

**REPORT OF THE
VIRGINIA CODE COMMISSION ON THE**

**Recodification of
Title 28.1 of the
Code of Virginia**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 21

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RICHMOND
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***Report of the
Virginia Code Commission
on
The Recodification of Title 28.1 of the Code of Virginia
to
The Governor and the General Assembly of Virginia***

Richmond, Virginia
January, 1992

TO: The Governor
and
The General Assembly of Virginia

Senate Joint Resolution No. 17 of the 1990 Acts of Assembly directed the Virginia Code Commission to study Title 28.1 of the Code of Virginia and report its findings in the form of a recodification of the title to the Governor and the General Assembly. Due to the number of amendments and changes which have been made in Title 28.1 since the previous recodification in 1962, the need arose to (i) organize the laws in a more logical manner, (ii) delete obsolete provisions, and (iii) improve the structure and clarity of the tidal fishery and habitat laws.

In accordance with the mandate, the study has been completed. The result is a recodification of Title 28.1 into a new Title 28.2 which reflects the consolidation of the fishery (Title 28.1) and habitat (Title 62.1) management functions of the Marine Resources Commission. The Code Commission has divided Title 28.2 into three subtitles. The first subtitle includes the general provisions relating to the administration of the agency. Subtitle II contains definitions, powers and duties covering those subjects which specifically apply to the management and regulation of the tidal fisheries. A new chapter has been created within this subtitle which captures the general requirements which apply to all the fisheries including terms and conditions of licensing, exemptions, duration of the licensing year, and tagging and marking requirements. More specific licensing requirements are retained in individual chapters for finfish, menhaden, oysters, clams, and crabs. Each of these chapters is organized in a manner which presents (i) the application process, (ii) the specific gear license requirements and fees, and (iii) the harvesting restrictions. The Code Commission also has reviewed the various penalties imposed for violation of the tidal fishery laws and in several instances has changed or modified the penalty to reflect the seriousness of the offense (i.e., its impact on the fishery). Subtitle III incorporates those statutes previously found in Title 62.1 relating to the Marine Resources Commission's responsibility for management of such habitats as state-owned submerged lands, tidal wetlands, and coastal primary sand dunes.

The Code Commission has rewritten and combined sections or parts of sections to clarify provisions and to eliminate archaic, obsolete or redundant language. Drafting notes highlighting significant changes or reorganization appear throughout this report, some preceding chapters where significant revisions were made and others following key sections in the Title 28.2 draft.

The outline of proposed Title 28.2 and the revision of Title 28.1 of the Code of Virginia follow this text as Appendix I. Appendix II contains tables that cross-reference the sections of Title 28.1 with equivalent sections in proposed Title 28.2 and vice versa.

The members of the Code Commission appreciate the time and effort of those who participated in this study, especially the staffs of the Virginia Marine Resources Commission and the State Health Department's Division of Shellfish Sanitation.

The Virginia Code Commission recommends that the General Assembly enact legislation at the 1992 Session to effectuate this revision.

Respectfully submitted,

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PROPOSED ORGANIZATION OF
TITLE 28.2
FISHERIES AND HABITAT OF THE TIDAL WATERS.

Subtitle I
General Provisions Relating to the Marine Resources Commission.

Chapter 1 - Administration.

- Article 1 - Commission; Commissioner.
- Article 2 - Support Activities.

Subtitle II
Tidal Fisheries.

Chapter 2 - General Provisions.

- Article 1 - Powers and Duties.
- Article 2 - Fishery Regulations.
- Article 3 - Proceedings and Actions.
- Article 4 - Officers, Agents and Districts.
- Article 5 - Licensing Generally.
- Article 6 - Marking of Boats, Nets and Other Devices.

Chapter 3 - Finfish.

- Article 1 - Licenses.
- Article 2 - Taking of Fish, Net and Device Restrictions.
- Article 3 - Restrictions on Trawling.

Chapter 4 - Use of Purse Nets for Taking Menhaden.

- Article 1 - Licenses.
- Article 2 - Area and Seasonal Restrictions.

Chapter 5 - Oysters and Clams.

- Article 1 - Licenses.
- Article 2 - Fishing for Oysters and Clams; Device Restrictions.
- Article 3 - Oyster Records and Taxes.
- Article 4 - Surveys and Resurveys.

Chapter 6 - Planting Grounds.

- Article 1 - Riparian Oyster-Planting Grounds.
- Article 2 - General Oyster-Planting Grounds.
- Article 3 - Assignment, Transfer, Condemnation; Other Grounds.
- Article 4 - Restrictions.

Chapter 7 - Crabs.

- Article 1 - General Provisions.
- Article 2 - Licenses.
- Article 3 - Restrictions on Harvesting Crabs.

Chapter 8 - Health and Sanitation Provisions.

- Article 1 - General Provisions.
- Article 2 - Control of Crustacea, Finfish and Shellfish; Violations and Penalties.

Chapter 9 - Enforcement of Subtitle II; Jurisdiction.

Chapter 10 - Compacts and Joint Laws with other States.

Article 1 - Atlantic States Marine Fisheries Compact.

Article 2 - Potomac River Compact; Related Laws.

Chapter 11 - Virginia Institute of Marine Science.

Subtitle III
Habitat.

Chapter 12 - Submerged Lands.

Article 1 - Ownership and Uses of Submerged Lands.

Article 2 - Enforcement and Penalties.

Chapter 13 - Wetlands.

Article 1 - General Provisions.

Article 2 - Wetlands Zoning Ordinance and Wetlands Boards.

Article 3 - Permits and Review.

Article 4 - Enforcement and Penalties.

Chapter 14 - Coastal Primary Sand Dunes and Beaches.

Article 1 - General Provisions.

Article 2 - Coastal Primary Sand Dune Ordinance and Boards.

Article 3 - Permits and Review.

Article 4 - Enforcement and Penalties.

CURRENT ORGANIZATION OF

TITLE 28.1.

FISH, OYSTERS, SHELLFISH AND OTHER MARINE LIFE.

Chapter 1 - Marine Resources Commission and Commissioner of Marine Resources.
(§§ 28.1-1 through 28.1-22.2)

Chapter 2 - Proceedings, Actions and Regulations of Commission.
(§§ 28.1-23 through 28.1-36.01)

Chapter 3 - Inspection Districts; Inspectors, etc.; Police Fleet.
(§§ 28.1-37 through 28.1-45.2)

Chapter 3.1 - Radio Navigation and Marine Patrol Dispatch Systems.
(§§ 28.1-46.1 through 28.1-46.3)

Chapter 3.2 - Marine Patrols Fund.
(§ 28.1-46.4)

Chapter 4 - Fish and Fishing Generally.
(§§ 28.1-47 through 28.1-81)

Article 1 - Food Fish.

(§§ 28.1-47 through 28.1-56)

Article 2 - Fish for Manufacture Into Fish Meal, Oil, etc.

