

**THE REPORT
OF THE
COMMISSION TO STUDY AND REVISE TITLE 28
OF THE CODE OF VIRGINIA RELATING TO
FISH, OYSTERS, AND SHELLFISH
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 14, 1962

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1961

MEMBERS OF COMMISSION

RUSSELL M. CARNEAL, Chairman
VICTOR P. WILSON, Vice-Chairman
MARVIN L. AMORY
WALTHER B. FIDLER
FRED GARRETT, JR.
WILLIAM J. HARGIS, JR.
MILTON T. HICKMAN
E. RALPH JAMES
T. D. MCGINNES
BLAKE T. NEWTON
MAYWOOD C. SHACKELFORD
ROBERT S. STERLING
HARRY M. THOMPSON

STAFF

JOHN B. BOATWRIGHT, JR.
WILDMAN S. KINCHELOE, JR.
FLETCHER W. HARKRADER, JR.
G. M. LAPSLEY

COUNSEL

C. F. HICKS

TABLE OF CONTENTS

	Page
1. Introduction	4
2. Synopsis of Changes Recommended in Code of Virginia.....	7
3. Bill for the revision of Title 28.....	14
4. Table of comparative sections Title 28 and Title 28.1.....	99

THE REPORT
OF THE
COMMISSION TO STUDY AND REVISE TITLE 28
OF THE CODE OF VIRGINIA RELATING TO
FISH, OYSTERS, AND SHELLFISH

Richmond, Virginia, December 29, 1961

TO:

HONORABLE J. LINDSAY ALMOND, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

The statutes relating to fish, oysters, and shellfish which make up the body of Title 28 of the Code of Virginia have been adopted piecemeal over a long period of time. Many of these laws were enacted long before the present century. As seafood problems have arisen, laws were passed to take care of specific problems; often these problems have disappeared but the laws remain. This maze of conflicting law has caused confusion, making effective administration and earnest compliance with the law difficult, if not impossible.

The destructive oyster virus MSX has now attacked Virginia oysters and, in a period of three years, the virus has placed the entire oyster industry in jeopardy.

Aware of these factors the General Assembly of Virginia at its 1960 Session adopted House Joint Resolution No. 45 creating a commission to study and revise Title 28 of the Code of Virginia relating to fish, oysters, and shellfish. This resolution follows:

HOUSE JOINT RESOLUTION NO. 45

Creating a Commission to Study and Revise Title 28 of the Code of Virginia Relating to Fish, Oysters, and Shellfish.

Whereas, the laws of this Commonwealth relating to fish, oysters, and shellfish contained in Title 28 of the Code of Virginia, are, to a certain extent, obsolete, not clear, impossible of enforcement; and

Whereas, said laws should be studied and revised so as to be in the best interest of conservation of these great natural resources, to further the economy of the fish, oyster and seafood industries, and the economy of the Commonwealth; now, therefore, be it

Resolved, by the House of Delegates, the Senate concurring, that there is hereby created a Commission on the Revision of Laws Relating to Fish, Oysters, and Seafood. The Commission shall consist of thirteen members, two of whom shall be appointed by the Lieutenant Governor from the Senate Committee on Fish and Game, three of whom shall be appointed

by the Speaker of the House of Delegates from the House of Delegates Committee on Chesapeake and its Tributaries, and six of whom shall be appointed by the Governor from counties or cities contiguous to the tidal waters of Virginia. One each of the members appointed by the Governor shall be principally engaged in the (1) planting of oysters, (2) packing of oysters, (3) the tonging of oysters, (4) the catching of fin-fish, (5) the catching or packing of crabs and, (6) the maritime industry. The Commissioner of Fisheries and the Director of the Virginia Fisheries Laboratory shall be members of the Commission.

The Commission shall make an extensive study of the laws and problems relating to fish, oysters, and shellfish and, if necessary, revise and redraft Title 28 of the Code of Virginia. The Commission shall hold such meetings and public hearings as it may deem necessary. When the Commission has concluded its study and, if necessary, revision of Title 28 of the Code of Virginia, it shall submit its revision or study of said Title to the Commission of Fisheries, the Virginia Code Commission, and the Governor of Virginia, not later than September 1, 1961; the said revision with any recommendations or comments of the Commission of Fisheries, the Code Commission and the Governor, shall be submitted to the General Assembly of Virginia on or before January 1, 1962.

All agencies of the Commonwealth of Virginia which are concerned with fish, oysters, and shellfish shall assist the Commission in its study. The members of the Commission shall be paid the sum of twenty dollars per day, plus necessary expenses for their services. The Commission may employ legal and secretarial personnel. For this study and revision of Title 28 of the Code of Virginia, there is hereby appropriated a sum sufficient from the General Fund not to exceed ten thousand dollars.

Pursuant to this resolution, the President of the Senate appointed to the Commission from the Senate Committee on Fish and Game, Blake T. Newton of Hague, and Victor P. Wilson of Hampton. The Speaker of the House of Delegates appointed to the Commission from the House of Delegates Committee on Chesapeake and its Tributaries, Russell M. Carneal of Williamsburg, Walther B. Fidler of Warsaw and E. Ralph James of Hampton. The Governor appointed to the Commission, Marvin L. Amory of Hampton, who is engaged in the catching of fin-fish, Fred Garrett, Jr., of Bowlers Wharf, who is engaged in the planting of oysters, T. D. McGinnes of Irvington, who is engaged in the packing of oysters, Maywood C. Shackelford of Severn, who is engaged in the packing of crabs, Robert S. Sterling of Naxera, who is engaged in the tonging of oysters, and Harry M. Thompson of Norfolk, representing the maritime industry. Milton T. Hickman, the Commissioner of Fisheries, and Dr. William J. Hargis, Jr., the Director of the Virginia Fisheries Laboratory also served as members of the Commission.

The Commission at its organization meeting elected Russell M. Carneal, Chairman, and Victor P. Wilson, Vice-Chairman. John B. Boatwright, Jr., and Fletcher W. Harkrader, Jr., were elected Secretary and Recording Secretary respectively.

The Committee chose as its counsel Clarence F. Hicks of Gloucester.

The Commission planned and conducted a series of public hearings in the major sections of Tidewater Virginia. In most localities both a day and a night hearing were conducted in order that the largest possible participation would be brought about. The first of these public hearings was conducted in Accomack Courthouse on October 7, 1960. This was followed by

hearings in the courthouse at Warsaw, Virginia, on November 4, 1960; in Gloucester, Virginia, on November 18, 1960, in Norfolk on December 9th, 1960, and in Newport News on January 20, 1961.

On October 6, 1960, the Commission met with the Virginia Fisheries Commission and the Maryland Commission having jurisdiction over seafood matters at the Chamberlain Hotel at Old Point Comfort, Virginia.

On February 9, 1961, E. C. Meredith and H. G. Gregory of the State Department of Health met with the Commission at the Gloucester Point laboratory in order to present recommendations of Dr. Shanholtz of the State Department of Health concerning health factors which should be taken into consideration in revising the law.

After studying and discussing the many problems made evident by the foregoing public hearings and meetings, the Commission determined that the necessary revisions of the title were so extensive that the best interest of the Commonwealth would be served by repealing the whole of Title 28 and reenacting the revised statutes as a new Title 28.1. With the aid of counsel the Commission set to work on that project.

The resulting bill for enactment, along with this report, has been submitted to the Commission of Fisheries and the Virginia Code Commission in accordance with the directive of the study resolution.

SYNOPSIS OF CHANGES RECOMMENDED IN THE CODE OF VIRGINIA

The Commission recommends that Title 28 be repealed and a new Title 28.1 be enacted. The new title recommended by the Commission contains most of the provisions found in Title 28 with the exception of those which have been deleted because of obsolescence and those which have been amended after exhaustive public hearings and study.

The major changes are enumerated below as they occur in the chapters of new recommended Title 28.1:

CHAPTER 1

The Commission recommends that a definition be included as to marine fish, shellfish and organisms, that the Commission of Fisheries be given jurisdiction of all marine organisms found in Tidewater Virginia, and that the jurisdiction of the Commission shall extend to the fall line of tidal rivers and streams.

It is recommended that the Commissioner of Fisheries shall be an experienced administrator with knowledge of seafood and marine affairs.

It is now provided that only one member of the Commission of Fisheries will be engaged in the seafood industry. It is recommended that this be amended to provide that all of the members of the Commission may be engaged in said industry.

The Commission feels that there should be a full time conservation and repletion officer appointed by the Commission, said officer to have charge of the conservation measures of the Commission in the oyster and shellfish repletion program. It is felt that the chief inspector should devote his time to law enforcement and should not be charged with supervising the repletion program.

CHAPTER 2

The Commission recommends that provisions in detail be written into Title 28.1 setting out the authority of the Commission to adopt regulations and decide contested matters, and that the procedure for hearings and decisions of the Commission be incorporated in Title 28.1.

The proposed procedure is similar to that found for other administrative agencies in Title 9 of the Code of Virginia. Any acts of the Commission may be appealed to the appropriate Court of record with final appeal to the Supreme Court of Appeals of Virginia.

The Commission is given authority to adopt emergency regulations without publication or public hearing, however, said emergency regulations are to exist for only thirty days.

CHAPTER 3

This chapter contains the provisions related to inspection districts, inspectors and police fleet. The Commission feels that any inspectors appointed by the Commission in the future should have the equivalent of a high school education and should take an examination prepared by the

Commission and the Personnel Division of the Commission, and should undergo a period of formal training relative to their duties and general law enforcements.

CHAPTER 4

This chapter contains the provisions related to fin-fish and fish in general. The Commission recommends that a number of provisions found in this chapter be repealed either for the reason that they are obsolete or unenforceable. The majority of these provisions have existed for over 50 years, a number of which the people in the seafood industry are unaware of and which serve no material purpose.

In recommending the repeal of provisions relating to fishing, the Commission checked with the staff of the Virginia Fisheries Laboratory as to whether or not there was any reason, conservationwise, to retain said provision. In every instance where a repeal has been recommended the Commission has been assured by the scientific personnel of the Virginia Fisheries Laboratory that said provision does not help to preserve or conserve fish, shellfish or other marine organisms.

Section 28-57 continues in force a number of chapters of Acts of Assembly of prior years. In every instance these chapters are related to non-tidal waters of the Commonwealth and it is recommended that this section be reenacted in Title 29 of the Code of Virginia.

There are a number of sections relating to catching of herring or shad which are now obsolete. It is recommended that the State-maintained and operated fish hatchery for the hatching of shad be discontinued.

The Commission recommends that no license be issued by the Commission of Fisheries for a pound net or any other type of fishing stand requiring the use of fishing poles or other devices until and unless all poles or devices placed by said applicant for previous fishing stands have been removed.

CHAPTER 5

The greatest number of recommended changes by the Commission are found in Chapter 5. This chapter deals with oysters, clams and other bivalves. The Commission spent the major portion of its time working on this chapter.

The Commission recommends setting out in one section, 28.1-82, the season for taking oysters from the natural or public oyster beds. The season as set out is the same as is now found in the existing law.

The prohibited patent tonging areas as set out in Section 28.1-83 have the same boundaries as now exist by statute law or by regulation of the Commission of Fisheries.

The Commission feels that there should be a weight limitation of 100 pounds placed on any patent tongs used for taking oysters.

It is recommended that the Commission of Fisheries be given authority to close, reopen and restrict the manner and method of taking oysters from public rocks in specific areas for conservation and repletion purposes.

Article 2 of Chapter 5 of Title 28.1 provides for new taxes on oysters. A minor one is the export tax to be placed on all oysters shipped unprocessed out of the State. The major recommendation pertaining to new

taxes is a substantial increase in the tax on oysters taken from the public rocks which tax shall be based on the market price of said oysters at the time they are taken from the rocks. All taxes collected from this new tax shall amount to approximately a 5 per cent tax on the value of the oysters, which is to be used for replanting shells and seed oysters on public rocks and can be used for no other purpose.

Any person who buys oysters from persons taking oysters from public rocks, whether they be seed oysters or others, shall be registered and licensed as a buyer. This buyer is required by the proposed new statutes to give receipts for all oysters purchased from persons catching or taking oysters from the public rocks and the buyer is held responsible for seeing that the oyster repletion tax is collected and paid to the State of Virginia.

The Commission recommends no change in the Baylor Survey or the survey of the public oyster rocks of the State and it feels that where the lines of the said survey shall have, because of time, become uncertain, they should be re-established by the Surveyor of the Commission of Fisheries.

In Article 5, Chapter 5 of Title 28.1 the Commission recommends that hereafter riparian owners anywhere in Tidewater Virginia shall be eligible for only one-half acre of riparian ground; that riparian ground which is now held by riparian owners in excess of one-half acre shall be deemed to be oyster ground held by said owner under a regular lease. The Commission feels that the one-half acre of riparian ground should not be subject to the annual rent primarily because it costs as much or more to collect the rent as the rent actually brings in. The Commission recommends that in the future no one be permitted to obtain riparian ground out of an area which is under a valid lease. The Commission recommends that the one-half acre of riparian ground be deemed to be attached to the highland and with a transfer or conveyance of the highland the one-half acre riparian oyster ground shall automatically pass to the person to whom the highland was conveyed.

The Commission does not recommend any increase in the amount of rent for oyster grounds at the present time in view of the conditions existing in the industry. It is recommended that any leases made after July 1, 1962, and any renewals of leases made after July 1, 1962, be made subject to a statutory provision that the rent can be increased or decreased at any time by the General Assembly of Virginia. It is recommended that every transfer or assignment of oyster ground shall constitute a new lease of the tract or parcel assigned and the remainder or balance, if any, of the ground remaining under the old lease. It is recommended that the Governor of Virginia on recommendation of the Commission of Fisheries may relieve owners of oyster ground of the payment of rent if there have been a mortality of oysters due to disease at the rate of 50 per cent per year for two or more successive years.

The Commission recommends that all license fees for the taking of oysters remain the same and that a person may not take more than one bushel of oysters or 50 clams for household use in any one day from public ground without first obtaining a license.

It is recommended that a provision be enacted in the law permitting a person who is charged with having uncultured oysters on his boat to post bond for the value of the oysters and then retain possession of the oysters and market them with the provision that if said person is found guilty of having uncultured oysters the cash bond for the value of the oysters shall be forfeited and that if said person shall be acquitted of the charge then

the cash bonds shall be refunded to him. If the persons charged with possessing uncultured oysters do not post cash bond then they are required, as now provided in the statute, to plant the oysters at the direction of an inspector.

It is recommended that packers and shuckers of oysters may be required to sell to the Commission of Fisheries at prevailing market price up to 50 per cent of their output of oyster shells, which shells will be placed on public rocks.

CHAPTER 6

The Commission does not recommend any material change in the laws relating to the taking or catching of crabs.

The scientists are pretty much in agreement that the taking of sponge crabs and the dredging of crabs does not in any way decrease the supply of crabs in future years, that the factor which determines whether there will be a plentiful supply of crabs or not is weather conditions and the temperature and condition of the water at the time the female crabs discharge their eggs into the water.

CHAPTER 7

The Commission recommends that the laws relating to health regulations and polluted seafood be revised to conform to the existing practices of the Department of Health of the State of Virginia and the United States Public Health Service as to analysis and examination of shellfish and shellfish growing areas. It is recommended that the State Health Commissioner be given authority to close shellfish growing areas when there is a pollution emergency without a hearing or investigation provided that said ground must be reopened within 30 days time unless there is a full-fledged investigation or hearing.

The Commission recommends that the practice of buying and selling of polluted shellfish be prohibited, that the only person who may buy polluted shellfish is a person who is going to plant them on ground owned or leased by that person.

With the increase in importation of unprocessed oysters into Virginia it is recommended that all oysters coming into Virginia unprocessed be deemed to come from polluted areas and be handled accordingly unless and except those unprocessed oysters which are accompanied by certification by the proper health or seafood agency of the state wherein said oysters were grown, that said oysters were taken from non-polluted areas.

CHAPTER 8

It is recommended that all criminal violations of new Title 28.1 shall be deemed to be misdemeanors and punishable by fines up to \$1,000.00 and/or jail sentences up to one year with the exception of larceny and the said larceny would be punishable as a misdemeanor or felony dependent on the value of the object or the goods or seafood products stolen. The Commission feels that a fine of \$1,000.00 and a jail sentence of one year is adequate for any offense which would be committed under the seafood laws.

It is further recommended that the only forfeiture provisions relating to boats and other equipment illegally used in the taking and handling of seafood which should be contained in law are those relating to forfeiture

of boats and equipment used to dredge oysters from public rocks and forfeiture of boats and equipment used to take food fish by purse nets or trawl nets within the inland waters of Virginia.

CHAPTER 9

It is recommended that the name of The Virginia Fisheries Laboratory be changed to The Virginia Institute of Marine Science and that said institute shall continue under the control of the College of William and Mary and the Commission of Fisheries.

It is recommended that the institute shall conduct studies and investigations of all phases of seafood and sports fishing industries and may conduct studies and investigations of other segments of the maritime economy.

CHAPTER 10

This chapter contains the compacts and joint laws with other states, namely the Atlantic States Maritime Fisheries Compact, and the Potomac River Compact with the State of Maryland. It is recommended that Chapter 8.1 of Title 28 of the existing laws relating to seafood which is titled "Potomac River Oyster Commission," be repealed as this law has never been enacted by the State of Maryland. It is recommended that the laws found in Sections 28-219 through 28-237 Potomac River Statute, as now found in existing laws be reenacted and continued until the new Potomac River Compact of the State of Maryland goes into full effect and force; and upon the putting into effect of the new Potomac River Compact these laws be repealed.

GENERAL COMMENTS

The recommendations made by the Commission are those for a major revision of the seafood laws of the State of Virginia to continue in effect and force for a number of years without any material changes. The Commission recognizes the critical condition of the seafood industry in the State of Virginia as a whole and, in particular, the oyster industry at the present time. The Commission feels that the recommended new Title 28.1 gives the Commission of Fisheries, with the aid and advice of the Virginia Institute of Marine Science, ample legal authority and leeway to function under the present existing conditions.

The Commission recommends that there be a substantial appropriation made to the Commission of Fisheries by the 1962 Session of the General Assembly to be used exclusively for repletion purposes, said appropriation is to be used to plant shells and seed oysters on those public rocks limited in the areas which have not been affected by the present disease which is destroying a large portion of the oysters.

The Commission feels that the State of Virginia has the largest and best seed oyster producing area in this country and probably in the world and feels that the State of Virginia should do everything possible to assure that as large a portion of these seed oysters as practicable is planted in Virginia waters so that said seed oysters may grow into marketable oysters in Virginia and be processed in Virginia. It is felt that this would aid the economy of Virginia as a whole and particularly the economy of the Tidewater area of Virginia.

All of the persons connected with the oyster industry who testified before the Commission were in complete agreement that the James River seed beds were vital to the industry in Virginia; that the beds should be protected; that no changes be permitted in the James River unless it is first assured that said changes will not affect the seed beds.

The Commission feels that the seafood and maritime industry of Virginia can be a great boost to the entire economy of Virginia, that it should be further developed and encouraged to grow. That the greatest problem confronting these industries in the future is pollution, organic, inorganic, and radio-active. We must stay abreast of this problem.

The Commission has worked on this study and report for over fifteen months. Public hearings were held in Accomack, Warsaw, Gloucester, Norfolk, and Newport News. Meetings were held with representatives of the Health Department of the State of Virginia and scientists on the staff of the Virginia Fisheries Laboratory. In every instance where a change in or repeal of an existing law has been recommended, assurances have been received from marine biologists that said change will not be to the detriment of the conservation of fish and shellfish.

The Commission wishes to express its appreciation to the Virginia Fisheries Laboratory for its aid and guidance in its work, and to the Division of Statutory Research and Drafting, the personnel of which served as Secretary of the Commission and did an admirable job in keeping and recording the minutes and deliberations of the Commission.

Respectfully submitted:

COMMISSION ON THE REVISION OF
LAWS RELATING TO FISH, OYSTERS,
AND SHELLFISH

Respectfully submitted,

RUSSELL M. CARNEAL, Chairman

VICTOR P. WILSON, Vice-Chairman

MARVIN L. AMORY

WALTHER B. FIDLER

FRED GARRETT, JR.

*WILLIAM J. HARGIS, JR.

MILTON T. HICKMAN

E. RALPH JAMES

T. D. MCGINNES

BLAKE T. NEWTON

MAYWOOD C. SHACKELFORD

ROBERT S. STERLING

HARRY M. THOMPSON

*See Statement below.

STATEMENT BY DOCTOR WILLIAM J. HARGIS, JR.

The suggested changes in Title 28 are generally satisfactory. However, because several matters pertaining to the organization of the academic affiliate are somewhat uncertain and the need for changes in details might arise as a result of the actions of the forthcoming General Assembly, certain changes may be necessary. Alternate proposals for Chapter 9, which pertains to the organization and operations of the Virginia Fisheries Laboratory (Virginia Institute of Marine Science) of Title 28 designed to cover conceivable changes have been prepared, and will be brought forward if the occasion demands. Aside from this possibility I approve the report.

William J. Hargis, Jr.

A BILL to revise, rearrange, amend and recodify the general laws of Virginia relating to fish, oysters and shellfish; to that end to repeal Title 28 of the Code of Virginia, which title includes Chapters 1 to 12 and §§ 28-1 to 28-258, inclusive, of the Code of Virginia, as amended, which title relates to fish, oysters and shellfish; to amend the Code of Virginia by adding thereto, in lieu of the foregoing title, chapters and sections of the Code repealed by this act a new title numbered 28.1, which title includes ten new chapters numbered 1 to 10, both inclusive, and new sections numbered 28.1-1 to 28.1-226, both inclusive, relating to fish, oysters and shellfish and to repeal all acts and parts of acts in conflict with the provisions of this act.

Be it enacted by the General Assembly of Virginia:

1. That Title 28 of the Code of Virginia, which title includes Chapters 1 to 12 and §§ 28-1 to 28-258, inclusive, of the Code of Virginia, as amended, is repealed.

2. That the Code of Virginia be amended by adding thereto, in lieu of the title, chapters and sections of the Code of Virginia herein repealed, a new title numbered 28.1, ten new chapters numbered 1 to 10, both inclusive, and new sections numbered 28.1-1 to 28.1-226, both inclusive, which new title, chapters and sections are as follows:

TITLE 28.1

FISH, OYSTERS, SHELLFISH, OTHER MARINE LIFE

CHAPTER 1

COMMISSION AND COMMISSIONER OF FISHERIES

§ 28.1-1. *Definitions.*—As used in this title:

“*Commission*” shall be taken to mean the “Commission of Fisheries”.

“*Commissioner*” shall be taken to mean “Commissioner of Fisheries”.

“*Fish*,” “*fishes*” or “*shellfish*” shall be construed to include porpoise, fishes, oysters, clams, scallops, mollusca, crustaceans, terrapins, marine mammals and all other seafood.

“*Fishing*” or “*fisheries*” shall be construed to include all operations involved in using, setting, taking, catching, or operating apparatus employed in killing, taking or catching the same, or in transporting and preparing the same for market.

“*Marine fish*,” “*shellfish*” and “*organisms*” shall be those species which spend the major portion of their lives in marine or estuarian waters (shad, herring, alewives and striped bass or rock fish) are considered to be marine fish; sunfishes, crappies, catfish and carp are not.

“*Resident*” shall be any person who has actually resided in Virginia for twelve months.

“*Shoals*” shall be taken to mean water of less than six feet in depth at mean low water.

§ 28.1-2. *What constitutes “Tidewater Virginia”.*—Tidewater Virginia, as used in this title, is defined to embrace the following counties:

Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, Nansemond, New Kent, Norfolk, Northampton, Northumberland, Prince George, Prince William, Princess Anne, Richmond, Southampton, Stafford, Surry, Sussex, Westmoreland, and York; and the cities of Alexandria, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Portsmouth, Richmond, South Norfolk, Suffolk, Virginia Beach, and Williamsburg.

§ 28.1-3. *Jurisdiction of the Commission.*—The jurisdiction of the Commission of Fisheries shall extend to the fall line of all tidal rivers and streams and the Commission shall have jurisdiction over all commercial fishing and all marine fish, marine shellfish, and marine organism below said fall line on all tidal waters of the Commonwealth.

§ 28.1-4. *Chairman and members of the Commission.*—The Commission of Fisheries shall consist of a chairman and four additional members. They shall be appointed by the Governor, subject to confirmation by the General Assembly, if in session when such appointments are made, and if not in session, then at its next succeeding session. The chairman, who shall be an experienced administrator with knowledge of seafood and marine affairs, shall be appointed as such by the Governor. The chairman shall be Commissioner of Fisheries and shall devote full time to the duties of the office.

§ 28.1-5. *Terms of office and vacancies.*—The chairman and two members of the Commission shall hold office at the pleasure of the Governor for terms coincident with the term of each Governor making the appointments, or until their successors shall be appointed and qualified, respectively. The remaining two members of the Commission shall be appointed to hold office at the pleasure of the Governor for a term of four years each, or until their successors shall be appointed and qualified, respectively; provided, that the appointment of such two members shall be made to expire on the thirtieth day of June of every fourth year after nineteen hundred and forty-eight. No person except the chairman shall be eligible to serve for or during more than two successive terms; provided, however, any person heretofore or hereafter appointed to fill a vacancy shall be eligible for two additional terms after the expiration of the term of the vacancy he was appointed; and incumbency during the current term when this amendment takes effect constitutes the first of the two successive terms with respect to eligibility for appointment. Vacancies shall be filled for unexpired terms in the same manner as original appointments are made.

