state-owned bottomlands covered by waters pursuant to § 28.2-1208 or as long as the property is used by a governmental entity for the performance of a governmental activity, as defined in §§ 28.2-1300 and 28.2-1400.

B.1. The Commonwealth may convey fee simple title to specified parcels of state-owned bottomlands that have been lawfully filled. For the purpose of this section, "lawfully filled" means the deposit of fill was (i) authorized by statute, (ii) pursuant to valid court order, (iii) authorized or

permitted by state officials pursuant to statutory authority subsequent to July 1, 1960, or (iv) under apparent color of authority prior to July 1, 1960. In the absence of information to the contrary, it may be presumed that state-owned bottomlands filled prior to July 1, 1960, were filled under apparent color of authority and, it may also be presumed, that all of the fill on the specified parcel was lawfully authorized if a substantial portion of the fill on such parcel was authorized. Properties not qualified under clauses (i) through (iv) of this subdivision shall not be eligible for conveyance under this section.

2. Titles to lands that (i) were once or may have been state-owned bottomlands covered by waters, (ii) were filled prior to July 1, 1960, and (iii) were acquired by private persons in good faith for value after such lands were filled, are hereby declared to be free and clear of any claimed ownership or interest by the Commonwealth and are released to such private persons and their successors and assigns by the Commonwealth to the extent that the areas of these lands were not state-owned bottomlands covered by waters on July 1, 1960.

3. This subsection shall not apply to any state-owned bottomlands filled by a publicly funded initiative and put to a continuing public use, which includes beach nourishment projects and public landings.

C. Except as provided in subsection D, the grantee in a conveyance under subdivision B 1 shall compensate the Commonwealth in an amount commensurate with the property interest being conveyed, which shall be considered equivalent to 25 percent of the assessed value of the specified parcel, exclusive of any buildings or other improvements. The assessed value shall be established as the average of the local real estate tax assessments for the most recent 10 years available for the specified parcel. If no such assessments are available for the specified parcel, then the assessed value shall be calculated as the percentage, by square footage or acreage, that the specified parcel represents of the larger parcel for which such assessments are available.

D. If the Commission determines that unique circumstances exist, the Commission may allow the grantee in a conveyance under subdivision B 1 to compensate the Commonwealth in an amount less than 25 percent of the assessed value of the specified parcel. Any such determination by the Commission shall be justified in writing and shall not be subject to judicial review.

2007, c. 879; 2011, c. 734.

§ 28.2-1201. Ungranted islands which rise from lands which are property of the Commonwealth

A. Except as otherwise provided in subsections B and C hereof, all ungranted islands which rise by natural or artificial causes from the beds of bays, rivers and creeks that are ungranted under § 28.2-1200 shall remain the property of the Commonwealth and shall be managed by the Commission as provided in Article 2 (§ 28.2-1503 et seq.) of Chapter 15 of this title. In case of any conflict between the provisions of this subsection and the common law of accretion, reliction and avulsion, such common law shall control.

B. Any island or land that is owned by the Commonwealth, whether currently in existence or subsequently created, that now or hereafter abuts a barrier island of the Eastern Shore shall remain the property of the Commonwealth and shall be managed by the Commission as provided in Article 2 (§ 28.2-1503 et seq.) of Chapter 15 of this title.

C. This section shall not apply to accretions to privately owned lands or islands, whether or not they are used as commons.

1991, c. 378, § 41.1-4.1; 1992, c. 836; 1995, c. 850.

§ 28.2-1202. Rights of owners to extend to mean low-water mark

A. Subject to the provisions of § 28.2-1200, the limits or bounds of the tracts of land lying on the bays, rivers, creeks, and shores within the jurisdiction of the Commonwealth, and the rights and privileges of the owners of such lands, shall extend to the mean low-water mark but no farther, except where a creek or river, or some part thereof, is comprised within the limits of a lawful survey.

B. For purposes of this section, "lawful survey" means the boundaries of any land, including submerged lands, held under a special grant or compact as required by § 28.2-1200, such boundaries having been determined by generally accepted surveying methods and evidenced by a plat or map thereof recorded in the circuit court clerk's office of the county or city in which the land lies.

C. Notwithstanding any provision of law to the contrary, where sand or other material is placed upon state-owned beds of the bays, rivers, creeks, or shores of the sea channelward of the mean low-water mark as part of the performance of a properly permitted beach nourishment, storm protection, or dredging project undertaken by a public body, and the public has an established right of use and maintenance upon the adjacent land above the mean low-water mark, whether such public right is established before or after the sand or other material is placed, such placement shall not be deemed a severance or taking of, or otherwise to have impaired, an adjacent landowner's riparian or littoral rights, and the newly created land channelward of the former mean low-water mark shall be deemed natural accretion for purposes of ownership, but such ownership shall be subject to the public's same right of use and maintenance upon the newly created land as previously existed on the adjacent land above the mean low-water mark. This subsection is retroactively effective beginning January 1, 2009.

Code 1950, § 62-2; 1968, c. 659, § 62.1-2; 1972, c. 865; 1992, c. 836; 2014, cc. 106, 234.

§ 28.2-1203. Unlawful use of subaqueous beds; penalty

A. It shall be unlawful for any person to build, dump, trespass or encroach upon or over, or take or use any materials from the beds of the bays, ocean, rivers, streams, or creeks which are the property of the Commonwealth, unless such act is performed pursuant to a permit issued by the Commission or is necessary for the following:

1. Erection of dams, the construction of which has been authorized by proper authority;

2. Uses of subaqueous beds authorized elsewhere in this title;

3. Construction and maintenance of congressionally approved navigation and flood-control projects undertaken by the United States Army Corps of Engineers, the United States Coast Guard, or other federal agency authorized by Congress to regulate navigation, navigable waters, or flood control;

4. Construction of piers, docks, marine terminals, and port facilities owned or leased by or to the Commonwealth or any of its political subdivisions;

5. Except as provided in subsection D of § 28.2-1205, placement of private piers for non-commercial purposes by owners of the riparian lands in the waters opposite those lands, provided that (i) the piers do not extend beyond the navigation line or private pier lines established by the Commission or the United States Army Corps of Engineers, (ii) the piers do not exceed six feet in width and finger piers do not exceed five feet in width, (iii) any L or T head platforms and appurtenant floating docking platforms do not exceed, in the aggregate, 400 square feet, (iv) if prohibited by local ordinance open-sided shelter roofs or gazebo-type structures shall not be placed on platforms as described in clause (iii), but may be placed on such platforms if not prohibited by local ordinance, and (v) the piers are determined not to be a navigational hazard by the Commission. Subject to any applicable local ordinances, such piers may include an attached boat lift and an open-sided roof designed to shelter a single boat slip or boat lift. In cases in which open-sided roofs designed to shelter a single boat, boat slip or boat lift will exceed 700 square feet in coverage or the open-sided shelter roofs or gazebo structures exceed 400 square feet, and in cases in which an adjoining property owner objects to a proposed roof structure, permits shall be required as provided in § 28.2-1204;

6. Agricultural, horticultural or silvicultural irrigation on riparian lands or the watering of animals on riparian lands, provided that (i) no permanent structure is placed on or over the subaqueous bed, (ii) the person withdrawing water complies with requirements administered by the Department of Environmental Quality under Title 62.1, and (iii) the activity is conducted without adverse impacts to instream beneficial uses as defined in § 62.1-10; or

7. Recreational gold mining, provided that (i) a man-portable suction dredge no larger than four inches in diameter is used, (ii) rights of riparian property owners are not affected, (iii) the activity is conducted without adverse impacts to instream beneficial uses as defined in § 62.1-10, (iv) the activity is conducted without adverse impacts to underwater historic properties and related objects as defined in § 10.1-2214, and (v) the activity is not defined as mining in § 45.1-180.

B. A violation of this section is a Class 1 misdemeanor.

Code 1950, § 62-2.1; 1960, c. 600; 1962, c. 637; 1966, c. 641; 1968, c. 659, § 62.1-3; 1970, c. 621; 1972, c. 866; 1973, cc. 23, 361; 1974, cc. 92, 385; 1975, c. 431; 1976, c. 579; 1980, c. 253; 1982, c. 102; 1988, c. 868; 1992, c. 836; 1998, c. 605; 2000, c. 167; 2001, c. 234; 2003, c. 973; 2006, c. 507; 2007, c. 25.

§ 28.2-1204. Authority of Commission over submerged lands

The Commission is authorized to:

1. Issue permits for all reasonable uses of state-owned bottomlands not authorized under subsection A of § 28.2-1203, including but not limited to, dredging, the taking and use of material, and the placement of wharves, bulkheads, and fill by owners of riparian land in the waters opposite their lands, provided such wharves, bulkheads, and fill do not extend beyond any lawfully established bulkhead lines;

2. Issue permits to recover underwater historic property pursuant to §§ 10.1-2214 and 28.2-1203; and

3. Establish bulkhead and private pier lines on or over the bays, rivers, creeks, streams, and shores of the ocean which are owned by or subject to the jurisdiction of the Commonwealth for this purpose, and to issue and publish maps and plats showing these lines; however, these lines shall not conflict with those established by the United States Army Corps of Engineers.

Code 1950, § 62-2.1; 1960, c. 600; 1962, c. 637; 1966, c. 641; 1968, c. 659, § 62.1-3; 1970, c. 621; 1972, c. 866; 1973, cc. 23, 361; 1974, cc. 92, 385; 1975, c. 431; 1976, c. 579; 1980, c. 253; 1982, c. 102; 1988, c. 868; 1992, c. 836 .

§ 28.2-1204.1. Submerged aquatic vegetation

The Commission shall, in consultation with the Virginia Institute of Marine Science, develop guidelines containing criteria for use in:

1. Defining existing beds of submerged aquatic vegetation; and

2. Delineating areas where there is potential for submerged aquatic vegetation restoration.

1999, c. 547.

§ 28.2-1204.2. Marine Habitat and Waterways Improvement Fund established

There is hereby created in the state treasury a special nonreverting fund to be known as the Marine Habitat and Waterways Improvement Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. In addition to the receipt of moneys as may be specifically provided by law, the Commissioner is authorized to accept gifts and grants for the Fund, as well as proceeds that may be received from time to time on the sale of state-owned marine lands. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of improving marine habitat and waterways, including the removal of obstructions or hazardous property from state waters as authorized in §§ 15.2-909 and 28.2-1210. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner.

2000, c. 1056.

§ 28.2-1205. Permits for the use of state-owned bottomlands

A. When determining whether to grant or deny any permit for the use of state-owned bottomlands, the Commission shall be guided in its deliberations by the provisions of Article XI, Section I of the Constitution of Virginia. In addition to other factors, the Commission shall also consider the public and private benefits of the proposed project and shall exercise its authority under this section consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to § 1-200 in order to protect and safeguard the public right to the use and enjoyment of the subaqueous lands of the Commonwealth held in trust by it for the benefit of the people as conferred by the public trust doctrine and the Constitution of Virginia. The Commission shall also consider the project's effect on the following:

1. Other reasonable and permissible uses of state waters and state-owned bottomlands;

2. Marine and fisheries resources of the Commonwealth;

3. Tidal wetlands, except when this has or will be determined under the provisions of Chapter 13 of this title;

4. Adjacent or nearby properties;

5. Water quality; and

6. Submerged aquatic vegetation (SAV).

B. The Commission shall consult with other state agencies, including the Virginia Institute of Marine Science, the State Water Control Board, the Virginia Department of Transportation, and the State Corporation Commission, whenever the Commission's decision on a permit application relates to or affects the particular concerns or activities of those agencies.

C. No permit for a marina or boatyard for commercial use shall be granted until the owner or other applicant presents to the Commission a plan for sewage treatment or disposal facilities that has been approved by the State Department of Health.

D. A permit is required and shall be issued by the Commission for placement of any private pier measuring 100 or more feet in length from the mean low-water mark, which is used for noncommercial purposes by an owner of the riparian land in the waters opposite the land, and that traverses commercially productive leased oyster or clam grounds, as defined in § 28.2-630, provided that the pier does not extend beyond the navigation line established by the Commission or the United States Army Corps of Engineers. The permit may reasonably prescribe the design and location of the pier for the sole purpose of minimizing the adverse impact on such oyster or clam grounds or the harvesting or propagation of oysters or clams therefrom. The permit shall contain no other conditions or requirements. Unless information or circumstances materially alter the conditions under which the permit would be issued, the Commission shall act within 90 days of receipt of a complete joint permit application to approve or deny the application. If the Commission fails to act within that time, the application shall be deemed approved and the applicant shall be notified of the deemed approval.

E. All permits issued by the Commission for the use of state-owned bottomlands pursuant to § 28.2-1204, or to recover underwater historic property shall be in writing and specify the conditions and terms that the Commission determines are appropriate, and royalties unless prohibited under other provisions of this chapter.

F. Any person aggrieved by a decision of the Commission under this section is entitled to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). However, any decision made by the Commission hereunder consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to § 1-200 shall not be deemed to have been made pursuant to the police power. No person shall reapply for the same or substantially similar use of the bottomlands within 12 months of the denial of a permit by the Commission. Nothing in this subsection shall be construed to deprive a riparian landowner of such rights as he may have under common law.

Code 1950, § 62-2.1; 1960, c. 600; 1962, c. 637; 1966, c. 641; 1968, c. 659, § 62.1-3; 1970, c. 621; 1972, c. 866; 1973, cc. 23, 361; 1974, cc. 92, 385; 1975, c. 431; 1976, c. 579; 1980, c. 253; 1982, c. 102; 1988, c. 868; 1992, c. 836; 1996, c. 228; 1999, c. 741; 2000, c. 167; 2001, c. 72; 2004, cc. 405, 899, 1018; 2005, c. 839.