(§§ 28.1-58 through 28.1-66)

Article 3 - Trolls, Trawl Nets and Drag Nets.

(§§ 28.1-67 through 28.1-72.1)

Article 4 - Marking of Boats, Nets and Other Devices; Restrictions in Certain Waters.

(§§ 28.1-73 through 28.1-81)

Chapter 5 - Oysters, Clams and Other Bivalves.
(§§ 28.1-82 through 28.1-164)

Article 1 - Taking Oysters Generally.

(§§ 28.1-82 through 28.1-85)

Article 2 - Oyster Records and Taxes.

(§§ 28.1-87 through 28.1-95)

Article 3 - Carrying Oysters From State or Certain Grounds.

(§§ 28.1-96 through 28.1-99)

Article 4 - Surveys and Resurveys.

(§§ 28.1-100 through 28.1-107)

Article 5 - Oyster-Planting Ground.

(§§ 28.1-108 through 28.1-118.1)

Article 6 - License Taxes Generally for Taking, Processing and Buying Bivalves.

(§§ 28.1-119 through 28.1-120.1).

Article 7 - Nonresidents Generally.

(§§ 28.1-121 through 28.1-123)

Article 8 - Culling Oysters.

(§§ 28.1-124 through 28.1-127)

Article 9 - Dredging or Scraping.

(§§ 28.1-128 through 28.1-135)

Article 10 - Miscellaneous Provisions.

(§§ 28.1-136 through 28.1-142)

Article 11 - Miscellaneous Provisions as to Particular Waters or Localities.

(§§ 28.1-143 through 28.1-159)

Article 12 - Clams and Scallops.

(§§ 28.1-160 through 28.1-164)

Chapter 6 - Crabs.
(§§ 28.1-165 through 28.1-174)

Chapter 7 - Health Provisions.
(§§ 28.1-175 through 28.1-183.2)

Chapter 8 - Enforcement of Title; Jurisdiction.
(§§ 28.1-184 through 28.1-194)

Chapter 9 - Virginia Institute of Marine Science.
(§§ 28.1-195 through 28.1-201)

Chapter 10 - Compacts and Joint Laws With Other States.
(§§ 28.1-202 through 28.1-229)

Article 1 - Compacts.
(§§ 28.1-202 through 28.1-203.1)

Article 2 - Potomac River Statutes.
(§§ 28.1-227 through 28.1-229)

Chapter 11 - Virginia Marine Products Board.
(§§ 28.1-230 through 28.1-239)

**CURRENT ORGANIZATION OF CHAPTERS RELATING
TO VMRC UNDER
TITLE 62.1.
WATERS OF THE STATE, PORTS AND HARBORS.**

Chapter 1 - Watercourses Generally.
(§§ 62.1-1 through 62.1-9.1)

Note - Only §§ 62.1-1 through 62.1-4 and § 62.1-9.1 relate to VMRC's Responsibilities.

Chapter 2.1 - Wetlands.
(§§ 62.1-13.1 through 62.1-13.20)

Chapter 2.2 - Coastal Primary Sand Dune Protection Act.
(§§ 62.1-13.21 through 62.1-13.28)

TITLE 28.2.

Fisheries and Habitat of the Tidal Waters.

Subtitle I.

General Provisions Relating to Marine Resources Commission.

CHAPTER 1.

ADMINISTRATION.

CHAPTER DRAFTING NOTE: This chapter, which constitutes Subtitle I, delineates the general administrative and enforcement responsibilities of the Marine Resources Commission over the tidal fisheries of Title 28.1 and the habitat programs of Title 62.1 (submerged lands, tidal wetlands, and coastal primary sand dunes). The general powers and duties of the Commission and the Commissioner are clarified and obsolete procedures or duplicative language is removed. The various support functions such as the Marine Patrol, the Marine Patrol Fund and operation of the radio dispatch system have been included in the chapter.

Article 1.

Commission; Commissioner.

~~§ 28.1-1.~~ 28.2-100. Definitions.—As used in this title , unless the context requires a different meaning :

“Commission” shall be taken to mean means the “ Marine Resources Commission. “

“Commissioner” shall be taken to mean means the “ Commissioner of Marine Resources. “

“Fish” , or “marine fish” “fishes,” or “shellfish” shall be construed to include porpoise, fishes, oysters, clams, scallops, mollusca, crustaceans, terrapins, marine mammals and all other seafood means those finfish species which spend a major portion of their lives in marine or estuarine waters. Sunfish, crappies, and carp are not considered to be marine fish.

“Fishing” , or “fisheries” or “to fish” shall be construed to include means all operations involved in using, setting, (i) taking, or catching, (ii) using, setting or operating apparatus employed in killing, taking or catching the same , or in (iii) transporting and or preparing the same for market marine fish, shellfish, and marine organisms .

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

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

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

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

“Officer” means a member of the Virginia Marine Patrol.

“Resident” shall be any person who has actually resided in Virginia for twelve months or a bistate agency created under a compact to which Virginia is a party; provided, however, that the powers and duties of the Potomac River Fisheries Commission shall not be expanded hereby and such Commission shall have only those powers and duties set forth in the Potomac River Compact of 1958.

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

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

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

Drafting Note: The definitions of "marine fish," "marine organisms," and "marine shellfish" are new. They are currently combined under existing § 28.1-1 but are proposed as separate definitions under § 28.2-100. "Scallops" are no longer included in the definition of "marine shellfish" since they are extinct in Virginia waters. The definition of "habitat" is new. The three current habitat programs managed by MRC under Title 62.1 are proposed to be relocated in Title 28.2. The definition of "officer" will standardize the numerous references to officials with full police powers. Currently, such individuals are referred to as inspectors, oyster inspectors, police boat captains, deputy inspectors, deputies, and oyster police. The terms "resident" and "shoals" are stricken and moved to proposed § 28.2-200. The definition of "territorial sea" is patterned after the federal definition in 33 CFR 2.05-5(a). The definition of "Tidewater Virginia" is taken from existing § 62.1-13.2 rather than § 28.1-2 since the latter is obsolete.

§ 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, Northampton, Northumberland, Prince George, Prince William, Richmond, Southampton, Stafford, Surry, Sussex, Westmoreland and York; and the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Portsmouth, Richmond, Suffolk, Virginia Beach and Williamsburg.

Drafting Note: Existing § 28.1-2 is repealed because it is obsolete. The current definition of Tidewater Virginia in § 62.1-13.2 has been used in proposed § 28.2-100.

§ 28.1-2.1. Change of name of Commission and Commissioner of Fisheries; transfer of certain properties to Marine Resources Commission.—The Commission of Fisheries hereafter shall be known as the Marine Resources Commission, and the Commissioner of Fisheries hereafter shall be known as the Commissioner of Marine Resources. All references in this Code to "Commission of Fisheries" and "Commissioner of Fisheries" hereafter shall be deemed references to "Marine Resources Commission" and "Commissioner of Marine Resources," respectively. All right, title and interest in and to any real estate, or any tangible personal property, vested in the Commission of Fisheries on June 28, 1968, are transferred to the Marine Resources Commission.