§ 28.1-6. *Oath; delivery of commissions of members.*—The Commissioner and the associate members shall take the oath prescribed by section thirty-four of the Constitution before a court of record of any county or city wherein such member resides. The commission of each member shall be forwarded by the Governor to the clerk of the court of record of the county or city of which such member is a resident, and shall be delivered to such member on the taking of the oath and the giving of the bond prescribed in the following section.

§ 28.1-7. *Bonds required.*—The Commissioner shall enter into bond in the penalty of ten thousand dollars, with surety to be approved by the Governor, payable and conditioned as required by § 49-12.

§ 28.1-8. *Compensation.*—The Commissioner shall receive a salary to be fixed by the General Assembly and payable out of the appropriation made for the Commission of Fisheries. The associate members shall receive a per diem of twenty dollars when actually serving and actual traveling expenses incurred in attending their duties as members of the Commission.

§ 28.1-9. *Powers of Commissioner and associate members.*—The Commissioner and the associate members shall jointly exercise all of the powers herein conferred, except that it is the intent of this section that the Commissioner shall, except as otherwise provided, be wholly responsible for the enforcement of the fish and shellfish laws and for the appointment of all employees.

§ 28.1-10. *Meetings.*—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.

§ 28.1-11. *Office; records open to examination.*—The Commissioner shall establish and equip a permanent office at some convenient place in the city of Newport News. All records in the office shall be open at all times to the examination of the Governor, Auditor of Public Accounts, or their accredited agents, or any interested person. The office of the Commission shall be kept open for transaction of business throughout each year, in conformity with the rules and regulations of the Commonwealth.

§ 28.1-12. *Appointment and control of employees.*—The Commissioner is authorized to appoint all of the officers and employees of the Commission of Fisheries, including all inspectors and police boat captains, and shall have full control of all the employees of his department, excepting the associate members. He shall employ such agencies and employees as the good of the service may, in the opinion of the Commission, require, and all such employees shall be subject to his orders.

§ 28.1-13. *Commissioner to enforce laws and require performance of duties.*—The Commissioner shall faithfully, impartially, and efficiently enforce all of the laws of this State relative to the fish and shellfish industry in the tidewaters of the Commonwealth, or under the jurisdiction or under the joint jurisdiction of the Commonwealth, and shall see that all laws relating to fish and shellfish are enforced and observed. It shall also be the duty of the Commissioner to see that the employees faithfully perform the duties prescribed for them by law, and observe such rules and regulations as may be laid down by the Commission or Commissioner for their government.

§ 28.1-14. *Purchase, lease or sale of boats, nets and other equipment.*—The Commissioner with the approval of the Commission of Fisheries is authorized to purchase or rent such boats, nets, and other equipment as may be necessary to enable the Commissioner and his assistants to perform the duties imposed on them by law; and the Commissioner is also authorized with the approval of the Commission to sell, exchange, charter, lease, rent, or repair any boats or other equipment belonging in the service; and in the case of sale or exchange, may re-invest the proceeds in another boat or boats, or equipment.

§ 28.1-15. *Reports of employees.*—All employees shall be required to make such reports to the Commissioner at such times as the Commissioner or Commission shall direct.

§ 28.1-16. *Investigations by Commissioner.*—It shall be the duty of the Commissioner to investigate from time to time any and all matters

affecting the seafood industry, and the Commission shall have the authority to hear and determine all questions arising out of the official acts of its employees.

§ 28.1-17. *Annual and other reports to Governor and General Assembly.*—It shall be the duty of the Commission to make a biennial report to the Governor, and a report to the General Assembly, at each regular session. In such reports the amounts of revenue derived from the fish and shellfish industries under the supervision of the Commission, and also the expenditures of the Commission shall be plainly set forth. The condition of the fish and shellfish industries under the supervision of the Commission shall be discussed, and such legislation as the Commission may think advisable for the betterment, protection, and conservation of such industries shall be recommended. The Commission and Commissioner; either or both, shall be required to make such reports to the Governor at such times as the Governor shall direct. Such recommendations to the Governor relative to legislation for the advancement of the fish and shellfish industries shall be transmitted by the Governor, together with his recommendations, to the General Assembly at its next succeeding session.

§ 28.1-18. *Who to have no interest in fisheries.*—No inspectors, captains or other employees of the Commission of Fisheries shall be engaged for market or profit in any fish or shellfish industry in Virginia, either directly or indirectly, but this section is not applicable to members of the Commission.

§ 28.1-19. *Employment of civil engineer and assistant.*—The Commissioner of Fisheries is authorized to appoint, with the consent of the Commission, a competent civil engineer and assistants thereto. It shall be the duty of such civil engineers to make, under the supervision of the Commissioner of Fisheries, a resurvey, where necessary, of the Baylor survey within the State, and to make surveys, where necessary, of all oyster-planting grounds heretofore leased or assigned by the State, together with such other surveys and resurveys of natural oyster rocks and shoals as may be deemed necessary and proper by the Commissioner of Fisheries.

§ 28.1-20. *Conservation and repletion officer.*—The Commission of Fisheries shall appoint a conservation and repletion officer, who at the direction of the Commission and the following advice and recommendations of the Director of the Laboratory, shall be in charge of the oyster and shellfish repletion program, and have such other duties as the Commission shall prescribe.

§ 28.1-21. *When licenses terminate; proration.*—All licenses issued by the Commission of Fisheries shall be on an annual basis and shall expire on December thirty-one of the year in which issued.

§ 28.1-22. *Destruction of duplicate licenses and invoices.*—The Commission may destroy or otherwise dispose of duplicate and triplicate sets of licenses and the duplicate invoices or vouchers after they have been audited by the Auditor of Public Accounts.

CHAPTER 2

PROCEEDINGS, ACTIONS & REGULATIONS OF THE COMMISSION

§ 28.1-23. *Authority to make regulations.*—The Commission shall have authority to make such regulations as it deems necessary to promote

the general welfare of the Seafood Industry and to conserve and promote the seafood and marine resources of the State, which regulations do not conflict with the provisions of statutory law.

§ 28.1-24. *Publication of proposed regulations.*—No regulation of general application shall be promulgated by the Commission until the expressed terms or an informative summary 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, or if the regulation has only local application in the locality to which it applies, and a copy is on file in the office of the Commission of Fisheries and the office of the Division of Statutory Research and Drafting, open to inspection to the general public. Such publication and filing must be not less than ten days nor more than thirty days prior to the day on which the public hearing on the proposal is to be held. The published notice shall include a statement of the time, place, and nature of the hearing.

§ 28.1-25. *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, welfare, protection of the seafood industry, or natural resources or marine animals, the Commission may promulgate the necessary regulation, in which the regulation shall forthwith be published and filed as prescribed in § 28.1-24. No regulation adopted as an emergency regulation shall remain in effect longer than thirty days unless a public hearing is held as prescribed in § 28.1-26 after being advertised as prescribed in § 28.1-24.

§ 28.1-26. *Hearing on proposed regulation.*—A public hearing shall be held by the agency at the time and place named in the notice prescribed in § 28.1-24, and opportunity shall be afforded all interested persons to be heard and to submit objections, amendments, evidence and arguments. The regulation may be adopted in the form in which it was filed, or as amended at the hearing, provided the amendments do not alter the main purpose of the regulation.

§ 28.1-27. *Distribution of new regulations.*—A copy of any regulation adopted by the Commission of general application shall be sent to the Division of Statutory Research and Drafting, the Clerks of the Courts of record of all counties and cities located in the Tidewater section of Virginia, and to all inspectors of the Commission.

§ 28.1-28. *Right of petition to Commission.*—Any interested person may petition the Commission requesting the promulgation, amendment or repeal of any regulation.

§ 28.1-29. *Judicial review of validity of regulations.*—The validity of any regulation of general application may be determined upon petition for a declaratory judgment thereon addressed to the Circuit Court of the City of Richmond, or Corporation Court of the City of Newport News by any person who might be adversely affected by its enforcement and who alleges that it is invalid; provided, that the validity of any regulation of local application only, may be determined by such petition addressed to the Court of record of the county or city wherein the application is applicable. A copy of the pleading shall be served on the Commission at its office in Newport News. An appeal may be taken from the decision of the Court of record to the Supreme Court of Appeals in the same manner that other appeals are made.

The General Assembly may by resolution nullify any regulation of the Commission.

§ 28.1-30. *Hearings before Commission.*—Any person whose rights, duties or privileges, including matters relating to licenses, shellfish planting grounds, fishing stands, have been or may be affected by any action or in action of an agency without a formal hearing may demand in writing a formal hearing of his complaint, or on the action of the Commission affecting his rights, and a hearing thereon shall be held as soon as practicable before the Commission. 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 in any matter, shall be given at least five days' notice of hearing by first class mail of the time, place, and issues involved. An opportunity shall be afforded all parties to present evidence and argument with respect thereto. The proponents for any regulation or matter shall be heard first, then the opponents. The Commissioner, if present, or any member of the Commission, if the Commissioner is not present, shall preside over the hearing. An orderly procedure shall be followed, and the rules of evidence shall be adhered to insofar as possible.

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

The Commission or Commissioner shall have power to issue subpoenas and subpoenas 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 reported by the agency to the Corporation Court of the City of Newport News and the proceedings thereon shall be as provided in § 8-302.

§ 28.1-31. *Procedure of hearing.*—Every party shall have the right to cross-examine adverse witnesses including inspectors and officers of the Commission and to submit rebuttal evidence.

The decision of the agency 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 have a stenographic report made of the hearing at cost to the party; a copy of such report shall be made available to the Commission, if it so requests, at the cost of the Commission.

§ 28.1-32. *Findings of Commission.*—In all contested matters the finding award, action or judgment of the Commission shall be reduced to writing and copies thereof sent to the parties noting an appearance.

§ 28.1-33. *Judicial review in contested cases.*—(a) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to judicial review thereof under this chapter either in the Circuit Court of the City of Richmond, Corporation Court of the City of Newport News, or in any court of record having jurisdiction in the city or county in which is located his property affected by the decision complained of.

(b) Proceedings for review shall be instituted by filing a notice of appeal with the Commission within thirty days after the date of the order and giving a copy thereof to all other parties.

(c) With his notice of appeal, the appellant shall deliver to the Com-

mission a transcript of the testimony if it was taken down in writing, or, if it was not taken down in writing, a statement of it in narrative form.

(d) Within thirty days thereafter, the Commission shall transmit to the clerk of the court to which the appeal is taken :

(1) A copy of the request, if any, for, or notice of, the formal hearing.

(2) A copy of the order appealed from.

(3) A copy of the notice of appeal.

(4) The transcript or statement of the testimony filed by appellant, together with a certificate that it is correct or that it is correct except in specified particulars.

(5) The exhibits.

(e) The failure of the Commission to transmit the record within the time allowed shall not prejudice the rights of the appellant. The court, on motion of the appellant, may issue a writ of certiorari requiring the agency to transmit the record on or before a certain date.

(f) The court, sitting without a jury, shall hear the appeal on the record transmitted by the Commission and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. And the court, in its discretion, may receive such other evidence as the ends of justice require.

(g) The court may affirm the decision of the Commission or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the findings, conclusions or decisions are (1) in violation of constitutional provisions; or (2) in excess of statutory authority or jurisdiction of the agency; or (3) made upon unlawful procedure; or (4) unsupported by the evidence on the record considered as a whole; or (5) arbitrary, capricious; or an abuse of discretion.

(h) The filing of a notice of appeal shall not operate to stay the enforcement of the order. The appellant, at any time after the filing of his notice of appeal, may apply to the court to which he has appealed for a stay. The application shall be on motion after notice to the Commission, and a stay pending the appeal shall be granted unless it appears to the court that immediate enforcement of the order is essential to the public health or safety. In the order granting a stay the court may make any provision required to serve the ends of justice, including the granting or continuing in effect of a license.

(i) Nothing in this chapter shall prevent resort to other means of review, redress, or trial de novo, provided by law.

§ 28.1-34. *Appeals to Supreme Court of Appeals.*—From the final decision of the court of record an appeal shall lie to the Supreme Court of Appeals in the manner provided by law for appeals in civil cases.

§ 28.1-35. *Posting of notices.*—The return of any employee of the Commission as to the posting of any notices required under this title or affecting any regulation of the Commission shall be conclusive evidence of the same.

§ 28.1-36. *Revocation of licenses.*—The Commission, after ten days' notice to any person having a license issued by it may revoke such license for violation of any of the provisions of this title. A hearing shall be heard

by the Commission and an appeal may be taken to the Courts as provided in this chapter.

CHAPTER 3

INSPECTION DISTRICTS, INSPECTORS, POLICE FLEET

§ 28.1-37. *Inspection districts.*—The Commission of Fisheries shall divide the territory over which it has jurisdiction into districts and in doing so it shall redistrict such territory with a view to reducing the number of inspection districts to the smallest number, commensurate with the efficient enforcement of the fish and shellfish laws of this state. This power shall be a continuing power and may be exercised at any time.

§ 28.1-38. *Appointment of chief of inspectors.*—The Commission shall appoint a chief of inspectors to be charged with directing enforcement.

§ 28.1-39. *Appointment of inspectors.*—The Commissioner of Fisheries shall appoint for each of such districts one or more inspectors.

§ 28.1-40. *Time devoted to duties; compensation.*—Each inspector shall be required to devote at least a normal work week exclusively to the performance of his duties; and each inspector shall be paid for such services such compensation as may be provided in accordance with law for the purpose.

§ 28.1-41. *Training and qualification of inspectors.*—The Commissioner of Fisheries shall establish a training program for all inspectors. After July 1, 1962, no new inspector may be appointed who is not a high school graduate or equivalent, and who has not satisfactorily passed an examination prepared by the Commissioner and the Personnel Division of the Commonwealth.

§ 28.1-42. *Oath and bond.*—Each inspector appointed by the Commissioner shall qualify before the circuit or corporation court of the county or city in which he resides, or in which his district may be, or before the clerk thereof in vacation, by taking the oaths prescribed by law and entering into a bond in a sum fixed by the Commissioner, with sufficient cash or corporate surety to be approved by such court or clerk, in the penalty not to exceed five thousand dollars nor to be less than five hundred dollars; payable and conditioned as required by law, and the clerk of such court shall transmit a copy of the bond to the Commissioner within thirty days from its execution. The premium on every such bond shall be paid out of funds of the Commission.

§ 28.1-43. *Collection of licenses, rentals, fines, etc.*—The Commission may designate such trustworthy persons in the several districts to sell licenses, and collect rentals and other sums due it, as it deems circumstances require; all such persons shall be bonded in such sum as will protect the Commission from any loss. All provisions applicable to such sales and collections by inspectors shall apply to such officers and agents.

§ 28.1-44. *Fees.*—Each inspector, agent or officer shall collect the following fees for services herein enumerated in the issuance of licenses: One dollar and fifty cents for assigning oyster-planting grounds including

riparian grounds; three dollars for assigning of bathing grounds; one dollar for issuing permits as required by this title; and such other fees as are specified under other sections of this title pertaining to fish, crabs, clams and other shellfish.

§ 28.1-45. *Reports of collections; receipts and accounts.*—Each inspector shall at such times as may be required of him, make a complete report to the Commissioner of collections during the preceding month from every source under his supervision, according to the forms furnished him by order of the Commission, accompanied by all revenues collected during the preceding calendar month. The inspector shall give receipts for all rents, fines, taxes and other sums collected by him only upon such blank forms as may be furnished him by the Commission, and shall keep accounts of all such collections and records of all his official acts in books to be furnished him by the Commission, which books and record shall be and remain the property of the State, subject at all times to examination by the Commission, or its agents or attorneys, and be delivered to such inspector's successor in office or to the Commission.

§ 28.1-46. *Police fleet.*—The police fleet shall consist of the various boats now operated by the Commission of Fisheries, with such additions or changes as the Commission may from time to time make, either in accordance with special enactment of the General Assembly or by reason of the general powers conferred upon it by law.

CHAPTER 4

FISH AND FISHING GENERALLY

ARTICLE 1

FOOD FISH

§ 28.1-47. *License to residents to fish with certain nets.*—Any resident of this State desiring to take or catch fish with any device other than a hand line in any of the tidal waters of the Commonwealth, or tidal waters within the jurisdiction or under the joint jurisdiction of this Commonwealth, shall apply to the inspector of the district within which the person so applying resides, except that the applicant for license to fish with a fixed device shall make application in writing to the inspector of the district in which the fixed device is proposed to be located, and state on oath the true name or names of the person or persons applying for license, that they are, and have been for twelve months next preceding, residents of this State, the place at which the net, seine, fyke, weir, or other device is to be fished; and that during the period of the license, which shall be from the first day of January to the thirty-first day of December, inclusive, of each year, they will not violate any of the laws of this State in relation to the taking and catching of fish.

§ 28.1-48. *License tax for fishing in tidal waters; register mark.*—
(1) Amount of tax; to whom paid.—Every resident who shall apply for license to catch or take fish from the tidal waters of the Commonwealth, or the waters within the jurisdiction of the Commonwealth, shall pay to the inspector of such district a specific license tax, which shall be in lieu of all taxes levied upon such persons for taking and catching fish, or for selling the product thereof, as follows:

- (a) On each pound net five dollars and fifty cents;
- (b) On each float or stake gill net of six hundred feet in length and under, three dollars; and for each additional thirty feet or fraction thereof, fifteen cents;
- (c) On each thresh net, skirt net, slat traps, prop nets, trap net, or similar device, three dollars;
- (d) On each fyke net head, weir, or similarly fixed device, two dollars and fifty cents;
- (e) On fish or eel pots not exceeding five in number, two dollars and fifty cents; on each additional pot on the same license, fifteen cents;
- (f) On each fish trot line, two dollars and fifty cents;
- (g) On each person using or operating a fish dip net, two dollars;
- (h) On each haul seine used for catching fish, under five hundred yards in length, fifteen dollars;
- (i) On each haul seine used for catching fish, from five hundred yards in length to one thousand yards in length, forty-five dollars;
- (j) On each sturgeon gill net or trammel net, seven dollars and fifty cents;
- (k) On each sturgeon sweep net or haul seine, thirty-eight dollars.

(2) Licenses for other devices.—The Commission of Fisheries shall have power to establish a license commensurate with other licenses in an amount not less than one dollar nor more than one hundred dollars for any device used for taking fish or shellfish in the waters of the Commonwealth, or waters under the jurisdiction of the Commonwealth, that is not mentioned above, and which has been put in use.

(3) Register mark and how displayed; length of seine.—Inspectors issuing such licenses shall furnish to the person to whom such licenses are issued a number or register mark, to be placed by the fishermen on their boats or fixed fishing devices. Provided, however, that it shall be unlawful for any person, firm, or corporation to use, operate, set or cause to be used, operated, or set, any such drift, or haul seine exceeding in length one thousand yards. If the license be for a fixed fishing device, the holder of the license shall fasten such register mark or number securely to one of the offshore stakes of the fishing device, but such device may be moved at any time within the same inspection district during the season for which the license therefor has been secured with the approval in writing of the inspector without the payment of any additional license. If the license be for a haul seine, drift net, purse net or similar fishing device, the holder of such license shall fasten the register mark number securely at a conspicuous place on the starboard side of the boat used in fishing such device.

§ 28.1-49. *Size of fish that may be caught.*—It shall be unlawful to take, catch or have in possession any sturgeon less than five feet in length; or any rock fish of less than twelve inches in length or more than twenty-five pounds in weight except that rock fish more than twenty-five pounds in weight may be lawfully taken by hook and line or lure; or any trout less than nine inches in length; or any spot less than six inches in length; or any bluefish less than eight inches in length; or any bonito fish less than twenty inches in length; or any croakers (grumblers) less than seven inches in length; or any black drum bass less than twelve inches in length;

or any red drum bass less than twelve inches in length; or any hog fish less than six inches in length; or any mackerel less than ten inches in length; or any mullets less than six inches in length; or any pompanos less than seven inches in length; or any porgie or moon fish less than ten inches in length; or any star-butter fish less than six inches in length; or any other butter fish less than seven inches in length; or any round-head or sea mullet less than seven inches in length; or any sea bass less than five inches in length; or any sheepshead less than twelve inches in length; or any black bass less than eight inches in length; or any mud shad less than seven inches in length; or any white sand perch less than five inches in length; or any yellow or ring perch less than seven inches in length; or any blue nose perch less than seven inches in length; or any bream less than eight inches in length; or any hickory shad or any other shad less than ten inches in length; or any bullhead catfish less than nine inches in length; or any Mississippi or blue channel catfish less than eleven inches in length; or any white channel catfish less than ten inches in length; or any flounder less than twelve inches in length. All such measurements are to be from nose to tip of tail.

Any such fish caught by any person shall be at once returned to the water, unless obviously injured or dead.

Whenever any fisherman or dealer or any other person, each of whom is herein called owner, has in his possession a lot or quantity of fish which weighs more than one hundred pounds in the aggregate, a one hundred pound lot may be separated according to size, and if it is found that in such a lot so separated the number of fish under the minimum size prescribed herein equals or exceeds ten per centum of the whole number of fish in the lot so separated, such owner shall be deemed to be guilty of violating the provisions of this section. In the event the owner has in his possession a lot or quantity of fish which weighs not more than one hundred pounds and it is found that in such lot the number of fish under the minimum size prescribed herein equals or exceeds ten per centum of the whole number of fish legally retained, in such lot, such owner shall be deemed to be guilty of violating the provisions of this section.

If any dealer offers for sale any fish under the sizes hereinbefore stated, he shall be deemed guilty of violating the provisions of this section.

§ 28.1-50. *Channel bass that may be taken in one day.*—Only two channel bass (red drum) over thirty-two inches in length may be taken in any one day by any person.

§ 28.1-51. *Size of mesh and length and depth of certain nets; pound net, haul seine and shallow water defined.*—It shall be unlawful for any person to use a pound net, head, or picket, or mullet net (that is under two hundred yards long) having a smaller mesh than two inches, stretched measure, after having been tarred, for the purpose of catching food fish. Nor shall any haul seine or mullet net be longer than one thousand yards in length and if over two hundred yards long, shall not have mesh less than three inches, stretched measure, and no mullet net shall be deeper than forty meshes, provided, further, that no license shall be issued to set a pound net or other fixed fishing device on an established and presently used haul seine stand, except that this provision shall not affect a pound net stand presently licensed as such.

Any net having a funnel mouth, round mouth, or square mouth, with head exposed above water, shall be construed as a "pound net." A "haul seine" is any net set out from the shore or shallow water. The term "shal-

low water” as used herein shall mean any waters not exceeding eight feet in depth at mean low tide. Every haul seine shall have one and the same end stationary at all times while the seine is being used, except when closing the net the stationary end may be changed.

§ 28.1-52. *Length of fishing structures.*—No single fishing structure shall have a total length greater than 1,200 feet, except in waters on the Eastern Shore south of the entrance to Eastern Bay, where the allowable lengths of single structures shall be not more than 1,800 feet. Between successive fishing structures in the same row, clear and unobstructed intervals of at least 200 feet shall be maintained, and adjoining rows of fishing structures shall be at least 200 feet 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 of all stages of the tide. Any stake not complying with this condition shall be withdrawn.

No fishing device shall be placed within three hundred (300) yards of the side or end of any other fishing device, unless in the same row, but this shall not apply to a licensee who desires to place his own nets closer than 300 yards to each other, and will not apply to fishing by hook and line.

§ 28.1-53. *Distance nets may extend across body of water or channel.*—It shall be 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 said body of water from mean low water to mean low water at the point where said net or nets are set or fished. Said net or nets shall not be set or fished more than one-half the distance across the channel of said river, bay, estuary, creek or inlet.

§ 28.1-54. *Concealing name or number of vessel; carrying patent tongs, etc., while fishing for menhaden.*—If any captain, master, or owner cover or conceal, or permit to be covered or concealed, the name or number of any vessel for the catching, or taking, or conveying of fish, oysters, clams, scallops, or crabs, or shall carry or permit to be carried aboard his vessel when employed in fishing for menhaden any scrape, dredge, or patent tongs, he shall upon conviction thereof be guilty of a misdemeanor.

§ 28.1-55. *Killing fish by means of explosives, drugs or poisons.*—It shall be unlawful to kill any species of fish by means of explosives, drugs, or poisons at any time in any of the waters of the Commonwealth or in any of the waters under its jurisdiction.

§ 28.1-56. *Possession or sale of fish taken by means of explosives, drugs or poisons.*—It shall be unlawful to have in possession, or to sell or offer to sell, within the Commonwealth, any fish killed or captured by means of explosives, drugs or poisons, whether the same were so killed or captured within or without the jurisdiction of Virginia.

§ 28.1-57. *What fishing by nonresidents is unlawful.*—If any person, not a resident of this State, take or catch fish in any of the tidal waters thereof, in any other way than by line, rod, or pole held in hand, he shall be deemed guilty of a misdemeanor. Any resident of this State who enters into a partnership or other agreement with intent to defeat the object of this section shall be deemed guilty of a misdemeanor.

ARTICLE 2

FISH FOR MANUFACTURE INTO FISH MEAL, OIL, ETC.

§ 28.1-58. *Food fish not to be taken, bought, or sold for manufacture into fish meal, oil, etc.; percentage allowable.*—It shall be unlawful to take, catch or round up with purse net for the purpose of manufacture into guano, fish meal, or oil, or buying or selling for such purpose, food fish, to an amount greater than one per cent of the whole catch without immediately opening the net and turning loose any such food fish while yet alive; or for any steamer or other vessel licensed for the purpose of menhaden fishing to catch any food fish for the purpose of marketing the same; or for any person, firm or corporation to have in its possession food fish, to a greater amount than one per cent of the bulk for the purpose of manufacturing them into guano, fish meal, or oil, or for any person to use in any manner any food fish, to a greater amount than one per cent of the bulk for the purpose of fertilizing or improving the soil.