§ 28.2-1205.1. Coordinated review of water resources projects

A. Applications for water resources projects that require a Virginia Marine Resources permit and an individual Virginia Water Protection Permit under § 62.1-44.15:20 shall be submitted and processed through a joint application and review process.

B. The Commissioner and the Director of the Department of Environmental Quality, in consultation with the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the Department of Historic Resources, the Department of Health, the Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services, and any other appropriate or interested state agency, shall coordinate the joint review process to ensure the orderly evaluation of projects requiring both permits.

C. The joint review process shall include, but not be limited to, provisions to ensure that: (i) the initial application for the project shall be advertised simultaneously by the Commission and the Department of Environmental Quality; (ii) project reviews shall be completed by all state agencies that have been asked to review and provide comments, within 45 days of project notification by the Commission and the Department of Environmental Quality; (iii) the Commission and the State Water Control Board shall coordinate permit issuance and, to the extent practicable, shall take action on the permit application no later than one year after the agencies have received complete applications; (iv) to the extent practicable, the Commission and the State Water Control Board shall take action concurrently, but no more than six months apart; and (v) upon taking its final action on each permit, the Commission and the State Water Control Board shall provide each

other with notification of its action and any and all supporting information, including any background materials or exhibits used in the application.

2005, c. 49.

§ 28.2-1205.2. Coordinated review of public beach replenishment projects using Chesapeake Bay sand; expedited process

A. Applications for sand replenishment projects on public beaches abutting the waters of the Chesapeake Bay that involve the dredging of sand from the Chesapeake Bay and require a permit from the Marine Resources Commission or the Department of Environmental Quality, or both, shall be reviewed and a decision on the issuance of the permit shall be made within 90 days thereafter, or as soon as practicable. These agencies shall establish a working group consisting of representative stakeholders in an effort to develop an effective and efficient process for review and approval of sand replenishment projects.

B. In developing such an expedited review process, the agencies and working group shall consider a requirement that the application include the submission of a dredging plan by the locality for the areas within the Chesapeake Bay from which the dredged material will be taken and the location of the beach replenishment project. Such a dredging plan, if approved, shall not require a new review procedure if any subsequent removal of bottomland involves material obtained from the area documented in the dredging plan. Any new site proposed for the dredging of sand from the Chesapeake Bay shall require a new or amended dredging plan. A permit issued shall be valid for 10 years.

C. Any dredging plan required to be submitted with an application shall include the following information:

1. Geotechnical analysis of the proposed area to be dredged;

2. Analysis of the benthic, marine, and fishery resources, including a specific analysis of the impact on the crab population;

3. Current recreational and commercial fishing activity in the proposed dredge area;

4. Impact on any historical artifacts in the proposed dredge area;

5. Impact on other uses of the state waters and bottomlands at the dredge site;

6. Location of the beach areas to be replenished; and

7. Environmental impact of the dredge material being placed on the beach area.

D. The Commissioner, in consultation with the Department of Environmental Quality, the State Health Department, the Department of Historic Resources, the Virginia Institute of Marine Science, and any other appropriate or interested state agency, shall coordinate a joint review process to ensure the orderly evaluation of sand replenishment projects requiring a permit for dredging sand from the Chesapeake Bay. All project reviews shall be completed by state agencies

within 45 days of receiving the project review request from the Commission or the Department of Environmental Quality.

2013, cc. 45, 196.

§ 28.2-1206. Permit fees; exemptions

A. The fee paid to the Commission for issuing each permit to recover underwater historic property shall be $25.

B. The fee paid to the Commission for issuing each permit to use state-owned bottomlands shall be $25, but if the cost of the project is to exceed $10,000, the fee paid shall be $100. Riparian owners of (i) commercial facilities engaged in the business of ship construction or repair, (ii) commercial facilities providing services relating to the shipping of domestic or foreign cargo, and (iii) commercial facilities engaged in the business of selling or servicing watercraft shall be exempt from the payment of rents and royalties, except as provided in subsection C.

C. When the activity or project for which a permit is requested will involve the removal of bottom material, the application shall indicate this fact. If granted, the permit shall specify a royalty of not less than $.20, nor more than $.60, per cubic yard of bottom material removed. In fixing the amount of the royalty, the Commission shall consider, among other factors, the following:

1. The primary and secondary purposes for removing the bottom material;

2. Whether the material has any commercial value and whether it will be used for any commercial purpose;

3. The use to be made of the removed material and any public benefit or adverse effect upon the public that will result from the removal or disposal of the material;

4. The physical characteristics of the material to be removed; and

5. The expense of removing and disposing of the material.

D. Where it appears that the project or facility for which a permit application is made has been completed or work thereon commenced at the time application is made, the Commission may impose additional assessments not to exceed an amount of three times the normal permit fee and royalties, unless such royalties are prohibited by this chapter.

E. Bottom material removed attendant to maintenance dredging or directional drilling shall be exempt from any royalty. The Virginia Department of Transportation shall be exempt from all fees, rents and royalties otherwise assessable under this section. All counties, cities, and towns of the Commonwealth shall pay the required permit fee but shall be exempt from all other fees, rents and royalties assessable under this section if the permit is issued prior to the commencement of any work to be accomplished under the permit.

F. All fees, rents and royalties collected pursuant to this chapter on and after July 1, 2000, shall be paid into the state treasury to the credit of the Marine Habitat and Waterways Improvement Fund.

Code 1950, § 62-2.1; 1960, c. 600; 1962, c. 637; 1966, c. 641; 1968, c. 659, § 62.1-3; 1970, c. 621; 1972, c. 866; 1973, cc. 23, 361; 1974, cc. 92, 385; 1975, c. 431; 1976, c. 579; 1980, c. 253; 1982, c. 102; 1988, c. 868; 1992, c. 836; 2000, c. 1056; 2004, cc. 899, 1018.

§ 28.2-1207. Authority to approve permits for encroachment on subaqueous beds; notice

A. Any application for a permit to trespass upon or over or encroach upon subaqueous beds which are the Commonwealth's property may be approved by the Commissioner or his authorized representative if the application meets the requirements of §§ 28.2-1205 and 28.2-1206 and the following criteria are satisfied:

1. The total value of the project does not exceed $500, 000;

2. The application is not protested by any citizen or objected to by any state agency; and

3. The project for which the permit is sought will not require any other permit from the Commission.

B. If the permit application is for a shore erosion control project recommended by the soil and water conservation district in which the project is to be located and the criteria listed in subsection A of this section are satisfied, the Commission may, after giving notice of the application to the Virginia Institute of Marine Science, approve the application without giving notice to or awaiting the approval of any other state agency.

C. The Commission shall, in conjunction with affected state and federal agencies, develop an expedited process for issuing general permits for activities that are intended to improve water quality such as bioengineered streambank projects and livestock stream crossings, and for activities required during emergencies in which a determination has been made that there is a threat to public or private property, or to the health and safety of the public. The development of the general permit shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

D. The Commission shall, in conjunction with affected state and federal agencies, develop an expedited process for issuing a permit for emergency activities intended to restore sand to any publicly owned beach damaged by sand erosion. Such erosion shall have been caused by a discrete, identifiable weather event or sequence of events that threatened public or private property or public health and safety and was the subject of a declaration of emergency by the Governor or the governing body of the locality in which the project is located. The development of the permit shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

1972, c. 398, § 62.1-3.01; 1973, c. 350, § 62.1-3.02; 1980, c. 312; 1984, c. 246; 1992, c. 836; 1997, c. 845; 2011, c. 451; 2016, cc. 9, 124.

§ 28.2-1208. Granting easements in or leasing the beds of certain waters

A. The Marine Resources Commission may, with the approval of the Attorney General and the Governor, grant easements over or under or lease the beds of the waters of the Commonwealth outside of the Baylor Survey. Every easement or lease executed pursuant to this section shall be for

a period not to exceed five years, except in the case of offshore renewable energy leases described in clause (ii), in which case the period shall not exceed 30 years, and shall specify the rent and such other terms deemed expedient and proper. Such easements and leases may include the right to renew the same for an additional period not to exceed five years. Any lease that authorizes grantees or lessees to (i) prospect for and take from the bottoms covered thereby, oil, gas, and other specified minerals and mineral substances; or (ii) generate electrical energy from wave or tidal action, currents, offshore winds, or thermal or salinity gradients, and transmit energy from such sources to shore shall require a royalty. Except for offshore renewable energy leases, purchase payment for any easement granted to a public service corporation, certificated telephone company, interstate natural gas company or provider of cable television or other multichannel video programming service shall be $100 and shall be for a period of 40 years. However, no easement or lease shall in any way affect or interfere with the rights vouchsafed to the people of the Commonwealth concerning fishing, fowling, and the catching and taking of oysters and other shellfish in and from the leased bottoms or the waters above.

B. All easements granted and leases made pursuant to this section shall be executed for, and in the name and on behalf of, the Commonwealth by the Attorney General and shall be countersigned by the Governor.

C. All oil, gas and other minerals royalties collected from such easements or leases on and after July 1, 2000, shall be paid into the state treasury to the credit of the Marine Habitat and Waterways Improvement Fund. All royalties collected as a result of the generation or transmission of electrical or compressed air energy from offshore renewable sources including wave or tidal action, currents, offshore winds, and thermal or salinity gradients shall be paid into the state treasury and appropriated to the Virginia Coastal Energy Research Consortium established pursuant to § 67-600.

D. Prior to December 1 of each year, the Commissioner and the Attorney General shall make reports to the General Assembly on all easements and leases executed pursuant to this section during the preceding 12 months.

E. The Commission shall, in cooperation with the Division of Geology and Mineral Resources of the Department of Mines, Minerals and Energy and with the assistance of affected state agencies, departments and institutions, including the Virginia Coastal Energy Research Consortium, maintain a State Subaqueous Minerals and Coastal Energy Management Plan that shall supplement the State Minerals Management Plan set forth in § 2.2-1157 and the Virginia Energy Plan (§ 67-200 et seq.). The State Subaqueous Minerals and Coastal Energy Management Plan shall include provisions for (i) the holding of public hearings, (ii) public advertising for competitive bids or proposals for mineral and renewable energy leasing and extraction activities, (iii) preparation of environmental impact reports to be reviewed by the appropriate agency of the Commonwealth, and (iv) review and approval of leases by the Attorney General and the Governor as required by subsection A. The environmental impact reports shall address, but not be limited to:

1. The environmental impact of the proposed activity;

2. Any adverse environmental effects that cannot be avoided if the proposed activity is undertaken;

3. Measures proposed to minimize the impact of the proposed activity;

4. Any alternative to the proposed activity; and

5. Any irreversible environmental changes which would be involved in the proposed activity.

For the purposes of subdivision 4 of this subsection, the report shall contain all alternatives considered and the reasons why the alternatives were rejected. If a report does not set forth alternatives, it shall state why alternatives were not considered.

Code 1950, § 62-3; 1958, c. 290; 1962, c. 637; 1968, c. 659, § 62.1-4; 1986, c. 488; 1992, c. 836; 1993, c. 644; 2000, c. 1056; 2004, cc. 899, 1018; 2008, c. 369; 2009, c. 766.

§ 28.2-1209. Maintenance or removal of structures erected upon or over state-owned subaqueous bottoms

Any person constructing or erecting any structure upon or over state-owned subaqueous bottoms, or their grantees or assignees for value, shall be responsible for the maintenance or removal of the structure upon its abandonment or its falling into a state of disrepair. However, public service corporations may abandon cables, conduit and pipes upon prior approval of the Commission.

1974, c. 274, § 62.1-3.03; 1992, c. 836 .

Article 2 - ENFORCEMENT AND PENALTIES

§ 28.2-1210. Removal of obstructions or hazardous property from state waters; penalty

A. Whenever any wharf, pier, piling, bulkhead, structure, or vessel is found in or upon the bays, oceans, rivers, streams or creeks of the Commonwealth in a state of abandonment, in danger of sinking, or in such disrepair as to constitute a hazard or obstruction to the use of such waterway, the Commission may ascertain the owner of the property and require him to repair or remove the property from the waters of the Commonwealth. If the identity or location of the owner remains unknown and unascertainable after a diligent search and the posting of proper notice at the last known address of the owner, if known, the Commission may have the property removed from the waterways of the Commonwealth after giving notice by publication once in a newspaper of general circulation in the area where such property is located.

B. It is unlawful for any person who owns a vessel to allow such vessel, for more than one week after delivery of notification by the Commission or a law-enforcement official in person or by United States Postal Service certified mail, return receipt requested, to be in a state of abandonment and in danger of sinking, or in such disrepair as to constitute a hazard or obstruction to the use of a waterway. Upon the occurrence of a natural disaster or other act of God, the Com-

mission or law-enforcement official shall not issue a notification until sixty days following such occurrence. Any person who violates this subsection is guilty of a Class 3 misdemeanor.

1974, c. 602, § 62.1-194.1:1; 1992, c. 836; 1997, c. 258; 1999, c. 544.

§ 28.2-1211. Injunction against violation of § 28.2-1203

The circuit court of the city or county in which any act is done or facility or project is found, which is unlawful under the provisions of § 28.2-1203, shall have the authority, upon application by the Commission, reasonable notice, and after a hearing, to enjoin any further unlawful act and to direct the guilty party or the Commission, at the cost of the guilty party, to remove, tear down or take such other steps as are necessary to protect and preserve the subject property of the Commonwealth.