Drafting Note: § 28.1-2.1 is repealed since no references to the Commission of Fisheries remain in the Code and all property has been transferred to the MRC.

§ 28.1-3. 28.2-101. Jurisdiction of Commission.—The jurisdiction of the Commission shall include the Commonwealth's territorial sea and extend to the fall line of all tidal rivers and streams and the except in the case of state-owned bottomlands where jurisdiction extends throughout the Commonwealth. The Commission shall have jurisdiction over all commercial fishing and all marine fish, marine shellfish, and marine organisms, below said fall line on all tidal waters of the Commonwealth and habitat in such areas.

Drafting Note: Proposed § 28.2-101 clarifies language of existing § 28.1-3 and specifies MRC's jurisdiction over both the marine fishery contained in Title 28.1 and the existing habitat programs in Title 62.1.

§ 28.1-4. Chairman and members of Commission.—The Marine Resources Commission shall consist of a chairman and eight additional members, who shall be representative of, but not limited to, those with a commercial, recreational or environmental interest in the marine resources of the Commonwealth. At least one of such members shall be a person who, at the time of his appointment and for at least five years prior thereto, has earned his livelihood from working on the waters of the Commonwealth. To the extent possible, the membership of the Commission shall be representative of all areas of interest in the marine resources of the Commonwealth. 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 Marine Resources 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 six 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 are appointed and qualified, respectively. The appointment of such six members shall be made to expire on June 30 of every fourth year after 1948. No person except the chairman shall be eligible to serve for or during more than two successive terms. However, any person appointed to fill a vacancy shall be eligible for two additional terms after the expiration of the term of the vacancy for which he was appointed. Vacancies shall be filled for unexpired terms in the same manner as original appointments are made.

Drafting Note: Existing §§ 28.1-4 and 28.1-5 have been consolidated into a new § 28.2-102, and unnecessary language has been eliminated. No change in the law.

§ 28.2-102. Commission membership; chairman; qualifications; terms; meetings.—A. The Commission shall consist of a chairman and eight additional members who, to the extent possible, shall be representative of all areas of interest in Virginia's marine resources, including commercial, recreational and environmental interests. At least one member shall, at the time of his appointment, have earned his livelihood for at least five years by working on Virginia waters. The members, including the chairman, shall be appointed by the Governor and shall serve at his pleasure.

B. The chairman and two members of the Commission shall hold office for terms coincident with the term of the Governor making the appointments, or until their successor has been appointed and qualified. The remaining six members shall be appointed for four-year terms or until their successors are approved and qualified. No person, except the chairman, shall serve more than two consecutive full terms. Any vacancy shall be filled by the Governor for the unexpired term.

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

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

§ 28.1-10. Meetings. E. The Commission shall meet on the call of the chairman or three members at such times as he or they may deem necessary, and at such places as he or they may designate.

Drafting Note: Existing §§ 28.1-4, 28.1-5 and 28.1-10 have been consolidated into proposed § 28.2-102. The language in § 28.1-4 requiring confirmation by the General Assembly has been deleted because confirmation procedures are established under § 2.1-41.2. The responsibility of the chairman as agency administrator has been incorporated into new § 28.2-105. Subsection D is new since current law does not provide for a quorum.

§ 28.1-6. Oath; delivery of commissions of members.—The Commissioner and the associate members shall take the oath prescribed by Article II, § 7, 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).

Drafting Note: § 28.1-6 is repealed since Chapter 1 (§ 49-1 et seq.) of Title 49 stipulates requirements for oaths and affirmations.

§ 28.1-7. Bond of Commissioner.—The Commissioner shall enter into bond in the penalty of \$10,000, with surety to be approved by the Governor, payable and conditioned as required by § 49-12.

Drafting Note: This section is stricken since bonding requirements are specified in Chapter 2 (§ 2.1-11.1 et seq.) of Title 2.1.

§ 28.1-8. Compensation of Commissioner.—The Commissioner shall receive a salary to be fixed by the General Assembly and payable out of the appropriation made for the Marine Resources Commission.

Drafting Note: § 28.1-8 is repealed since compensation is established in the Appropriations Act.

~~§ 28.1-9. Powers 28.2-103. General powers of Commissioner and associate members Commission; promulgation of regulations .—The Commissioner and the associate members Commission 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. and may promulgate regulations and guidelines necessary to carry out the provisions of this title. Marine fisheries regulations shall be promulgated according to the procedures established in Article 2 (§ 28.2-209 et seq.) of Chapter 2 of this title. Habitat management regulations and guidelines shall be promulgated in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.).~~

The Commissioner may provide for the development of programs designed to enhance and improve commercial and sport fisheries in Virginia's tidal waters.

Drafting Note: Existing § 28.1-9 is amended to include only the general powers of the Commission. The new section (§ 28.2-103) consolidates regulatory authority for the habitat programs in Title 62.1 and marine fisheries (Title 28.1). The new language clarifies that there are two distinct procedures for promulgating regulations: one for habitat and the other for marine fisheries. The powers of the Commissioner have been stricken and incorporated into a new § 28.2-104, except for the power to develop fishery programs, which is moved to proposed § 28.2-202.

~~§ 28.2-104. Commissioner; general powers and duties.—The Commissioner shall:~~

- ~~1. Enforce the marine fishery and habitat laws and regulations;~~
- ~~2. Serve as chief executive officer of the Commission and devote full time to the duties of the office;~~
- ~~3. Appoint all personnel; and~~
- ~~4. Establish and equip a permanent office in the City of Newport News.~~

Drafting Note: This proposed new section consolidates the powers of the Commissioner located in a number of existing sections. Subdivision 1 combines existing §§ 28.1-9, 28.1-13, and the first paragraph of 28.1-23, all dealing with enforcement of fishing laws and the general power to enforce habitat laws and regulations in Title 62.1. Subdivision 2 is taken from existing § 28.1-4 with clarifying language added which indicates that as agency head the Commissioner is the chief executive officer. Subdivision 3 is taken from § 28.1-12. Subdivision 4 is the first sentence of existing § 28.1-11.

~~§ 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.~~

Drafting Note: This section is stricken because the requirement to locate an office in Newport News is being moved to proposed § 28.2-104. The requirement for examination of records is unnecessary since records are subject to F.O.I. under § 2.1-342.

~~§ 28.1-12. Appointment and control of employees.—The Commissioner is authorized to appoint all of the officers and employees of the Marine Resources Commission, 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.~~

Drafting Note: This section is stricken because the power to appoint is being moved to proposed § 28.2-104. The control of employees is already provided for under § 2.1-20.01 (Employment of personnel) and § 2.1-20.01:1 (General authority for agency directors).