Any person, firm or corporation violating any provision of this section, or having in their possession more than one per cent of food fish, among menhaden caught for the purpose of manufacturing into guano, fish meal, or oil, or buying or selling the same for such purpose, shall be guilty of a misdemeanor, and the license on such person's boat or net shall be revoked for the remainder of the season.

§ 28.1-59. *License to take fish with purse nets for such manufacture.*—(1) Residents.—Any resident person, firm or corporation entitled by law to fish in any of the waters of this Commonwealth, or waters within the jurisdiction of this Commonwealth, desiring to take or catch fish therein with purse nets for the purpose of manufacturing them into oil, fish scrap, fish meal or guano, or for any other purpose, shall first obtain a license therefor, and shall pay to the inspector a specific license tax, which shall be in lieu of all taxes levied upon such person, firm or corporation for taking and catching fish with purse nets, or for selling the products thereof, as follows:

(a) On each sail vessel fishing with purse nets of not more than four hundred meshes deep, twenty-one dollars and fifty cents;

(b) On each sail vessel fishing with purse net of more than four hundred meshes deep, seventy-five dollars;

(c) On each power boat or steam vessel of over twenty horsepower fishing with purse net, one dollar and fifty cents per gross ton, provided the minimum license shall not be less than one hundred fifty dollars and the maximum not more than three hundred dollars;

(d) On each power boat or steam vessel of not over twenty horsepower, fishing with purse net, thirty-seven dollars and fifty cents.

Such inspector shall thereupon grant a license to use such net or other device, and state in such license the name or names of the person or persons who shall use the same, and the amount of tax as prescribed by law; and the term for which such license is granted shall begin on the first day of January in any year and end on the thirty-first day of December of the same year.

It shall be lawful for a resident of this State, except such persons, firms or corporations as may be engaged in the taking or catching of fish for the purpose of manufacturing the same into oil, fish scrap, fish meal

or guano, to employ any vessel or net owned within or without this State for the purpose of taking and catching fish.

(2) Nonresidents.—Any nonresident person, firm or corporation may be licensed to take and catch fish known as “menhaden” with purse nets within the season permitted by law, under the provisions of § 28.1-60, within the three mile limit on the seacoast of Virginia and east of a straight line drawn from Cape Charles Light House to Cape Henry Light House upon compliance with the provisions of such section.

§ 28.1-60. *Nonresidents generally.*—(1) Catching fish for oil or guano prohibited. No nonresident of this State shall take or catch any fish, in the waters of the Commonwealth, or in the waters under its joint jurisdiction, for the purpose of converting the same into oil, fish scrap, fish meal or guano, except as hereinafter provided; nor shall any nonresident be concerned or interested with any resident as partner or otherwise, except as a stockholder in a domestic corporation, in taking or catching fish in any of the waters of this State to be manufactured into oil, fish scrap, fish meal or guano, or in such manufacture, except as hereinafter provided.

(2) Resident not to be interested.—Nor shall any resident of this State be concerned or interested with any nonresident as partner or otherwise, except as stockholder in a domestic corporation, in taking or catching fish in any of the waters of this State to be manufactured into oil, fish scrap, fish meal or guano, or in such manufacture, except as hereinafter provided, or knowingly permit any nonresident to use his name for either purpose.

(3) License for taking menhaden fish. A nonresident person, firm or corporation may take or catch the fish known as “menhaden”, within the three-mile limit on the seacoast of Virginia and east of a straight line drawn from Cape Charles Light House to Cape Henry Light House for the purpose of converting the same into oil, fish scrap, fish meal or guano between the last Monday of May and the first day of December of each year; provided such person, firm or corporation has applied for and obtained license to take and catch such fish within the above defined area and in accordance with the following requirements.

(4) Application for license; affidavit required.—Such nonresident person, firm or corporation shall apply to the Commissioner of Fisheries for such license, at the office of the Commissioner. Before granting such license the Commissioner shall require the applicant applying for the same to disclose by written affidavit;

(a) The true name or names of the person, persons, firm or corporation owning the purse net, seine, vessel or water craft, and all the apparatus thereunto belonging, for which the license is desired; and if it be a firm, the true names and addresses of all the members of such firm; and, if a corporation, the location of the principal office and the names and addresses of the officers thereof.

(b) The name of each and every vessel, steamer or other water craft, and the port in which the same is registered, for which such license is desired.

(c) That during the period of the license the owners and all persons employed by them will not violate any of the laws of this State in regard to the taking and catching of fish in the waters thereof.

Should the Commissioner of Fisheries be fully satisfied that the statements set forth in the affidavit are true and bona fide he shall then grant

a license to such applicant, upon the applicant's payment of the same license fee as set forth for residents in Section 28.1-59; provided, that in the event a resident of Virginia would be required to pay higher license fees in the applicant's state, then such applicant shall be required to pay the same license fee in this State which a resident of Virginia would be required to pay in the applicant's state. Nothing in this section shall be construed to permit fishing west of the aforementioned straight line from Cape Charles Light House to Cape Henry Light House.

(5) Service of process. Every such licensee shall by written power of attorney appoint the Secretary of the Commonwealth and his successor in office, its 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 upon the Secretary of the Commonwealth, or, in his absence, upon the person in charge of his office, and shall be made in duplicate. The provision of § 8-47 shall not apply to process in any action, suit, or motion against such licensee to be served upon the Secretary of the Commonwealth. A copy of such power of attorney, duly certified and authenticated shall be filed with the Secretary of the Commonwealth, and copies thereof duly certified by him shall be received as evidence in all the courts of this State. No judgment shall be entered against the licensee until after the process has been served as set forth for at least ten days.

Whenever lawful process against, or notice to, any such nonresident person, firm or corporation shall be served as hereinabove provided for, the Secretary of the Commonwealth shall forthwith mail a copy of such process or notice to such nonresident person, firm or corporation. For the first process or notice to be so mailed, the Secretary of the Commonwealth shall collect two dollars and fifty cents, and for each additional process or notice to be so mailed the sum of fifty cents, which shall be paid by the plaintiff at the time of such service, and the same shall be recovered by him 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 nonresident person, firm or corporation shall be as valid and binding on such nonresident person, firm or corporation as if such nonresident person, firm or corporation had been a resident and served with process or notice therein.

(6) Penalty for violation.—Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor.

§ 28.1-61. *Application for license for resident to catch fish for manufacture into fish meal, oil, etc.*—General provisions.—Every person, firm, or corporation owning or holding by lease or charter a purse net, seine, or vessel of any description to be engaged in catching fish in any of the waters of this Commonwealth, or waters within the jurisdiction of this Commonwealth, to be manufactured into fish meal, oil, or guano, shall make application to the Commissioner of Fisheries through the inspector for the district in which is located the factory where such are to be manufactured, or in which the applicant resides or has its principal office, for a license to take and catch fish within the waters of this Commonwealth, or waters within the jurisdiction of this Commonwealth, for the purpose aforesaid.

(2) Who shall make application.—If it be a corporation applying for such license, the application shall be made by an officer or one of the directors of such corporation; if the applicant be a partnership, the application

shall be made by a general partner thereof; if the applicant be a joint venture or other firm, by a member thereof; if the applicant be an individual, by such individual.

(3) Form and contents of application.—The application shall be in writing, shall be sworn to by the applicant before a Notary Public or other person authorized to administer oaths, and shall disclose:

(a) The true name or names of the persons, firm, or corporation owning the purse net, seine, or vessel, and all the apparatus thereunto belonging, together with the true name or names of any persons, firms, or corporations holding the same by lease or charter, for which such license is desired; and, if it be a firm, the true names of all the members of such firm; and, if it be a corporation, whether the same be a domestic or foreign corporation, and the location of the principal office thereof.

(b) That all such persons and firm members are, and have been for twelve months next preceding, bona fide residents of the State of Virginia.

(c) The name of each and every vessel, steamer, or other water craft for which such license is desired.

(d) That the applicant will not be concerned or interested with any nonresident of this State, except as stockholders in domestic corporations, in taking or catching fish in the waters of this Commonwealth, or waters within the jurisdiction of this Commonwealth, for the purpose of manufacturing the same into fish meal, oil, guano, or in such manufacture.

(e) That the nets or vessels of any description thus to be employed and for which license is desired are not hold by contract of hire, charter, or other agreement calling for their return at any subsequent time to any nonresident person, firm, or corporation.

(f) The place where the factory which is to manufacture the fish so taken and caught into fish meal, oil, or guano is located.

(g) That, during the period of this license, the applicant will not violate any of the laws of this State in regard to the taking and catching of fish in the waters thereof.

(4) Application of section.—The provisions of this section shall apply only to resident persons, firms, and corporations who, when duly licensed, shall have the right to take and catch fish for the purpose aforesaid in all the waters of this Commonwealth, or waters within its jurisdiction.

§ 28.1-62. *Action of the Commissioner of Fisheries on such application.*—Should the Commissioner of Fisheries be satisfied that the disclosures required by § 28.1-61 have been duly made, and that the application conforms in other respects to the provisions of said section, and upon payment of the license tax specified in § 28.1-59 the inspector through whom, or in whose district the application was made shall issue to the applicant a license for each of the purse nets, seines, vessels, steamers, or other water craft specified in the application, which license shall state the name of the licensee and the name of the vessel, steamer, or other water craft licensed.

If any vessel, steamer, or other water craft so licensed becomes disabled for use during the period of such license, the licensee may, with the consent of the Commissioner of Fisheries, hire or charter a vessel, steamer, or other craft belonging to a nonresident to take the place of the one so disabled for the unexpired period of such license; in which case the inspec-

tor shall transfer the license issued for the disabled vessel, steamer, or other craft to the one so hired or chartered without requiring any additional license therefor, for which transfer the fee shall be one dollar.

The Commissioner of Fisheries may delegate to the various inspectors so much or all of his authority under this section as he may deem expedient; provided, however, that any person, firm, or corporation aggrieved by any action of any inspector exercising such delegated authority shall have the right to appeal to the Commissioner of Fisheries for a review and correction of the actions of such inspector. Such appeal may be made by mailing a statement of the inspector's action, together with the appellant's objections thereto and his grounds for such objections to the Commissioner of Fisheries at the office of the Commission of Fisheries. Upon receipt of such appeal, the Commissioner of Fisheries shall forthwith notify the oyster inspector involved, who shall, within three days, deliver to the Commissioner of Fisheries all papers in his possession concerning the subject matter of the appeal, together with a written statement of his actions in the premises and the grounds therefor. The Commissioner of Fisheries shall issue his ruling granting, transferring, refusing to transfer the license or licenses involved within ten days after the receipt by him of such appeal.

§ 28.1-63. *Appeals from actions of the Commissioner of Fisheries.*—Any person, firm, or corporation aggrieved by any action of the Commissioner of Fisheries taken under the provisions of § 28.1-62 shall have the right to petition the circuit court of the county, or the corporation court of the city, in which is located the factory where the fish were to be manufactured, for a review and correction of the ruling of the Commissioner of Fisheries as provided in Chapter Two of this title.

§ 28.1-64. *Penalty for violation of three preceding sections.*—If any person, firm or corporation use or employ any purse net, seine, vessel, steamer or other craft for the purpose of taking and catching fish in the waters of this Commonwealth, or in the waters within its jurisdiction, or in waters under its joint jurisdiction, to be manufactured into oil, fish scrap, fish meal, or guano, or permit the same to be used or employed by another for such purposes, without first obtaining a license therefor as hereinabove provided; or if any person swear falsely in making application for the certificate aforesaid, or otherwise violate any of the provisions of the three preceding sections, such person, firm or corporation shall be guilty of a misdemeanor.

Any vessel, boat or other craft, her tackle, apparel, anchors, cables, sails, rigging and appurtenances and any troll net or similar device used in the violation of any of the provisions of the three preceding sections shall together with the cargo of such vessel, boat or craft be forfeited to the Commonwealth, such forfeiture to be enforced under the provisions of Chapter 8 of this title. Any property seized under authority of this article shall be held to await the proceedings of information prescribed by such section; and upon such seizure being made, the officer or other person making the same shall forthwith give notice thereof to the Commonwealth's Attorney whose duty it is to file such information.

§ 28.1-65. *Nonresident commanders and fishermen; nonresident stockholders; closed season for menhaden fishing; forbidden nets.*—Nonresidents may be stockholders in domestic corporations authorized to take and catch fish to be manufactured into fish meal, oil, and guano, and to engage in such manufacture. Nothing in this article shall be construed to

prevent a resident licensee from employing nonresidents to command or work licensed purse nets, seines, vessels, steamers, or other craft.

It shall be unlawful for any person, firm, or corporation to take or catch in the waters of this Commonwealth, or waters within its jurisdiction, menhaden fish to be manufactured into fish meal, oil, or guano between the first day of December and the last Monday in May of each year; and it shall also be unlawful for any person, firm or corporation to use in said waters for the purpose of taking or catching menhaden fish for the purpose aforesaid any purse net or other net having, when made, a stretched mesh of less than one and three-quarter inches. Any person, firm, or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor.

§ 28.1-66. *Processing of herring which is unfit for human consumption.*—Notwithstanding any other provision of this article, any person catching herring in pound nets, dip nets, haul seines, and other similar nets, excluding trawl and purse nets, may sell such herring to be manufactured into fish meal, fish oil, or guano, provided that said herring is or has become unfit for human consumption or for processing into food for human consumption. Any manufacturer purchasing said herring which is or has become unfit for human consumption or for processing into food for human consumption, may manufacture said herring into fish meal, fish oil, or guano.

ARTICLE 3

TROLLS, TRAWL NETS AND DRAG NETS

§ 28.1-67. *Trolls, trawl nets and drag nets prohibited.*—It shall be unlawful for any person, firm or corporation to operate, for the purpose of taking or catching fish, a troll or trawl net, drag net, or similar device drawn through the waters by a vessel, boat, or other craft in any waters of the Commonwealth, or waters under the jurisdiction of the Commonwealth, except a regular licensed haul seine, authorized by law; or 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 troll or trawl net, drag net, or similar device.

§ 28.1-68. *Trawling boat not granted license for other fishing device.*—No vessel, boat or other craft shall have a license for any other net or fishing device granted to be used or employed on a boat equipped for trawling, and having thereon a trawl net, except as hereinafter provided.

§ 28.1-69. *Fishing with trawl net within three-mile limit.*—It shall not be lawful to catch fish within the three-mile limit of the Virginia Atlantic shoreline with a trawl net or similar device. Provided, however, the Commission of Fisheries may issue permits to trawl within said three-mile limit, in the waters north of Cape Charles to the Maryland line, during the months of June, July and August of each year.

§ 28.1-70. *License fee.*—A license to fish in the above area with a trawl net or similar device will be granted upon payment of a fee of thirty-seven dollars and fifty cents per annum for each boat so employed, and no part of this fee will be refunded should the area be closed at the order of the Commissioner of Fisheries.

§ 28.1-71. *Prima facie evidence of violation.*—The finding of any vessel, boat, or other craft in the waters of the Commonwealth, or in the waters under the joint jurisdiction of the Commonwealth, equipped for trolling, or trawling, having a trawl net, drag net, or a similar device aboard with fresh or live fish on deck or in the hold thereof, or in any portion of such vessel, boat or craft, shall be prima facie evidence that the operator or operators and master and members of the crew of the vessel, boat or other craft are guilty of trolling or trawling.

§ 28.1-72. *Exemption from article.*—Nothing in this article shall be construed as prohibiting the transportation of fish caught by means of troll or trawl net outside of the territorial limits of Virginia and troll or trawl nets used incident thereto, into Virginia ports to be placed upon the market.

§ 28.1-72.1. *Forfeiture of boats, nets, etc.*—Any vessel, boat or other craft, her tackle, apparel, anchors, cables, sails, rigging and appurtenances and any troll net or similar device used in the violation of any of the provisions of this article shall together with the cargo of such vessel, boat or craft be forfeited to the Commonwealth, such forfeiture to be enforced under the provisions of Chapter 8 of this title. Any property seized under authority of this article shall be held to await the proceedings by information prescribed by such section; and upon such seizure being made, the officer or other person making the same shall forthwith give notice thereof to the Commonwealth's Attorney whose duty it is to file such information.

ARTICLE 4

MARKING OF BOATS, NETS AND OTHER DEVICES, AND RESTRICTIONS

§ 28.1-73—*Commission to provide plates or tags.*—It shall be the duty of the Commission of Fisheries to provide metal plates or tags, of such design or designs, with such letters and figures stamped or painted thereon, as may be deemed proper by the Commission, for the marking or designation of all boats used in taking and catching fish, or shellfish in the tidal waters of the State, and for the marking of haul seines, pound nets, fyke nets, purse nets, drag nets, and other devices for the taking of fish in the tidal waters of this State.

§ 28.1-74. *Inspectors to distribute plates or tags; duty to attach to boats, nets or other devices.*—Such metal plates or tags shall be furnished by the Commission of Fisheries to the various inspectors of this State, who shall furnish the same to the owners and operators of every boat used and employed in the taking of fish or shellfish in the tidal waters of this State, and the same shall thereupon be attached by the owner or operator of such boat to such boat, in such a position thereon as may be designated by the Commission of Fisheries as the proper place to display such metal plate or tag, when the same cannot be attached to the device. It shall also be the duty of each inspector, when issuing a license to any person to operate or set a pound net, fyke net, gill net or other device for the taking of fish, to furnish such licensee with a metal disc or tag, which such licensee shall display upon such part of such pound net, fyke net, gill net or other device as may be prescribed by the Commission of Fisheries.

§ 28.1-75. *License tags for takers of clams or oysters.*—The license to take clams or oysters by hand or tongs or by any dredging device shall

be of some durable material. All such licenses shall be displayed on the starboard side of the boat in a plainly visible location.

§ 28.1-76. *Penalty for failure to attach plate or tag or for permitting its removal.*—Any person, licensed to engage in the fish or shellfish business in this State, who shall fail or refuse to properly attach such metal plate or tag to the boat, pound net, fyke net or gill net for which he has procured a license, or who shall remove or suffer the same to be removed from such boat, pound net, fyke net, gill net or other device, shall be guilty of a misdemeanor.

§ 28.1-77. *Duty to apply for new plate or tag in case of loss.*—Should such metal plate or tag be removed or destroyed by accident or by the force of the sea, or in any other casual manner, it shall be the duty of the person holding the license to operate, conduct and maintain such boat, haul seine, pound net, fyke net, purse net and other device to at once apply to the inspector of the district in which such boat, haul seine, pound net, fyke net, or other device is located to issue to him a new plate or tag, which application must be made within twenty-four hours after the discovery of the destruction or loss of the original plate or tag; and any person failing so to do for twenty-four hours after the discovery of the loss of any such plate or tag shall be guilty of a misdemeanor.

§ 28.1-78. *Exemptions from article.*—Nothing contained in this article shall be construed to apply to boats used purely for pleasure purposes, or for the taking of fish or shellfish for family use only by rod and line or with hand lines.

§ 28.1-79. *Old poles and stands to be removed.*—No person shall be issued a license for a pound net or any other type fishing stand requiring the use of fixed poles or devices until and unless all poles and devices placed by said person for previous pound nets or fishing stands have been removed; provided that one pole may be left standing at old stands as a marker or buoy.

§ 28.1-80. *Chickahominy river in Charles City county.*—It shall be unlawful for any person, firm, corporation, or association to take or catch fish or shellfish, on or within five hundred yards below the Chickahominy Dam at Walker's, on the Chickahominy river, in Charles City County, Virginia, other than with rod and reel and hand line.

§ 28.1-81. *Rappahannock river and certain of its tributaries.*—It shall be unlawful for any person, firm or corporation to use any haul seine within one hundred yards of mean low water mark, or three feet of water in depth at mean low water, whichever shall be closer to the shore, or 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 hereinabove set forth as to hauling seine within a certain number of feet of shore or in water of a certain depth shall be inapplicable where the unrevoked written consent of the adjacent landowner has been obtained.

CHAPTER 5
OYSTERS, CLAMS AND OTHER BIVALVES

ARTICLE 1

TAKING OYSTERS GENERALLY

§ 28.1-82. *Season, public rocks.*—The season for taking oysters from the natural, or public oyster beds, rocks, or shoals in any of the waters of this Commonwealth shall be as follows:

By shaft tongs or by hand:

- (1) James River seed area, from October first until June first.
- (2) Seaside of the Eastern Shore, from November first until April first.
- (3) All other areas of the waters of the Commonwealth, from October first until April first.

By patent tongs:

- (1) Chesapeake Bay, between Smith's Point and Wolf Trap Lighthouse, from October first to March first.
- (2) Anywhere else in the Commonwealth where patent tongs are not prohibited, from October first to January first.

It shall be unlawful for any person to take or catch oysters from any of the natural, or public rocks, or shoals of this Commonwealth at any time other than that provided above. The having of patent tongs and oysters in a boat at any time other than the season for patent tongs as specified above, shall constitute prima facie evidence of violating this section.

If any person be found upon the natural, or public rocks, beds or shoals of this Commonwealth taking oysters or with tongs or other device for taking or catching of oysters other than during the season listed above, it shall constitute prima facie evidence of violation of this section.

§ 28.1-83. *Prohibited area for patent tongs.*—It shall be unlawful for anyone to use or employ patent tongs for the purpose of taking or catching oysters from the natural or public rocks, beds or shoals of the Commonwealth in the following areas:

- (1) In the Piankatank River and its tributaries above a line beginning at the extreme West most 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 sub-division, Mathews County (Deed Book 55; Page No. 279), said point located North 57° 07', West 176.00 feet from the East side of said lots 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° 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° 00' East approximately 14,960 feet to point "X", or the East stable of hotel, located on the extreme East most 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 Towles Point on the North side of the Rappahannock to Burhan's Wharf on the South side of said river, which line begins at a United States Coast and Geodetic Survey Triangulation Point, Towles Number 2, thence south 14° 25' West (true) approximately eleven thousand, four hundred feet to Station "Burn" located inshore and in line with the ruins of Burhan's Wharf on the South side provided that patent tongs shall not be used in water less than 21 feet in depth at the time they are used in the area in the Rappahannock River where the use of patent tongs is permitted;

(3) In the Nansemond River above a line drawn across its mouth;

(4) In the Mobjack Bay and its tributaries above a line beginning at a point of land on the South side of the mouth of Brown's Bay, Gloucester County; thence in a northeasterly direction across Mobjack Bay to a point of land on the northwest side of the mouth of Pepper Creek in Mathews County. This area, as described, is to include all of Mobjack Bay and its tributaries from Brown's Bay to Pepper Creek;

(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 Carrotoman River above a line beginning at U. S. Coast and Geodetic Triangulation Station Towles No. 2, located on Towles Point, Lancaster County, thence North 81° 30' east approximately 16,800 feet to survey point "Orchard" located on Orchard Point in Lancaster County. This line, as described, is to include all of Carrotoman River and its tributaries from Towles Point to Orchard Point.

§ 28.1-84. *Maximum weight for patent tongs.* It shall be unlawful for any person to use patent tongs exceeding one hundred pounds in gross weight including any attachments thereto or thereon, excluding rope for the taking or catching of oysters. The teeth of said patent tongs shall not exceed four inches in length. The having of a pair of patent tongs exceeding this weight and oysters in a boat at the same time, shall constitute prima facie evidence of a violation of this Section.

§ 28.1-85. *Opening and closing public rocks.* The commission or commissioner with the approval of the commission may, whenever it or he deems it advisable so to do to protect or promote the growth of oysters, close and open any area or restrict the manner or method of taking oysters in any area of the natural, or public, rocks, grounds, or shoals for purposes of repletion and rehabilitation, and may establish seed beds and plant shells and other culch thereon, or take any other restorative measures which it or he may deem best. Said area may be closed for an entire season, or part of season, or may be closed for so many days per week. Before closing any such area, notice of such closing shall be posted by the inspector or other officer in two or more public places in the district in which the area is located for at least five days, and in such event the area shall be buoyed or marked by signs by a uniform system of buoys or signs indicating that such area is closed and that oystering by any means is prohibited therein. Any area closed under the provisions of this Section may be re-opened at any time by the commission or commissioner with the approval of the commission, but any area which has been closed and re-opened at a later time may be closed by the commission or commissioner at any time without notice.

§ 28.1-86. *Registration of boat taking oysters with tongs; number.*— Any resident of this State having a boat to be used in taking or catching oysters with tongs from the natural rocks, beds or shoals shall apply to the inspector of the district where he resides to have the boat registered.

The inspector shall register such boat and prescribe for it a number. For such registration annually the owner shall pay to the inspector, for all kinds of boats, a registration fee of one dollar.

Where patent tongs are to be used on any such boat, the inspector shall register, and number the boat as follows: The stamp or mark shall be "P. T.", and the number shall be the registered number as assigned by the Commission of Game and Inland Fisheries or its name if documented.

Where ordinary tongs are to be used, the inspector shall register and number such boats as follows: The stamp or mark shall be "O. T." and the number shall be the registered number as assigned by the Commission of Game and Inland Fisheries or its name if documented.

ARTICLE 2

OYSTER RECORDS AND TAXES

§ 28.1-87. *Record of oysters handled and tax.*—All purchasers, planters, packers, importers of shucking stock or shippers shall keep an accurate and complete itemized daily record of oysters barrelled, packed, shucked or marketed by them in a book to be kept for that purpose, which book will also indicate the number of bushels of oysters, before shucking, which came from public grounds and from whom purchased and the number which came from private grounds and from whom purchased. This book shall at all times be open for inspection by the Commissioner or any employee designated by him to inspect the same; and a failure to keep such a record shall be unlawful and shall be punishable as hereinafter provided.