1970, c. 621, § 62.1-3.1; 1992, c. 836 .

§ 28.2-1212. Monitoring, inspections, compliance and restoration

A. The Commissioner may require permittees to implement monitoring and reporting procedures he believes are reasonably necessary to safeguard the property and interests of the Commonwealth protected by this chapter.

B. The Commissioner may require such on-site inspections as he believes are reasonably necessary to determine whether the measures required by the permit are being properly performed, or whether the provisions of this chapter are being violated. Prior to conducting such inspections, the Commissioner shall provide notice to the resident owner, occupier or operator, who shall be given an opportunity to accompany the site inspector. If it is determined that there is a failure to comply with the permit, the Commissioner shall serve notice upon the permittee at the address specified in his permit application or by delivery at the site of the permitted activities to the person supervising those activities and designated in the permit to receive the notice. The notice shall describe the measures needed for compliance and the time within which these measures shall be completed. Failure of the person to comply within the specified period is a violation of this section.

C. Upon receipt of a sworn complaint of a substantial violation of this chapter from the designated enforcement officer, the Commissioner may, in conjunction with or subsequent to a notice to comply as specified in subsection B of this section, issue an order requiring all or part of the activities on the site to be stopped until the specified corrective measures have been taken. In the case of an activity not authorized under this chapter or where the alleged permit noncompliance is causing, or is in imminent danger of causing, significant harm to the subaqueous bottoms protected by this chapter, the order may be issued without regard to whether the person has been issued a notice to comply as specified in subsection B of this section. Otherwise, the order may be issued only after the permittee has failed to comply with the notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the Commissioner, permittee, resident owner, occupier, or

operator for appropriate relief to the circuit court of the jurisdiction where the violation was alleged to have occurred. Upon completion of corrective action, the order shall immediately be lifted.

D. Upon receipt of a sworn complaint of a substantial violation of this chapter from a designated enforcement officer, the Commission may order that the affected site be restored to its previous condition if the Commission finds that restoration is necessary to recover lost resources or to prevent further damage to resources. The order shall specify the restoration necessary and establish a reasonable time for its completion. The order shall be issued only after a hearing with at least thirty days' notice to the affected person of the hearing's time, place and purpose and shall become effective immediately upon issuance by the Commission. The Commission shall require any scientific monitoring plan it believes is necessary to ensure the successful restoration of subaqueous bottoms protected by this chapter and may require that a prepaid contract acceptable to the Commission be in effect for the purpose of carrying out the scientific monitoring plan. The Commission may also require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it securing to the Commonwealth compliance with the conditions set forth in the restoration order. The appropriate court, upon petition by the Commission, may enforce any such restoration order by injunction, mandamus, or other appropriate remedy. Failure to complete the required restoration is a violation of this chapter.

E. The duties of the Commissioner under this section may be delegated to his respective designee; however, the designee shall not be a designated enforcement officer.

1992, c. 836 .

§ 28.2-1213. Penalties

A. Without limiting the remedies which may be obtained under this chapter, any person who violates any provision of this chapter or who violates or fails, neglects, or refuses to obey any Commission notice, order, rule, regulation, or permit condition authorized by this chapter shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed $25,000 for each day of violation. Such civil penalties shall be paid into the state treasury to the credit of the Marine Habitat and Waterways Improvement Fund.

B. Without limiting the remedies which may be obtained under this chapter, and with the consent of any person who has violated any provision of this chapter or who has violated or failed, neglected, or refused to obey any Commission order, rule, regulation, or permit condition authorized by this chapter, the Commission may provide, in an order issued by the Commission against such person, for the one-time payment of civil charges for each violation in specific sums, not to exceed $10,000 for each violation. Civil charges shall be in lieu of any appropriate civil penalty which could be imposed under subsection A of this section. Civil charges may be in addition to the cost of any restoration ordered by the Commission and shall be paid into the state treasury to the credit of the Marine Habitat and Waterways Improvement Fund.

Code 1950, § 62-2.1; 1960, c. 600; 1962, c. 637; 1966, c. 641; 1968, c. 659, § 62.1-3; 1970, c. 621; 1972, c. 866; 1973, cc. 23, 361; 1974, cc. 92, 385; 1975, c. 431; 1976, c. 579; 1980, c. 253; 1982, c. 102; 1988, c. 868; 1992, c. 836; 2000, c. 1056.

Chapter 13 - WETLANDS

Article 1 - GENERAL PROVISIONS

§ 28.2-1300. Definitions

As used in this chapter, unless the context requires a different meaning:

"Back Bay and its tributaries" means the following, as shown on the United States Geological Survey Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the Virginia-North Carolina state line; Capsies Creek north of the Virginia-North Carolina state line; Deal Creek; Devil Creek; Nawney Creek; Redhead Bay, Sand Bay, Shipps Bay, North Bay, and the waters connecting them; Beggars Bridge Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black Gut; and all coves, ponds and natural waterways adjacent to or connecting with the above-named bodies of water.

"County, city, or town" means the governing body of the county, city, or town.

"Governmental activity" means any of the services provided by the Commonwealth or a county, city, or town to its citizens for the purpose of maintaining public facilities, including but not limited to, such services as constructing, repairing and maintaining roads; providing street lights and sewage facilities; supplying and treating water; and constructing public buildings.

"Nonvegetated wetlands" means unvegetated lands lying contiguous to mean low water and between mean low water and mean high water, including those unvegetated areas of Back Bay and its tributaries and the North Landing River and its tributaries subject to flooding by normal and wind tides but not hurricane or tropical storm tides.

"North Landing River and its tributaries" means the following, as shown on the United States Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River from the Virginia-North Carolina line to Virginia Highway 165 at North Landing Bridge; the Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge; and all named and unnamed streams, creeks and rivers flowing into the North Landing River and the Chesapeake and Albemarle Canal except West Neck Creek north of Indian River Road, Pocaty River west of Blackwater Road, Blackwater River west of its forks located at a point approximately 6400 feet due west of the point where Blackwater Road crosses the Blackwater River at the village of Blackwater, and Millbank Creek west of Blackwater Road.

"Vegetated wetlands" means lands lying between and contiguous to mean low water and an elevation above mean low water equal to the factor one and one-half times the mean tide range at the site of the proposed project in the county, city, or town in question, and upon which is growing any of the following species: saltmarsh cordgrass (Spartina alterniflora), saltmeadow hay (Spartina

patens), saltgrass (Distichlis spicata), black needlerush (Juncus roemerianus), saltwort (Salicornia spp.), sea lavender (Limonium spp.), marsh elder (Iva frutescens), groundsel bush (Baccharis halimifolia), wax myrtle (Myrica sp.), sea oxeye (Borrichia frutescens), arrow arum (Peltandra virginica), pickerelweed (Pontederia cordata), big cordgrass (Spartina cynosuroides), rice cutgrass (Leersia oryzoides), wildrice (Zizania aquatica), bulrush (Scirpus validus), spikerush (Eleocharis sp.), sea rocket (Cakile edentula), southern wildrice (Zizaniopsis miliacea), cattail (Typha spp.), three-square (Scirpus spp.), buttonbush (Cephalanthus occidentalis), bald cypress (Taxodium distichum), black gum (Nyssa sylvatica), tupelo (Nyssa aquatica), dock (Rumex spp.), yellow pond lily (Nuphar sp.), marsh fleabane (Pluchea purpurascens), royal fern (Osmunda regalis), marsh hibiscus (Hibiscus moscheutos), beggar's tick (Bidens sp.), smartweed (Polygonum sp.), arrowhead (Sagittaria spp.), sweet flag (Acorus calamus), water hemp (Amaranthus cannabinus), reed grass (Phragmites communis), or switch grass (Panicum virgatum).

"Vegetated wetlands of Back Bay and its tributaries" or "vegetated wetlands of the North Landing River and its tributaries" means all marshes subject to flooding by normal and wind tides, but not hurricane or tropical storm tides, and upon which is growing any of the following species: saltmarsh cordgrass (Spartina alterniflora), saltmeadow hay (Spartina patens), black needlerush (Juncus roemerianus), marsh elder (Iva frutescens), groundsel bush (Baccharis halimifolia), wax myrtle (Myrica sp.), arrow arum (Peltandra virginica), pickerelweed (Pontederia cordata), big cordgrass (Spartina cynosuroides), rice cutgrass (Leersia oryzoides), wildrice (Zizania aquatica), bulrush (Scirpus validus), spikerush (Eleocharis sp.), cattail (Typha spp.), three-square (Scirpus spp.), dock (Rumex sp.), smartweed (Polygonum sp.), yellow pond lily (Nuphar sp.), royal fern (Osmunda regalis), marsh hibiscus (Hibiscus moscheutos), beggar's tick (Bidens sp.), arrowhead (Sagittaria sp.), water hemp (Amaranthus cannabinus), reed grass (Phragmites communis), or switch grass (Panicum virgatum).

"Wetlands" means both vegetated and nonvegetated wetlands.

"Wetlands board" or "board" means a board created pursuant to § 28.2-1303.

"Wetlands zoning ordinance" means the ordinance set forth in § 28.2-1302.

1972, c. 711, § 62.1-13.2; 1973, c. 388; 1974, c. 297; 1975, c. 268; 1979, c. 524; 1982, c. 300; 1992, c. 836 .

§ 28.2-1301. Powers and duties of the Commission

A. The Commission may receive gifts, grants, bequests, and devises of wetlands and money which shall be held for the uses prescribed by the donor, grantor, or testator and in accordance with the provisions of this chapter. The Commission shall manage any wetlands it receives so as to maximize their ecological value as provided in Article 2 (§ 28.2-1503 et seq.) of Chapter 15 of this title.

B. The Commission shall preserve and prevent the despoliation and destruction of wetlands while accommodating necessary economic development in a manner consistent with wetlands preservation.

C. In order to perform its duties under this section and to assist counties, cities, and towns in regulating wetlands, the Commission shall promulgate and periodically update guidelines which scientifically evaluate vegetated and nonvegetated wetlands by type and describe the consequences of use of these wetlands types. The Virginia Institute of Marine Science shall provide advice and assistance to the Commission in developing these guidelines by evaluating wetlands by type and continuously maintaining and updating an inventory of vegetated wetlands.

D. In developing guidelines or regulations under this chapter the Commission shall consult with all affected state agencies. Consistent with other legal rights, consideration shall be given to the unique character of the Commonwealth's tidal wetlands which are essential for the production of marine and inland wildlife, waterfowl, finfish, shellfish and flora; serve as a valuable protective barrier against floods, tidal storms and the erosion of the Commonwealth's shores and soil; are important for the absorption of silt and pollutants; and are important for recreational and aesthetic enjoyment of the people and for the promotion of tourism, navigation and commerce.

1972, c. 711, §§ 62.1-13.1, 62.1-13.4, 62.1-13.17; 1982, c. 300; 1990, c. 811; 1992, c. 836; 1995, c. 850.

Article 2 - WETLANDS ZONING ORDINANCE AND WETLANDS BOARDS

§ 28.2-1302. Adoption of wetlands zoning ordinance; terms of ordinance

Any county, city or town may adopt the following ordinance, which, after October 1, 1992, shall serve as the only wetlands zoning ordinance under which any wetlands board is authorized to operate. Any county, city, or town which has adopted the ordinance prior to October 1, 1992, shall amend the ordinance to conform it to the ordinance contained herein by October 1, 1992.

Wetlands Zoning Ordinance

§ 1. The governing body of ....., acting pursuant to Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, adopts this ordinance regulating the use and development of wetlands.

§ 2. As used in this ordinance, unless the context requires a different meaning:

"Back Bay and its tributaries" means the following, as shown on the United States Geological Survey Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the Virginia-North Carolina state line; Capsies Creek north of the Virginia-North Carolina state line; Deal Creek; Devil Creek; Nawney Creek; Redhead Bay, Sand Bay, Shipps Bay, North Bay, and the waters connecting them; Beggars Bridge Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black Gut; and all coves, ponds and natural waterways adjacent to or connecting with the above-named bodies of water.

"Commission" means the Virginia Marine Resources Commission.

"Commissioner" means the Commissioner of Marine Resources.

"Governmental activity" means any of the services provided by this ..... (county, city, or town) to its citizens for the purpose of maintaining this ..... (county, city, or town), including but not limited to such services as constructing, repairing and maintaining roads; providing sewage facilities and street lights; supplying and treating water; and constructing public buildings.

"Nonvegetated wetlands" means unvegetated lands lying contiguous to mean low water and between mean low water and mean high water, including those unvegetated areas of Back Bay and its tributaries and the North Landing River and its tributaries subject to flooding by normal and wind tides but not hurricane or tropical storm tides.