~~§ 28.1-12.1. 28.2-105. Legal representation for appointees employees in criminal prosecution; compensation.—If any person appointed by the Commissioner shall be Commission employee is prosecuted on any criminal charge arising out of any act committed in the discharge of his official duties, the Commissioner may employ special counsel approved by the Attorney General to defend such person the employee . The compensation for special counsel employed pursuant~~

to this section shall, subject to the approval of the Attorney General, be paid out of the funds appropriated for the administration of the Marine Resources Commission.

Drafting Note: No change in the law.

§ 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.

Drafting Note: This section is stricken. The provision requiring the Commissioner to enforce all fish laws has been moved to proposed § 28.2-104. The language regarding employee performance is unnecessary since § 2.1-20.01:1 provides general authority for agency directors.

§ 28.1-14. Purchase, lease or sale of boats, nets and other equipment.—The Commissioner with the approval of the Marine Resources Commission 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 reinvest the proceeds in another boat or boats, equipment.

Drafting Note: This section is repealed since procurement procedures are subject to the Virginia Public Procurement Act (§ 11-35 et seq.). The reinvestment of proceeds is covered under the surplus property provisions of the Appropriations Act.

§ 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.

Drafting Note: Existing § 28.1-15 is being repealed as unnecessary.

§ 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.

Drafting Note: Existing § 28.1-16 is stricken with the Commissioner's investigative power moved to proposed § 28.2-202. The authority to determine questions arising out of employee actions is unnecessary since § 2.1-20.01:1 stipulates this authority of agency directors.

§ 28.1-17. Repealed by Acts 1984, c. 734.—

§ 28.1-18. Repealed by Acts 1970, c. 463.—

§ 28.1-19. Repealed by Acts 1984, c. 245.—

§ 28.1-20. Repealed by Acts 1984, c. 288.—

Article 2.

Support Activities.

§ 28.1-45.1. 28.2-106. Virginia Marine Patrol; law-enforcement responsibilities ; qualifications; oath .— A. The law-enforcement force division of the Commission shall be designated as the Virginia Marine Patrol. It shall exercise such powers and duties as the General Assembly may confer upon it by law and as provided in regulations adopted pursuant to law : The responsibilities of the Virginia Marine Patrol shall include, , including but not be limited to: patrolling the tidal waters and shoreline of the Chesapeake Bay, its tidal tributaries, and territorial sea; enforcing marine fishing and habitat conservation laws and regulations; enforcing health laws pertaining to the harvesting of seafood from condemned areas; enforcing laws or assisting other agencies in enforcing laws pertaining to the removal of obstructions and abandoned vessels from the water, to boating operation and navigation, and to larceny on the water; providing for waterborne safety; and conducting search and rescue activities.

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

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

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

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

5. *Providing for water-borne safety; and*

6. *Conducting search and rescue activities.*

§ 28.1-45.2. Powers of officers of the Virginia Marine Patrol.—

B. Officers of the Virginia Marine Patrol shall have the same powers as regular game wardens appointed pursuant to Chapter 2 of Title 29.1.

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

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

Drafting Note: Existing §§ 28.1-45.1 and 28.1-45.2 have been combined in proposed § 28.2-106. No change in the law. Subsection C of this section is taken from existing § 28.1-41 but raises the age requirement for officers from 18 to 21 years which is current agency policy. Subsection D is taken from existing § 28.1-42.

§ 28.1-46. Repealed by Acts 1990, c. 521.—

§ 28.1-46.1. 28.2-107. Commission to implement systems; leases and other agreements; fees and charges radio system .—The Commission is authorized and directed to *shall* take steps to implement both an effective navigation system and a marine patrol radio dispatch system. In establishing and operating such systems a system on a permanent basis, the Commissioner is authorized to may negotiate appropriate lease leases or other necessary agreements with such firm or firms as may be necessary. Such agreements, if made, shall provide for lease of transmission or base radio stations ; and of radio navigational equipment for designated vessels of the Commission and of the Virginia Institute of Marine Science, and shall provide an option for purchase of such equipment .

The Commission is authorized to establish a schedule of fees and charges to be paid by users of the system who are not agencies of the State.

Drafting Note: All language regarding a navigation system is stricken, since no such system exists or ever existed. The language was placed in the Code for a private party who hoped to develop an electronic navigation system. The Commission still needs to lease base radio stations, so this language remains.

§ 28.1-46.2. Commission to obtain assignment of necessary radio frequencies.—The Commission shall apply to the Federal Communications Commission for, and make its best efforts to obtain, permanent assignment of radio frequencies necessary and appropriate for operation of such systems.

Drafting Note: Existing § 28.1-46.2 is repealed. Applications for licensed radio frequencies are made on behalf of the Commonwealth by the Department of Information Technology.

§ 28.1-46.3. Plan for implementation of complete and permanent systems.—The Commission, with the cooperation of any other contracting party and appropriate officials of other state agencies, local governments, other states, and the federal government, shall develop a plan to implement both a marine patrol dispatch system and a complete and permanent system of radio navigation for the protection and safety of pleasure boating and the commercial boating and seafood industries.

Drafting Note: This section is being repealed since the radio dispatch system has been implemented and a navigation system is no longer contemplated.

§ 28.1-46.4. 28.2-108. Marine Patrols Fund created *continued*.—A. There is hereby created The Marine Patrols Fund ; *is continued and* hereinafter referred to as the fund : The fund , which shall consist of those moneys appropriated thereto to it by the General Assembly. From the fund, there shall be distributed by the Comptroller such moneys as shall be required by the Virginia Marine Resources Commission to cover the costs of the operation of a marine patrol dispatch service as provided for and defined in Chapter 3.1 (§ 28.1-46.1 et seq.) of this title. From the fund, there shall also be distributed, no later than February 1 of each year, by the Comptroller, who shall draw warrants on the basis of certification by the Commissioner, to each county or city in Tidewater Virginia or any county abutting Smith Mountain Lake operating a marine patrol or providing marine patrol services in the waters under the jurisdiction of the Commonwealth, an amount equal to fifty percent of the immediately preceding year's cost to such locality of such marine patrol or a larger amount as specifically provided in the current general appropriations act. The Comptroller shall annually distribute moneys from the fund for the following purposes:

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

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

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

C. The Commissioner is hereby authorized to ~~may~~ obtain from any county or city seeking funds under this section ~~such any information as he may require in order that he may needs to~~ determine the amount of funds to which such county or city may be entitled hereunder .

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

Drafting Note: In subsection A 2 the specific percentage of reimbursement has been stricken and replaced with a general reference to the Appropriations Act. No other change in the law.

Subtitle II.

Tidal Fisheries.

CHAPTER 2.

GENERAL PROVISIONS.