The purchasers, planters, packers, importers of shucking stock or shippers shall pay a tax, to be known as inspection tax, to the Commonwealth of Virginia, or to the person authorized to receive the same, of not more than one and one-half cents for each bushel of oysters taken, caught, imported, or purchased, or two cents per gallon of all shucked oysters, it being the intent and purpose of this article to impose a tax upon all oysters taken, caught, imported or purchased from the above mentioned areas, except those which are to be replanted in the waters of the Commonwealth.

The tax shall be collected by the District Inspector or police boat captain from the owner, master or operator of any boat or vessel, motor vehicle, or the purchaser, importer or shipper, regardless of whether he is a packer, planter or an individual working on public grounds, immediately when each boat, vessel or motor vehicle is loaded or arrives in the state when the oysters do not go to a shucking or packing house. If the oysters are going to a shucking or packing house located in the Commonwealth of Virginia for their use, then the tax shall be collected from the shucking house or packer. The tax shall be paid by such shucking house or packer between the first and tenth day of each month immediately following that in which such oysters are shucked, barrelled, packed or marketed.

§ 28.1-88. *Right to inspection of oysters when loaded on conveyance.*—The Commissioner or any inspector, deputy, or captain of any oyster

police boat of this State shall have the right at all times to inspect any of the oysters taken or purchased as aforesaid, loaded on any boat, or vessel, motor vehicle or other conveyance or sold to any person, firm, or corporation wherever they may be, as to the quality or measurements.

§ 28.1-89. *Export tax.*—In addition to all other taxes imposed by law, there shall be an export, or out-of-state tax of five cents per bushel imposed on all oysters, including seed oysters, taken from any of the waters of this State, be they from private or public rocks, and shipped unshucked from this State. A record shall be kept on all out-of-state shipments.

§ 28.1-90. *Duty to inspect; collection of tax and receipt for same.*—It shall be the duty of the inspector in whose district a cargo of oysters is to be loaded, or a police boat captain in the area, to inspect such oysters as they are loaded and to see that all measurements are a full measure of oysters as defined in § 28.1-136; and that they are properly culled; and when such oysters are loaded to collect the inspection tax, and/or the out-of-state tax, whichever one or more of these taxes will be due and payable to the Commonwealth. The inspector or police boat captain shall furnish the owner, master or operator of such boat, vessel or motor vehicle a receipt showing the date, the destination, the number of bushels and the amount of each tax paid. This receipt is to be carried in the possession of the master or operator of the boat, vessel or motor vehicle and must be exhibited when requested by any inspector or police boat captain, a copy of which receipt shall be sent to the office of the Commissioner of Fisheries.

On or before the fifth day of each month the inspector or police boat captain shall render a statement to the Commissioner, on blanks furnished by the Commissioner, showing the amounts collected, and from whom collected.

§ 28.1-91. *Oyster buyer's license.*—Any person purchasing or buying oysters from any person catching or taking oysters from the public rocks, beds or shoals shall have an annual oyster buyer's license which has been issued by the Commission. Said license fee shall be \$25.00 per year, and is transferable within the season by application to the Commission for a transfer.

§ 28.1-92. *Record of oysters taken from public rocks.*—Any person purchasing or buying oysters from a person who has taken or caught the oysters from public rocks, beds, or grounds shall keep a written record of each such purchase in the following manner: The Commission shall issue to licensed oyster buyers in this State receipt books which shall contain oyster purchase receipts in triplicate, said receipts shall show the date of the purchase, the number of bushels purchased, from whom purchased, the license number of the person from whom purchased, the price paid for said oysters, the receipt shall be signed by both the purchaser and the seller. One copy of said receipt is to be given to the seller, one copy of said receipt is to accompany the oysters purchased and the remaining receipt is to remain in the receipt book. On or before the fifth day of each month the oyster buyer described above shall send the receipts of all oysters purchased or bought the preceding month from the public rocks, beds or shoals to the Commission of Fisheries together with all taxes collected by them as required by § 28.1-93.

§ 28.1-93. *Tax on oysters taken from public rocks.*—There is imposed upon all oysters taken from the public rocks, beds, or shoals the following replenishment tax: Oysters selling for \$1.50 per bushel or less,

5 cents per bushel; oysters selling for \$1.51 through \$2.50 per bushel, 10 cents per bushel; oysters selling for \$2.51 through \$3.50 per bushel, 15 cents per bushel; oysters selling for \$3.51 through \$4.50 per bushel, 20 cents per bushel; oysters selling for \$4.51 through \$5.50 per bushel, 25 cents per bushel; oysters selling for \$5.51 through \$6.50 per bushel, 30 cents per bushel; oysters selling for \$6.51 through \$7.50 per bushel, 35 cents per bushel; oysters selling for \$7.51 through \$8.50 per bushel, 40 cents per bushel; oysters selling for \$8.51 through \$9.50 per bushel, 45 cents per bushel; oysters selling for over \$9.51 per bushel, 50 cents per bushel.

The tax shall be collected by the oyster buyer from the person taking or catching said oysters from the public rocks, beds, or shoals at the time said oysters are purchased. All buyers of oysters from the seed area of the James River shall pay to the Commission the taxes collected at the time they pass the inspection point, located on said river, all buyers of oysters purchasing or buying oysters elsewhere in this State shall pay the taxes collected to the Commission monthly.

The permit or license of any person purchasing, buying or selling oysters taken or caught from public rocks, beds or grounds who fails to comply with the requirements of this section shall be subject to revocation by the Commission.

§ 28.1-94. *Public oyster rocks replenishment fund.*—All oyster replenishment taxes collected by the Commission of Fisheries shall be credited and deposited to a special Public Oyster Rocks Replenishment Fund, to be used only for administration of the program, and for replenishment, planting, and re-planting the public oyster rocks, beds, and shoals of this State with seed oysters, oyster shells, or other material which will catch, support and grow oysters. These funds shall be withdrawn and expended for such purpose on the order of the Commission of Fisheries.

§ 28.1-95. *Violations, recovery of taxes.*—Any person who violates any provision of this article shall be guilty of a misdemeanor. Any person collecting taxes under this article and wilfully failing to pay such taxes collected to the Commission when and as required by law shall be guilty of larceny of said tax money collected and punished as provided by law for the crime of larceny. The Commission may maintain an action at law against any person required to collect or collecting taxes and failing to pay them to the Commission for the sum so collected, or which should have been collected, plus interest, and a penalty of fifteen per cent.

ARTICLE 3

CARRYING OYSTERS FROM STATE OR CERTAIN GROUNDS

§ 28.1-96. *Carrying oysters out of State, or buying for that purpose.*—Permit required. It shall be unlawful for any person, firm or corporation to carry, or attempt to carry, or to buy for the purpose of carrying out of this State, any oysters taken from the natural rocks, beds, or shoals in the waters of this Commonwealth until he has first obtained for each cargo a permit to do so from the inspector from whose district the cargo is to be taken, or from the captain of one of the police boats, and has paid to the inspector or police boat captain the required tax per bushel on the number of bushels in the cargo. Such permit shall be signed by the

Commissioner of Fisheries and countersigned by the inspector or police boat captain; and it shall be the duty of the Commission to grant such permit whenever, after examination of the seed areas, it shall ascertain that it will not injure or deplete the seed areas to grant such permits, and that the supply of seed oysters is in excess of demand for seed oysters by planters in the State of Virginia; and provided that the Commission shall have power to cease granting of such permits whenever it shall ascertain that the seed areas are becoming depleted, and that to continue to grant such permits would seriously injure the same.

§ 28.1-97. *Permit to buy or carry seed oysters from certain grounds.*

—(1) Permit required. It shall be unlawful for any person, without first having obtained a permit therefor, as hereinafter provided, to buy or carry oysters to be planted in this State, whose shells measure less than three inches in length from hinge to mouth, from the eastern side of Accomack and Northampton counties, or from James River above the seed line, as heretofore established. Any person desiring to buy or carry such oysters from such localities to be planted in this State, shall first obtain for each cargo a permit therefor from the inspector for the district wherein such cargo is loaded, or from an officer of a police boat, for each boat, vessel, or motor vehicle to be used, which permit shall state the name and tonnage (if registered in the customhouse), of the boat, vessel, or motor vehicle, or other conveyance, the name of the owner and master thereof, and to what place in this State it is intended to carry such oysters in such boat, vessel, or motor vehicle, and shall be loaded, under the supervision of the inspector, and in the order of the presentation of the permit to the inspector in the seed oyster district in which such boat, vessel, or motor vehicle or other conveyance is, to obtain its cargo. Such permit shall further certify to the identity and residence of the person making application to buy or carry such oysters.

(2) Oath required. Before such permit shall be granted, the owner, operator, or mate of such boat, vessel, or motor vehicle shall make oath before the inspector or officer of a police boat that the boat, vessel, or motor vehicle or other conveyance will not be used for the purpose of carrying seed oysters measuring less than the size aforesaid out of this State, and that he will not sell such oysters to any other person for the purpose of carrying the same out of the State. The oath so taken and subscribed, together with a memorandum of the permit issued, shall be returned by the inspector or officer of a police boat to the Commissioner, to be filed in this office.

(3) Penalties for violations. If any person in charge of a boat, vessel, motor vehicle or other conveyance, obtain a permit to take seed oysters to some place in this State, thereafter take said seed oysters to another place in this State, unless within twenty-four hours after taking said seed oysters he shall notify the Commission of the place in this State to which said seed oysters are to be taken or were taken, or if he take said seed oysters out of this State, shall be guilty of a misdemeanor. The owner or master of any boat, vessel, or motor vehicle or other conveyance found buying or carrying seed oysters from the place aforesaid to any point in this State without a permit therefor shall be guilty of a misdemeanor.

§ 28.1-98. *Permit to carry oysters from certain grounds.*—It shall be unlawful for any person who does not have a written permit from an inspector or from the Commissioner of Fisheries, at any time during the closed season to carry oysters from the James River seed area, i.e., 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 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.

§ 28.1-99. *Taking seed oysters from the State.*—Seed oysters, taken from the public oyster rocks, beds and shoals of the Commonwealth, and planted in the waters of this Commonwealth, shall not be carried outside the State of Virginia for a period of twelve months from the time they were so taken and planted, without first having obtained written permission from the Commission. Any person violating the provisions of this section shall be guilty of a misdemeanor and punished as provided by law.

ARTICLE 4

SURVEYS AND RESURVEYS

§ 28.1-100. *Baylor survey; surveying and resurveying planting grounds and marking lines.*—(1) Surveys and reports as conclusive evidence. The survey or surveys of the natural oyster beds, rocks and shoals of the Commonwealth, made in pursuance of an act of the General Assembly of Virginia, entitled an act to protect the oyster industry of the Commonwealth, approved on the twenty-ninth day of February, eighteen hundred and ninety-two, and acts amendatory thereof, or supplemental thereto, shall until otherwise provided by law continue to be held in all respects to be the survey or surveys defining and determining the natural oyster beds, rocks and shoals of the Commonwealth; the surveys and reports filed in accordance with the acts aforesaid shall be construed in all the courts of the Commonwealth to be conclusive evidence of the boundaries and limits of all the natural oyster beds, rocks and shoals lying within the waters of the counties wherein such reports and surveys are filed other than those embraced in the surveys authorized by the acts aforesaid. The surveys of the natural oyster beds, rocks or shoals of the Commonwealth referred to in this section shall not extend inshore of the mean low water mark of said body of water, any surveys, plats, markers, or lines to the contrary notwithstanding.

(2) Resurvey on motion of Commission or an application of citizens. The Commission of Fisheries may select and appoint, on such terms as may be agreed upon, any surveyor to survey or resurvey and oyster-planting grounds either in his own or any other county, and to re-establish and permanently mark any line or lines of the Baylor survey of natural oyster rocks, which, in the judgment of the Commission, it may be necessary to define.

§ 28.1-101. *Re-establishment, etc., of lines of Baylor survey; procedure.*—The Commission of Fisheries may re-establish, relocate and remark all lines of the Baylor survey which cannot be otherwise relocated because of the loss or destruction of marks which formerly existed. In re-establishing any such lines of the Baylor survey the line surveyed by Fred E. Ruediger shall be followed wherever such line exists or was surveyed. Where no former line can be re-established the Commission may establish a new line.

§ 28.1-102. *Unlawful to threaten or hinder surveyor; rights of surveyor.*—It shall be unlawful for any person or persons to threaten, resist or in any manner interfere with a surveyor in the performance of the

duties imposed upon him by the provisions of the law relating to oyster grounds. And in the performance of any such duties the surveyor shall have the right to enter upon the lands of any person or persons for that purpose.

§ 28.1-103. *Placing permanent markers.*—Whenever any surveys or resurveys of the public oyster rocks of the Commonwealth are made by or under the direction of the Commission of Fisheries, 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 cost of same to be paid by the Commission.

§ 28.1-104. *Removal of oysters planted by mistake.*—When, by any resurvey of oyster-planting ground or survey made to re-establish the lines of the State survey of natural oyster beds, rocks, or shoals, which shall hereafter be made under the direction of the Commission of Fisheries, it shall appear that any holder, without his own default, and by mistake of any officer of the State has had assigned to him and included in the plat of his assignment any portion of the natural oyster beds, rocks or shoals, as defined by law, and such holder shall file a petition with the Commission for leave to remove such oysters or shells from such ground, and that without default of the holder and by mistake of an officer of the State there has been assigned to him and included in the plat of his assignment a portion of the natural oyster beds, rocks or shoals, as defined by law, then the Commission may allow the holder a reasonable time, not exceeding two years, within which to remove such oysters, their increase and the shells therefrom.

§ 28.1-105. *Larceny of oysters and shells.*—Any person other than such holder, his agent, or employees going upon such ground and taking oysters and shells therefrom before the expiration of the time allowed such holder, shall be deemed guilty of larceny thereof.

§ 28.1-106. *Removal of markers of planting grounds.*—It shall be unlawful for any person to intentionally or knowingly injure, remove or displace any boundary oyster stakes, range monuments, signal beacon, boundstone, post or buoy, or any part, appurtenance or enclosure thereof, erected, constructed or set on the land or water of this State, or upon the lawful beds of any lessee, for the purpose of designating, locating, surveying or mapping any shellfish grounds.

§ 28.1-107. *Maps to be filed; evidential value.*—A copy of all maps of the bays, rivers and creeks of this Commonwealth made by the engineer of the Commission of Fisheries and showing the location of oyster-planting grounds in these waters, shall be filed in the Clerk's Office of the county or city having jurisdiction over the respective underwater areas.

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

ARTICLE 5

OYSTER PLANTING GROUND

§ 28.1-108. *Assignments of Planting Grounds to Riparian Owners.*—Any owner of land bordering on a body of water in the oyster growing

area of this State whose shore front measures at least one hundred five feet at the low water mark, who has not had as much as one-half acre of ground already assigned him on such front, or whose lease has terminated and is not to be renewed, may make application for planting grounds to the inspector for the district in which the land lies, who shall assign to him such ground out of vacant ground or bottom not covered by a valid, existing lease, wherever such owner may designate in front of his land not exceeding in area one-half acre, to be not less than one hundred five feet wide along the shore and beginning at low water mark, extending out not more than two hundred ten feet, or to the middle of the body of water, or to the middle of the channel, whichever is the shorter distance; the same to be surveyed, plotted, marked, assigned and recorded in all respects as provided for assignments to persons in Section 28.1-109 of the Code of Virginia. After July 1, 1962, no person shall be assigned ground under this section if said ground is occupied under a valid existing lease; provided that a person applying for ground, pursuant to this section, shall have priority over all other applicants for said ground for sixty days after any ground is applied for by anyone else. There shall be no rent due or collected on ground assigned pursuant to this section, and such owner shall have the exclusive right to the use thereof for the purpose of planting or gathering oysters and other shellfish. The assignment made pursuant to this section shall pass with the transfer of the adjacent highland to the subsequent owner of highland and cannot be held separated from said highland.

This section shall, on and after July 1, 1962, be applicable in all counties and cities of the State bordering such bodies of water, except it shall not be applicable to riparian lands located in the City of Norfolk, or riparian lands located above the James River Bridge in the James River or its tributaries. In any county or city in this State where more than one-half of ground per water front tract has heretofore been assigned to a riparian owner, after July 1, 1962, said ground in excess of one-half acre shall be deemed to be ground under a regular lease and assignment, and not a riparian assignment.

Nothing in this section shall be construed to prevent the erection by riparian land owners of wharves, landings or other structures as otherwise permitted by law.

§ 28.1-109. *General oyster-planting grounds.*—(1) Grounds comprising. The residue of such water front in excess of what is already assigned or is reserved for the riparian owners, and the residue of the beds of the bays, rivers, creeks and shores of the sea other than those within the limits of navigation projects adopted and authorized by the Congress and those required for the disposal of materials dredged incident to the maintenance of such projects, and other than natural 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 thereon, and may be leased by the Commission upon proper application therefor.

(2) Eligible applicants; provisions of Section incorporated in lease. Application for assignment of oyster-planting ground may be made by any resident of the State, or by any firm, or corporation chartered under the laws of this State for the purpose of oyster culture and the oyster business provided that at least 60% of the stock of any such corporation must be wholly owned by residents of the State of Virginia. Provided further that such firm or corporation employ only resident labor in planting, cultivating, selling and marketing the oysters grown on the ground or land so occupied, and provided its principal place of business for selling and marketing such oysters be maintained within this State; and the pro-

visions of this section shall be incorporated in any lease of oyster ground to any such firm or corporation, and the violation thereof shall forfeit the lease.

(3) Application for assignment. All applications for assignment of oyster-planting grounds shall be made in writing to the inspector of the district wherein the ground lies, in duplicate. Applications shall be given priority in the same order in which they are received by the inspector; the applications shall be signed by the inspector when he receives them showing time and date received and the method by which he received them. The application shall state as near as may be the number of acres applied for and definite location, with the name of one or more prominent points or objects adjacent to such ground. A duplicate copy of this application shall be immediately forwarded to the office of the Commission of Fisheries by the inspector. It shall be the duty of any resident, firm or corporation desiring to obtain a location for planting or propagating oysters to apply to the inspector of the district in which such land lies to have the location ascertained, designated, surveyed and assigned.

(4) Posting of notice of applications. Notice of the application shall be posted by the inspector for not less than sixty days at the courthouse of the county or city in which the ground applied or lies, and in at least two or more prominent places in the vicinity of such ground.

(5) Advertisement of application. No assignment shall be made of any piece of ground containing more than ten acres until notice of application has been published in the county or city wherein the ground lies; and if no newspaper be published in the county or city, then it shall be published once a week for at least four weeks in some newspaper having general circulation in the county within which the ground lies. This publication shall be done in addition to the posting of the notices as required in paragraph 4 above, however, said publication may be done within the same sixty-day period that the application is posted.

(6) Survey and marking of ground.—Sixty days after posting of the notice of application, the inspector shall require the chief engineer of the Commission of Fisheries to designate a survey or to proceed to survey the grounds, and said surveyor so designated shall survey said grounds and make a plat in duplicate of the same. The surveyor shall forward the plat of survey to the office of the Commission of Fisheries to be approved by the engineer of the Commission within thirty days. If no protest to the application of surveying of ground is made before the expiration of thirty days after the plat of survey is recorded in the Office of the Commission of Fisheries, the ground applied for shall be assigned by the inspector provided:

1. That the application and assignment complies with all applicable provisions of law and if in the judgment of the Commission of Fisheries it shall be wise to do so.

2. All fees, costs, and the annual rental has been paid, and the lease of said ground. The ground shall be marked at the expense of the applicant, at the time the survey is made, and at the direction of the surveyor, with suitable stakes or other such markers, as may be permitted and approved by the Commission of Fisheries; and such suitable stakes or markers shall be kept by the lessee in their proper places at all times during the continuance of such lease, so as to conform accurately to the survey. Should such stakes or other markers be removed, knocked down, or be carried away, the lessee shall replace them in their proper places; and if he fails to do so within thirty days after being notified by the inspector

of the district in which the ground lies, the lessee shall have no claim against any person for trespassing on the ground in any manner.

(7) Application and surveyor's fee. Any applicant for oyster-planting ground or for riparian oyster ground shall pay an application fee of twenty-five dollars and in addition shall pay to the surveyor for his services ten dollars for the first five acres or less; two dollars per acre or fraction thereof for each acre more than five and up to and including ten acres; one dollar per acre or fraction thereof for each acre more than ten and up to and including thirty acres; fifty cents per acre for each acre and fraction thereof more than thirty acres up to and including fifty and twenty-five cents per acre for all over 50 acres; and for drawing plat of ground (original and one duplicate), two dollars per corner for each corner, up to and including four corners, and one dollar per corner for all additional corners over four. No ground shall be assigned until surveyor's fees have been paid.

(8) Restrictions on assigned acreage and applications. No assignment, except in Chesapeake Bay, shall exceed two hundred and fifty acres. No applicant, after having had as much as two hundred and fifty acres of oyster ground assigned to him, shall again make application for another assignment of oyster grounds within six months from the day his assignment was recorded and completed as the statutes hereinafter provide. If an assignment be not made within six months after the expiration of the notice required by statute to be posted for sixty days, such application shall, upon the expiration of six months, lapse and become null and void, unless an extension is allowed by the Commission, of not more than ninety days, provided, however, that in cases where 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.

(9) Restriction on acreage owned or operated. No person, firm or corporation shall own or operate more than three thousand acres of oyster grounds in the waters of this State other than the Chesapeake Bay; and should ground in excess of three thousand acres be acquired by original assignment to the assignee, or be assigned to him or them by a lawful holder of such oyster ground, or as heir or distributee, or by devise or bequeath, he or they shall, nevertheless, have a right to lawfully hold the same for and during the period of one year and shall have a legal right to assign the same. Should no assignment be made within one year the oyster-planting ground so acquired, in excess of three thousand acres, shall revert to the Commonwealth of Virginia, and may be applied for by any person having a legal right to do so.

(10) Application for planting ground in Chesapeake Bay; acreage allowed; annual rental. Application for planting ground in Chesapeake Bay in waters from fifteen feet or more in depth shall be made to the Commission of Fisheries, which shall have the right to accept or reject any such application as it may deem best for the public interests; and the number of acres to be assigned to any applicant shall not exceed five thousand acres, provided that such 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 rental per acre in the Chesapeake Bay, in waters from fifteen feet or more in depth, shall be such an amount per acre as the Commission of Fisheries may designate, but in no case shall be less than seventy-five cents per annum per acre.

(11) Payment of annual rental to inspector; penalty for default. Such an applicant shall pay to the inspector the annual rental for such

ground at the rate of one dollar and fifty cents per acre or any fraction thereof, per annum, except as provided for the Chesapeake Bay, and for bathing ground; such rental to be due on the first of September of each year after the date of assignment; and if not paid on or before December fifth, a ten per centum penalty shall be added to the annual rental charge, and the inspector may proceed to levy for rental and penalty.

(12) Duration of lease. Each assignment shall continue in force for a period of twenty years from the date of assignment, unless said assignment is terminated in one of the manners provided by law. At the end of the twenty-year period, the holder shall continue to hold the same and it shall continue a new and renewed assignment unless the holder notified the District Inspector or the Commissioner of Fisheries, that said assignment is not to be renewed. The interest in such ground shall be construed as a chattel real, and at the death of the renter pass into the hands of the personal representative, or resident heirs if there be no qualification on the estate, who shall notify the Commission office of the death of said renter within one year. The amount of the annual rental on any assignment made or renewed after July 1, 1962, may be changed by a valid statute enacted into the law of this State.

(13) Possession gives no preference as to assignment. Any person, firm or corporation in possession of any oyster-planting ground which has not been assigned according to law shall have no preference as to having the same assigned to him, but such ground shall be open to the first applicant.

(14) Recordation of plat. The plat and assignment, as soon as practicable after completion, and after such ground shall have been assigned to the applicant, shall be filed for record by the inspector in the office of the Commission of Fisheries and in the office of the clerk of the county or city by the Commission of Fisheries. The county or city clerk shall forthwith record the assignment and plat in a well-bound and substantial book, such recording to be indexed in the name of the assignee. The clerk of the court shall receive the said plat and assignment and record the same, and shall be paid by the Commission for his services a fee of six dollars for each assignment. After the same has been recorded, the assignee is entitled to withdraw the original from the clerk's office.

(15) State guarantees rights of renter subject to right of fishing. To any person, after having complied with all requirements, as set forth in the statutes necessary to have ground assigned to him, the State will guarantee the absolute right to the renter to continue to use and occupy such ground for the term of the lease, subject to: (1) subsection (12) of this section; (2) riparian rights; (3) the right of fishing in waters above the bottoms, provided that no person exercising such right of fishing shall use any device which is fixed to the bottom, or which, in any way, interfered with such renter's rights or damages such bottoms, or the oysters planted thereon; and (4) established fishing stands, but only if said fishing stand license fee is timely received from the existing licensee of said fishing stand and no new applicant shall have priority over the said oyster lease. However, such fishing stand location, assigned prior to the lease of said oyster ground, is to be considered a vested interest, a chattel real, and is an inheritable right which may be transferred or assigned whenever the current licensee complies with all existing laws.

(16) Payment of rent by person who does not hold lease. In any case where the inspector has personal knowledge that the person in whose name the lease was made, is dead, or unknown, and there is no one actually claiming said property as an heir of the former lessee, and there is a

person personally known to the inspector who has paid the rent on the ground for at least five years, the inspector shall notify the person paying said rent that the ground may be assigned to someone else, provided that the person paying the rent shall have thirty days priority in which to perfect his application.

(17) Delinquent ground. Any ground or area which becomes delinquent shall be open and available to be leased, after the following conditions have been complied with:

(a) The Commission must have notified the person in writing on or about September first of that year of the amount of rent due. If the rent becomes delinquent, a second notice must be mailed by certified mail on or about June first of the following year.