"North Landing River and its tributaries" means the following, as shown on the United States Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River from the Virginia-North Carolina line to Virginia Highway 165 at North Landing Bridge; the Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge; and all named and unnamed streams, creeks and rivers flowing into the North Landing River and the Chesapeake and Albemarle Canal except West Neck Creek north of Indian River Road, Pocaty River west of Blackwater Road, Blackwater River west of its forks located at a point approximately 6400 feet due west of the point where Blackwater Road crosses the Blackwater River at the village of Blackwater, and Millbank Creek west of Blackwater Road.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

"Vegetated wetlands" means lands lying between and contiguous to mean low water and an elevation above mean low water equal to the factor one and one-half times the mean tide range at the site of the proposed project in the county, city, or town in question, and upon which is growing any of the following species: saltmarsh cordgrass (Spartina alterniflora), saltmeadow hay (Spartina patens), saltgrass (Distichlis spicata), black needlerush (Juncus roemerianus), saltwort (Salicornia spp.), sea lavender (Limonium spp.), marsh elder (Iva frutescens), groundsel bush (Baccharis halimifolia), wax myrtle (Myrica sp.), sea oxeye (Borrichia frutescens), arrow arum (Peltandra virginica), pickerelweed (Pontederia cordata), big cordgrass (Spartina cynosuroides), rice cutgrass (Leersia oryzoides), wildrice (Zizania aquatica), bulrush (Scirpus validus), spikerush (Eleocharis sp.), sea rocket (Cakile edentula), southern wildrice (Zizaniopsis miliacea), cattail (Typha spp.), three-square (Scirpus spp.), buttonbush (Cephalanthus occidentalis), bald cypress (Taxodium distichum), black gum (Nyssa sylvatica), tupelo (Nyssa aquatica), dock (Rumex spp.), yellow pond lily (Nuphar sp.), marsh fleabane (Pluchea purpurascens), royal fern (Osmunda regalis), marsh hibiscus (Hibiscus moscheutos), beggar's tick (Bidens sp.), smartweed (Polygonum sp.), arrowhead (Sagittaria spp.), sweet flag (Acorus calamus), water hemp (Amaranthus cannabinus), reed grass (Phragmites communis), or switch grass (Panicum virgatum).

"Vegetated wetlands of Back Bay and its tributaries" or "vegetated wetlands of the North Landing River and its tributaries" means all marshes subject to flooding by normal and wind tides but not hurricane or tropical storm tides, and upon which is growing any of the following species: saltmarsh cordgrass (Spartina alterniflora), saltmeadow hay (Spartina patens), black needlerush (Juncus roemerianus), marsh elder (Iva frutescens), groundsel bush (Baccharis halimifolia), wax myrtle (Myrica sp.), arrow arum (Peltandra virginica), pickerelweed (Pontederia cordata), big cordgrass (Spartina cynosuroides), rice cutgrass (Leersia oryzoides), wildrice (Zizania aquatica), bulrush (Scirpus validus), spikerush (Eleocharis sp.), cattail (Typha spp.), three-square (Scirpus spp.), dock (Rumex sp.), smartweed (Polygonum sp.), yellow pond lily (Nuphar sp.), royal fern (Osmunda regalis), marsh hibiscus (Hibiscus moscheutos), beggar's tick (Bidens sp.), arrowhead (Sagittaria sp.), water hemp (Amaranthus cannabinus), reed grass (Phragmites communis), or switch grass (Panicum virgatum).

"Wetlands" means both vegetated and nonvegetated wetlands.

"Wetlands board" or "board" means a board created pursuant to § 28.2-1303 of the Code of Virginia .

§ 3. The following uses of and activities in wetlands are authorized if otherwise permitted by law:

1. The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duckblinds, wildlife management shelters, footbridges, observation decks and shelters and other similar structures, provided that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the wetlands;

2. The cultivation and harvesting of shellfish, and worms for bait;

3. Noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shellfishing, horseback riding, swimming, skeet and trap shooting, and shooting on shooting preserves, provided that no structure shall be constructed except as permitted in subdivision 1 of this section;

4. Other outdoor recreational activities, provided they do not impair the natural functions or alter the natural contour of the wetlands;

5. Grazing, haying, and cultivating and harvesting agricultural, forestry or horticultural products;

6. Conservation, repletion and research activities of the Commission, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries and other conservation-related agencies;

7. The construction or maintenance of aids to navigation which are authorized by governmental authority;

8. Emergency measures decreed by any duly appointed health officer of a governmental subdivision acting to protect the public health;

9. The normal maintenance and repair of, or addition to, presently existing roads, highways, railroad beds, or facilities abutting on or crossing wetlands, provided that no waterway is altered and no additional wetlands are covered;

10. Governmental activity in wetlands owned or leased by the Commonwealth or a political subdivision thereof;

11. The normal maintenance of man-made drainage ditches, provided that no additional wetlands are covered. This subdivision does not authorize the construction of any drainage ditch; and

12. The construction of living shoreline projects authorized pursuant to a general permit developed under subsection B of § 28.2-104.1

§ 4. A. Any person who desires to use or develop any wetland within this ..... (county, city, or town), other than for the purpose of conducting the activities specified in § 3 of this ordinance, shall first file an application for a permit directly with the wetlands board or with the Commission.

B. The permit application shall include the following: the name and address of the applicant; a detailed description of the proposed activities; a map, drawn to an appropriate and uniform scale, showing the area of wetlands directly affected, the location of the proposed work thereon, the area of existing and proposed fill and excavation, the location, width, depth and length of any proposed channel and disposal area, and the location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands; a description of the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland of whom the applicant has notice; an estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure; and such additional materials and documentation as the wetlands board may require.

C. A nonrefundable processing fee shall accompany each permit application. The fee shall be set by the applicable governing body with due regard for the services to be rendered, including the time, skill, and administrator's expense involved.

§ 5. All applications, maps, and documents submitted shall be open for public inspection at the office designated by the applicable governing body and specified in the advertisement for public hearing required under § 6 of this ordinance.

§ 6. Not later than 60 days after receipt of a complete application, the wetlands board shall hold a public hearing on the application. The applicant, local governing body, Commissioner, owner of record of any land adjacent to the wetlands in question, known claimants of water rights in or

adjacent to the wetlands in question, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the Water Control Board, the Department of Transportation, and any governmental agency expressing an interest in the application shall be notified of the hearing. The board shall mail these notices not less than 20 days prior to the date set for the hearing. The wetlands board shall also cause notice of the hearing to be published at least once a week for two weeks prior to such hearing in a newspaper of general circulation in this ..... (county, city, or town). The published notice shall specify the place or places within this ..... (county, city, or town) where copies of the application may be examined. The costs of publication shall be paid by the applicant.

§ 7. A. Approval of a permit application shall require the affirmative vote of three members of a five-member board or four members of a seven-member board.

B. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may testify at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for the decision.

C. The board shall make its determination within 30 days of the hearing. If the board fails to act within that time, the application shall be deemed approved. Within 48 hours of its determination, the board shall notify the applicant and the Commissioner of its determination. If the board fails to make a determination within the 30-day period, it shall promptly notify the applicant and the Commission that the application is deemed approved. For purposes of this section, "act" means taking a vote on the application. If the application receives less than four affirmative votes from a seven-member board or less than three affirmative votes from a five-member board, the permit shall be denied.

D. If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing to the Commissioner. Upon a final determination by the Commission, the record shall be returned to the board. The record shall be open for public inspection at the same office as was designated under § 5 of this ordinance.

§ 8. The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it, securing to the Commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after a hearing held pursuant to this ordinance, suspend or revoke a permit if the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work described in the application. The board may, after a hearing, suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

§ 9. In fulfilling its responsibilities under this ordinance, the board shall preserve and prevent the despoliation and destruction of wetlands within its jurisdiction while accommodating necessary economic development in a manner consistent with wetlands preservation.

§ 10. A. In deciding whether to grant, grant in modified form or deny a permit, the board shall consider the following:

1. The testimony of any person in support of or in opposition to the permit application;

2. The impact of the proposed development on the public health, safety, and welfare; and

3. The proposed development's conformance with standards prescribed in § 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia .

B. The board shall grant the permit if all of the following criteria are met:

1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment.

2. The proposed development conforms with the standards prescribed in § 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia .

3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia.

C. If the board finds that any of the criteria listed in subsection B of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.

§ 11. The permit shall be in writing, signed by the chairman of the board or his authorized representative, and notarized. A copy of the permit shall be transmitted to the Commissioner.

§ 12. No permit shall be granted without an expiration date established by the board. Upon proper application, the board may extend the permit expiration date.

§ 13. No permit granted by a wetlands board shall in any way affect the applicable zoning and land use ordinances of this ..... (county, city, or town) or the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity.

1972, c. 711, §§ 62.1-13.1, 62.1-13.5; 1973, cc. 382, 388; 1975, c. 268; 1979, c. 418; 1982, c. 300; 1985, c. 541; 1988, c. 587; 1989, c. 360; 1992, c. 836; 1994, c. 274; 2014, cc. 112, 143; 2014, cc. 112, 143.

§ 28.2-1303. Appointment, terms, compensation, etc., of local wetlands boards; jurisdiction of county wetlands board over wetlands in town

A. Every county, city, or town that enacts a wetlands zoning ordinance pursuant to this chapter shall create a wetlands board, consisting of five or seven residents of that jurisdiction appointed by the local governing body. All board members' terms shall be for five years, except that the term

of at least one of the original appointments shall expire during each of the succeeding five years. The chairman of the board shall notify the local governing body at least 30 days prior to the expiration of any member's term and shall promptly notify the local governing body if any vacancy occurs. Vacancies shall be filled by the local governing body without delay upon receipt of such notice. Appointments to fill vacancies shall be for the unexpired portion of the term. Members may serve successive terms. A member whose term expires shall continue to serve until his successor is appointed and qualified. Members of the board shall hold no public office in the county or city other than membership on the local planning or zoning commission, the local erosion commission, the local board of zoning appeals, a board established by a local government to hear cases regarding ordinances adopted pursuant to the Chesapeake Bay Preservation Act and regulations promulgated thereunder, or as director of a soil and water conservation board. When members of these local commissions or boards are appointed to a local wetlands board, their terms of appointment shall be coterminous with their membership on those boards or commissions. The governing body shall also appoint at least one but not more than three alternate members to the board. The qualifications, terms, and compensation of alternate members shall be the same as those of members. Any member who knows that he will not be able to attend a board meeting shall notify the chairman at least 24 hours in advance of such meeting. The chairman shall select an alternate member to serve in place of the absent member at the board meeting, which shall be noted in the records of the board.

B. Upon a hearing with at least 15 days' notice thereof, any board member may be removed for malfeasance, misfeasance, or nonfeasance in office, or for other just cause, by the local governing body. Notwithstanding the foregoing provisions, a member of a local wetlands board may be removed from office by the local governing body without limitation in the event that the board member is absent from any three consecutive meetings of the board, or is absent from any four meetings of the board within any 12-month period. In either such event, a successor shall be appointed by the governing body for the unexpired portion of the term of the member who has been removed.

C. If a town does not enact a wetlands zoning ordinance within one year of its enactment by the surrounding county, application for permits to use and develop wetlands within the town shall be made to the county wetlands board.

D. Any county, city, or town that creates a local wetlands board pursuant to this section may compensate the members of the board in accordance with such terms and conditions as the locality may prescribe.

E. Notwithstanding any other provision of this section, the Town of Dumfries in Prince William County may enact a wetlands zoning ordinance pursuant to the provisions of this chapter.

1972, c. 711, §§ 62.1-13.6, 62.1-13.8; 1977, c. 15; 1978, c. 585; 1982, cc. 300, 446; 1983, c. 87; 1987, c. 62; 1992, c. 836; 2004, c. 277; 2005, c. 104; 2006, c. 687.

§ 28.2-1304. Officers, meetings, rules, etc., of wetlands boards; records and reports
The board shall annually elect from its membership a chairman and such other officers as it deems necessary for terms of one year. For the conduct of any hearing and the taking of any action, a quorum shall be not less than three members of a five-member board nor less than four members of a seven-member board. The board may make, alter, and rescind rules and forms for its procedures, provided they are consistent with state law and local ordinances. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the local governing body at least once each year. The board shall forward a copy of each report to the Commission.

1972, c. 711, § 62.1-13.7; 1977, c. 15; 1982, c. 446; 1992, c. 836 .

§ 28.2-1305. Local governing body to supply meeting space and services for wetlands board
Every county, city, or town creating a wetlands board shall supply the board with reasonable meeting space and necessary secretarial, clerical, legal, and consulting services. The local governing body is authorized to expend the public funds necessary to comply with the provisions of this section.

1972, c. 711, § 62.1-13.8; 1992, c. 836 .

Article 3 - PERMITS AND REVIEW

§ 28.2-1306. Permits required for certain activities; issuance of permits by Commission
A. It shall be unlawful for any person to conduct any activity which would require a permit under a wetlands zoning ordinance without such a permit. Until the county, city, or town in which a person proposes to conduct an activity which would require a permit under a wetlands zoning ordinance adopts the wetlands zoning ordinance, the person shall apply for a permit directly to the Commission, except as provided in subsection C of § 28.2-1303. If an applicant desires to use or develop wetlands owned by the Commonwealth, he shall apply for a permit directly to the Commission, and in addition to the application fee required by the wetlands zoning ordinance, he shall pay those fees and royalties assessed under § 28.2-1206.

B. Upon notification by any county, city, or town that it has adopted the wetlands zoning ordinance, the Commission shall immediately forward to that jurisdiction's wetlands board any pending permit application over which that board would have had jurisdiction if the ordinance had been in effect at the time the application was filed. However, if requested by the applicant, the application shall remain within the Commission's jurisdiction.

C. The Commission shall process permit applications in accordance with the provisions of the wetlands zoning ordinance and the Commissioner, or his authorized representative, shall sign such permit; however, the Commission may designate one or more hearing officers who may, in lieu of the Commission, conduct public hearings as required under § 28.2-1302, and thereafter report their findings and recommendations to the Commission.

1972, c. 711, §§ 62.1-13.5, 62.1-13.9; 1973, cc. 382, 388; 1975, c. 268; 1979, c. 418; 1982, c. 300; 1985, c. 541; 1988, c. 587; 1989, c. 360; 1992, c. 836; 1994, c. 125.