CHAPTER DRAFTING NOTE: Chapter 2 contains those provisions which apply specifically to the regulation of the tidal fishery and include the powers and duties of the Marine Resources Commission and the Commissioner and general licensing requirements. Under its current powers, the agency may promulgate regulations. A violation of any regulation, under existing § 28.1-23, is a Class 1 misdemeanor, whereas a violation of a statute unless otherwise specified is a Class 3 misdemeanor. This has led to a two-tier system of penalties. To remedy this situation, the Code Commission has removed the provision which calls for a Class 1 misdemeanor penalty for violation of a regulation and has proposed new language (§ 28.2-201) which requires that the penalty for violations of a regulation be the same as the penalty specified in the enabling statute under which a regulation has been promulgated. No changes have been made to the procedure for promulgating fishery regulations or to the hearings before the Marine Resources Commission which appear as Articles 2 and 3. Articles 4 and 5 consist of general provisions which consolidate many of the requirements that previously appeared in each of the fisheries (i.e., finfish, shellfish, oysters and clams). Similarly, all the exemptions from licensing requirements as well as the requirements for tagging and marking of gear have been placed in this chapter.

Article 1.

Powers and Duties.

§ 28.2-200. *Definitions.*—As used in this subtitle, unless the context requires a different meaning:

"Haul seine" means any net set from the shore or in shallow waters not exceeding eight feet in depth at mean low water. Every haul seine shall have one end stationary at all times while the seine is being used, except when closing the net the stationary end may be changed.

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

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

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

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

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

Drafting Note: The definitions of haul seine and pound nets are taken from existing § 28.1-51. The definition of James River seed area is taken from existing §§ 28.1-83 (proposed § 28.2-508) and existing 28.1-98. The definition of the mouth of the Rappahannock River is existing § 28.1-148 but the boundaries have been updated to reflect the Virginia coordinates system and references to certain structures which no longer exist are stricken. The definition of "resident" in existing § 28.1-1 is changed to remove the durational requirements and includes the intent to be domiciled Virginia. The definition of "shoals" is taken from existing § 28.1-1 with modifying language added.

~~§ 28.1-22. 28.2-201.~~ Authority of Commission to make regulations, establish licenses, and prepare fishery management plans; enforcement; penalty for violation of regulation.— A. The Commission shall have authority to make such may:

1. Promulgate regulations as it deems , including those for taking seafood, necessary to promote the general welfare of the seafood industry and to conserve and promote the seafood and marine resources of the Commonwealth ; including regulations as to the taking of seafood . The Commission may also promulgate regulations necessary for the conservation and reasonable use of surf clams. ~~The regulations~~ Regulations shall not conflict with the provisions of statutory law. The penalty for violation of a regulation shall be the same as the penalty prescribed for violation of the specific statute under which the regulation has been promulgated.

~~The Commission shall have the power to establish~~ 2. Establish a license commensurate with other licenses in an amount not to exceed \$100 for any device used for the taking or catching of seafood in the tidal waters of the Commonwealth when the device (i) is not otherwise licensed in this title and when the device (ii) is used for commercial purposes. The Commission may specify, when issuing such a license, any restriction or control over the device or the person operating the device.

The Commission is authorized to prepare 3. Prepare fishery management plans containing evaluations of regulatory management options, based upon scientific, economic, biological, and sociological information, and to use them in the design and promulgation development of regulations. The Commissioner may appoint a fisheries advisory committee and its chairman, consisting of representatives of the various fishery user groups, to assist in the preparation and implementation of the fishery management plans. ~~Notwithstanding the provisions of § 2.1-20.3, the~~ The Commission may expend funds to compensate the members of the committee pursuant to § 14.1-5.2 from funds that may be appropriated for such purposes by the Virginia Marine Resources Commission .

In addition to the enforcement of any regulation by its own inspectors, the Commission may provide 4. Provide for enforcement of any regulation governing surf clams by any law-enforcement officer of any agency of the Commonwealth or its political subdivisions or by any law-enforcement officer of any agency of the federal government ; providing the agency agrees to undertake the enforcement . Enforcement agreements by other than Commission inspectors with other agencies or political subdivisions shall be stated in the regulation.

Any person who violates any regulation adopted and promulgated by the Commission shall be guilty of a Class 1 misdemeanor.

Drafting Note: The authority to regulate surf clams has been moved from existing § 28.1-120.1 to subsection A 1. Although surf clams are not found in Virginia waters, they are landed at Virginia facilities and subject to inspection by the federal government and MRC. The last sentence in subsection A 2 is language from existing § 28.1-48(B) (proposed § 28.2-301). In order to eliminate the current two-tier system of penalties (i) new language in subsection A 1 clarifies that the penalty for violation of a regulation shall be the same as that of the enabling statutes and (ii) language in subsection A 4 which makes it a Class 1 misdemeanor to violate a regulation has been stricken.

§ 28.2-202. Commissioner, fishery powers.—The Commissioner may :

1. Investigate all matters affecting the seafood industry; and
2. Provide for the development of programs designed to enhance and improve commercial and sport fisheries in Virginia's tidal waters.

Drafting Note: Subdivision 1 is taken from existing § 28.1-16 and subdivision 2 is taken from existing § 28.1-9.

~~§ 28.1-23.1. 28.2-203. Fishery Commission to prepare fishery management policy plans; standards .— It shall be the goal of fisheries management within the Commonwealth of Virginia to conserve and enhance finfish and shellfish resources, and to preserve and promote both commercial and recreational fisheries, and, thereby, to maximize food production and recreational opportunities. The marine resources of the Commonwealth shall be managed for their maximum benefit and long-term use by present and future generations. The Commission shall prepare and implement fishery management plans prepared and implemented according to law shall also have as a goal the preservation of so as to preserve the Commonwealth's exclusive right to manage the fisheries within its territorial jurisdiction.~~

Fishery management shall be based upon the best scientific, economic, biological and sociological information available, shall be responsive to the needs of interested and affected citizens, shall promote efficiency in the utilization of the resources, and shall draw upon all available capabilities in carrying out research, administration, management, and enforcement.

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

1. Conservation and management measures shall prevent overfishing while achieving ; on a continuing basis, the optimum yield from each fishery. The "optimum yield" of a fishery means the amount of fish or shellfish which will provide the greatest overall benefit to the Commonwealth, with particular reference to commercial fishing for food production and to recreational fishing;
2. Conservation and management measures shall be based upon contemporaneous consideration of the best scientific, economic, biological and sociological information available;
3. To the extent practicable, an individual stock of fish shall be managed as a unit throughout the territorial waters of the Commonwealth, and interrelated stocks of fish shall be managed as a unit or in close coordination;
4. Conservation and management measures shall not discriminate between user groups. If it becomes necessary to allocate or assign fishing privileges among various user groups, such allocation shall be (i) fair and equitable to all fishermen; (ii) reasonably calculated to promote conservation; and (iii) carried out in such manner that no particular individual, corporation, or other entity person acquires an excessive share of such privileges;
5. Conservation and management shall, where practicable, promote efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as

its sole purpose;

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

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

Drafting Note: The policy language and goal statements have been stricken. The second paragraph is stricken since it duplicates the language contained in the standards.