(b) If the person holding the lease does not pay all rents due on or before June 30th of the following year the land may be assigned if there is a valid application; provided that if the holder of the lease is deceased said delinquent lands shall not be open for application until one year has transpired from the time of the death.

(c) If the Commission has posted a list of delinquent oyster ground in that county for 30 days at the Court House and three public places in the District in which the ground is located.

(18) Effect of proposal for navigation project. From and after the date on which the Commissioner of Fisheries receives information to the effect that with regard to a specified navigation improvement project, the Secretary of the Army has been authorized by Congressional action to cause a survey to be made on any such project, the Commissioner shall obtain the consent and approval of the Governor before leasing any public oyster-planting grounds which probably will be required for dredging operations or spoil disposal areas in connection with such project. If after the completion of the survey and a submission of the District Engineers' report thereon to the Chief of Engineers, U. S. Army, the proposed navigation improvement project is not authorized, the affected ground will again become available for lease and assignment.

Nothing in the above shall prohibit the renewal of any lease already in existence at the time the Commissioner of Fisheries receives information as to the authorization of a survey, as above set out.

§ 28.1-110. *Ground for clams.*—All provisions in this title referring or relating to oyster grounds shall include the leasing and/or use of said grounds for planting, growing, and/or use of said grounds for planting, growing, and/or storing clams.

§ 28.1-111. *Natural rocks, etc., not to be used or staked off.*—It shall be unlawful for any person to stake in or use or continue to use or occupy for the purpose of propagating or planting oysters or shells any natural oyster bed, rock, or shoal, as defined by law, or any bottom which has not been assigned to him according to law, or any public clamming or scalloping grounds which have been set aside as such. The inspector for that district or any other officer of the Commission of Fisheries, shall require any such person to remove all stakes, watchhouses, or other obstructions from the natural beds, rocks, or shoals or from any bottom which has not been assigned to him according to law; failure to remove such stakes or other obstructions within ten days of the notice in writing is received by said person shall constitute a separate and additional unlawful act and violation of this title of the Code of Virginia, and the stakes or other obstruc-

tions shall be removed by the inspector or other officer of the Commission at the cost of the person unlawfully placing or having placed said stakes or other obstructions.

§ 28.1-112. *Transfer or assignment.*—A person holding a valid existing lease of oyster-planting ground, may transfer, or assign all or any part of said lease to another under the following conditions and provisions:

(1) The transfer or assignment may be made only to a resident of the State of Virginia or firm, or corporation authorized by the laws of this State to occupy and hold oyster-planting ground.

(2) The application for transfer or assignment shall be in the form prescribed by the Commission and shall be filed with the inspector for the district in which said ground is located, which application shall be forwarded to the engineering office of the Commission.

(3) The Commission or its chief engineer shall require a new survey if there is not a survey 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 for same shall be the same as for surveys made by the Commission.

(5) The application shall be accompanied by the transfer fee of \$5.00 if said parcel or parcels are ten acres or less in area and \$10.00 if said parcel or parcels are more than ten acres in area.

(6) The engineering office of the Commission shall return said application for transfer or assignment with any correction or new plat it may deem necessary, to the Clerk of the Court of the county or city in which the ground lies, and shall notify the applicant by mail that said transfer has been sent to said clerk.

(7) The transfer or assignment shall constitute a new lease of the tract or parcel assigned and of the remainder or balance, if any, of the ground remaining under the old lease.

(8) The Clerk of said Court shall record the transfer or assignment together with the new plat of survey, if any in the Clerk's Office of the county or city wherein the ground is located after the cost of recording said transfer and plat is paid to the Clerk by the person receiving said transfer or assignment. A copy of said transfer or assignment and plat shall also be recorded at the Office of the Commission.

§ 28.1-113. *Refund of rent paid under mistake.*—Whenever it is made to appear to the Commission of Fisheries, by satisfactory evidence, that any person has, under mistake of law or fact, paid to the Commonwealth any sum or sums of money, he then and there not being legally obligated to pay the same, the Commission, if of the opinion that justice so requires, may refund the same. All amounts refunded under this section shall be paid out of the then current appropriations made for the use of the Commission.

§ 28.1-114. *Relief from rent.*—The Governor of Virginia on recommendation by the Commission of Fisheries may relieve the oyster planters in any given area from the payment of the rent required by statute if the Virginia Institute of Marine Science finds that in that area there have been a mortality of oysters due to disease at the rate of 50 percent per

year for two or more successive years immediately preceding the year for which the rent is due. The determination of the Institute as to the percentage of mortality due to disease of any particular area and the boundaries of such area shall be conclusive.

§ 28.1-115. *Condemnation of oyster bottoms and grounds.*—The Department of Highways, and any county, city or town 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 that it deems necessary for the purpose of such Department or county, city, or town, respectively. The procedure in such cases shall conform, mutatis mutandis, to the provisions of article 5 of chapter 1 of title 33 of the Code of 1950 relating to the exercise of the right of eminent domain by the State Department of Highways in acquiring lands for highway purposes.

The Department of Conservation and Economic Development shall have the same right of eminent domain against the same properties as outlined above, where the purpose of the condemnation is to provide for a navigational improvement benefiting an area of the State or the whole State and not limited to purposes of any particular county, city, or town.

§ 28.1-116. *Rights of owner to waters within lawful survey.*—If any creek, cove or inlet within the jurisdiction of this Commonwealth makes 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, which survey has been of record in the official records of the county or city for at least 20 years, such person or other lawful occupant shall have the exclusive right to use such creek, cove or inlet for sowing or planting oysters or other shellfish.

§ 28.1-117. *Rights of planters to erect watchhouses.*—Any person holding planting ground rented from the State may erect thereon a watchhouse for the purpose of watching oyster beds; provided, however, that it shall not obstruct navigation, nor otherwise injure the private rights of any person, and shall be at least one-half mile from the off-shore of the high water mark, and shall be subject to the laws of the State governing such structures.

§ 28.1-118. *Rights of riparian owners to build bulkhead or wharf.*—All assignments or leases of oyster grounds under this chapter shall be subject to the rights vested in riparian claimants under § 28.1-108 and also to this proviso and condition, namely: That any landowner desiring to erect a bulkhead or wharf in front of his property or to open a channel to reach water of navigable depth or the channel of the stream, or for other purposes, and is not already a lessee or riparian holder of suitable bottoms for that purpose, shall have the right to give the lessee or other holder of oyster 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 such oyster grounds as shall be reasonably needed for the building of bulkhead or wharf or channel shall cease; but if such bulkhead, wharf or channel be not commenced as specified in such notice within three months after such oyster grounds shall be vacated, then the former lessee or holder of such oyster grounds shall have the right to resume possession of such oyster grounds as he may have vacated in favor of such landowners, subject to the provisions of this chapter; provided further that anyone constructing a channel under provision of the section shall compensate the lessee or any oyster shore or oyster

grounds for all losses or damages resulting thereto including the value of the ground taken for the construction of the channel and the lessee shall have recourse under action of the law in the Court of the proper jurisdiction of the Commonwealth of Virginia to recover said damages.

§ 28.1-118.1. *Bathing grounds; assignment; rental.*—Any person desiring to obtain a location for bathing grounds shall apply to the inspector of the district in which the grounds lie to have his location designated, surveyed and assigned for the purpose aforesaid, and for such ground shall pay an annual rental of seven dollars and fifty cents per acre. Any such application, surveying, assigning and marking shall conform to the law pertaining to oyster-planting grounds. Any license so granted shall be for bathing grounds for public or commercial use only.

Should any lessee of bathing ground have his ground or any portion thereof re-surveyed or should he reassign any or all of the ground, such resurvey or reassignment shall not be construed to be a twenty-year renewal of his lease, or as a new assignment of such ground, but shall be deemed to be a continuation of the original assignment, subject to all the limitations and conditions under which such 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 the inspector, deputy inspector or the Commission of Fisheries in writing of his intention so to do before September first. Such notice, when received by the inspector or deputy inspector, shall be immediately forwarded by such inspector or deputy inspector to the office of the Commissioner.

ARTICLE 6

LICENSE TAXES GENERALLY FOR TAKING AND HANDLING BIVALVES

§ 28.1-119. *Tax on handling bivalves.*—(A) Tax graduated by amount of oysters handled.—Every person, firm or corporation engaged in the business of shucking or packing oysters in this State shall pay a license tax for the privilege of transacting such business, to be graduated by the amount of oysters barrelled, shucked or packed by him during the period for which his license is granted.

(B) Barrellers.—Every person engaged in buying oysters for marketing in barrels shall pay a yearly license tax, beginning January first of each year, to be graduated as follows: (1) For any number of barrels under one hundred bought and marketed, three dollars and fifty cents; (2) for one hundred barrels and over, up to two hundred and fifty, six dollars and seventy-five cents; (3) for two hundred and fifty barrels and over, up to five hundred, eight dollars and twenty-five cents; (4) five hundred barrels and over, eleven dollars and twenty-five cents.

(C) Shuckers and packers.—For every license to a person, firm or corporation engaged in the business of shucking or packing oysters the license taxes shall be graduated as follows: (1) For any number of gallons under one thousand, a tax of three dollars; (2) for one thousand gallons or over, up to ten thousand, a tax of eight dollars and twenty-five cents; (3) for ten thousand gallons or over, up to twenty-five thousand, a tax of fifteen dollars and seventy-five cents; (4) for twenty-five

thousand gallons or over, up to fifty thousand, a tax of thirty dollars and seventy-five cents; (5) for fifty thousand gallons or over, up to one hundred thousand, a tax of forty-six dollars; (6) for one hundred thousand gallons or over, up to two hundred thousand, a tax of seventy-five dollars and seventy-five cents; (7) for two hundred thousand gallons or over, a tax of one hundred and fifty dollars and fifty cents.

(D) Reports required of licensees.—To ascertain the amount of oysters marketed it shall be the duty of such person, firm or corporation, on the first day of January of each year, or within ten days thereafter, to make report in writing, under oath, to the oyster inspector for the district for which he was licensed, showing the amount of oysters actually shucked or packed or sold in barrels by him during the next preceding twelve months.

(E) Violations.—Each inspector shall report every oyster packer who shall fail to comply with the requirements of this Section. Any person, firm or corporation violating the provision of this section, or making false reports shall be guilty of a misdemeanor.

(F) Tax in lieu of other taxes on capital.—The sum imposed under and by virtue of this section shall be in lieu of all taxes for state purposes on the capital actually employed in such business. The word "capital" shall include moneys and credits actively used in carrying on the business, including goods, wares and merchandise on hand, and all solvent bonds, demands, and claims made and contracted in the business during the preceding year. Real estate shall not be held to be capital, but shall be assessed and taxes as other specific property.

(G) Other property listed and taxes.—All other property held by such person, firm or corporation shall be listed and taxes as other property.

(H) Collection and disposition of license tax.—The sum required by this section to be paid when the license is taken out shall be collected in the same manner that the amounts required to be paid for other licenses under the oyster laws of the State are collected.

§ 28.1-120. *Taking oysters, clams, scallops and mussels by hand or with tongs.*—(1) Application for license.—Any resident of this State who shall be duly qualified, and desires to take or catch oysters, clams or scallops from the natural oyster beds, rocks, shoals or any other waters of the Commonwealth, or water under the jurisdiction of the Commonwealth, not leased for planting purposes, by hand or with ordinary or patent tongs, or any instrument allowed by law other than a scrape or dredge, shall first apply in writing to the inspector for a license.

(2) License taxes.—The license taxes shall be as follows:

(a) For each pair of patent tongs, fifteen dollars and seventy-five cents.

(b) For each person taking oysters or clams by hand, or with ordinary tongs, five dollars and twenty-five cents.

A license issued for patent tongs shall entitle the holder, without the payment of an additional license tax, to use ordinary tongs while not using patent tongs. When such person shall have paid to the inspector the amount of license required of him the inspector shall register such person, and shall issue to him a license, which shall entitle him during the season for which such license shall be issued to take or catch oysters, clams or scallops from the natural oyster rocks, beds, or shoals, or any other water

of the Commonwealth or within the jurisdiction thereof, for the period during which he is not prohibited by law from working on any such natural rocks, beds or shoals.

If any person is found oystering, clamming or scalloping upon the natural rocks, beds, shoals or other waters of the Commonwealth not assigned for shellfish culture without having been so licensed, or after having his license revoked, or if he violates any provision of this section, such person shall be guilty of a misdemeanor.

The license issued under the above provision of this section shall entitle the holder to take either oysters, clams or scallops from the waters of this Commonwealth, or from waters under the jurisdiction of this Commonwealth, for and during the open oyster season; and shall, in addition thereto, permit the holder of such license to take or catch clams or scallops during the season prohibited by law for the taking of oysters, from the public clamming bottoms of the Commonwealth.

(3) Tax for taking clams.—For each person desiring to take or catch only clams by hand or with ordinary tongs the license tax shall be three dollars and seventy-five cents and for any person desiring to use patent tongs for the purpose of taking clams only, he shall pay to the inspector a specific tax of eight dollars and twenty-five cents for each pair of such tongs to be used; provided that these licenses for the taking of clams by hand, or with tongs, ordinary or patent, shall entitle the holder thereof to take only clams from the public clamming bottoms in the waters of this Commonwealth and in the waters under its jurisdiction, and not from the public oyster rocks, beds, and shoals, and is not to be construed, in anywise, to permit or authorize the taking of oysters at any time.

(4) Possessing oysters while taking clams.—If any person shall have in his possession any oysters while taking or catching clams or scallops under the preceding subsection during the season in which it is unlawful to take or catch oysters from the natural rocks, beds or shoals, he shall be prima facie guilty of violating the law of taking or catching of oysters therefrom during the prohibited season.

(5) Taking clams in certain areas.—It shall be unlawful to take or catch clams at any time, or by any means, 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 State of Maryland and Virginia, except upon such grounds in those waters as may be set aside for public clamming or scalloping purposes by the Commission of Fisheries.

(6) Restriction on size of clams.—It shall be unlawful for any person to ship any clams measuring less than one and seven-sixteenths inches in length from hinge to mouth, or to take or catch clams under such size other than for seed or planting purposes.

(7) Digging mussels.—Any person desiring to dig mussels from the natural oyster rocks, beds and shoals shall pay an annual license of three dollars and fifty cents, provided that if he holds a license to take or catch clams or oysters he may dig mussels under the same license.

(8) Oysters and clams for household use exempted.—This section shall not apply to the taking or catching of oysters or clams for immediate household use but not for planting or for sale, provided that no one may take more than one bushel of oysters or fifty clams in any one day without having a license.

(9) Any person violating the provisions of this Section shall be guilty of a misdemeanor.

ARTICLE 7

NONRESIDENTS GENERALLY

§ 28.1-121. *Who deemed nonresident.*—No person shall be deemed a resident of this State within the meaning of this chapter who is not a taxpayer in the State, and shall not have maintained his residence therein for one year and actually resided therein for the four months next preceding the time when he makes application for any privileges or licenses granted to residents under this chapter; or unless he be a bona fide purchaser of land in this State and has actually lived within this State for the four months next preceding the time when he makes application for any privileges or licenses granted to residents under this chapter; provided, no restriction as to residence in this section shall prevent any person from obtaining license when required for buying fish or shellfish, or for the shucking of oysters; provided, further, that in dredging or scraping private planting grounds on permission of the Commission the restriction as to the residence in this section shall not prohibit the having of nonresidents as crew for any boat used in the fish or shellfish industry, if such boat be owned wholly by a resident or residents of Virginia, and also has for its master a resident as defined in this chapter.

§ 28.1-122. *Nonresidents not to take or plant oysters, etc.*—If any person other than a resident of this State, as defined in this article, shall take or catch fish or shellfish, in any of the waters of this State, or in any of the waters under the jurisdiction of this State, for market or profit, or if any person other than a resident of this State or a corporation authorized by law to occupy and hold oyster-planting grounds, rent any oyster-planting grounds, or plant shellfish in any of the waters of the State, or waters under the jurisdiction of the State, he shall be guilty of a misdemeanor, and such rental, lease or assignment shall be void. Where the penalty is incurred by reason of the defendant being a nonresident, the burden of proof as to his residence shall be on him, provided this section shall not apply to any oyster-planting ground against which foreclosure proceedings have been instituted or title to which is acquired by reason of the death of the lessee, and provided further that any interest to title acquired under this provision shall not extend for a period of more than twelve months from the time the title vests.

§ 28.1-123. *Citizens not to be interested with nonresident.*—If any citizen of this State shall for market or profit be concerned or interested with any person not a resident thereof in taking or catching fish or shellfish in any of the waters of this State, or in waters under the jurisdiction of this State, or in planting oysters or other shellfish therein, or shall knowingly permit any person, not a resident of this State, to engage in any such business in his name for market or profit he shall be guilty of a misdemeanor; but the restrictions as to residence 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.

ARTICLE 8

CULLING OYSTERS

§ 28.1-124. *Oysters to be culled as taken.*—All oysters taken from any public natural rocks, beds, or shoals in the waters of this State shall be culled on their natural rocks, beds, or shoals as taken; and oysters whose

shells measure less than three inches in length, except those oysters taken from Russ Rock and Little Carter's Rock, in the Rappahannock River, whose shells shall be not less than two and one-half inches in length, and all shells shall be included in such culling, and replaced upon such rocks, beds or shoals.

All oysters once passing from the culling board to the inside of the boat when found to include oysters less than the size above prescribed, and all shells, the entire cargo shall be considered as not having been culled as taken, according to the provision of this section.

When small oysters are adhering so closely to the shell of the marketable oysters as to render removal impossible without destroying the young oyster, then it shall not be necessary to remove it.

In the inspection of oysters under this section, the law enforcement officer shall, with a shovel, take at least one bushel of oysters at random, provided that the entire bushel shall be taken at one place in the pile of oysters. If as many as one Virginia oyster gallon measure of undersized unshucked oysters and/or shells are found per bushel inspected, it shall constitute a violation of this section. In the inspection of seed oysters taken from the James River seed area, or any other area designated as seed area by the Commission of Fisheries, if as many as one and one-half Virginia oyster gallon measure of shells are found per bushel inspected, it shall constitute a violation of this section.

It shall be unlawful to have more than one-half gallon of shucked oysters kept on board of a boat tonging on the public rocks.

This section only applies to oysters taken, by any catcher, from the natural rocks and shall not apply to oysters which have been purchased by a buyer and in the buyer's possession.

Any violation of any provision of this section shall constitute a misdemeanor. Any person charged with violating any provision of this section shall be required, by the officer making said charge, to scatter the entire cargo of oysters on the public rocks under the supervision of an inspector and at the expense of the person charged with the violation. Provided that in lieu of throwing said cargo overboard the person charged with said violation may post cash bond with the officer making the charge in an amount approximately equal to the value of the entire load as determined by the officer making the charge. The refusal to either dump the oysters overboard or post a cash bond shall constitute a distinct and separate offense from any other violation. A person who has posted a cash bond who is acquitted shall be refunded said cash bond, if found guilty said cash bond shall be forfeited and deposited to the credit of the special oyster replenishment fund.

§ 28.1-125. *Buying, selling, possessing unculled oysters.*—It shall be unlawful for any person to buy, sell, or possess oysters under the prescribed size and shells so taken from the natural rocks, beds and shoals.

§ 28.1-126. *Exempted waters.*—So much of §§ 28.1-124 and 28.1-125 as prohibits the taking and catching of oysters whose shells measure less than three inches in length, shall not apply to the James River 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 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, which shall be known as the seed line; nor to Russ Rock and

Little Carter's Rock, in Rappahannock River, nor to the Eastern side of Accomack and Northampton Counties; but nothing in this section shall exempt the culling of shells as provided in § 28.1-124.

§ 28.1-127. *Prima facie evidence of violation, defense.*—It shall be unlawful for a person to have any oysters or shells on the culling board, deck, wash-board or other receptacle above the hold of the boat on in the deck house of the boat of any person oystering upon the natural rocks, beds or shoals when the boat is not at anchor, or when the boat is off the public rocks or when the boat is approaching a buy boat or approaching a landing. The attempt of any person to escape or to throw oysters or shells overboard into the water other than in the ordinary process of culling, or to the culling board or deck from the hole, upon the approach of the oyster inspector or police boat shall be prima facie evidence of the violation of §§ 28.1-124 and/or 28.1-125.

It shall be unlawful for any person to offer for sale or have in his possession oysters which have not been culled as required by § 28.1-124; if upon trial for such offense the accused person asserts the claim or defense that said uncultured oysters were taken from private planting grounds, the burden of proving such defense or fact shall be upon the accused person. It shall be unlawful for any person who has in his possession unshucked oysters, to resist or interfere with any inspector or other authorized officer in the examination of oysters suspected of being uncultured, or to refuse to admit an inspector or other authorized officer to a boat or oyster house for the purpose of such inspection.

ARTICLE 9

DREDGING OR SCRAPING

§ 28.1-128. *Where lawful to issue permits to dredge.*—It shall be unlawful for any person at any time to take and catch oysters with dredges and scrapes from any public rocks, beds, or shoals in this State; provided, however, that the Commission may authorize the use of dredges upon the public rocks, beds and shoals of Tangier Sound, to-wit: Johnson's Rock, Thoroughfare Rock, Fox's Island Rock, John's Rock, Klondike Rock, and the California Rock, during the months of December, January and February.

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

§ 28.1-129. *Application for license to dredge or scrape.*—Any resident desiring to dredge or scrape for oysters in the waters where dredging is permitted, shall make application in writing for such privilege to the inspector of the district in which he resides, which application shall be sworn to, and shall plainly state the name of his vessel, the owner or owners thereof, the commander or person in charge and the length of vessel or gross tonnage at which it is rated. Such 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.

28.1-130. *Registration and issuance of license.*—Upon being satisfied of the facts stated in such application, the inspector shall register such vessel for a fee of one dollar and issue to such applicant a license granting him the privilege of dredging or scraping for oysters on public ground within the prescribed limits and season, which shall be plainly set forth in the license.

§ 28.1-131. *Prima facie evidence of violation.*—In any prosecution for the violation of the preceding sections of this article against the master or commander of a vessel, or any of his crew, or any person on board thereof, proof that such vessel was equipped with a crank, dredge, or scrape shall be prima facie evidence of the violation of such section.

§ 28.1-132. *Penalty and forfeiture of equipment.*—If any person take or catch oysters or clams with a dredge, or 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, he shall be deemed guilty of a felony, and upon conviction thereof shall be confined in the penitentiary not less than one year, and fined not less than one hundred nor more than one thousand dollars, either or both.

§ 28.1-133. *License tax.*—Before any license shall be issued for dredging or scraping, the applicant shall, in addition to the fee of one dollar for registering the boat, pay an annual license tax of twenty dollars for each dredge. The captains or masters of such boats shall always have such license on board of their boats and exhibit the same whenever it shall be demanded by any duly authorized officer; and the refusal so to do shall be prima facie evidence that they are dredging or scraping without having a license therefor.

§ 28.1-134. *Dredging or scraping on private ground.*—(1) It shall be lawful for any resident of this State holding under legal assignment oyster-planting ground totaling at least five acres and having paid the rent therefor, to dredge or scrape the same at any time, except on Sunday or at night; provided he obtain from the Commission of Fisheries a permit to do so, such permit to show date of issue and date of expiration, which expiration date shall not be more than twelve months from date of issue and may be renewed for like periods from time to time; and provided, further, that the Commission may after a hearing refuse to grant a permit or renew the same to dredge or scrape any oyster-planting ground unless it be proved that the holder thereof has planted seed oysters or shells thereon and is using said planting ground for the cultivation of oysters and may refuse to grant said permit if it appears to the satisfaction of the Commission at said hearing that the holder of said ground is an habitual violator of the seafood laws; provided further that applicant for said permit shall have the right of appeal from any decision of the Commission of Fisheries refusing to grant said permit as provided in Chapter Two of this title. The Commission shall receive one dollar for each such permit issued.

(2) Such privilege of dredging or scraping such oyster-planting ground may be revoked in any case by the Commission of Fisheries or Commissioner, whenever, in its judgment, it may be proper or necessary to do so.

(3) No person shall have or enjoy the privilege hereinbefore granted of dredging or scraping his oyster-planting ground unless he shall have first properly designated and marked the oyster lines of his planting

ground by placing prominent and fixed buoys thereon by means of anchors, or in any other manner sufficient to hold them in place, such buoys to be so many inches in diameter and to extend so far above water as the Commission of Fisheries, or the Commissioner, may direct, and the same shall be kept up and maintained so as to distinctly mark the outer line or lines of such planting ground. The buoys shall be painted white, and shall have the initials of the person or firm whose property they are, placed upon them near the top, in black letters, of not less than five inches in length.

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

§ 28.1-135. *Relocation of license or permit to dredge.*—The Commission, after a hearing, on testimony of an officer of the Commission at such hearing that he has personally observed a person having dredging cable and/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, shall have the authority to revoke all permits and licenses held by said person to dredge on public and/or private grounds, and to refuse to issue any licenses or permits for such purposes for a period of one year. Before any hearing is held pursuant to this section there must be at least five days notice given to the permit or license holder, by written notice served by an officer or by certified mail addressed to the permit or license holder at the address given on the permit or license.

ARTICLE 10

MISCELLANEOUS PROVISIONS

§ 28.1-136. *Oyster measures.*—It shall not be lawful at any time for any person to buy or sell oysters in this state in the shell by any other than one-half bushel or one bushel metallic measures, and such measures shall be iron circular tubs with straight sides and straight solid bottoms with holes in bottom, if desired, for draining, such holes to be no larger, however, than one inch in diameter. A half-bushel tub shall have the following dimensions, all measurements to be from inside to inside; fifteen inches across the top, thirteen inches across the bottom, and seventeen inches diagonally from the inside chine to the top; and a bushel tub shall measure eighteen and one-half inches across the top, seventeen inches across the bottom, and twenty-one and one-half inches diagonally from the inside chine to the top. Such metallic measure must be level full across the entire top of the measure to be considered a full measure.