§ 28.2-1307. Expedited permits; administrative procedures

A. The Commission may, in conjunction with local wetlands boards and other affected state and federal agencies, develop administrative procedures to expedite the processing of applications for permits required under this chapter. Whenever an application is received by the Commission for a permit over which a local board has jurisdiction under a wetlands zoning ordinance, the Commission shall forward a copy of the application to that board within seven days.

B. The Commission shall, in conjunction with local wetlands boards and other affected state and federal agencies, develop an expedited process for issuing general wetlands permits to be used by applicants during emergency situations in which a determination has been made that there is a threat to public or private property, or to the health and safety of the public. The development of the general wetlands permit shall be in accordance with subdivision A 8 of § 2.2-4006.

1982, c. 300, § 62.1-13.5:2; 1992, c. 836; 1997, c. 868; 2010, c. 65.

§ 28.2-1308. Standards for use and development of wetlands; utilization of guidelines

A. The following standards shall apply to the use and development of wetlands and shall be considered in the determination of whether any permit required by this chapter should be granted or denied:

1. Wetlands of primary ecological significance shall not be altered so that the ecological systems in the wetlands are unreasonably disturbed; and

2. Development in Tidewater Virginia, to the maximum extent practical, shall be concentrated in wetlands of lesser ecological significance, in vegetated wetlands which have been irreversibly disturbed before July 1, 1972, in nonvegetated wetlands which have been irreversibly disturbed prior to January 1, 1983, and in areas of Tidewater Virginia outside of wetlands.

B. The provisions of guidelines promulgated by the Commission pursuant to § 28.2-1301 shall be considered in applying the standards listed in subsection A of this section.

C. When any activity authorized by a permit issued pursuant to this chapter is conditioned upon compensatory mitigation for adverse impacts to wetlands, the applicant may be permitted to satisfy all or part of such mitigation requirements by the purchase or use of credits from any wetlands mitigation bank, including any banks owned by the permit applicant, that has been approved and is operating in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use and operation of mitigation banks as long as (i) the bank is in the same fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset or by the hydrologic unit system or dataset utilized and depicted or described in the bank's approved mitigation banking instrument, as the impacted site, or in an adjacent subbasin within the same river watershed, as the impacted site, or it meets all the conditions found in clauses (a) through (d) and either clause (e) or (f) of this subsection; (ii) the bank is ecologically

preferable to practicable on-site and off-site individual mitigation options, as defined by federal wetland regulations; and (iii) the banking instrument, if approved after July 1, 1996, has been approved by a process that included public review and comment. When the bank is not located in the same subbasin or adjacent subbasin within the same river watershed as the impacted site, the purchase or use of credits shall not be allowed unless the applicant demonstrates to the satisfaction of the Commission that (a) the impacts will occur as a result of a Virginia Department of Transportation linear project or as the result of a locality project for a locality whose jurisdiction encompasses multiple river watersheds; (b) there is no practical same river watershed mitigation alternative; (c) the impacts are less than one acre in a single and complete project within a subbasin; (d) there is no significant harm to water quality or fish and wildlife resources within the river watershed of the impacted site; and either (e) impacts within the Chesapeake Bay watershed are mitigated within the Chesapeake Bay watershed as close as possible to the impacted site or (f) impacts within subbasins 02080108, 02080208, and 03010205, as defined by the National Watershed Boundary Dataset, are mitigated in-kind within those subbasins as close as possible to the impacted site. After July 1, 2002, the provisions of clause (f) shall apply only to impacts within subdivisions of the listed subbasins where overlapping watersheds exist, as determined by the Department of Environmental Quality, provided the Department has made such a determination by that date. For the purposes of this subsection, the hydrologic unit boundaries of the National Watershed Boundary Dataset or other hydrologic unit system may be adjusted by the Department of Environmental Quality to reflect site-specific geographic or hydrologic information provided by the bank sponsor.

D. Where an agreed-upon permit condition requires the contribution of in-lieu fees to offset permitted wetland losses, the wetlands board shall credit the applicant for any in-lieu fee payments made to the Virginia Aquatic Resources Trust Fund or another dedicated wetlands restoration fund with reference to the same activity.

For the purposes of this section, "river watershed" means the Potomac River Basin, Shenandoah River Basin, James River Basin, Rappahannock River Basin, Roanoke and Yadkin Rivers Basin, Chowan River Basin (including the Dismal Swamp and Albemarle Sound), Tennessee River Basin, Big Sandy River Basin, Chesapeake Bay and its Small Coastal Basins, Atlantic Ocean, York River Basin, and the New River Basin.

1972, c. 711, § 62.1-13.3; 1982, c. 300; 1992, c. 836; 1996, c. 736; 1999, c. 8; 2011, c. 253; 2014, cc. 131, 332.

§ 28.2-1309. Emergency sand grading activities on nonvegetated wetlands located on the Atlantic Shoreline of Virginia Beach [Not set out]

Not set out. (1992, c. 836 .)

§ 28.2-1310. Commissioner to review all decisions of wetlands boards

The Commissioner shall review all decisions of wetlands boards and request the Commission to review a decision only when he believes the board failed to fulfill its responsibilities under the wetlands zoning ordinance.

1972, c. 711, § 62.1-13.10; 1992, c. 836 .

§ 28.2-1311. When Commission to review decision of wetlands board

A. The Commission shall review a decision of a wetlands board when any of the following events occur:

1. An appeal is taken from the decision by the applicant or the county, city, or town where the wetlands are located.

2. The Commissioner requests the review. In order to make the request, the Commissioner shall notify the board, applicant, and the county, city, or town where the wetlands are located within ten days of receiving notice of the board's decision.

3. Twenty-five or more freeholders of property within the county, city, or town in which the proposed project is located sign and submit a petition to the Commission requesting the review. The petition shall indicate those specific instances where the petitioners allege that the board failed to fulfill its responsibilities under the wetlands zoning ordinance.

B. All requests for review or appeal shall be made within ten days of the date of the board's decision. The Commission shall hear and decide the review or appeal within forty-five days of receiving the request for review or notice of appeal. A continuance may be granted by the Commission on a motion of the applicant, the freeholders specified in subsection A of this section, or the county, city, or town where the wetlands are located.

1972, c. 711, § 62.1-13.11; 1992, c. 836 .

§ 28.2-1312. Procedure for review; notice of decision

A. The Commissioner shall cause notice of the review or appeal to be given to the board, the applicant, the county, city, or town where the wetlands are located, and where applicable, to the freeholders specified in § 28.2-1311.

B. The Commission shall hear the appeal or conduct the review of the record transmitted by the board to the Commissioner. The Commission may take such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The Commission, in its discretion, may also receive such other evidence as the ends of justice require.

C. The Commission shall notify the parties of its decision within forty-eight hours of the appeal or review hearing.

1972, c. 711, §§ 62.1-13.12, 62.1-13.14; 1992, c. 836 .

§ 28.2-1313. When Commission to modify, remand, or reverse decision of wetlands board

The Commission shall modify, remand, or reverse the decision of the wetlands board if:

1. The wetlands board, in reaching its decision, failed to fulfill its responsibilities under the wetlands zoning ordinance; or

2. The substantial rights of the appellant or the applicant have been prejudiced because the findings, conclusions, or decisions of the board are:

a. In violation of constitutional provisions;

b. In excess of statutory authority or jurisdiction of the wetlands board;

c. Made upon unlawful procedure;

d. Affected by other error of law;

e. Unsupported by the evidence on the record considered as a whole; or

f. Arbitrary, capricious, or an abuse of discretion.

1972, c. 711, § 62.1-13.13; 1975, c. 467; 1992, c. 836 .

§ 28.2-1314. Time for issuance of permit

No permit shall be issued until the period within which a request for review or an appeal to the Commission may be made has expired. If a request for review is made or an appeal is noted, no activity for which the permit is required shall be commenced until the Commission has notified the parties of its determination.

1973, c. 65, § 62.1-13.14:1; 1992, c. 836 .

§ 28.2-1315. Judicial review

An appeal from any Commission decision granting or denying a permit or from any Commission decision on the review of or appeal from a board decision may be taken by the applicant, any of the freeholders specified in subsection A of § 28.2-1311, or the county, city, or town where the wetlands are located. Judicial review shall be pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

1972, c. 711, § 62.1-13.15; 1982, c. 300; 1986, c. 615; 1992, c. 836 .

Article 4 - ENFORCEMENT AND PENALTIES

§ 28.2-1316. Investigations and prosecutions

The Commission may investigate all projects, whether proposed or ongoing, which alter wetlands. The Commission may prosecute all violations of any order, rule, or regulation of the Commission or of a wetlands board, or violation of any provision of this chapter. Wetlands boards may investigate all projects, whether proposed or ongoing, which alter wetlands located within their jurisdiction. Wetlands boards may prosecute all violations of their orders and any violation of the wetlands zoning ordinance under which they were established.

1972, c. 711, § 62.1-13.16; 1975, c. 467; 1992, c. 836 .

§ 28.2-1317. Monitoring, inspections, compliance, and restoration

A. The Commissioner or board chairman may require a permittee to implement monitoring and reporting procedures they believe are reasonably necessary to ensure compliance with the provisions of the permit and this chapter.

B. The Commissioner or board chairman may require such on-site inspections as he believes are reasonably necessary to determine whether the measures required by the permit are being properly performed, or whether the provisions of this chapter are being violated. Prior to conducting any inspection, the Commissioner or board chairman shall provide notice to the resident owner, occupier, or operator, who shall be given an opportunity to accompany the site inspector. If it is determined that there is a failure to comply with the permit, the Commissioner or board chairman shall serve notice upon the permittee at the address specified in his permit application or by delivery at the site of the permitted activities to the person supervising those activities and designated in the permit to receive the notice. The notice shall describe the measures needed for compliance and the time within which these measures shall be completed. Failure of the person to comply within the specified period is a violation of this section.

C. Upon receipt of a sworn complaint of a substantial violation of this chapter from the designated enforcement officer, the Commissioner or board chairman may, in conjunction with or subsequent to a notice to comply as specified in subsection B of this section, issue an order requiring all or part of the activities on the site to be stopped until the specified corrective measures have been taken. In the case of an activity not authorized under this chapter or where the alleged permit noncompliance is causing, or is in imminent danger of causing, significant harm to the wetlands protected by this chapter, the order may be issued without regard to whether the person has been issued a notice to comply pursuant to subsection B of this section. Otherwise, the order may be issued only after the permittee has failed to comply with the notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority, permittee, resident owner, occupier, or operator for appropriate relief to the circuit court of the jurisdiction where the violation was alleged to have occurred. Upon completion of corrective action, the order shall immediately be lifted. Nothing in this section shall prevent the Commissioner or board chairman from taking any other action specified in § 28.2-1316.

D. Upon receipt of a sworn complaint of a substantial violation of this chapter from a designated enforcement officer, the Commission or a wetlands board may order that the affected site be restored to predevelopment conditions if the Commission or board finds that restoration is necessary to recover lost resources or to prevent further damage to resources. The order shall specify the restoration necessary and establish a reasonable time for its completion. The order shall be issued only after a hearing with at least thirty days' notice to the affected person of the hearing's time, place, and purpose, and shall become effective immediately upon issuance by the Commission or board. The Commission or board shall require any scientific monitoring plan they believe necessary to ensure the successful reestablishment of wetlands protected by this chapter and may

require that a prepaid contract acceptable to the Commission or board be in effect for the purpose of carrying out the scientific monitoring plan. The Commission or board may also require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it securing to the Commonwealth compliance with the conditions set forth in the restoration order. The appropriate court, upon petition by the Commission or board, may enforce any such restoration order by injunction, mandamus, or other appropriate remedy. Failure to complete the required restoration is a violation of this chapter.

E. The duties of the Commissioner or the board chairman under this section may be delegated to their respective designees; however, these designees shall not be designated enforcement officers.

1987, c. 436, § 62.1-13.16:1; 1990, c. 811; 1992, c. 836 .

§ 28.2-1318. Violations; penalty

Any person who knowingly, intentionally, or negligently violates any order, rule, or regulation of the Commission or of a wetlands board established pursuant to this chapter, any provision of this chapter or of a wetlands zoning ordinance enacted pursuant to this chapter, or any provision of a permit granted pursuant to this chapter is guilty of a Class 1 misdemeanor. Following a conviction, every day the violation continues is a separate offense.

1972, c. 711, § 62.1-13.18; 1992, c. 836 .

§ 28.2-1319. Injunctions

Upon the petition of the Commission or a wetlands board to the circuit court of the county or city where any act is done or threatened which is unlawful under this chapter, the court may enjoin the unlawful act and order the defendant to take any steps necessary to restore, protect, and preserve the wetlands involved. This remedy shall be exclusive of and in addition to any criminal penalty which may be imposed under § 28.2-1318.

1973, c. 65, § 62.1-13.18:1; 1992, c. 836 .

§ 28.2-1320. Penalties

A. Without limiting the remedies which may be obtained under this chapter, any person who violates any provision of this chapter or who violates or fails, neglects, or refuses to obey any Commission or wetlands board notice, order, rule, regulation, or permit condition authorized by this chapter shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed $25,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred for the purpose of abating environmental damage to or restoring wetlands therein, in such a manner as the court may, by order, direct, except that where the violator is the county, city, or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

B. Without limiting the remedies which may be obtained under this chapter, and with the consent of any person who has violated any provision of this chapter or who has violated or failed,

neglected, or refused to obey any Commission or wetlands board order, rule, regulation, or permit condition authorized by this chapter, the Commission or wetlands board may provide, in an order issued by the Commission or wetlands board against such person, for the one-time payment of civil charges for each violation in specific sums, not to exceed $10,000 for each violation. Civil charges shall be in lieu of any appropriate civil penalty which could be imposed under subsection A of this section. Civil charges may be in addition to the cost of any restoration ordered by the Commission or a wetlands board.