~~§ 28.1-23.2. 28.2-204. Authority to collect fisheries statistics.—~~ A. The Commission shall ~~have the authority to~~ may collect from any source any fisheries data and information which it deems necessary to develop fishery management plans and to evaluate management options. This information shall include, but not be limited to:

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

2. Statistics from fish processors and dealers;

3. Types of gear and equipment used;

4. Areas in which fishing has been conducted;

5. Landing places; and

6. ~~Any other information as deemed necessary by the Commission.~~

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

~~It shall also include information necessary to document the estimated and actual processing capacity of fish processing facilities.~~

B. The Commission may enter into cooperative agreements with agencies of another state, the federal government, or others any other entity for the collection of statistics ; or the Commission may collect statistics from any source and require the reporting of these statistics on forms prescribed by the Commission .

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

Drafting Note: Subdivision 6 is stricken since subsection A authorizes the collection of any data. No change in the law.

~~§ 28.1-3.1. 28.2-205 Scientific collection permits ; penalty . —~~A. Except as provided for in § 28.1-106 § 28.2-1101 , it shall be is unlawful for any resident or nonresident person, partnership, association, corporation, school, educational institution, research or related group or organization person to remove from the waters of this State the Commonwealth subject to under the jurisdiction of the Commission any marine fish, marine shellfish, or marine organisms for technical research, scientific, educational or museum purposes without having first obtained from the Commissioner a collection permit when such removal is for technical, research, scientific, educational or museum purposes .

A violation of this subsection is a Class 3 misdemeanor.

B. Application for a permit shall be made in writing to the Commissioner. There shall be no charge for a permit issued pursuant to the provisions of this section. Any permit issued pursuant to the provisions of this section and the permit shall not be transferable. Provided, however, that the The issuance of the permit shall be governed by applicable rules and Commission regulations promulgated by the Commission and shall be subject to any reasonable terms and conditions imposed by the Commissioner. The Commissioner may, with the approval of the Commission, require an applicant for such permit to submit to the Commissioner any data or results acquired through the collection of marine specimens pursuant to use of the permit.

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

Drafting Note: No change in the law. New language in subsection A stipulates the penalty for unlawful activity.

~~§ 28.1-22.1.~~ 28.2-206. Virginia Saltwater Sport Fishing Tournament.—The Commission shall promote and develop the Commonwealth's saltwater angling resources for their recreational and economic benefits; including but not limited to, . These efforts shall include, but not be limited to, a subprogram, known as the Virginia Saltwater Sport Fishing Tournament. The Tournament is charged with the following duties and responsibilities, which shall:

1. To promote and develop saltwater sport fishing, including a Saltwater Sport Fishing Tournament designed to document *Publicize and document* the quantity, quality, and variety of the Commonwealth's saltwater angling resources for the purpose of publicizing these resources; when possible fish caught or taken in the tournament shall be released alive; and

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

Drafting Note: No change in the law.

~~§ 28.1-22.2.~~ 28.2-207. Tournament Advisory Committee established *continued*.—A. There is hereby established the The Virginia Saltwater Sport Fishing Tournament Advisory Committee which is *continued and* shall hereinafter be known as the Committee. The Committee shall assist the Director of the Virginia Saltwater Sport Fishing Tournament, hereinafter referred to as the Director, with the development and operation of tournament programs and make recommendations concerning tournament services and programs.

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

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

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

Drafting Note: No change in the law.

~~§ 28.1-47.2~~ 28.2-208. Marine Fishing Improvement Fund established *continued*.—There is hereby established *continued* a special, nonreverting fund in the state treasury to be known as the Marine Fishing Improvement Fund, hereinafter referred to as the Fund. The Fund shall consist of that portion of the nonresident harvester's license fees which have not been allocated to the Virginia Marine Products Fund as provided for in § 28.2-227. The Fund shall be administered by the Commission; to be and used solely for the purpose of ~~managing to manage~~ and ~~improving~~ improve marine fisheries.

Drafting Note: Clarifies the Fund's source of revenue. No change in the law.

Article 2.

Fishery Regulations.

~~§ 28.1-24.~~ 28.2-209. Publication of proposed regulations.—No regulation of general application shall be promulgated by the Commission until the expressed express terms or an informative a summary including a statement of purpose and substance of the proposed regulation has been published by and at the expense of the agency at least once in daily papers published and having general circulation in Richmond, Norfolk, and Newport News; or if. If the regulation has only local application in the locality to which it applies, and a similar notice shall be published in a daily paper with circulation in the locality in which the regulation applies. A copy of every regulation shall be filed in the office of the Commission and open to public inspection

to the general public . Such publication and filing must shall be not less than fifteen days prior to the day on which the public hearing on the proposal is to be held is scheduled . The published notice shall include a statement of state the time, place, and nature of the hearing.

Drafting Note: Specific language is added to clarify what a summary of the regulations should include.

~~§ 28.1-25.~~ 28.2-210. Adoption of emergency regulations.—If, in an emergency, the adoption of a regulation is necessary for the immediate preservation of the public peace, health, safety, and welfare, or the protection of the seafood industry, or natural resources or marine animals organisms , the Commission may promulgate the necessary regulation ; in which the . The regulation shall forthwith be published and filed as prescribed in § ~~28.1-24~~ 28.2-209 . No regulation adopted as an emergency regulation shall remain in effect longer than thirty days unless a public hearing is held as prescribed required in § ~~28.1-26~~ 28.2-211 after being advertised as prescribed in § ~~28.1-24~~ 28.2-209 .

Drafting Note: No change in the law.

~~§ 28.1-26.~~ 28.2-211. Hearing on proposed regulations.—A public hearing shall be held by the agency at the time and place named designated in the notice prescribed in § ~~28.1-24,~~ 28.2-209 and . An 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.

Drafting Note: The language regarding the adoption of regulations has been stricken and moved to proposed § 28.2-212.

§ 28.2-212. Adoption of regulations.—A regulation may be adopted in the form in which it was filed or as amended at the public hearing, provided the amendments do not alter the primary purpose of the regulation.

Drafting Note: This section is the last sentence of existing § 28.1-26 (proposed § 28.2-211).

~~§ 28.1-27.~~ 28.2-213. Distribution of new regulations.—A copy of any regulation of general application adopted by the Commission of general application shall be sent to the Registrar of Regulations, the clerks of the circuit courts of record of all counties and cities located in the Tidewater section of Virginia, and to all inspectors of the Commission officers .

Drafting Note: No change in the law.