If the seller of any oysters or oyster shells fails to furnish a full measure as defined in this section, or a buyer of any seed oysters or oyster shells accepts less than a full measure as defined in this section, he shall be guilty of a misdemeanor.

§ 28.1-137. *Theft of oysters, clams, shells, etc.*—If any person take, steal or carry away, without permission of the owner, oysters, clams, bedded or planted, oysters deposited by any person making up a cargo for market, shells or seed planted for formation of oyster beds by the State or any person, firm, or corporation, he shall be deemed guilty of the larceny thereof.

§ 28.1-138. *Converting shells into lime.*—It shall be unlawful for any person to take or catch oysters or shells in any of the waters within the

jurisdiction of this State for the purpose of converting the same into lime, unless and except said person has obtained permission from the Commission to convert said shells into lime.

§ 28.1-139. *Taking shellfish or loading on vessel on Sunday or in night time.*—No person shall take oysters or clams in the waters of this State, from either public or private grounds, on Sunday or in the night time between the hours of 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 in the night time between the hours of sunset and sunrise; however, shucking oysters from the public grounds may be unloaded on shore at packing houses or loaded on trucks or motor vehicles one-half hour after sunset and one-half hour before sunrise; but those oysters which have been inspected by an oyster inspector 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.

§ 28.1-140. *Soaking oysters and clams; selling oysters in containers; proportion of liquid allowed.*—It shall be unlawful to soak shucked oysters or clams in fresh water before shipment provided shucked oysters may be washed in fresh water.

It shall be unlawful to sell, offer for sale, or package for sale oysters in any container or vessel in which the proportion of liquid is more than five percentum of the weight of the oysters contained therein at the time of packing. The quantity of liquid in such container shall be determined by draining the oysters on a strainer or skimmer which has an area of not less than three hundred square inches per gallon of oysters drained and has perforations of at least one-fourth of an inch in diameter and not more than one and one-fourth inches apart, or perforations of equivalent areas and distribution. The oysters shall be distributed evenly over the draining surface and drained for not less than five minutes.

§ 28.1-141. *Oysters or clams on crab dredging boat.*—It shall be unlawful for any person in charge of any boat licensed to catch crabs with a dredge to have or allow on board any oysters or clams in excess of one bushel. Any person violating any provisions of this section shall be guilty of a misdemeanor and punished as provided by law.

§ 28.1-142. *Sale of shells to Commission.*—(1) Each shucker or packer of oysters shall sell to the Commission at the prevailing market price up to fifty percentum of the shells therefrom for sale to the Commission.

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

ARTICLE 11

MISCELLANEOUS PROVISIONS AS TO PARTICULAR WATERS OR LOCALITIES

§ 28.1-143. *Use of rakes or scrapes on ocean side of Eastern Shore.*—It shall be unlawful for any person to use, or employ rakes other than

hand rakes, or scrapes, or other like devices for the purpose of taking or catching oysters, crabs, clams, or shells from the natural rocks, beds, or shoals on the eastern or ocean side of Accomack and Northampton Counties at any time. Any person violating this provision shall be fined not less than ten nor more than fifty dollars for each offense, and be confined in jail until such fine is paid, but not to exceed thirty days.

§ 28.1-144. *Leasing of certain bottoms in Rappahannock River prohibited.*—No part of the bottom of the Rappahannock River, lying in or near the center of such river, and running from the mouth of the river to and including Morattico bar, which is now designated on the Baylor survey and resurveys thereof as assignable bottom, and which is commonly known as “deep water planting grounds,” shall be subject to lease or assignment, and such bottom is declared to be a part of the public oyster beds and rocks of such river.

§ 28.1-145. *Leasing of certain bottoms in James River prohibited.* The Commission of Fisheries shall have no power to lease any oyster bottom in the James River, above the James River Bridge, west of the James River Bridge, not theretofore leased, and nothing herein contained shall apply to any renewal of existing leases.

§ 28.1-146. *Dredging for oysters in James River.*—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; provided, however, that the Commission of Fisheries may grant a permit to applicants therefor to dredge in specified areas which permit shall be valid only within the ten days following its issuance.

§ 28.1-147. *Dredging ship channel between points in James River without approval.*—Insofar as the State has the power to prohibit the same, it shall be unlawful for any person, firm, corporation, association, or government or agency of any or all of any of the foregoing to dredge a ship channel in the James River between the James River Bridge and Jamestown Island and to employ or make use of disposal areas to place material so dredged, except for the ordinary maintenance of the existing ship channel at its established depth, unless application to accomplish such dredging, which application shall show specifically the areas to be dredged and the disposal areas proposed to be used, has been made to and approved by the Governor upon the recommendation of the Commission of Fisheries.

§ 28.1-148. *Mouth of Rappahannock River defined.*—Whenever the mouth of the Rappahannock River is used in Title 28 of the Code it shall mean: Beginning on the west edge of a concrete breakwater located on the extreme eastmost of Stingray Point, Middlesex County, designated as Point “B”, said point is located in line with the north side and 98.3 feet from the northeast corner of a porch dwelling owned by William E. Myers; thence north 21° 50' east (magnetic), 20,240 feet (approximately,) to a pipe designated as point “C”, located on the extreme eastmost point of Windmill Point, Lancaster County. This area is to include all of the Rappahannock River and its tributaries except as set out in § 93.1, Code of Virginia.

§ 28.1-149. *Certain natural oyster rocks in Rappahannock River.*—All of Russ' Rock and Little Carter's Rock are declared to be natural 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 same had been embraced within the original Baylor survey; and the Commissioner of Fisheries is hereby directed as soon as practicable to have such natural oyster rocks, beds and shoals properly and accurately surveyed and a plat of the survey recorded in the Clerk's Office of Richmond and Essex counties. The expense of making such surveys and recording the plat to be paid by the Commissioner out of the general oyster funds of the State, and such natural oyster rocks, beds and shoals shall henceforth be exempt from assignment to any person.

§ 28.1-150. *Declaring certain grounds in Mobjack Bay natural oyster rocks.*—The following grounds in Mobjack Bay, in the county of Gloucester, to-wit: First, a lot of oyster-planting ground containing two hundred and eighteen and seventy-five-one-hundredths 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 four, page thirty-one 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 four, page thirty-five 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 four, page thirty-one, in the clerk's office of Gloucester County, Virginia, which two portions of the two plats adjoin the two hundred-and-eighteen-and-seventy-five-one-hundredths 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 forty-seven degrees, thirty-two minutes east, seventy-eight and sixty-one hundredths chains, intersects the boundary of F. W. Darling ground, which runs south forty-two degrees east, thirty chains, and from this point of intersection running south forty-two degrees east, until it intersects with the line of S. J. Watson's ground, which runs south fifty-one degrees, twenty-six minutes west one hundred and thirteen and seventy-nine-one-hundredths chains (these portions of the Weymouth and Watson lots of oyster ground are cut off by the boundary line hereinbefore described without regard to acreage thereof; the acreage is estimated not to exceed fifty acres), shall be regarded, deemed, and taken to be natural oyster rocks, beds and shoals as fully and effectually to all intents and purposes as if the same had originally been included within the limits and boundaries of the Baylor survey of the natural rocks, beds, and shoals in the waters of the Commonwealth, and subject in all respects to the laws of the State in relation to natural oyster rocks, beds and shoals, and the taking of oysters therefrom, but subject, also, to the existing rights of any lessees of such ground, if there be any such right.

§ 28.1-151. *Declaring certain areas in Hill's Bay, Mathews County, as natural 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 hereby declared to be natural 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 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 hereby excluded from the area herein described.

§ 28.1-152. *Declaring certain other areas in Hill's Bay, Mathews County, as natural oyster rocks, beds and shoals.*—The following ground in Hill's Bay, Mathews County, contained within the following boundaries is hereby declared to be natural 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's 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; thence due south toward survey station "Burton" 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.

§ 28.1-153. *Declaring certain areas in Chesapeake Bay, Mathews County, as natural oyster rocks, beds and shoals.*—The following ground in Chesapeake Bay, Mathews County, contained within the following boundaries is hereby declared to be natural 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 north side of Additional Public Ground (1954) to a point on the west side of 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 line 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.

§ 28.1-154. *Declaring certain areas near Hole in the Wall, in Mathews County, as natural oyster rocks, beds and shoals.*—The following ground near Hole in the Wall, Mathews County, contained within the following boundaries is hereby declared to be natural oyster rocks, beds and shoals and unassignable to any person for private use:

Beginning at Virginia Commission of Fisheries' survey Station Marsh, located in the marsh on the south side of the 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 Commission of Fisheries' 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.

§ 28.1-155. *Declaring certain areas in Pocomoke Sound, Accomack County, as natural oyster rocks, beds and shoals.*—The following area in Pocomoke Sound, Accomack County, contained within the following boundaries is hereby declared to be natural 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 mouth of Starling creek to a point; thence following the low water mark in a southwesterly direction to a point, said point being 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, said point being 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; then 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; said point being due north to the true point of beginning; thence due south to the point of beginning.

Provided, however, that nothing in this section shall be construed as prohibiting assignment of a portion of such area to riparian owners under the provisions of § 28-123 of the Code of Virginia.

§ 28.1-156. *Declaring certain areas in Piankatank river near Stove Point, Middlesex County, as natural oyster rocks, beds and shoals.*—The following area, in the Piankatank river around and near Stove Point, Middlesex County be, and the same hereby is declared, as natural 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.

Provided, however, that nothing in this section shall affect any oyster ground assignments that are now in effect nor shall this section be construed as prohibiting assignment of a portion of such area to riparian owners under the provisions of § 28.1-108 of the Code of Virginia.

§ 28.1-157. *Declaring certain areas near the mouth of the Poquoson river, in York County, as natural oyster rocks, beds and shoals.*—The following ground near the mouth of the Poquoson river in York County, contained within the following boundaries is hereby declared to be natural 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 112.70 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 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.

§ 28.1-158. *Declaring certain ground in Mobjack Bay, in Gloucester and Mathews Counties, to be natural oyster rocks, beds and shoals.*—The

following grounds in Mobjack Bay, Gloucester-Mathews counties, contained within the following boundaries are hereby declared to be natural 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 same had been embraced 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.

§ 28.1-159. *Acts which remain in force.*—The following acts of the General Assembly are continued in force:

Chapter 632 of the Acts of 1901-2, approved April 2, 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 1901-2, approved March 25, 1902, declaring certain grounds in the James river, in the county of Isle of Wight, known as Day's Point Long Rock be a natural oyster bed, rock or shoal.

Chapter 319 of the Acts of 1901, approved February 16, 1901, including Surry County within the oyster territory of the State, etc.

Chapter 855 of the Acts of 1895-6, approved March 5, 1896, and chapter 263 of the Acts of 1897-98, approved February 9, 1898, declaring certain portions of ground in York river to be natural oyster rocks.

Chapter 862 of the Acts of 1897-98, approved March 3, 1898, relating to the natural oyster rocks, beds and shoals in York river in King and Queen county.

Chapter 279 of the Acts of 1930, approved March 24, 1930, relating to certain natural oyster beds, rocks and shoals in Mathews County.

ARTICLE 12

CLAMS AND SCALLOPS

§ 28.1-160. *License tax for buying, marketing and shipping clams or scallops.*—(1) Amount of tax. Every person engaged in the business of buying, marketing and shipping scallops, clams and bivalves other than oysters shall for such privilege, on or before January first of each year pay to the inspector of the district in which such person does business, a license tax of twenty-five dollars per year.

(2) Penalty of violation. Any person found guilty of making false report to an inspector as to the number of scallops or clams he has handled for market when obtaining license under this section, or any person failing to comply with the requirements of this section or of violating any of its provisions, shall be guilty of a misdemeanor.

(3) Illegal possession of oysters. If any person shall have in his possession any oysters while taking or catching clams or scallops during the season in which it is not lawful to take or catch oysters from the natural rocks, beds, or shoals, he shall be prima facie guilty of violating the law against taking or catching oysters therefrom during such season; and upon conviction, the penalty shall be the same as for taking or catching oysters from the natural rocks, beds, or shoals, during the prohibited season.

§ 28.1-161. *Dredging clams in polluted areas for replanting in public clamming grounds.*—The Commissioner of Fisheries shall have authority to dredge clams or have the same dredged in polluted areas for the purpose of replanting the same in public clamming grounds which have been or which may thereafter be set aside.

§ 28.1-162. *Public clamming or scalloping 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 oyster inspector of the district in which the land lies, laid off and designated as public clamming or scalloping grounds; or the Commission of Fisheries may do so without such petition if in its judgment it is expedient, provided in its opinion no oyster interests will suffer thereby and the clams or scallops are of sufficient quantity for a person to realize at least two hundred and twenty-five clams or one and one-half dollars per day catching and taking clams or scallops from such ground; and, if laid off, the Commission shall have the metes and bounds of such ground accurately designated by proper and suitable stakes; and also have a plat made of the same, to be recorded in the clerk's office of the county wherein the ground lies, all cost of surveying, platting and recording to be paid by the applicants; and such ground shall be set apart and remain as public clamming or scalloping ground for the common use of the citizens of this State so long as the Commission may deem best, and shall not be assigned to anyone during such period.

§ 28.1-163. *Catching of scallops; public scallop grounds.*—(1) Season for catching scallops. It shall be lawful for any person, who has been duly licensed according to law, to take or catch scallops with scrapes, from the public grounds of the Commonwealth, to take and catch scallops, by any means from such grounds between the fifteenth day of November of each year and the fifteenth day of April of the succeeding year, inclusive; but it shall be unlawful to take or catch scallops by any means what-

soever between the fifteenth day of April and the fifteenth day of November of any year.

(2) License tax. For the privilege of taking scallops, there shall be paid to the inspector of the district in which he resides a license tax of two dollars and fifty cents per year, which shall include the privileges of marketing and shipping scallops so taken or caught.

(3) Measuring ring; size limit.—The inspector shall furnish each such licensee with a metal ring, having an inside measurement of one and three-quarter inches; and it shall be unlawful for any person to take, catch, or have in his possession scallops of a size smaller than one and three-quarter inches, which will pass through such metal ring.

(4) Public scallop grounds. Any ground in the waters of this Commonwealth not assigned to anyone for planting or bathing purposes, may, on application of twenty or more citizens to the inspector of the district in which the land lies, be laid off and designated as public scallop grounds; or the Commission of Fisheries may do so without such petition if in its judgment it is expedient; provided, in the opinion of the Commission no oyster interest will suffer thereby, and the scallops are of sufficient quantity for a person to realize at least three dollars per day catching and taking scallops from such grounds; and, if laid off, the Commission of Fisheries shall have the metes and bounds of such ground accurately designated by proper and suitable stakes, and also have a plat made of same, to be recorded in the clerk's office of the county wherein the ground lies, all costs of surveying, platting and recording to be paid by the applicants; and such grounds shall be set apart and remain as public scallop grounds for the common use of the citizens of this State so long as the Commission may deem best, and shall not be assigned to anyone during such period. Provided, however, that any person who has procured an oyster and/or clamming license shall have the privilege of taking and catching scallops under such license.

§ 28.1-164. *Unlawful to soak or swell scallops.*—It shall be unlawful for any person, firm, or corporation to soak or swell any scallops, or to sell or offer for sale, or to have in his or their possession, any soaked or swelled scallops, either shucked or in shell.

CHAPTER 6

CRABS

§ 28.1-165. *Licenses to take crabs; amount of tax; restrictions on privilege.*—Any resident of this State desiring to take or catch crabs for market or profit from the waters of this Commonwealth, or waters under its jurisdiction, by any of the means hereinafter stated, or any person desiring to engage in the business of buying or marketing crabs for packing or canning the same in any way, shall pay to the inspector of the district in which he resides the taxes and be subject to the provisions set forth in the other sections of this article and the following sub-sections:

(1) For each person taking or catching crabs by dip nets, net, ordinary trot line, hand rake, or hand scrape, pushed or pulled, or with any device other than hand line, three dollars and seventy-five cents; provided that no boat shall be used to pull or push any rake or scrape except as provided for in subsections (4) and (5) of this section;

(2) For each person taking or catching crabs with patent trot lines,

fifteen dollars and seventy-five cents; provided, no steam or motorboat shall be used in the taking or catching of soft crabs.

(3) For each boat operator catching blue crabs by means of a device made of wire or thread net and commonly known as a crab pot, fifteen dollars; or if catching crabs with one or more assistants twenty-five dollars.

(4) For boat used for the purpose of taking or catching hard crabs with scrapes or dredges, thirty dollars; but such boat shall not be used as a boat for buying crabs, when the Commission limits the taking of crabs under § 28.1-168.

(5) For each picking, crating and/or shedding house, sixteen dollars and fifty cents.

(6) For each boat or motor vehicle used in buying crabs, and for each person or firm engaged in marketing crabs by barrel or crate, eight dollars and twenty-five cents; but no person who is licensed to catch crabs shall be required to procure further license for marketing or shipping his own catch;

(7) For each trap used for taking crabs or peelers, two dollars and fifty cents.

(8) For scraping crabs with a hand scrape, eight dollars and twenty-five cents.

§ 28.1-166. *Use of scrapes or dredges.*—No scrapes or dredges shall be used for catching crabs between the first day of April and the first day of December of any year; provided that the Commission of Fisheries, when in its judgment it is deemed advisable on account of weather conditions and not contrary to the public interest to do so, may open any season on the sixteenth day of November and it may likewise extend any season to the sixteenth day of April; nor shall scrapes or dredges be used at any time of the year in any of the rivers, or their estuaries, inlets, or creeks for the purpose of taking crabs except on the ocean side of Accomack and Northampton Counties. This section shall not apply to the taking or catching of soft crabs or the crab known as the “peeler” crab.

§ 28.1-167. *Limitations on sizes of crabs to be taken.*—It shall be unlawful for any person to catch, take or have in possession at any time more than ten per centum by count per barrel of hard crabs, or fraction thereof if the total amount is less than one barrel, which measure less than five inches across the shell from tip to tip of the second spike; except the crab commonly known as the peeler crab, nor more than ten per centum by count per barrel, or fraction thereof if the total amount is less than one barrel, or to destroy them in any manner, but shall immediately return the same to the water alive when taken out of the net or scrape provided that adult female crabs under five inches are excepted from these limitations. In enforcing this section the law enforcement officer shall check at least one barrel of crabs if the person has that amount of crabs; it shall not be necessary to check more than one barrel.

§ 28.1-168. *Limiting the taking of crabs by one boat in one day.*—Whenever, in the discretion of the Commission, the interest of consideration and/or the crabbing industry so require, the Commission may limit the taking or catching of crabs by any one boat in any one day. Such regulation, upon becoming effective, shall have the full force and effect of law and violation thereof is hereby declared to be a misdemeanor.

Possession of crabs in excess of the amount provided by such regulation shall be prima facie evidence of violation, provided, however, that the provisions of this section shall not apply to crab buy boats.

§ 28.1-169. *Peeler crab defined.*—A peeler crab for the purposes of this article is 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.

§ 28.1-170. *Closed season for taking “sponge” crabs in certain area.*—It shall be unlawful for any person to take or catch “sponge” crabs from, or have in his possession sponge crabs in the following area from the fifteenth day of May to the fifteenth day of September, both inclusive, of every year. The limits of the area are defined as follows:

Beginning at the Nansemond Hotel, Ocean View, Norfolk, Virginia, 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 southeastern direction to Cape Henry Lighthouse, and bounded by the shore line; and thence following the shore line in a general westerly direction back to the Nansemond Hotel, the point of beginning.

§ 28.1-171. *License number to be displayed on boat.*—In licensing a person for taking crabs with boat the inspector shall cause to be placed at the conspicuous point on the starboard side of such boat, or on the mast thereof, a number, and the number or numbers shall be kept displayed during the crabbing season by the master of the boat.

§ 28.1-172. *Taking crabs on Sunday or at night time.*—No person shall take from the waters of the Commonwealth crabs for commercial purposes on Sunday or between one hour after sunset and one hour before sunrise. This section shall not apply to peeler pound or floats.

§ 28.1-173. *Use of crab traps and fykes to take crabs.*—It shall be unlawful to place, set or use crab pound or fykes within one hundred yards of any other crab pound or fyke without respect to whether or not such other crab pound or fyke is owned by the same or some other person, firm, corporation or association. Any person, firm, corporation or association violating any of the provisions of this section shall be guilty of a misdemeanor and punished as provided by law.

§ 28.1-174. *Crabs for household use.*—Nothing in this article shall apply to anyone taking or catching not more than one bushel per day of crabs for immediate household use.

CHAPTER 7

HEALTH REGULATIONS

§ 28.1-175. *Examination, analysis and inspection of fish, shellfish, growing areas, packing houses, etc.*—For the purpose of protecting the fish and shellfish industries of the State, as well as the public health of the country, and preventing the sale of fish and shellfish which are deemed unfit for market, the State Health Commissioner is hereby directed in his discretion, or at the request of the Governor or the Commission or Commissioner of Fisheries, to make an examination or analysis of the

fish and shellfish, whether on the planting grounds, in packing house, or in any other place or places in this State, from which such fish and shellfish are to be taken or sold for food purposes. The Health Commissioner in making such examination may make an analysis of the sea water and bottom sediment in and adjacent to the shellfish growing areas, for evidence of pollution, in making such examination and analysis, the Health Commissioner or his designated agents or employees shall use the acceptable scientific methods. The Health Commissioner may also make a survey of the sanitary conditions and pollution hazards adjacent to shellfish growing areas, both in the water and on shore.

And the Health Commissioner in making such examination of oyster-packing houses or other places so designated shall examine the packing houses and plants wherein fish and shellfish are handled and the sanitary conditions surrounding the packing house and plant. The Health Commissioner, when making an examination of the packing houses and plants, may or may not make an analysis of the fish and shellfish in the packing house or plant at the time the inspection or examination is made.

§ 28.1-176. *Polluted ground or shellfish.*—When the State Health Commissioner determines, as a result of an examination, analysis or inspection, made pursuant to this article, that the shellfish upon such ground, or in such packing houses, or fish or crab meat in packing houses or other places where they are sold, or offered for sale as in the preceding section described, are unfit for market; or that such shellfish growing area is polluted or has a pollution hazard so great as to render it an unfit ground upon which to take oysters from for processing or consumption; or that such packing house or other place is so insanitary as to render it an unfit place in which to prepare fish, shellfish or crab meat for market, the State Health Commissioner shall notify the Commissioner of Fisheries, and owner/or operator of such grounds, packing house, or other place of such fact.

Upon receipt of such notice, the owner or operator of such grounds, packing house, or other place, shall cease to take 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 in any manner, fish, shellfish or crab meat in such packing houses or other place, as herein mentioned, until the cause for such notice shall have been removed or relieved to the satisfaction of the Health Commissioner.

And the Health Commissioner may establish, alter and change, in his discretion, at any time, standards, examinations, analysis and inspections which shall control the taking and marketing from a health standpoint, of fish, shellfish, and crab meat; and he shall be the sole judge as to whether or not such fish, shellfish and crab meat are sanitary and fit for market and also of such standards, examinations, analysis and inspection.

§ 28.1-177. *Condemnation of polluted ground or area.*—When from examination of or analysis of the shellfish in a shellfish growing area, or the bottom in or adjacent to such area, or the water over such area, on the sanitary or pollution conditions adjacent to or in near proximity to a shellfish growing area, the State Health Commissioner determines that the shellfish growing in such area is unfit for market, he shall, after notifying the Commissioner of Fisheries, cause limits or boundaries of such area upon which such shellfish are located or planted to be fixed, which area shall be condemned, and remain so until such time as the Health Commissioner shall find such shellfish or area sanitary and not polluted or possible pollution.

A shellfish growing area and the shellfish located thereon may be condemned for the following periods:

1. Condemned for an indefinite period, which shall remain in effect until some major improvement in pollution abatement occur on the stream in question.

2. Seasonably condemned area 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 condemned areas which are sanitary and open under normal conditions, but which because of potential pollution hazards may be closed by the Health Commissioner at any time without advance notice or a prior hearing, provided that relative to said area there must be a hearing within 30 days after the area is condemned, unless it is re-opened within said period.

§ 28.1-178. *Emergency closing of ground.*—The State Health Commissioner may close or declare any shellfish growing area in this State as polluted without a hearing or investigation, if he has substantial evidence or information upon which to conclude that such area is polluted or likely to be polluted, provided that in such event, the State Health Commissioner must within thirty days after such closure or declaration, either re-open said area or make the examination, inspection, and analysis provided for in §§ 28.1-175, 28.1-176 and 28.1-177. If such grounds or area are not re-opened or declared not polluted within thirty days after closure or declaration of pollution, any lease holder in said area may demand and have a public hearing as to the conditions of the ground or area.

§ 28.1-179. *Removal, transportation, etc., from polluted ground.*—
(1) No person, firm or corporation shall take, catch, transport, sell, offer for sale, remove, receive, keep or store shellfish from condemned areas, or relay shellfish taken from such areas, until a special permit has been obtained from the Commission, which must be carried in his possession when engaged in such operation.

Before any person, firm or corporation shall take or remove shellfish from private grounds in condemned areas he shall have written authority in his possession from the owner or lessee in addition to obtaining the permit as herein required.

No permit for transporting or relaying shall be issued to any person, firm or corporation for the purpose of buying and selling restricted shellfish. Permits for transporting and relaying shall only be issued to persons, firms or corporations who catch restricted shellfish from restricted grounds and who want to move such shellfish to an approved area; and to those persons who buy restricted shellfish from the catcher and who transport or relay the shellfish to their or other approved grounds.