1990, c. 811, § 62.1-13.18:2; 1992, c. 836 .

Chapter 14 - COASTAL PRIMARY SAND DUNES AND BEACHES

Article 1 - GENERAL PROVISIONS

§ 28.2-1400. Definitions

A. As used in this chapter, unless the context requires a different meaning:

"Beach" means the shoreline zone comprised of unconsolidated sandy material upon which there is a mutual interaction of the forces of erosion, sediment transport and deposition that extends from the low water line landward to where there is a marked change in either material composition or physiographic form such as a dune, bluff, or marsh, or where no such change can be identified, to the line of woody vegetation (usually the effective limit of stormwaves), or the nearest impermeable man-made structure, such as a bulkhead, revetment, or paved road.

"Coastal primary sand dune" or "dune" means a mound of unconsolidated sandy soil which is contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from ten percent or greater to less than ten percent, and upon which is growing any of the following species: American beach grass (Ammophila breviligulata); beach heather (Hudsonia tomentosa); dune bean (Strophostyles spp.); dusty miller (Artemisia stelleriana); saltmeadow hay (Spartina patens); seabeach sandwort (Honckenya peploides); sea oats (Uniola paniculata); sea rocket (Cakile edentula); seaside goldenrod (Solidago sempervirens); Japanese sedge or Asiatic sand sedge (Carex kobomugi); Virginia pine (Pinus virginiana); broom sedge (Andropogon virginicus); and short dune grass (Panicum amarum). For purposes of this chapter, "coastal primary sand dune" or "dune" shall not include any mound of sand, sandy soil, or dredge spoil deposited by any person for the purpose of temporary storage, beach replenishment or beach nourishment, nor shall the slopes of any such mound be used to determine the landward or lateral limits of a coastal primary sand dune.

"Coastal primary sand dune zoning ordinance" means the ordinance set forth in § 28.2-1403.

"County, city or town" means the governing body of the county, city or town.

"Governmental activity" means any of the services provided by Commonwealth or a county, city or town to its citizens for the purpose of maintaining public facilities, including but not limited to,

such services as constructing, repairing and maintaining roads; providing street lights and sewage facilities; supplying and treating water; and constructing public buildings.

"Wetlands board" or "board" means the board created pursuant to § 28.2-1303.

B. Although separately defined in subsection A of this section, the terms "coastal primary sand dune," "dune," and "beach," when used in this chapter, shall be interchangeable.

1980, c. 660, §§ 62.1-13.21, 62.1-13.22; 1984, c. 556; 1985, c. 589; 1987, c. 499; 1989, c. 342; 1992, c. 836; 1994, c. 112; 1998, c. 160; 2008, c. 20.

§ 28.2-1401. Powers and duties of Commission

A. The Commission may receive gifts, grants, bequests, and devises of coastal primary sand dunes, beaches, and money which shall be held for the uses prescribed by the donor, grantor, or testator and in accordance with the provisions of this chapter.

B. The Commission shall preserve and protect coastal primary sand dunes and beaches and prevent their despoliation and destruction. Whenever practical, the Commission shall accommodate necessary economic development in a manner consistent with the protection of these features. The Commission shall manage any coastal primary sand dunes and beaches it receives as provided in Article 2 (§ 28.2-1503 et seq.) of Chapter 15 of this title.

C. In order to perform its duties under this section and to assist counties, cities and towns in regulating coastal primary sand dunes and beaches, the Commission shall, with the advice and assistance of the Virginia Institute of Marine Science, promulgate guidelines which describe the consequences of use of these dunes and beaches.

D. In developing guidelines or regulations under this chapter, the Commission shall consult with all affected state agencies. Consistent with other legal rights, consideration shall be given to the importance of coastal primary sand dunes with their unique physiographic features which, in their natural state, serve as protective barriers from the effects of flooding and erosion caused by coastal storms, thereby protecting life and property; provide an essential source of natural sand replenishment for beaches and an important natural habitat for coastal fauna; and enhance the scenic and recreational attractiveness of Virginia's coastal area.

1972, c. 711, § 62.1-13.17; 1980, c. 660, §§ 62.1-13.21, 62.1-13.24; 1984, c. 556; 1989, c. 342; 1992, c. 836; 1994, c. 112; 1995, c. 850.

§ 28.2-1402. Expired

Expired.

Article 2 - COASTAL PRIMARY SAND DUNE ORDINANCE AND BOARDS

§ 28.2-1403. Certain counties, cities and towns authorized to adopt coastal primary sand dune ordinance

Any of the following counties, cities and towns which adopt a wetlands zoning ordinance pursuant to § 28.2-1302 may adopt the coastal primary sand dune zoning ordinance which is set out in this section: the Counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York; and the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach and Williamsburg; and the Town of Cape Charles. In the event that a locality has not adopted a wetlands zoning ordinance pursuant to Chapter 13 (§ 28.2-1300 et seq.) or repeals it if already adopted, such locality may adopt or continue to administer the ordinance contained herein provided the locality appoints a wetlands board following the procedure specified in § 28.2-1303. Any county or city which has adopted the Coastal Primary Sand Dune Zoning Ordinance prior to October 1, 1992, shall amend the ordinance to conform it to the ordinance contained herein by October 1, 1992. The following ordinance is the only coastal primary sand dune zoning ordinance under which any board shall operate after October 1, 1992.

Coastal Primary Sand Dune Zoning Ordinance

§ 1. The governing body of _____, acting pursuant to Chapter 14 (§ 28.2-1400 et seq.) of Title 28.2 of the Code of Virginia, adopts this ordinance regulating the use and development of coastal primary sand dunes. Whenever coastal primary sand dunes are referred to in this ordinance, such references shall also include beaches.

§ 2. As used in this ordinance, unless the context requires a different meaning:

"Beach" means the shoreline zone comprised of unconsolidated sandy material upon which there is a mutual interaction of the forces of erosion, sediment transport and deposition that extends from the low water line landward to where there is a marked change in either material composition or physiographic form such as a dune, bluff, or marsh, or where no such change can be identified, to the line of woody vegetation (usually the effective limit of stormwaves), or the nearest impermeable man-made structure, such as a bulkhead, revetment, or paved road.

"Coastal primary sand dune" or "dune" means a mound of unconsolidated sandy soil which is contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from ten percent or greater to less than ten percent, and upon which is growing any of the following species: American beach grass (Ammophila breviligulata); beach heather (Hudsonia tomentosa); dune bean (Strophostyles spp.); dusty miller (Artemisia stelleriana); saltmeadow hay (Spartina patens); seabeach sandwort (Honckenya peploides); sea oats (Uniola paniculata); sea rocket (Cakile edentula); seaside goldenrod (Solidago sempervirens); Japanese sedge or Asiatic sand sedge (Carex kobomugi); Virginia pine (Pinus virginiana); broom sedge (Andropogon virginicus); and short dune grass (Panicum amarum). For purposes of this ordinance, "coastal primary

sand dune" shall not include any mound of sand, sandy soil, or dredge spoil deposited by any person for the purpose of temporary storage, beach replenishment or beach nourishment, nor shall the slopes of any such mound be used to determine the landward or lateral limits of a coastal primary sand dune.

"Commission" means the Virginia Marine Resources Commission.

"Commissioner" means the Commissioner of Marine Resources.

"County, city and town" means the governing body of the county, city and town.

"Governmental activity" means any of the services provided by the Commonwealth or a county, city or town to its citizens for the purpose of maintaining public facilities, including but not limited to, such services as constructing, repairing, and maintaining roads; providing street lights and sewage facilities; supplying and treating water; and constructing public buildings.

"Wetlands board" or "board" means the board created pursuant to § 28.2-1303 of the Code of Virginia.

§ 3. The following uses of and activities in dunes are authorized if otherwise permitted by law:

1. The construction and maintenance of noncommercial walkways which do not alter the contour of the coastal primary sand dune;

2. The construction and maintenance of observation platforms which are not an integral part of any dwelling and which do not alter the contour of the coastal primary sand dune;

3. The planting of beach grasses or other vegetation for the purpose of stabilizing coastal primary sand dunes;

4. The placement of sand fences or other material on or adjacent to coastal primary sand dunes for the purpose of stabilizing such features, except that this provision shall not be interpreted to authorize the placement of any material which presents a public health or safety hazard;

5. Sand replenishment activities of any private or public concern, provided no sand shall be removed from any coastal primary sand dune unless authorized by lawful permit;

6. The normal maintenance of any groin, jetty, riprap, bulkhead, or other structure designed to control beach erosion which may abut a coastal primary sand dune;

7. The normal maintenance or repair of existing roads, highways, railroad beds, and facilities of the United States, this Commonwealth or any of its counties or cities, or of any person, provided no coastal primary sand dunes are altered;

8. Outdoor recreational activities, provided the activities do not alter the natural contour of the coastal primary sand dune or destroy the vegetation growing thereon;

9. The conservation and research activities of the Commission, Virginia Institute of Marine Science, Department of Game and Inland Fisheries, and other conservation-related agencies;

10. The construction and maintenance of aids to navigation which are authorized by governmental authority;

11. Activities pursuant to any emergency declaration by the governing body of any local government or the Governor of the Commonwealth or any public health officer for the purposes of protecting the public health and safety;

12. Governmental activity in coastal primary sand dunes owned or leased by the Commonwealth or a political subdivision thereof; and

13. The construction of living shoreline projects authorized pursuant to a general permit developed under subsection B of § 28.2-104.1.

§ 4. A. Any person who desires to use or alter any coastal primary sand dune within this _____ _____ (county, city or town), other than for the purpose of conducting the activities specified in § 3 of this ordinance, shall first file an application directly with the wetlands board or with the Commission.

B. The permit application shall include the following: the name and address of the applicant; a detailed description of the proposed activities and a map, drawn to an appropriate and uniform scale, showing the area of dunes directly affected, the location of the proposed work thereon, the area of any proposed fill and excavation, the location, width, depth and length of any disposal area, and the location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands; a description of the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land; an estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure; and such additional materials and documentation as the wetlands board may require.

C. A nonrefundable processing fee shall accompany each permit application. The fee shall be set by the applicable governing body with due regard for the services to be rendered, including the time, skill, and administrator's expense. No person shall be required to file two separate applications for permits if the proposed project will require permits under this ordinance and Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia. Under those circumstances, the fee shall be established pursuant to this ordinance.

§ 5. All applications, maps, and documents submitted shall be open for public inspection at the office of the recording officer of this _____ (county, city or town).

§ 6. Not later than 60 days after receipt of a complete application, the wetlands board shall hold a public hearing on the application. The applicant, local governing body, Commissioner, owner of

record of any land adjacent to the coastal primary sand dunes in question, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the State Water Control Board, the Department of Transportation, and any governmental agency expressing an interest in the application shall be notified of the hearing. The board shall mail these notices not less than 20 days prior to the date set for the hearing. The wetlands board shall also cause notice of the hearing to be published at least once a week for two weeks prior to such hearing in a newspaper of general circulation in this _____ (county, city or town). The costs of publication shall be paid by the applicant.

§ 7. A. Approval of a permit application shall require the affirmative vote of three members of a five-member board or four members of a seven-member board.

B. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for the decision.

C. The board shall make its determination within 30 days of the hearing. If the board fails to act within that time, the application shall be deemed approved. Within 48 hours of its determination, the board shall notify the applicant and the Commissioner of its determination. If the board fails to make a determination within the 30-day period, it shall promptly notify the applicant and the Commission that the application is deemed approved.

D. If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing to the Commissioner. Upon a final determination by the Commission, the record shall be returned to the board. The record shall be open for public inspection at the office of the recording officer of this _____ (county, city or town).

§ 8. The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it, securing to the Commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after a hearing held pursuant to this ordinance, suspend or revoke a permit if the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work described in the application. The board may, after a hearing, suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

§ 9. In fulfilling its responsibilities under this ordinance, the board shall preserve and protect coastal primary sand dunes and beaches and prevent their despoliation and destruction. However, whenever practical, the board shall accommodate necessary economic development in a manner consistent with the protection of these features.

§ 10. A. In deciding whether to grant, grant in modified form, or deny a permit, the board shall consider the following:

1. The testimony of any person in support of or in opposition to the permit application;

2. The impact of the proposed development on the public health, safety, and welfare; and

3. The proposed development's conformance with standards prescribed in § 28.2-1408 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1401 of the Code of Virginia.

B. The board shall grant the permit if all of the following criteria are met:

1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment.

2. The proposed development conforms with the standards prescribed in § 28.2-1408 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1401 of the Code of Virginia.

3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 14 (§ 28.2-1400 et seq.) of Title 28.2 of the Code of Virginia.

C. If the board finds that any of the criteria listed in subsection B of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.

§ 11. The permit shall be in writing, signed by the chairman of the board, and notarized. A copy of the permit shall be transmitted to the Commissioner.

§ 12. No permit shall be granted without an expiration date established by the board. Upon proper application, the board may extend the permit expiration date.

§ 13. No permit granted by a wetlands board shall in any way affect the right of any person to seek compensation for any injury in fact incurred by him because of the permitted activity.

1980, c. 660, §§ 62.1-13.21, 62.1-13.25; 1984, c. 556; 1989, c. 342; 1992, c. 836; 1994, c. 112; 1998, c. 160; 2008, c. 20; 2014, cc. 112, 143; 2014, cc. 112, 143.