~~§ 28.1-28.~~ 28.2-214. Right of petition to Commission.—Any interested person may petition the Commission requesting the promulgation, amendment or repeal of any regulation.

Drafting Note: No change in the law.

~~§ 28.1-29.~~ 28.2-215. Judicial review of validity of regulations.—Judicial review of any regulation shall be in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

Drafting Note: No change in the law.

Article 3.

Proceedings and Actions.

~~§ 28.1-30.~~ 28.2-216. Hearings before Commission.— A. Any person whose rights, duties , or privileges, including matters relating to licenses, shellfish planting grounds, or fishing stands, have been or may be affected by any action or inaction of an agency the Commission or Commissioner 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 . The Commission shall hold a hearing on the complaint 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 informed of the hearing by first class mail of at least five days prior to the scheduled date of the hearing. The notice shall indicate the time ; and place ; of the hearing and the issues involved. An opportunity shall be afforded all All parties shall have the opportunity 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 in his absence, shall preside over the hearing. An orderly procedure shall be followed, and the rules of evidence shall be adhered to apply insofar as possible.

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

B. 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 acted upon by the Commission in the manner prescribed in § 9-6.14:13.

Drafting Note: The reference to § 8-302 has been stricken since that section was deleted and not replaced when Title 8 was revised. The section authorized the assessment of damages for failure to obey a summons and punishment for contempt. Section 9-6.14:13 of the Administrative Process Act has been substituted for § 8-302. That section authorizes an agency issuance of a subpoena. Upon a failure or refusal to comply with the subpoena, the agency may obtain an order of enforcement from the court.

§ 28.1-31. 28.2-217. Procedure of hearing.—Every party shall have the right to cross-examine adverse witnesses including inspectors and officers employees of the Commission and to submit rebuttal evidence.

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

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

Drafting Note: No change in the law.

§ 28.1-32. 28.2-218. Finding, award, etc., of Commission.—In all contested matters the finding, award, action or judgment of the Commission shall be reduced to in writing and copies thereof sent to the parties noting an appearance appearing at the hearing.

Drafting Note: No change in the law.

§ 28.1-33. 28.2-219. 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 in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

(b) through (i) ~~Repealed.~~

Drafting Note: No change in the law.

§ 28.1-34. 28.2-220. Appeals to Court of Appeals.—From the final decision of the circuit court an appeal of the final decision of the circuit court may be taken to the Court of Appeals.

Drafting Note: No change in the law.

§ 28.1-35. 28.2-221. Proof of posting of notices.—The return of by any Commission employee of the Commission as to the posting of any notices required under this title subtitle or affecting any regulation of the Commission shall be conclusive evidence of the same proper posting.

Drafting Note: No change in the law.

Article 4.

Officers, Agents, and Districts.

§ 28.1-37. 28.2-222. Inspection districts Districts.—The Marine Resources Commission shall divide and periodically redistrict the territory over which it has jurisdiction into the smallest number of 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 *Virginia* fish and shellfish laws of this State . This power shall be a continuing power and may be exercised at any time.

Drafting Note: Changes in existing § 28.1-37 reflect the change in the title of the enforcement position from inspector to officer. Since there is authority to redistrict it is unnecessary to assert this is a continuing power.

~~§ 28.1-38. Repealed by Acts 1972, c. 56.—~~

~~§ 28.1-39. 28.2-223. Appointment of inspectors officers.—The Commissioner of Marine Resources shall appoint for each of such districts one or more inspectors assign at least one officer to each district .~~

Drafting Note: Language reflects a change in the name of the law-enforcement position.

~~§ 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.~~

Drafting Note: This section is repealed because the employment of personnel is a power granted to agency directors under § 2.1-20.01.

~~§ 28.1-41. Training and qualifications of inspectors.—The Commissioner of Marine Resources 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, or who has not satisfactorily passed an examination prepared by the Commissioner. No person shall hereafter be appointed as inspector who has not attained the age of eighteen years.~~

Drafting Note: This section is stricken because law-enforcement training is now conducted through the Criminal Justice Training Standards System. The provisions dealing with qualifications have been moved to proposed § 28.2-106.

~~§ 28.1-42. Oath and bond.—Each inspector appointed by the Commissioner shall qualify before the clerk of the circuit or corporation court of the county or city in which he resides, or in which his district may be, by taking the oaths prescribed by law. Each inspector shall be bonded in an amount to be fixed by the Commissioner in the penalty not to exceed \$15,000 nor to be less than \$500. Such bond shall be made payable to the Commonwealth, and shall be conditioned upon the faithful performance by the inspector of his duties. The premium on every such bond shall be paid out of funds of the Commission.~~

Drafting Note: This section is stricken since the language requiring an oath has been moved to subsection D of proposed § 28.2-106 and the bonding requirement is stipulated in Chapter 2 (§ 2.1-11.1 et seq.) of Title 2.1.

~~§ 28.1-43 28.2-224. Collection of licenses, rentals, fines, etc. license fees. —The Commission Commissioner may designate such trustworthy persons an officer assigned to a district or authorized agents in the several districts to sell licenses, and collect rentals and other sums due it; as it deems circumstances require ; and such . Such persons shall be bonded in such a sum as that will protect the Commission from any loss. All provisions applicable to such sales and collections by inspectors shall apply to such officers and agents.~~

Drafting Note: The change in language reflects a current procedure that the designation of agents is an administrative responsibility of the Commissioner. Leasing and rental collection is now centralized so the obsolete language has been stricken.

~~§ 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; and such other fees as are specified under other sections of this title pertaining to fish, crabs, clams and other shellfish.~~

Drafting Note: This section is stricken because the \$1.50 fee for assigning oyster planting grounds has been moved to existing § 28.1-109 (proposed §§ 28.2-600 and 28.2-608), and the \$3 fee for bathing grounds has been moved to proposed § 28.2-633.

~~§ 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, 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 records 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.

Drafting Note: Existing § 28.1-45 is being repealed since supervision of inspectors is an administrative responsibility of the Commissioner and does not have to be set out in a separate statute.

Article 5.

Licensing Generally.

§ 28.2-225. *Fishing license required; penalty.*—It shall be unlawful to fish in the tidal waters of the Commonwealth or those waters under the joint jurisdiction of the Commonwealth without first obtaining the required license, subject to the exemptions set out in § 28.2-226.

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

Drafting Note: The proposed § 28.2-225 clarifies that it is a crime to use various devices and apparatus without a license. This is a general provision which would apply to all the fisheries. "To fish" is defined in proposed § 28.2-100 as all operations including taking or catching, or using or operating any apparatus. Several existing sections (i.e., §§ 28.1-47 and 28.1-47.1) have been cited as authority for assessing a criminal penalty for fishing without a license. These sections are requirements for completing a license application or payment of a fee.