Upon evidence of such permit holder offering for sale and not planting such restricted shellfish, the Commissioner shall promptly revoke all permits held by such person, firm or corporation.

(2) Any person, firm or corporation holding a valid permit to remove, transport and/or relay shellfish from condemned area shall keep accurate records and submit monthly reports to the Commission, which shall designate the areas from which the shellfish were removed; the areas to which the shellfish were relayed; the dates of the removal, and/or relaying; the number of bushels of shellfish removed, and/or relayed; the name of

the permit holder; the name and address of each person employed and engaged in the operation; the names or numbers of the boats; and the license numbers of the trucks used in the operation. During any month, covered by permit, in which no removal and/or relaying is in operation, a report shall be submitted to the Commission, indicating that no shellfish were removed and/or relayed. It shall be the responsibility of the permit holder to keep accurate records and make reports of the removal, and/or relaying, to the main office of the Commission on or before the tenth day of the month following the month of operation. The permit shall set out the expiration date thereof.

(3) Application for the special permit, provided for in sub-section (1) of the regulations, before the removal, transportation and/or relaying of shellfish from condemned areas, shall be made on forms provided by the Commission. A fee of one dollar shall be paid to the Commission when such application for permit is filed. This permit shall not be transferable.

The special permit, after being issued, may be revoked at any time by the Commissioner, when, in his judgment, it will be to the best interest of the industry that the same be revoked. Any person having said permit revoked may demand a hearing before the Commission at the next scheduled meeting of the Commission.

(4) Shellfish removal, and/or relaying, from condemned areas shall be under the supervision of the Commission of Fisheries and the Department of Health.

(a) The season for the removal, and/or relaying, of shellfish from private grounds shall be from April 1st to August 15th.

(b) The season for the removal, and/or relaying of shellfish from public grounds shall be from May 1st to August 15th.

(c) The above dates for the opening and closing of said seasons may be changed by the Commission, and the Commission may refuse to grant permits for removal of shellfish from any and all polluted areas of the waters of the State.

(5) Any conveyance engaged in transporting shellfish, which have been caught within condemned areas for the purpose of relaying, to another area 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, and the flag shall be displayed during the entire relaying operation.

(6) It shall be the duty of the inspector of the Commission of Fisheries, and employees of the Department of Health, to examine the area to which the polluted shellfish are relayed and see that adequate and proper corner stakes or buoys have been put in place by the lessee before a permit shall be issued to transport to or plant the area. 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.

(7) No person, firm or corporation shall discharge, or cause to be discharged, any part or all of the shellfish from any conveyance engaged in transporting shellfish from condemned areas at any place other than to approved areas for cleansing, and shall move directly to the approved planting ground, or to conveyances holding a proper permit for relaying to cleansing areas designated in the permit.

(8) The loading and unloading, ashore, of shellfish taken from condemned areas shall only be at points designated by the Commission.

(9) Should the occasion arise for any emergency unloading of any conveyance engaged in transporting shellfish from a condemned area, the Commission shall be notified immediately and disposition of said cargo shall be made under the supervision of the said Commission.

(10) There shall be no transportation, relaying or any movement of restricted shellfish after sunset or before sunrise. Clean shellfish and restricted shellfish shall not be mixed in any quantity in the same cargo. No restricted shellfish shall remain on a truck after sunset, the cargo must be planted before sunset; unless such truck is parked under the complete control and supervision of a Fisheries Inspector or an employee of the Department of Health.

(11) The Commission of Fisheries, whenever they deem an emergency exists, may make rules and regulations to protect the health of the public, which relate to shellfish from restricted areas, without complying with the requirements of § 28-95. Such rules and regulations shall become effective upon the passage by the Commission. These rules and regulations shall be enforced by revoking any and all permits which may have been issued.

§ 28.1-180. *Who to enforce preceding sections; rules and regulations; duty of Commonwealth's attorney.*—The State Health Commissioner and the Commissioner of Fisheries are hereby charged with the enforcement of the provisions of this chapter and for the purpose of carrying out their provisions, they may make uniform rules and regulations, and it shall be the duty of the attorney for the Commonwealth, to whom they or either of them shall report any violation of this chapter to cause proceedings to be commenced and prosecuted, without delay, for the fines and penalties in such cases provided.

§ 28.1-181. *Violations.*—It shall be unlawful for any person, firm or corporation to have in their 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 § 28.1-179, or to in any way violate any provision found in this article. Upon conviction of violating any provision of this article any boat, vessel, motor vehicle and/or equipment used in committing said violation may be forfeited as provided by the provisions of Chapter 8 of this title.

§ 28.1-182. *Certification of oysters and clams from out of state.*—All oysters and clams in the shell imported, brought, or transported into this State for processing or consumption within this State must have a certificate from the appropriate agency of the state of origin that said oysters and clams came from clean, approved areas of water of that state. Any such oysters or clams imported, brought or transported into this State which are not accompanied by such certificate are deemed to have come from polluted waters and shall not be sold or processed for consumption within this State but must be replanted in compliance with the provisions and requirements of § 28.1-179.

§ 28.1-183. *Powers of officers charged with enforcement.*—For the purpose of carrying out the provisions of the six preceding sections, the State Health Commissioner and the Commissioner of Fisheries, and such agents or assistants of either of the Commissioners as are now or may be hereafter appointed may enter upon premises located in the State, or

upon any boat, vessel, barge, car, motor vehicle, or other conveyance, wharf, packing or shucking house, store, stall or other place where oysters, clams, crab meat or scallops may be found, and if it appears that the provisions of such sections, or any of them, have been violated, may, with or without a warrant, arrest any person or persons who are or who have been, or who are believed to be or have been, in charge of such oysters, clams, crab meat or scallops, and may seize, in the name of the Commonwealth, and take possession of such oysters, clams, crab meat or scallops, and may seize and take possession of any boat, vessel, barge, car, motor vehicle or other conveyance used in violation of the provisions of such sections, together with the cargo of any such boat, vessel, barge, car, motor vehicle or other conveyance, which may be held till the accused has paid the penalty for his offense, if upon trial he is found guilty, or has upon trial been acquitted, as the case may be.

CHAPTER 8

PROVISIONS, JURISDICTION, FOR LAW ENFORCEMENT

§ 28.1-184. *Who may issue warrant of arrest and seizure.*—Where a proceeding is instituted for the violation of any section of this title, an affidavit of such violation may be made before an inspector, a justice of the peace or the Judge or Clerk of any court, and upon such affidavit the inspector, justice of the peace, Judge or Clerk may issue his warrant for the apprehension of the offender.

§ 28.1-185. *Arrest and seizure with or without warrant.*—The Commissioner or any member of the Commission of Fisheries, all inspectors, police captains of boats, and other employees designated by the Commissioner in the service, shall have the power, with or without warrant, to arrest any person or persons found violating any of the fish or shellfish laws, and to seize any vessel, boat, craft, motor vehicle conveyance or other thing used in violating any of such laws, together with the cargo of such vessel, boat, craft, motor vehicle conveyance or other thing.

Any property declared forfeited by any of the provisions of the title of this code, the seizure and disposition whereof is not otherwise provided for, may be seized by a sheriff or any designated employee of the Commission under a warrant issued by a Justice of the Peace or of a Court not of record.

§ 28.1-186. *Procedure after arrest and seizure.*—Any person so arrested may be carried before a county or municipal court for trial, or may be committed to jail pending trial or admitted to bail or released on recognizance as provided by general law; or the arresting officer may issue a summons requiring such person to appear for trial at a time and place specified therein before a court having jurisdiction to try the offense; such time shall not, however, be less than five days from the date of arrest unless such person request an earlier hearing. Any person failing to appear as directed in such summons shall be guilty of a misdemeanor, regardless of the disposition of, and in addition to, the charge upon which he was originally arrested and upon such failure to appear a warrant for his arrest may be issued.

Any vessel, boat, craft, motor vehicle conveyance, or other thing seized under the provisions of § 28.1-185 may be held by the inspector or other official who made the seizure, or in whose district the same was seized,

until the accused has paid the penalty of his offense if upon trial he is found guilty, or has upon trial been acquitted, as the case may be.

§ 28.1-187. *Violations constitute misdemeanor.*—A violation of any of the provisions of this title unless otherwise specifically provided, shall constitute a misdemeanor and is punishable by a fine up to and including but not to exceed, one thousand dollars and/or a sentence in jail up to one year, either or both.

§ 28.1-188. *Pursuit and arrest of law violators who cross Maryland-Virginia line.*—(a) It shall be lawful for any police officer of the Conservation Commission of Maryland, or other officer of such commission having policing powers and charged with the duty of enforcing the fish and shellfish laws of Maryland, along the Maryland-Virginia line in the Chesapeake Bay, while in the act of arresting or attempting to arrest a person or persons for an alleged violation of such laws, committed in his presence and for which he is attempting an immediate arrest, to pursue such person or persons across the state line into Virginia and to make such arrest in Virginia.

(b) The several police officers of the Commission of Fisheries of Virginia and any other officer or agent of the Commission, having policing powers and charged with the duty of enforcing the fish and shellfish laws of Virginia in the Chesapeake Bay along the Maryland-Virginia line, are hereby authorized and empowered to pursue any person or persons whom they are attempting to arrest for an alleged violation of the fish and shellfish laws of Virginia, committed in their presence and for which they are seeking an immediate arrest, across the state line into Maryland, if any such person or persons should flee across such line, to arrest such person or persons in Maryland and to return him or them to Virginia.

(c) This section shall not take effect unless and until the General Assembly of the State of Maryland shall have enacted concurrent legislation and the Governor of this Commonwealth shall have issued his proclamation as hereinafter provided; and if and when such concurrent legislation shall have been enacted by the General Assembly of the State of Maryland and provisions made whereby the same will become effective concurrently herewith, the Governor shall issue his proclamation declaring the provisions of this section effective.

§ 28.1-189. *Using drag-boxes, etc.*—It shall be unlawful for any person to use, in collecting or taking fish or shellfish from the waters of this Commonwealth, any drag-box, tub, sack, or other receptacle for fish or shellfish so collected or taken, which in the use or moving are dragged or drawn through the waters of this Commonwealth; or to secrete in a bag, box, locker, or other closed receptacle any unculled fish or shellfish taken from the waters of this Commonwealth. The possession by any person of a drag-box in the waters of this Commonwealth, or the having in his possession of any unculled fish or shellfish secreted as aforesaid, shall be prima facie evidence of the violation of this section.

§ 28.1-190. *Failure to keep names of boats in plain view.*—The master or person in charge of any boat, registered for any purpose under the preceding chapters of this title, or licensed to engage in fisheries of any sort, shall keep the name of such boat and number of license under which it is operated in plain view and in the position prescribed, and in no way conceal such name or number.

§ 28.1-191. *Resistance to officer or authorized person, etc.*—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 the preceding chapters of this title, shall be guilty of a misdemeanor.

§ 28.1-192. *Failure to perform duty.*—The failure of any officer or other person to perform any duty required of him by any provision of the preceding chapters of this title shall constitute a misdemeanor.

§ 28.1-193. *Jurisdiction of Courts not of record.*—Any proceeding under any section of the preceding chapters of this title may be before a court of record or not of record in the county or city wherein, or in any county or city adjacent to the waters in which the offense was committed.

§ 28.1-194. *Compromise of violations of fish or shellfish laws prohibited.*—No inspector or other officer apprehending any person for any violation of the fish or shellfish laws shall have power to compromise or settle with any such offender, or release him from any legal proceedings resulting from any such violation.

CHAPTER 9

VIRGINIA INSTITUTE OF MARINE SCIENCE

§ 28.1-195. *Control and supervision.*—The Virginia Institute of Marine Science, heretofore operating as the Virginia Fisheries Laboratory, is continued under the control and supervision of the Colleges of William and Mary and the Commission of Fisheries.

§ 28.1-196. *Board of Administration.*—The operation of the institute, including selection of personnel, shall be by a Board of Administration, consisting of Chancellor of the College of William and Mary, the Commission of Fisheries, the Laboratory Director and three citizens of the State familiar with various phases of the seafood and other maritime segments appointed by the Governor.

The terms of office of the members appointed by the Governor shall be for four years. No member appointed by the Governor shall be eligible to serve for more than two successive terms, provided that a member appointed to fill a vacancy shall be appointed for the unexpired term and may thereafter be appointed to serve two additional successive terms. The Laboratory Director shall be appointed by the other five members of the Board of Administration to serve at the pleasure of the Board.

Any contract for employment entered into by the Board of Administration shall be subject to the State Personnel Act and to the limitations imposed by the then current general appropriations act. Personnel involved in the teaching program of the Colleges of William and Mary are subject to approval of the Board of Visitors of the Colleges.

§ 28.1-197. *Studies and investigations.*—The Virginia Institute of Marine Science shall conduct studies and investigations of all phases of the seafood and sport fishing industries and may conduct studies and investigations of other segments of the maritime economy as a whole; and

shall, in addition thereto, make such special studies and investigations touching any part of these maritime endeavors as it may be requested to do by either the Commission of Fisheries or the Governor. In conducting its studies and investigations, the Institute, its officers, agents, employees, or persons operating under its direction, with the consent of the Commission of Fisheries, may take or cause to be taken for scientific purposes or for fish culture, any fish or other marine organism at any time from the waters of Virginia, and may cause or permit to be sold such fishes or parts of fishes so taken as may not be necessary for purposes of scientific investigations or fish culture.

§ 28.1-198. *Study of Chesapeake Bay and Tributaries and tidal waters.*—The Virginia Institute of Marine Science is authorized and directed to conduct a hydrographic and biological study and investigation of the Chesapeake Bay and the tributaries thereof, and all the tidal waters of the Commonwealth and the impinging Atlantic Ocean. Such studies and investigations shall include consideration of the seafood and other marine resources including the water, shorelines, tidal wetlands, beaches and all phenomena and problems impinging on the water and the means by which these marine resources might be conserved and replenished. The Institute shall conduct studies and investigations of marine pollution and make recommendations to the appropriate agencies to correct the problems.

In conducting such studies and investigations the Institute is authorized to obtain and make use of the services of any agency, public or private, which might be able to aid the work. The Institute is further authorized, subject to the provisions of general law, to solicit, accept and make use of such funds as are made available from any source, public and private, for the purpose of furthering the studies and investigations and to cooperate with similar agencies and institutions and in other states and the United States in conducting the work authorized hereby.

§ 28.1-199. *Composition of advisory group; appointment, terms of office and compensation.*—The Governor shall appoint a group composed of ten persons, residents of Tidewater Virginia, and all branches of the seafood and other maritime industries shall, as far as possible, have representation on the group. The persons so appointed plus the Board of Administration shall constitute the advisory group. The Commissioner of Fisheries and the Chancellor of the Colleges shall be co-chairmen and the Laboratory Director shall be secretary of the advisory group. The advisory group shall meet at least three times a year. The members appointed shall serve for two years from the date of their appointment and until their successors are appointed and have qualified, and all vacancies shall be filled by the Governor. They shall receive no compensation for their services, but shall be reimbursed for all ordinary and necessary expenses incurred by them in and about their services, including their traveling expenses, out of the appropriation made for the support of the Laboratory.

Such advisory group shall advise and assist the technical personnel of the Institute in their work; direct their attention to possible problems; assist in securing the cooperation of the public; help facilitate plans for a thorough investigation of the commercial and sport fisheries and other maritime industries and resources; and assist in working out long range plans for the conservation and repletion of the seafood and other marine resources of the State.

§ 28.1-200. *Bi-annual reports of Institute.*—The Virginia Institute of Marine Science shall make a regular, annual or biennial report of its

findings and recommendations to the advisory group, the Commission of Fisheries, the Governor and the General Assembly, and shall transmit copies of such reports to the Board of Visitors of the Colleges of William and Mary.

§ 28.1-201. *Damaging property of Institute.*—It shall be unlawful for anyone unauthorizedly to destroy, remove, damage, molest any property of the Institute, including shell and finfish.

CHAPTER 10
COMPACTS AND JOINT LAWS
WITH OTHER STATES

ARTICLE 1
COMPACTS

§ 28.1-202. *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 over-fishing, 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 provisions 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 part 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	Delaware	\$ 200
New Hampshire	200	Maryland	700
Massachusetts	2,300	Virginia	1,300
Rhode Island	300	North Carolina	600
Connecticut	400	South Carolina	200
New York	1,300	Georgia	200
New Jersey	800	Florida	1,500

“ARTICLE XII

“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 provisions of 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 of responsibilities in the Atlantic States Marine Fisheries Commission under the general compact.”

§ 28.1-203. *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 six members, three from Maryland and three from Virginia. The Maryland members shall be the members of the Tidewater Fisheries Commission of Maryland or its successor agency and the Virginia members shall be the members of the Virginia Fisheries Commission or its successor agency. If the membership of either of the respective State Commissions exceeds three, then the three Commission members from that State shall be selected by the

Governor thereof from the members of the State Commission; and if the membership of either of the respective State Commissions is less than three, the three Commission members from that State shall be the member or members of the State Commission, and such additional person or persons who shall be appointed by the Governor as may be necessary to constitute a total of three Commissioners.

§ 3. *Term, Vacancies.*—The term of Commissioners who are members of their respective State Commissions shall be conterminous with their term on their State Commission. The term of Commissioners who are not members of their State Commission 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 where the State Commission has three members, the person filling a vacancy on the State 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 of twenty-five dollars (\$25.00) for each day or portion thereof spent in the performance of their duties, 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 three 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 Article 64A of the Annotated Code of Maryland nor to the provisions of the Virginia Personnel Act, as the same may be from time to time in effect. The Commission may extend to any employee or employees membership in the Virginia Supplemental Retirement System or the Maryland Employees' Retirement System, whichever is applicable, subject to the laws relating to each such retirement system.

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 sand bar 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 sand bar 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 places, 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 Fisheries Laboratory, the Maryland Department of Research and Education, 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, not exceeding 25c 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 Fisheries Commission or of the Maryland Department of Tidewater Fisheries, as may be designated by the Commission, and by him paid over to the Commission.

ARTICLE IV

COMMISSION REGULATIONS— PROCEDURE AND REVIEW

§ 1. *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 four members of the Commission.

§ 2. *Recording, Effective Date.*—(a) Regulations of the Commission shall be exempt from the provisions of chapter 1.1 (§ 9-6.1 et seq.) of Title 9 of the Code of Virginia (1950 Edition, as amended from time to time), and of section 9 of Article 41 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 offices 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 Division of Statutory Research and Drafting, the office of the Maryland Department of Legislative Reference, the office of the Virginia Fisheries Commission, and the office of the Maryland Department of Tidewater Fisheries.

(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. *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.

§ 3. *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.

§ 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 relating to finfish, crabs, oysters, and clams in the Potomac River, as set forth in Article 66C of the Annotated Code of Maryland and as in effect on December 1, 1958, 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

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.

§ 28.1-203.1. *Cooperation of agencies of Commonwealth; when effective.*—All governmental agencies of the Commonwealth of Virginia are authorized to cooperate with the Potomac River Fisheries Commission created by the compact approved by this chapter, it being the policy of this Commonwealth to perform and carry out the compact and accomplish the purposes thereof.

The compact approved herein and other provisions of this chapter dependent thereon shall become effective upon the ratification and approval of the compact by the General Assembly of the State of Maryland and upon approval of this compact by the Congress of the United States.

ARTICLE 2

POTOMAC RIVER STATUTES

§ 28.1-204. *Who may take fish, oysters or crabs.*—It shall be lawful for any citizen of the State of Maryland or this State to take fish, oysters

or crabs from the Potomac River after complying with the requirements of the laws of the State of which he is a citizen for the taking of fish, oysters, or crabs from the waters of such State.

It shall not be lawful for any person to take or catch fish, except by hook and line, or oysters or crabs in any manner whatever in the waters of the Potomac River unless he be a citizen of Maryland or of Virginia, and shall have been a resident of the State of which he is a citizen for twelve months immediately preceding. Any such nonresident violating this section shall be subject to a fine of five hundred dollars; furthermore any vessel, with its equipment and cargo, or any net or other appliances used in violating this section, shall be deemed forfeited to the State.

§ 28.1-205. *Restriction as to time and manner of taking oysters.*— It shall not be lawful:

(1) For any citizen of Maryland or Virginia to take or catch oysters with a scoop, scrape, dredge or any such instrument in the waters of the Potomac River between the fifteenth day of March and the first day of November of each year;

(2) For any citizen of either State to take oysters with tongs from the waters of the Potomac River between the fifteenth day of April and the fifteenth day of September of each year, except as provided in § 28.1-207;

(3) For any person to have in possession any oysters taken from the waters of the Potomac River between the twentieth day of April and the fifteenth day of September of each year, except as provided in § 28.1-206.

Every person found guilty of violating any of the provisions of this section shall be fined not less than fifty dollars nor more than five hundred dollars for each offense, and the vessel, together with its equipment and cargo, used in violating any such provisions, shall be forfeited to the State.

§ 28.1-206. *Culling of oysters required; exception; procedure on violation.*—All oysters taken from any natural rocks, beds or shoals within the Potomac River shall be culled on their natural rocks, beds or shoals as taken, and oysters whose shells measure less than three inches in length, measuring from hinge to mouth, whether attached to a marketable oyster or not, and all shells shall be included in such culling and replaced on such rocks, beds or shoals; provided, that oysters once passed from the culler less than the prohibited size and all shells shall be considered as not having been culled according to the provisions of this section and for the purpose of this section shall be declared to be unmerchantable oysters. When oysters measuring less than three inches are adhering so closely to the shell of a marketable oyster as to render removal impossible without destroying the small oysters, then such oysters, including the marketable oyster or oysters, shall be returned to the bed or bar from which they were taken. And it shall be unlawful for any person to take, buy or sell the small oysters and shells from the natural rocks, beds, and shoals as aforesaid, or to take, buy, sell or have in possession oysters less than three inches in length from hinge to mouth.

Whenever any inspector or other officer shall have reason to believe that this section has been violated with reference to the culling of oysters, such inspector or other officer is hereby authorized to examine the cargo of any boat or vessel, and if upon examination of such cargo, the inspector or other officer shall find that five per centum or more of the cargo shall consist of shells and oysters whose shells measure less than three inches

in length, measuring from hinge to mouth, the captain of the boat or other person in charge of the boat shall be deemed to have violated this section, and upon conviction, if of a dredge boat or vendor of oysters, shall be fined not less than one hundred dollars, or confined in jail not less than thirty days nor more than six months, either or both, and in addition to such fine or imprisonment the cargo shall be confiscated and returned to the natural beds under the supervision of the oyster inspector or other officer making the arrest, and at the expense of the violator, which expense shall be in addition to the fine imposed and collectible in the same manner, and the boat or vessel on which such oysters are found shall be held as security for the payment of the fine; if of a boat in which only oyster tongs are used, the captain or other person in charge shall be fined not less than fifty dollars or confined in jail not less than fifteen days nor more than three months, either or both, and the cargo shall be confiscated and returned to the natural beds under the supervision of the oyster inspector or other officer making the arrest. The boat or vessel on which the oysters are found shall be held as security for the payment of such fine, provided, however, that when any person shall be found with oysters in violation of this section, he shall be presumed to be a dredger or vendor of oysters, and if he claims to be a tonger the burden shall be upon such person to show that he is a tonger only.

In case there is an appeal or waiver of trial before a trial justice, in order to provide for the disposition of any oysters that have been declared unmerchantable, the cargo of oysters shall remain in the possession or custody of the deputy commander, inspector or other officer making the arrest until the captain of the boat or vessel or the packer shall have reculled the oysters in question; and the officer under whose supervision the reculling is done, after ascertaining the quantity of unmerchantable oysters and shells so culled out, shall give the captain or other person in charge of the vessel or packing house, a certificate showing the number of bushels of such unmerchantable oysters and the captain or other person shall return the unmerchantable oysters so culled out to the natural beds or bars under the supervision of the officer. The cost of reculling and expenses incident to same shall be borne by the violator.

This section shall not apply to seed oysters or plants taken under other provisions of this chapter from that portion of the Potomac River above a straight line drawn from the north point at the mouth of Upper Machodoc creek, in the county of King George, Virginia, to Lower Cedar Point, in Charles county, Maryland.

§ 28.1-207. *Taking oysters with tongs above certain line; dredging or scraping with certain boats.*—It shall be lawful between the first day of October and the fifteenth day of April of each year and at no other time, to take marketable oysters with ordinary or patent tongs, and in no other manner, from the natural rocks, beds and shoals in the Potomac River above a straight line drawn from North point at the mouth of Upper Machodoc Creek in the county of King George, Virginia, to Lower Cedar Point in Charles county, Maryland. Any citizen of Maryland or of Virginia, who has complied with all the requirements of the oyster laws of his state entitling him to the privilege for a certain period of taking and catching oysters with ordinary or patent tongs in such state, shall have the right without further license tax to take marketable oysters with such tongs above such line during the open season provided for in the waters above the line.

It shall be unlawful to dredge or scrape on the natural rocks, beds, and shoals of the Potomac River at any time with any boat propelled other

than by sail, or with a power boat from which the shaft and propeller have not been withdrawn, and the penalties otherwise prescribed for unlawful dredging shall be imposed under this section for any violation hereof.

§ 28.1-208. *Permit required for buying or carrying seed oysters.*— It shall be lawful for any citizen of Maryland or Virginia after having obtained a permit as hereinafter provided, to buy and carry out of the Potomac River to be planted in the waters of either Maryland or Virginia, oysters whose shells measure less than two and one-half inches from hinge to mouth taken from natural rocks, beds and shoals in such river above a straight line drawn from the north point at the mouth of Upper Machodoc Creek, in the county of King George, Virginia, to Lower Cedar Point, in Charles county, Maryland, during the period between the first day of January and the first day of May in any year. The permit shall be obtained from any oyster inspector, or any officer in charge of a Virginia or Maryland oyster police boat, for each boat or vessel to be used in carrying such oysters as aforesaid, and shall state the name and tonnage (if registered in the custom house) of the boat or vessel, the name of the owner, and the master thereof, and to what waters in Maryland or Virginia such cargo of oysters is to be carried.