§ 28.2-1404. Meetings, quorum, rules, etc., of wetlands boards; records and reports

For the conduct of any wetlands board hearing and the taking of any action, a quorum shall be not less than three members of a five-member board nor less than four members of a seven-member board. The board may make, alter, and rescind rules and forms for its procedures, provided they are consistent with state law and local ordinances. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the local governing body at least once each year. The board shall forward a copy of each report to the Commission.

1992, c. 836 .

§ 28.2-1405. Local governing body to supply meeting space and services for wetlands board

Every county, city or town enacting an ordinance pursuant to this chapter shall supply the board with reasonable meeting space and necessary secretarial, clerical, legal, and consulting services. The local governing body is authorized to expend the public funds necessary to comply with the provisions of this section.

1992, c. 836; 1994, c. 112.

Article 3 - PERMITS AND REVIEW

§ 28.2-1406. Permits required for certain activities; issuance of permits by Commission

A. It shall be unlawful for any person to conduct any activity which would require a permit under a coastal primary sand dune zoning ordinance without such a permit. Until the county, city or town in which a person proposes to conduct an activity which would require a permit under the ordinance adopts the ordinance, such person shall apply for a permit directly to the Commission. Permit applicants desiring to use or develop dunes or beaches owned by the Commonwealth shall also apply directly to the Commission.

B. The Commission shall process permit applications in accordance with the provisions of the Coastal Primary Sand Dune Zoning Ordinance and the Commissioner, or his authorized representative, shall sign any permit granted; however, the Commission may designate one or more hearing officers who may, in lieu of the Commission, conduct public hearings as required under § 28.2-1403 and thereafter report their findings and recommendations to the Commission.

1972, c. 711, § 62.1-13.9; 1980, c. 660, § 62.1-13.26; 1992, c. 836; 1994, cc. 112, 125.

§ 28.2-1407. Administrative procedures

The Commission may, in conjunction with local wetlands boards and other affected state and federal agencies, develop administrative procedures to expedite the processing of applications for permits required under this chapter. Whenever an application is received by the Commission for a permit over which a local board has jurisdiction under a coastal primary sand dune zoning ordinance, the Commission shall forward a copy of the application to that board within seven days.

1992, c. 836 .

§ 28.2-1408. Standards for use of coastal primary sand dunes

No permanent alteration of or construction upon any coastal primary sand dune shall take place which would (i) impair the natural functions of the dune, (ii) physically alter the contour of the dune, or (iii) destroy vegetation growing thereon unless the wetlands board or the Commission, whichever is applicable, determines that there will be no significant adverse ecological impact, or that the granting of a permit is clearly necessary and consistent with the public interest, considering all material factors.

1980, c. 660, § 62.1-13.23; 1992, c. 836 .

§ 28.2-1408.1. Expired

Expired.

§ 28.2-1408.2. Exemptions

Notwithstanding the requirements of § 28.2-1408 or any other provision of this Code, the Virginia Beach Wetlands Board (Board) shall make an ongoing determination in the Sandbridge Beach Subdivision to determine which structures or properties are in clear and imminent danger from erosion and storm damage due to severe wave action or storm surge. The owners of such structures or properties shall not be prohibited from erecting and maintaining protective bulkheads or other equivalent structural improvements of the type, size and configuration as approved by the Board. As used in this section, the "Sandbridge Beach Subdivision" means the area that is bounded on the north by Dam Neck Naval Base, on the west by Sandpiper Road, and on the south by Little Island Park.

The Board shall not impose arbitrary or unreasonable conditions upon its approval of any such bulkhead or other structural improvement. The Board shall maintain a continuing responsibility to ensure that each bulkhead or structural improvement constructed under the authority of this section is maintained in a condition that is safe, structurally sound, and otherwise in conformity with the conditions imposed by the Board.

Upon submission of an application to the Board pursuant to this section, as a requirement for approval, the applicant must consent in writing to any subsequent construction approved by the Board whereby an adjacent property owner desires to tie in a bulkhead at no additional cost with the bulkhead proposed by the applicant. Such consent shall constitute a waiver of property line defenses relating to the bulkhead line.

2009, c. 391.

§ 28.2-1409. Emergency sand grading activities on sand dunes located on the Atlantic Shoreline of Virginia Beach [Not set out]

Not set out. (1992, c. 836 .)

§ 28.2-1410. Commissioner to review all decisions of wetlands boards

The Commissioner shall review all decisions of wetlands boards and request the Commission to review a decision only when he believes the board failed to fulfill its responsibilities under the coastal primary sand dune zoning ordinance.

1992, c. 836 .

§ 28.2-1411. When Commission to review decision of wetlands board

A. The Commission shall review a decision of a wetlands board when any of the following events occur:

1. An appeal is taken from the decision by the applicant or by the county, city or town where the dunes are located.

2. The Commissioner requests the review. In order to make the request, the Commissioner shall notify the board, applicant, and county, city or town where the dunes are located within ten days of receiving notice of the board's decision.

3. Twenty-five or more freeholders of property within the county, city or town in which the proposed project is located sign and submit a petition to the Commission requesting the review. The petition shall indicate those specific instances where the petitioners allege that the board failed to fulfill its responsibilities under the coastal primary sand dune zoning ordinance.

B. All requests for review or appeal shall be made within ten days of the date of the board's decision. The Commission shall hear and decide the review or appeal within forty-five days of receiving the request for review or notice of appeal. A continuance may be granted by the Commission on a motion of the applicant, the freeholders specified in subsection A of this section, or the county, city or town where the dunes are located.

1992, c. 836; 1994, c. 112.

§ 28.2-1412. Procedure for review; notice of decision

A. The Commissioner shall cause notice of the review or appeal to be given to the board, the applicant, the county, city or town where the dunes are located, and where applicable, to the freeholders specified in § 28.2-1411.

B. The Commission shall hear the appeal or conduct the review on the record transmitted by the board to the Commissioner. The Commission may take such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The Commission, in its discretion, may receive such other evidence as the ends of justice require.

C. The Commission shall notify the parties of its decision within forty-eight hours of the appeal or review hearing.

1992, c. 836; 1994, c. 112.

§ 28.2-1413. When Commission to modify, remand or reverse decision of wetlands board

The Commission shall modify, remand or reverse the decision of the wetlands board if:

1. The wetlands board, in reaching its decision, failed to fulfill its responsibilities under the coastal primary sand dune zoning ordinance; or

2. The substantial rights of the appellant or the applicant have been prejudiced because the findings, conclusions, or decisions of the board are:

a. In violation of constitutional provisions;

b. In excess of statutory authority or jurisdiction of the wetlands board;

c. Made upon unlawful procedure;

d. Affected by other error of law;

e. Unsupported by the evidence on the record considered as a whole; or

f. Arbitrary, capricious, or an abuse of discretion.

1992, c. 836 .

§ 28.2-1414. Time for issuance of permit

No permit shall be issued until the period within which a request for review or an appeal to the Commission may be made has expired. If a request for review is made or an appeal is noted, no activity for which the permit is required shall be commenced until the Commission has notified the parties of its determination.

1992, c. 836 .

§ 28.2-1415. Judicial review

An appeal from any Commission decision granting or denying a permit or from any Commission decision on the review of or appeal from a board decision may be taken by the applicant, any of the freeholders specified in subsection A of § 28.2-1411, or by the county, city or town where the dunes or beaches are located. Judicial review shall be pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

1992, c. 836; 1994, c. 112.

Article 4 - ENFORCEMENT AND PENALTIES

§ 28.2-1416. Investigations and prosecutions

The Commission may investigate all projects, whether proposed or ongoing, which alter dunes or beaches. The Commission may prosecute all violations of any order, rule, or regulation of the Commission or of a wetlands board, or violation of any provision of this chapter. Wetlands boards may investigate all projects, whether proposed or ongoing, which alter dunes or beaches located within their jurisdiction. Wetlands boards may prosecute all violations of their orders and any violation of any provision of the coastal primary sand dune zoning ordinance which they administer.

1992, c. 836 .

§ 28.2-1417. Monitoring, inspections, compliance, and restoration

A. The Commissioner or board chairman may require a permittee to implement monitoring and reporting procedures they believe are reasonably necessary to ensure compliance with the provisions of the permit and this chapter.

B. The Commissioner or board chairman may require such on-site inspections as he believes are reasonably necessary to determine whether the measures required by the permit are being properly performed, or whether the provisions of this chapter are being violated. Prior to conducting such inspections, the Commissioner or board chairman shall provide notice to the resident owner, occupier, or operator, who shall be given an opportunity to accompany the site inspector. If it is determined that there is a failure to comply with the permit, the Commissioner or board chairman shall serve notice upon the permittee at the address specified in his permit application or by delivery at the site of the permitted activities to the person supervising the activities and designated in

the permit to receive the notice. The notice shall describe the measures needed for compliance and the time within which these measures shall be completed. Failure of the person to comply within the specified period is a violation of this section.

C. Upon receipt of a sworn complaint of a substantial violation of this chapter from the designated enforcement officer, the Commissioner or board chairman may, in conjunction with or subsequent to a notice to comply as specified in subsection B of this section, issue an order requiring all or part of the activities on the site to be stopped until the specified corrective measures have been taken. In the case of an activity not authorized under this chapter or where the alleged permit non-compliance is causing, or is in imminent danger of causing, significant harm to the coastal primary sand dunes protected by this chapter, the order may be issued without regard to whether the person has been issued a notice to comply pursuant to subsection B of this section. Otherwise, the order may be issued only after the permittee has failed to comply with the notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority, permittee, resident owner, occupier, or operator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. Upon completion of corrective action, the order shall immediately be lifted. Nothing in this section shall prevent the Commissioner or board chairman from taking any other action specified in § 28.2-1416.

D. Upon receipt of a sworn complaint of a substantial violation of this chapter from a designated enforcement officer, the Commission or a wetlands board may order that the affected site be restored to predevelopment conditions if the Commission or board finds that restoration is necessary to recover lost resources or to prevent further damage to resources. The order shall specify the restoration necessary and establish a reasonable time for its completion. The order shall be issued only after a hearing with at least thirty days' notice to the affected person of the hearing's time, place, and purpose, and shall become effective immediately upon issuance by the Commission or board. The Commission or board shall require any scientific monitoring plan they believe is necessary to ensure the successful reestablishment of coastal primary sand dunes protected by this chapter and may require that a prepaid contract acceptable to the Commission or board be in effect for the purpose of carrying out the scientific monitoring plan. The Commission or board may also require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it securing to the Commonwealth compliance with the conditions set forth in the restoration order. The appropriate court, upon petition by the Commission or board, may enforce any such restoration order by injunction, mandamus, or other appropriate remedy. Failure to complete the required restoration is a violation of this chapter.

E. The duties of the Commissioner or the board chairman under this section may be delegated to their respective designees; however, these designees shall not be designated enforcement officers.

1992, c. 836 .

§ 28.2-1418. Violations; penalty

Any person who knowingly, intentionally, or negligently violates any order, rule, or regulation of the Commission or of a wetlands board, any provision of this chapter or of a coastal primary sand dune zoning ordinance enacted pursuant to this chapter, or any provision of a permit granted pursuant to this chapter is guilty of a Class 1 misdemeanor. Following a conviction, every day the violation continues is a separate offense.

1992, c. 836 .

§ 28.2-1419. Injunctions

Upon the petition of the Commission or a wetlands board to the circuit court of the county or city where any act is done or threatened which is unlawful under this chapter, the court may enjoin the unlawful act and order the defendant to take any steps necessary to restore, protect, and preserve the dunes or beaches involved. This remedy shall be exclusive of and in addition to any criminal penalty which may be imposed under § 28.2-1418.

1992, c. 836 .

§ 28.2-1420. Penalties

A. Without limiting the remedies which may be obtained under this chapter, any person who violates any provision of this chapter or who violates or fails, neglects, or refuses to obey any Commission or wetlands board notice, order, rule, regulation, or permit condition authorized by this chapter shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed $25,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred for the purpose of abating environmental damage to or restoring dunes or beaches therein, in such a manner as the court may, by order, direct, except that where the violator is the county, city, or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

B. Without limiting the remedies which may be obtained under this chapter, and with the consent of any person who has violated any provision of this chapter or who has violated or failed, neglected, or refused to obey any Commission or wetlands board order, rule, regulation, or permit condition authorized by this chapter, the Commission or wetlands board may provide, in an order issued by the Commission or wetlands board against such person, for the one-time payment of civil charges for each violation in specific sums, not to exceed $10,000 for each violation. Civil charges shall be in lieu of any appropriate civil penalty which could be imposed under subsection A of this section. Civil charges may be in addition to the cost of any restoration ordered by the Commission or a wetlands board.

1990, c. 811, § 62.1-13.27:1; 1992, c. 836 .

Chapter 15 - UNGRANTED SHORES OF THE SEA, MARSHES AND MEADOWLANDS

Article 1 - GENERAL PROVISIONS

§ 28.2-1500. Definitions

As used in this chapter, unless the context requires a different meaning:

"Beach" shall have the same meaning ascribed thereto in subsection A of § 28.2-1400.

"Initial inventory" means a set of maps prepared by, at the direction of, or with the approval of the Commission which have been filed prior to January 1, 1995, with the clerk of the circuit court and the commissioner of revenue in any county in that portion of the Commonwealth separated from the larger portion of the Commonwealth by the Chesapeake Bay and in which the ungranted shores of the sea, marsh and meadowlands mapped therein are located.

"Inventory" means a set of maps prepared by, at the direction of, or with the approval of the Commission, mapping certain ungranted shores of the sea, marsh and meadowlands in any county in that portion of the Commonwealth separated from the larger portion of the Commonwealth by the Chesapeake Bay.