Before such permit shall be granted, the owner or master of such boat or vessel shall take and subscribe to an oath before such officer that the boat or vessel will not be used for carrying the oysters to any state other than Maryland or Virginia, or for any other purpose than for planting the same in the waters of one or the other of the said states, and that he will not sell the oysters to any other person for the purpose of carrying the same to any state other than Maryland or Virginia. The oath so taken and subscribed, together with a memorandum of the permit issued, shall be returned by the officer to the commander of the state fishery force of Maryland, if the officer be a Maryland official, or to the Secretary of the Commission of Fisheries of Virginia, if the officer be a Virginia official, to be filed by him in his office. Blank forms for such oath and permit shall be furnished to the respective oyster inspectors, and the captains of the oyster police boats by the Comptroller of Maryland and the Auditor of Public Accounts of Virginia. For administering such oath and issuing the permit, the inspector or officer issuing the same shall be entitled to receive from the applicant a fee of twenty-five cents.

The owner or master of any boat or vessel found carrying or buying such seed oysters without such permit shall be fined not less than twenty dollars nor more than one hundred dollars. And any owner or master of any boat or vessel violating the provisions of this section by buying or carrying or knowingly selling such seed oysters to be carried elsewhere, or for any other purpose than to be planted in the waters of Maryland or Virginia, shall be fined not less than one hundred dollars, nor more than one thousand dollars, and in addition thereto the boat or vessel so used shall, with its cargo and equipment, be forfeited to the state wherein such offender is convicted.

No permit shall be granted to any person engaged in taking or catching, buying or carrying seed oysters or having in his possession oysters measuring less than two and one-half inches from hinge to mouth, who shall have any scoop, scrape or dredge or any part thereof, on any boat or vessel to be used in taking, buying or carrying seed oysters; and it shall be the duty of the officer who issues such permit to first inspect the boat or vessel and satisfy himself that no such appliance is on such boat or vessel before he issues any permit. Any person who shall have any scoop,

scrape or dredge or any part thereof on any boat or vessel engaged in catching, buying or carrying seed oysters or oysters measuring less than two and one-half inches from hinge to mouth, and any owner or master of any boat or vessel violating the provisions of this section by having any scrape, scoop or dredge or any part thereof on any boat or vessel engaged in taking, catching, buying or carrying seed oysters shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars, and in addition thereto, the boat or vessel so used with its cargo and equipment shall be forfeited to the state wherein such offender is convicted.

§ 28.1-209. *Taking fish and crabs; how licenses procured.*—Any citizen of Maryland or Virginia desiring to fish for market or profit with a pound net, fyke net, gill net, haul seine, sturgeon net, weir or other device, in the waters of the Potomac River, shall first apply to the regularly constituted officer as determined by the laws or regulations of the state of which he is a resident and in the district or locality in which the applicant resides, except that the applicant for license to fish with a fixed device shall apply to the officer of the district or locality in which such fixed device is proposed to be located, for a license, and state on oath, the true name or names of the person or persons applying for such license, that they are, and have been for twelve months next preceding, residents of the state in which such application has been made, the place at which the net, seine, fyke, weir or other device is to be fished, and that during the period of the license he will not violate any of the laws of the state in which he resides in relation to the taking and catching of fish; provided nothing in this section shall apply to any person using a net solely for the purpose of supplying his own table. Such oyster inspector or other authorized officer shall thereupon grant a license to use such net, or other device, and state in such license the name or names of the person or persons who shall use the same, the place at which it is to be located or used, the season for which such license is granted, which season shall begin on the first day of February in any year and end on the thirty-first day of January of the year following, and the amount of tax as prescribed by the laws of the state where issued.

Any citizen of either Maryland or Virginia desiring to take or catch crabs from the waters of the Potomac River by any method, or any person desiring to engage in the business of buying crabs for picking or canning or shipping the same shall pay to the oyster inspector or other designated official in the district in which he resides such specific license tax as is prescribed by the state of which he is a resident.

If any person shall use or set, or cause to be used or set, any such net or seine as aforesaid, or shall take or catch crabs, in the waters of the Potomac River within the jurisdiction of the states of Maryland or Virginia, without having first paid the tax and obtained the license provided for under the laws of the state in which such net is set, or crabs are taken, he shall be deemed guilty of a violation of the provisions of this section, and shall, for each such violation, be fined not less than ten dollars nor more than two hundred dollars, and forfeit to the state such net or other fishing devices used in such violation.

It shall be unlawful for any person to use a haul seine or pound net, head or pocket having a smaller mesh than two inches, stretched measure, for the purpose of catching food fish. Any net having a funnel-mouth, round-mouth, or square-mouth, with head above water, shall be construed as a pound net. Any person or persons using a net in violation of this provision shall be fined not less than ten dollars nor more than one hun-

dred dollars for each offense, and such net or nets shall be forfeited to the state.

§ 28.1-210. *Concurrent jurisdiction for punishment of offenses.*—All offenses committed against the provisions of §§ 28.1-204 through 28.1-214 by persons not citizens and residents of either state be punished by any of the magistrates or courts of either state having criminal jurisdiction.

§ 28.1-211. *Right to examine into rights of persons taking fish, etc.; arrest of offenders.*—The authorities of either state shall have the right to examine into the rights of any person taking fish, oysters or crabs in the Potomac river, or having the same in his possession; and any person taking fish, oysters or crabs in the Potomac river or having the same in his possession shall exhibit his authority for so doing, whenever required by the police or other legal authority of either state. The legal authorities of either state shall have the right to arrest any such offender.

§ 28.1-212. *Penalties not otherwise provided.*—Any person violating any preceding section of this chapter, where not otherwise provided, shall, upon conviction thereof, be fined not less than twenty-five dollars nor more than three hundred dollars.

§ 28.1-213. *Sale of forfeited boats or equipment.*—When forfeiture of boat, vessel, net or other equipment is provided for in any preceding section of this chapter, the boat, vessel, net or other equipment shall be sold at public auction by the sheriff of the county for cash after ten days' notice. In case of appeal the appellant shall remain in custody, and the boat, vessel, net or other equipment shall be sold as above provided, unless a recognizance be entered into for double the amount of the fine and double the value of the boat, vessel, net or other equipment, conditioned on the performance of the final judgment of the court. Upon such recognizance being given, the party convicted and the aforesaid property shall be discharged.

§ 28.1-214. *Failure of officer to perform duty; penalty.*—If any oyster inspector or other officer empowered with the duties of enforcing the preceding provisions of this chapter knowingly fail to report violations of the same or to perform any of the duties therein required of him, he shall, for every such offense, be liable to a fine of one hundred dollars, to be applied to the oyster fund of his state.

§ 28.1-215. *Compact with Maryland not affected.*—Nothing in the eleven preceding sections shall be construed in any way to impair, alter or abridge any rights which either state or the citizens thereof may be entitled to, either by, through, under or against the compact entered into between the States of Maryland and Virginia on March twenty-eighth, seventeen hundred and eighty-five.

§ 28.1-216. *Statutes not affecting preceding sections; when effective.*—Nothing contained in any of the provisions of chapters 4 to 7 of this title shall be construed to repeal, alter, modify or impair the twelve preceding sections, or any part of the same.

The preceding sections of this chapter shall be effective from April second, nineteen hundred forty-eight, provided concurrent legislation has been passed by the General Assembly of Maryland, or if not passed, then immediately upon the passage thereof. Upon the taking effect in the State

of Maryland of the provisions prescribed in such sections, the Governor of Virginia shall issue his proclamation declaring such provisions to be effective.

§ 28.1-217. *Other provisions as to culling oysters.*—(1) Oysters to be culled.—All oysters taken from any natural rocks, beds or shoals, within the Potomac River shall be culled on their natural rocks, beds or shoals as taken, and oysters whose shells measure less than three inches in length, measuring from hinge to mouth, which are hereby declared to be unmarketable oysters, and all shells, shall be included in such cullings and replaced on such rocks, beds or shoals as taken; provided, that unmarketable oysters once passed from the culling board to the inside of the boat shall be considered as not having been culled in accordance with the provisions of this section; and provided further, that when unmarketable oysters are adhering so closely to the shell of the marketable oysters as to render removal impossible without destroying the young oyster, then such unmarketable oysters need not be removed and need not be included in the cullings.

(2) Unlawful to buy, sell or possess unmarketable oysters and shells.—It shall be a violation of this section for any person to buy, sell or have in his possession on the Potomac River, its tributaries, or any other place; unmarketable oysters and shells taken from the natural rocks, beds or shoals as aforesaid.

(3) Right of inspection.—For the purpose of ascertaining whether this section has been violated, any oyster inspector, or other officer authorized by law, shall have the right, at any time, to examine the contents of any boat, including market boats, and the contents of any oyster packing house, or oyster warehouse, or to examine any oysters stored or accumulated in any place, conveyance or thing.

(4) Amount of unmarketable oysters and shells allowed.—If, upon such examination, the oyster inspector, or other officer authorized by law, shall find that any cargo, load or collected mass of oysters shall consist of five per cent or more of unmarketable oysters and shells, or of five per cent or more of unmarketable oysters, the owner, captain or person in charge of any boat on which such oysters are found, or the person in charge of any other conveyance, thing or place where such oysters are found, shall be deemed to be in possession of such oysters and in violation of this section.

(5) Penalties for violations.—Any owner, captain or person in charge of any boat, except a market boat, who is found guilty of being in possession of or selling oysters in violation of this section shall, upon conviction, be fined (a) for the first offense, fifty dollars, (b) for the second offense, one hundred dollars and (c) for each subsequent offense, two hundred dollars. In addition, the oystering license of such boat shall be suspended for not less than two weeks nor more than three months when more than two violations of this section occur thereon, regardless of whether or not the owner, captain or person in charge of such boat at the time of such third or subsequent offense has been found guilty of any prior violation of this section.

Any owner, captain or person in charge of any market boat, or any person in charge of any oyster packing house or oyster warehouse, or any person in charge of any oysters stored or collected in a mass in any conveyance, place or thing, other than a boat as specified in the preceding paragraph, who is found guilty of being in violation of this section shall, upon conviction, be fined (a) for the first offense, one hundred dollars,

(b) for the second offense, two hundred dollars, and (c) for each subsequent offense, five hundred dollars.

(6) Market boat defined.—For the purposes of this section, a market boat is defined as any boat which engages at any time in buying, storing or transporting oysters which have been taken from the water by another boat.

(7) Imprisonment for failure to pay fine.—Failure to pay any fine imposed under this section shall result in the convicted person serving one day in jail for each dollar of the fine imposed and not paid, but in no event shall any such person confined in jail for more than ninety days for any single offense.

(8) Confiscation of cargo.—In addition to the above penalties, such cargo, load or collected mass of oysters shall be confiscated and returned to the natural rocks, beds or shoals under the supervision of the inspector or other officer making the arrest, at the expense of the violator, which expense shall be in addition to the fine, suspension of license or imprisonment, and any boat or other conveyance on which such oysters are found shall be held as security for the payment of the fine and expense.

(9) Disposition of unmarketable oysters in case of appeal, etc.; reculling.—In order to provide for the disposition of any oysters that have been declared unmarketable, in case there is an appeal or waiver of trial, the cargo, load or other collected mass of oysters shall remain in the possession or custody of the inspector, or other officer, making the arrest until the owner, captain or person in charge of the boat, or the person in charge of any other conveyance, place or thing where such oysters are found shall have reculled the oysters in question. The inspector or other officer under whose supervision the reculling is done, after ascertaining the quantity of unmarketable oysters and shells so culled and the quantity of marketable oysters remaining, shall give the violator a certificate showing the number of bushels of such unmarketable oysters and shells and the quantity of such marketable oysters remaining, and the unmarketable oysters and shells shall then be returned to the natural rocks, beds or shoals under the supervision of such inspector or other officer. The cost of reculling and returning such unmarketable oysters and shells to the water and expenses incidental thereto shall be borne by the violator.

(10) Exemption from section.—This section shall not apply to seed oysters or plants taken under other provisions of this section from that point at the mouth of Upper Machodoc creek, in the county of King George, Virginia, to Lower Cedar Point in Charles county, Maryland.

(11) When Governor to issue proclamation.—Upon the taking effect in the State of Maryland of the provisions of this section, the Governor of Virginia shall issue his proclamation declaring the provisions to be effective, upon which being done, § 28.1-206 shall become and thereafter be null and void.

§ 28.1-218. *Fishing season for herring.*—The fishing season for herring in the waters of the Potomac River shall begin the first day of March and end the first day of June of each year.

§ 28.1-219. *Fishing within regularly hauled fishing landing, or on Sunday.*—No person shall haul, drift or fish any seine or gill net within the waters, bounds or berth of any regularly hauled fishing land, or opposite to any part of the shore of the owner or occupier of any fishery, between the first day of March and the first day of June in each year,

without the permission of the owner or occupier of such fishing landing; nor shall any such owner or occupier, or any other person or persons, lay out and fish with any seine or net in the Potomac River or its tributaries, between five o'clock on Sunday morning and five o'clock on Monday morning. Any person offending against any provisions of this section shall be subject to the penalties and forfeitures prescribed by the next succeeding section and to the other provisions of such section; and the same shall be in force during the existence of a similar law in the State of Maryland.

§ 28.1-220. *How two preceding sections enforced.*—The owners or occupiers of the regularly hauled fishing landings are authorized to render any sheriff or other officer assistance necessary to arrest any person violating the provisions of the two preceding sections; and such officer shall seize all boats, seines, and fixtures in the possession of such person, and carry the person so arrested before some justice of the peace, to be dealt with as herein directed; and the officer may summon a posse comitatus to aid him in making arrests or seizure authorized by this section, and may, for that purpose, also press, at the expense of the prosecutor, any steamboat or other vessel belonging to any citizen of the State not actually engaged in carrying the United States mail.

§ 28.1-221. *Restrictions on fishing with gill nets or seines.*—No person shall fish in the Potomac River or its tributaries during the months of March, April and May with gill nets or seines of any kind, other than such nets or seines as may be laid out from and hauled to and landed upon the shores of the river and its tributaries; nor shall any person, with gill nets or seines of any kind, fish in such river or its tributaries from the first day of June until the twentieth day of October; and every person offending against either of the aforesaid provisions shall, upon conviction thereof, forfeit to the State all the vessels, boats, seines, ropes, and fixtures used in such fishing, and moreover shall pay a sum of not less than fifty nor more than five hundred dollars, one-half of which sum shall be to the informer and the other half to the State. Nothing in this section shall be construed to prevent bona fide citizens of the counties bordering on the aforesaid waters from fishing the shores they own or occupy as they have hitherto been in the habit of doing. And this section shall be in force during the existence of a similar law in the State of Maryland.

§ 28.1-222. *Protection and preservation of freshwater fish.*—It shall not be lawful for any person to catch or kill any black bass, green bass, rock bass, pike (or pickerel), or walleyed pike (commonly known as salmon), in the Potomac River between the fifteenth day of April and the first day of June each year; nor to catch or kill any such species of fish at any other time during the year save only with a rod, hook and line or dip net. Trot lines are forbidden.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and shall be punishable, on conviction, by imprisonment in the county jail not exceeding six months or by a fine not exceeding two hundred dollars, or both; and it shall be the duty of the courts for the counties abutting on the Potomac River above the Little Falls, near Washington, at each session of the grand jury to call its attention to the provisions of this law.

The provisions of this section shall not be applicable below such Little Falls, nor shall the same be effective unless they are in force in the states of West Virginia and Maryland.

§ 28.1-223. *Process and jurisdiction for enforcing penalties.*—If any person shall violate the preceding sections of this chapter relative to fishing in or on the Potomac River, the process and jurisdiction to enforce the penalties or recover damages therefor shall be according to the compact between Virginia and Maryland, so far as therein provided for, and so far as not so provided for, according to the other laws of this State.

§ 28.1-224. *Beam trawl, trammell net, troll net, etc., prohibited.*—It shall be unlawful to use any beam trawl, trammell net, troll net, or any similar device in the waters of the Potomac River or of any of its tributaries.

Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof shall forfeit such net or nets or device, together with all boats, vessels and tackle used in the violation of this section or shall be fined not less than fifty nor more than one hundred dollars, or shall be subject to both such forfeiture and fine; provided, however, that nothing in this section shall be construed in any manner to prohibit the catching of fish through the method of seine hauling and pound net and gill net fishing as heretofore permitted, by license or otherwise, under the laws of the State of Virginia.

§ 28.1-225. *Catching fish with certain gill nets prohibited.*—The use of any sunken anchored gill nets is absolutely prohibited in the waters of the Potomac River at all times; and the use of all gill nets, known as floating or drift nets, other than stake gill nets, is prohibited at all times of the year except during the shad and herring season. The use of all stake gill nets is prohibited at all times of the year except during the months of February through May in each year. Any person, firm or corporation violating the provisions of this section shall on conviction therefor before the trial justice of any county of this State, most accessible, forfeit such net or nets, or device, together with all boats, vessels and tackle used in the violation of this section and be fined a sum of not less than three hundred dollars and not more than one thousand dollars, or be subject to both such fine and forfeiture, in the discretion of the trial justice trying the case.

Nothing in this section shall be construed in any way to impair, alter or abridge any rights which either state, or the citizens thereof, may be entitled to, either by, through, under or against the compact entered into between the States of Virginia and Maryland on March twenty-eighth, seventeen hundred and eighty-five.

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.

§ 28.1-226. *Dredges and scrapes generally.*—It shall be unlawful for any person to take or catch oysters from the Potomac River by means of a dredge or scrape, or any instrument other than ordinary shaft or patent tongs, at any season of the year. Any person violating the provisions of this section, upon conviction thereof, shall be confined in the penitentiary for not less than one year nor more than three years, or may be confined in jail not exceeding one year, and fined not less than one hundred dollars, nor more than one thousand dollars, either or both, in the discretion of the court or jury trying the case. In any prosecution for the violation of this section against the master or commander of a vessel, or any of his crew, or any person on board thereof, proof that such vessel was equipped with a

crank, dredge or scrape shall be prima facie evidence of such violation. Any vessel, boat or other craft, her tackle, apparel, anchor, cables, sails, rigging and appurtenances, and any dredge, scrape or other instrument used in violation of this section, shall, together with the cargo of such vessel, boat or craft, be condemned as forfeited to the Commonwealth in proceedings as provided for the enforcement of forfeitures.

TABLE OF COMPARATIVE SECTIONS

28-1	28.1-1	28-33.1	28.1-38
28-2	28.1-2	28-34	28.1-39
28-3	28.1-3	28-35	28.1-40
28-4	Repealed	28-35.1	28.1-41
28-4.1	Repealed	28-36	28.1-42
28-4.2	Repealed	28-37	Repealed
28-5	Repealed	28-38	28.1-43
28-6	Repealed	28-39	28.1-44
28-7	28.1-18	28-40	28.1-45
28-8	Repealed	28-41	28.1-46
28-9	Repealed	28-42	28.1-47
28-10	28.1-21	28-43	28.1-48
28-11	28.1-4	28-44	Repealed
28-12	28.1-5	28-45	28.1-49
28-13	28.1-6	28-45.01	28.1-50
28-14	28.1-7	28-46	28.1-51
28-15	28.1-8	28-46.1	28.1-52
28-16	28.1-9	28-47	28.1-53
28-17	28.1-10	28-48	Repealed
28-18	28.1-11	28-49	28.1-54
28-19	28.1-12	28-50	Repealed
28-20	28.1-13	28-51	Repealed
28-21	28.1-14	28-52	Repealed
28-22	28.1-15	28-53	28.1-55
28-23	28.1-16	28-54	28.1-56
28-24	28.1-17	28-55	28.1-57
28-25	Repealed	28-56	Repealed
28-26	Repealed	28-57	Repealed
28-27	Repealed	28-58	Repealed
28-28	Repealed	28-59	28.1-58
28-29	28.1-22	28-60	28.1-59
28-30	28.1-19	28-61	28.1-60
28-31	28.1-20	28-62	28.1-61
28-32	Repealed	28-63	28.1-61
28-33	28.1-37	28-64	28.1-62

28-65	28.1-63	28-98.1	28.1-85
28-66	28.1-64	28-99	28.1-86
28-67	28.1-65	28-100	28.1-86
28-68	28.1-67	28-101	28.1-87
28-69	28.1-68	28-102	Repealed
28-70	28.1-69	28-102.1	28.1-88
28-71	28.1-70	28-103	28.1-89
28-72	28.1-71	28-104	Repealed
28-73	Repealed	28-105	28.1-90
28-74	28.1-73.1	28-106	Repealed
28-75	28.1-72	28-107	Repealed
28-76	28.1-73	28-108	Repealed
28-77	28.1-74	28-109	28.1-95
28-77.1	28.1-75	28-110	28.1-96
28-78	28.1-76	28-111	28.1-97
28-79	28.1-77	28-112	28.1-98
28-80	28.1-78	28-112.1	28.1-99
28-81	Repealed	28-113	28.1-104
28-82	Repealed	28-114	28.1-105
28-83	Repealed	28-115	Repealed
28-84	Repealed	28-116	Repealed
28-85	Repealed	28-117	28.1-100
28-86	Repealed	28-118	28.1-101
28-87	Repealed	28-119	28.1-102
28-88	Repealed	28-120	28.1-103
28-88.4	28.1-80	28-121	28.1-106
28-89	28.1-81	28-122	28.1-107
28-90	Repealed	28-122.1	28.1-115
28-91	Repealed	28-123	28.1-108
28-92	28.1-82	28-124	28.1-109
28-93	28.1-83	28-124.1	28.1-110
28-94	28.1-84	28-125	28.1-111
28-95	Repealed	28-126	28.1-112
28-95.1	Repealed	28-127	28.1-113
28-96	Repealed	28-128	28.1-114
28-97	Repealed	28-129	Repealed
28-98	Repealed	28-130	Repealed

28-131	Repealed	28-167	Repealed
28-132	28.1-116	28-168	28.1-180
28-133	28.1-117	28-169	Repealed
28-134	28.1-118	28-170	28.1-165
28-135	28.1-119.1	28-171	28.1-166
28-136	28.1-119	28-172	28.1-167
28-137	28.1-120	28-172.1	28.1-168
28-138	28.1-121	28-173	28.1-169
28-139	28.1-122	28-174	28.1-170
28-140	28.1-123	28-175	28.1-171
28-141	28.1-124	28-176	Repealed
28-142	28.1-125	28-177	28.1-174
28-143	28.1-126	28-178	28.1-160
28-144	Repealed	28-179	28.1-161
28-145	Repealed	28-180	28.1-162
28-146	28.1-127	28-181	28.1-163
28-148	Repealed	28-182	28.1-164
28-149	Repealed	28-183	Repealed
28-150	28.1-129	28-184	Repealed
28-151	28.1-130	28-185	Repealed
28-152	Repealed	28-186	Repealed
28-153	28.1-135	28-187	Repealed
28-154	28.1-132	28-188	28.1-136
28-155	28.1-131	28-189	Repealed
28-156	28.1-132	28-190	Repealed
28-157	28.1-133	28-190.1	28.1-142
28-158	28.1-134	28-191	28.1-137
28-159	28.1-175	28-192	28.1-138
28-160	28.1-176	28-193	Repealed
28-161	28.1-177	28-194	Repealed
28-162	28.1-178	28-195	28.1-139, 28.1-172
28-163	Repealed	28-196	28.1-140
28-164	Repealed	28-196.1	28.1-140
28-165	28.1-181	28-196.2	28.1-141
28-166	28.1-183	28-197	Repealed
28-166.1	28.1-182	28-198	28.1-143

28-198.1.....	28.1-173	28-220	28.1-205
28-199	Repealed	28-221	28.1-206
28-200	Repealed	28-224	28.1-209
28-201	28.1-144	28-225	28.1-210
28-201.1.....	28.1-145	28-226	28.1-211
28-201.2.....	28.1-146	28-227	28.1-212
28-201.3.....	28.1-147	28-228	28.1-213
28-201.4.....	28.1-148	28-229	28.1-214
28-203	28.1-149	28-230	28.1-215
28-204	28.1-150	28-231	28.1-216
28-204.1.....	28.1-151	28-232	28.1-217
28-204.1:1.....	28.1-152	28-233	28.1-218
28-204.1:2.....	28.1-153	28-234	28.1-219
28-204.2.....	28.1-154	28-235	28.1-220
28-204.3.....	28.1-155	28-236	28.1-221
28-204.4.....	28.1-156	28-237	28.1-222
28-204.5.....	28.1-157	28-238	28.1-223
28-204.6.....	28.1-158	28-239	28.1-224
28-205	28.1-159	28-240	28.1-225
28-206.1.....	28.1-187	28-241	28.1-226
28-207	28.1-184	28-242	Repealed
28-208	28.1-185	28-243	Repealed
28-209	28.1-186	28-244	Repealed
28-210	Repealed	28-245	Repealed
28-211	Repealed	28-246	Repealed
28-212	28.1-188	28-247	Repealed
28-213	28.1-189	28-248	28.1-195
28-214	28.1-190	28-249	28.1-196
28-215	28.1-191	28-250	28.1-197
28-216	28.1-192	28-251	28.1-198
28-217	28.1-194	28-252	28.1-199
28-218	28.1-193	28-253	28.1-200
28-218.1.....	28.1-203	28-254	28.1-202
28-218.2.....	28.1-203.1	28-255	28.1-202
28-219	28.1-204		