"Marsh" or "meadowland" shall have the same meaning ascribed to vegetated wetlands in § 28.2-1300.

"Shores of the sea" means a beach or any unvegetated lands lying contiguous to mean low water and between mean low water and mean high water.

"Ungranted shores of the sea, marsh or meadowlands" means (i) shores of the sea which were not conveyed by special grant or compact according to law prior to April 1, 1873, and which have not been conveyed by special grant of the General Assembly on or after that date and (ii) marsh or meadowlands which were not appropriated and remained ungranted prior to February 24, 1888, and which have not been conveyed by special grant of the General Assembly on or after that date.

"Virginia Coastal Land Management Advisory Council" or "Council" means the Virginia Coastal Land Management Advisory Council created pursuant to § 28.2-1505.

1995, c. 850.

§ 28.2-1501. Powers and duties of Commission

A. The Commission may receive gifts, grants, bequests, and devises of shores of the sea, marsh, meadowlands, and money which shall be held for the uses prescribed by the donor, grantor, or testator in accordance with the provisions of this chapter. The Commission shall manage any shores of the sea, marsh or meadowlands it receives as prescribed in Article 2 (§ 28.2-1503 et seq.) of this chapter.

B. The Commission may promulgate regulations and guidelines necessary to carry out the provisions of this chapter.

1995, c. 850.

§ 28.2-1502. Ownership of ungranted shores of the sea, marsh and meadowlands

All ungranted shores of the sea, marsh and meadowlands shall remain the property of the Commonwealth. Such ungranted marsh and meadowlands which have been used as a commons by the people of the Commonwealth shall continue as a commons for the purpose of fishing, fowling, hunting, and the taking and catching of oysters and other shellfish. All ungranted shores of the sea may be used as a commons for the purpose of fishing, fowling, hunting, and the taking and catching of oysters and other shellfish. The Commission shall manage all ungranted shores of the sea, marsh and meadowlands as provided in Article 2 (§ 28.2-1503 et seq.) of this chapter.

1995, c. 850.

Article 2 - MANAGEMENT OF UNGRANTED SHORES OF THE SEA, MARSH AND MEADOWLANDS

§ 28.2-1503. Management of lands

The Commission shall manage all ungranted shores of the sea, marsh and meadowlands, and all other lands of the Commonwealth for which management duties have been given to the Commission, as steward for the property interests of the Commonwealth. All agencies of the Commonwealth shall cooperate with the Commission and, upon request, shall assist the Commission in the performance of its duties and responsibilities under this chapter.

1995, c. 850.

§ 28.2-1504. Preparation of management plan

A. The Commission shall prepare and implement a plan for the management of the Commonwealth's ungranted shores of the sea, marsh and meadowlands. The management plan, and any regulations and guidelines promulgated to implement the management plan, shall 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. Through methods consistent with that goal, the management plan, and any regulations and guidelines promulgated to implement the management plan, shall recognize the use of such properties, where they have been so used in the past, as a commons by the people of the Commonwealth for the purpose of fishing, fowling, hunting, and the taking and catching of oysters and other shellfish. The Commission shall review the management plan every five years.

B. In developing regulations, guidelines, or management plans under this chapter, the Commission shall consult with the Virginia Coastal Land Management Advisory Council.

1995, c. 850.

§ 28.2-1505. Virginia Coastal Land Management Advisory Council established

A. There is hereby created the Virginia Coastal Land Management Advisory Council. The Council shall advise the Commission on issues relating to the management of ungranted shores of the sea, marsh and meadowlands, and shall advise the Commission on the development of the management plan prepared pursuant to § 28.2-1504.

B. The Council shall consist of six members appointed by the Governor, who shall be residents of a county in which there are ungranted shores of the sea, marsh or meadowlands, and who shall represent tourism and commerce, traditional uses of shores of the sea, marsh and meadowlands, and conservation interests; however, if any private person or entity owns more than fifty percent of the land area of the barrier islands of the Eastern Shore that are privately owned, such person or entity shall be one of such members. In appointing these members, the Governor shall consider recommendations submitted by the boards of supervisors of counties in which the Commission is managing the largest portions of the ungranted shores of the sea, marsh or meadowlands. The Council shall also include (i) the Director of the Department of Conservation and Recreation or his designee, (ii) the Director of the Department of Game and Inland Fisheries or his designee, and (iii) the Commissioner or his designee.

C. The term of office of each appointed member shall be for three years. Appointments to fill vacancies shall be made to fill the unexpired term.

D. Members shall receive no compensation for their services but shall receive reimbursement for actual expenses.

E. The Council shall meet at the call of the Commissioner or at least once per year.

1995, c. 850.

§ 28.2-1506. Filing of initial inventories; amended or supplemental inventories

Whenever any privately owned land in any of such counties is to be transferred, and the transferor or the transferee requests clarification as to whether any portion of such land is claimed by the Commonwealth as ungranted shores of the sea, marsh or meadowlands, the Commission shall review the matter, and, if it determines that all or any portion of such land constitutes ungranted shores of the sea, marsh or meadowlands, the Commission shall file an amended or supplemental inventory as it may deem appropriate. Any such amended or supplemental inventory shall be filed in the same offices as the initial inventory for such area. The Commission shall not prepare or file any such amended or supplemental inventory unless (1) such classification is requested by a transferor or transferee as provided herein, or (2) (a) the federal government has asserted title to any ungranted shores of the sea, marsh or meadowlands excluding the Wallops Island Naval/Aegis facility and all land adjacent thereto lying to the south that is used for a federal National Wildlife Refuge, (b) both the Governor and Attorney General concur in writing that all or any of the property to which the federal government has asserted title constitutes ungranted shores of the sea, marsh or meadowlands, and (c) such amended or supplemental inventory only asserts the Com-

monwealth's title to the portion of such property that constitutes ungranted shores of the sea, marsh or meadowlands as concurred in by the Governor and the Attorney General.

1995, c. 850.

Article 3 - INVENTORIES OF CERTAIN UNGRANTED SHORES OF THE SEA, MARSH AND MEADOWLANDS

§ 28.2-1507. Notice of filing of inventories

A. The Commission shall cause to be published, within ninety days following the effective date of this section, in a newspaper of general circulation published at the state capital, in a newspaper having general circulation in the counties where the initial inventories have been filed, and in such other newspapers in the Commonwealth as the Commission generally publishes notices pursuant to § 2.2-4007.03, a notice of the filing of the initial inventories. The notice shall state that any person claiming ownership of an interest in lands designated in an initial inventory as ungranted shores of the sea, marsh or meadowlands is required to assert the claim as provided in § 28.2-1509 within two years following the effective date of this section, or any action to assert such claim shall be barred.

B. The Commission shall cause to be published a notice of the filing of any amended or supplemental inventory in a newspaper having general circulation in the county for which such amended or supplemental inventory applies. The notice shall refer to the initial inventory and any previous amended or supplemental inventory with respect thereto, and shall state that any person claiming ownership of an interest in lands designated therein as ungranted shores of the sea, marsh or meadowlands is required to assert the claim as provided in § 28.2-1509 within two years following the filing of the amended or supplemental inventory, or any action to assert such claim shall be barred.

C. The failure of the Commission to comply with the requirements of this section shall not impair the Commonwealth's rights of ownership in any ungranted shores of the sea, marsh, or meadowlands.

1995, c. 850; 2007, cc. 873, 916.

§ 28.2-1508. Effect of inventories

The failure to include any ungranted shores of the sea, marsh or meadowlands in an initial inventory shall not affect the Commonwealth's rights of ownership in such property.

1995, c. 850.

Article 4 - RESOLUTION OF CONFLICTING CLAIMS TO INVENTORIED PROPERTY

§ 28.2-1509. Claims to lands designated in an inventory

A. Any person claiming ownership of an interest in lands designated as ungranted shores of the sea, marsh or meadowland in an initial inventory, or in any amended or supplemental inventory, may bring an action for declaratory judgment to determine title to the land pursuant to § 8.01-184, an action to establish the boundaries to land pursuant to § 8.01-179, or an action of ejectment pursuant to § 8.01-131.

B. Any action pursuant to subsection A with respect to lands designated as ungranted shores of the sea, marsh or meadowland in an initial inventory shall be brought within two years following the effective date of this section. Any action to assert a claim in such land shall be barred unless brought within such two-year period.

C. Any action pursuant to subsection A with respect to lands designated as ungranted shores of the sea, marsh or meadowland in an amended or supplemental inventory shall be brought within two years following the filing of such amended or supplemental inventory. Any action to assert a claim in such lands shall be barred unless brought within such two-year period.

D. Upon entry of a final judgment ruling that any lands designated in an initial inventory, or in an amended or supplemental inventory, as ungranted shores of the sea, marsh or meadowlands are not property of the Commonwealth, the Commission shall file an amended inventory correcting its designation of such property.

1995, c. 850.

§ 28.2-1510. Approval of amended or supplemental inventory

The Commission shall not approve an amended or supplemental inventory, if such amended or supplemental inventory initially designates a parcel of land as ungranted shores of the sea, marsh or meadowlands, until notice of the Commission's intention so to do has been published once a week for two successive weeks in a newspaper having general circulation in the county where such land is located. Such notice shall specify the time and place of a public hearing at which persons affected may appear and present their views. In addition, the Commission shall give written notice of the amended or supplemental inventory, and of the public hearing, to the owner or owners of each parcel so designated, if known, by postpaid mail to the address of the owner as shown in the land records of the circuit court for the county. Nothing in this section shall be construed to invalidate any subsequently filed amended or supplemental inventory because of the inadvertent failure of the Commission to give written notice to any person listed as having an ownership interest in such land in the land records of the circuit court for the county. After the public hearing, the Commission may approve, amend, or disapprove such amended or supplemental inventory.

1995, c. 850.

§ 28.2-1511. Claims to ungranted shores of the sea, marsh and meadowlands proposed for designation in amended or supplemental inventory

A. The Commission shall not file any amended or supplemental inventory, if such amended or supplemental inventory initially designates a parcel of land as ungranted shores of the sea, marsh or

meadowland, unless the Commission has approved such amended or supplemental inventory as provided in § 28.2-1510. The Commission shall give notice of its intention to file such amended or supplemental inventory to any person listed as having an ownership interest in such land in the land records of the circuit court for the county. The notice shall be sent by postpaid mail to the address of the person as shown on the land book. The Commission shall also cause notice of its intent to file an amended or supplemental inventory to be published in a newspaper of general circulation in the county where such land is located.

B. Any person claiming ownership of an interest in lands described in a notice given pursuant to subsection A may bring an action for declaratory judgment to determine title to the land pursuant to § 8.01-184, to establish the boundaries to land pursuant to § 8.01-179, or an action of ejectment pursuant to § 8.01-131. Any such action shall be brought within two years following publication of the notice pursuant to subsection A; however, the failure of a person claiming ownership of such lands to commence an action within the two-year period as provided in this subsection shall not bar such person from asserting a claim of ownership as provided in § 28.2-1509.

C. If an action is not commenced within the two-year period as provided in subsection B, the Commission may file an amended or supplemental inventory designating as ungranted shores of the sea, marsh or meadowlands the parcels as to which no action has been commenced. Upon filing the amended or supplemental inventory, the Commission shall cause to be published a notice as provided in subsection B of § 28.2-1507.

D. If an action is commenced within the two-year period as provided in subsection B, the Commission shall not, during the pendency of the action, file an amended or supplemental inventory designating the land which is the subject of the action as ungranted shores of the sea, marsh or meadowlands. Upon the entry of a final judgment ruling that any of such land is not the property of the Commonwealth, the Commission shall correct the amended or supplemental inventory to remove any designation of such land as ungranted shores of the sea, marsh or meadowland. The Commission may then file the corrected amended or supplemental inventory. Upon the entry of a final judgment ruling that such land is the property of the Commonwealth, the Commission may file an amended or supplemental inventory designating such land as ungranted shores of the sea, marsh or meadowlands, and further such final judgment shall bar the assertion of a like claim in any action brought to assert ownership of such land pursuant to § 28.2-1509. Upon filing an amended or supplemental inventory, the Commission shall cause to be published the notice as provided in subsection B of § 28.2-1507.

1995, c. 850.

§ 28.2-1512. Effect of disability

The provisions of § 8.01-237 shall apply with respect to the effect of disabilities on the preservation of a right to bring an action to establish ownership of land pursuant to §§ 28.2-1509 and 28.2-1511.

1995, c. 850.

§ 28.2-1513. Filing of notice of lis pendens

The Commissioner is authorized to record a notice of lis pendens in order to provide notice of the Commonwealth's claim of ownership of any property designated in an initial inventory, or in an amended or supplemental inventory filed as provided in § 28.2-1506, as ungranted shores of the sea, marsh or meadowland. The notice shall set forth the name of any person who has, or has asserted, an interest in the property, a description of the property, and a statement that the Commission has determined that the property is ungranted shores of the sea, marsh, or meadowland and is designated as such on a filed inventory. The notice shall be admitted to record in the clerk's office of the county wherein the property is located.

1995, c. 850.

§ 28.2-1514. Historical evidence

In any administrative proceeding before the Commission under this chapter, or in any proceeding for the resolution of conflicting claims to inventoried property under Article 4 (§ 28.2-1509 et seq.) of this chapter, the Commission or court may consider any relevant and credible evidence including, but not limited to, deeds, grants, maps, plats or other historical documents.

1995, c. 850.

Chapter 16 - WATER COLUMN LEASES FOR AQUACULTURE PURPOSES

§§ 28.2-1600 through 28.2-1623. Not in effect

Not in effect.