§ 28.2-226. *Exemption from licensing requirements—A. The following activities are exempt from the licensing requirements of this subtitle:*

1. *Taking of fish for recreation or family use with a rod and line, hand line or gig.*
2. *Taking by dip net, hand line, or two crab pots, as much as one bushel of hard crabs and two dozen peeler crabs in any one day for personal use only.*
3. *Taking a maximum of one bushel of oysters in any one day for personal use, when taken by hand or with ordinary tongs.*
4. *Taking a maximum of 250 clams in any one day for personal use, when taken by hand or with ordinary tongs.*

B. No license shall be required of an oyster grounds leaseholder, or other person authorized or employed by a leaseholder, to harvest oysters or clams from the leasehold. However, this exemption shall not apply to other requirements to obtain permits, including those permits for dredging or scraping on leaseholds provided in § 28.2-516, or for removal and transportation of shellfish from condemned areas as required by §§ 28.2-810 and 28.2-811.

Drafting Note: This proposed section consolidates existing exemptions. Subsection A 1 is existing section 28.1-78. Subsection A 2 combines §§ 28.1-165(1) and 28.1-174. Subsections A 3 and A 4 are existing § 28.1-120(8). Subsection B is new language from § 28.1-120 which specifies such an exemption.

§ ~~28.1-47.1~~ 28.2-227. *Special nonresident harvesters harvester's license ; fee and oath; revocation; penalty .— A. Any nonresident desiring to take or catch finfish marine fish , crabs or any other seafood except oysters, clams or other shellfish, from any of the tidal waters of the Commonwealth for which a license is required and for which such nonresident is eligible, shall first pay to any officer or agent a fee of \$1,150 for a nonresident harvesters harvester's license. Three hundred fifty dollars of each fee shall be credited to the Virginia Marine Products Fund as provided under § ~~28.1-238~~ 3.1-684.63 . The remainder of the fee shall be credited to the Marine Fishing Improvement Fund, as established pursuant to § ~~28.1-47.2~~ 28.2-208 .*

B. The license shall be required of each boat used in the Virginia's tidal waters of Virginia, and shall be in addition to any other licenses required for the activity involved. However, the total fee for a nonresident to engage in any fishing activity in Virginia's waters shall not be less than the total fee charged a Virginia resident to engage in like fishing activities in the state of

residence of the nonresident.

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

D. A nonresident harvesters license shall be required and displayed to any inspector or agent prior to the purchase of any other license for the harvesting of seafood. A nonresident harvesters license shall be valid for one calendar year, and no part of the fee for the license shall be prorated. Revocation of this license in accordance with the provisions of § 28.1-36 of this Code § 28.2-232 shall constitute revocation of any other license held by the nonresident under the provisions of Title 28.1 of this Code by the named nonresident *this subtitle* .

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

Drafting Note: No change in the law. The language relating to the license year and proration in subsection D is stricken since proposed § 28.2-229 contains similar language.

~~§ 28.1-119.1. 28.2-228. License for purchase of oysters, clams, crabs, finfish or eels fish, shellfish, or marine organisms from the catcher ; fee ; display; monthly reports .— A. Any person ; firm, or corporation , purchasing from the catcher, oysters or clams caught from the public grounds of the Commonwealth or the Potomac River, or crabs, finfish fish , eels or other seafood caught from the waters of the Commonwealth or the Potomac River, shall : (1) pay a license fee of (i) fifty dollars for each place of business in the Commonwealth purchase a license therefor and the license fee shall be fifty dollars ; and (2) (ii) twenty-five dollars for each boat or motor vehicle used for buying in the Commonwealth shall purchase a license therefor and the license fee shall be twenty-five dollars .~~

The license plate issued by the Commission shall be affixed in a conspicuous place on the place of business, boat or motor vehicle.

Any person, firm or corporation purchasing oysters under the license specified herein shall file monthly reports as required by § 28.1-92. These reports shall be filed with the Commission each month regardless of whether oysters were purchased that month or not.

B. Nothing in this section shall be construed as applying to No license shall be required of any person purchasing seafood for personal consumption, any place of business which is solely a restaurant, or any person who operates a business which is subject to local license taxes under § 58.1-3703 and who has in his possession no more than one bushel of peeler crabs to be sold as bait.

All fees collected pursuant to this section shall be deposited to the credit of the Virginia Marine Products Fund.

Drafting Note: The second paragraph, which requires the license plate to be displayed in a conspicuous place, is stricken and moved to subsection A 4 of proposed § 28.2-234. The third paragraph regarding the filing of monthly reports is stricken because of similar requirements in existing § 28.1-92 (proposed § 28.2-543). The last paragraph is stricken since existing § 28.1-233 (proposed § 3.1-684.63) requires all fees to be deposited in the Fund.

~~§ 28.1-21. 28.2-229. When licenses terminate; proration and refund not permitted . All licenses issued by the Marine Resources Commission shall be on an annual basis and — A. The Commission shall issue all licenses on an annual basis. All licenses shall be valid from January 1 of each year or their later date of purchase and expire on December thirty-one 31 of the year in which issued.~~

B. Refunds shall not be made or prorated if the fishing effort is reduced, or seasons are closed (i) in order to promote conservation of the fisheries or (ii) due to natural conditions. Refunds shall not be made for any license that is suspended or revoked.

Drafting Note: Subsection B clarifies that refunds will not be made in instances of a closing of a fishery, or revocation/suspension of a license. Similar language appears in existing §§ 28.1-47.1 and 28.1-70.

~~§ 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.

Drafting Note: Existing § 28.1-22 is repealed since procedures for disposition of records are prescribed by the Virginia Public Records Act (§ 42.1-76 et seq.).

§ 28.2-230. *Penalty for false statements or altering a fishing license; penalty.*—It shall be unlawful for any person to (i) subscribe to a materially false statement in applying to secure a license to fish, or (ii) alter or change such license.

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

Drafting Note: This proposed section contains new language which makes it a crime to falsely obtain or alter a license. Language in existing § 28.1-64 provides a Class 1 misdemeanor penalty for falsely swearing on an application for a menhaden license. Similar language has been used for this proposed general provision. Although several existing sections (i.e., §§ 28.1-47, 28.1-47.1, 28.1-60, etc.) require an applicant to affirm through an oath that the information provided in the application is accurate, it is unclear what constitutes unlawful activity.

§ 28.2-231. *Exhibition of license; display to officers; penalty.*—Any person engaged in fishing shall have the required license available for inspection and shall present such license when requested by an officer. Failure to present the license upon request of any officer is a Class 1 misdemeanor and prima facie evidence that the person is fishing without a license.

Drafting Note: Existing § 28.1-120 (Taking oysters or clams by hand or with tongs) and § 28.1-133 (dredging and scraping license fee) contain similar language.

~~§ 28.1-36. 28.2-232. Revocation of licenses.~~—The Commission may revoke and prohibit the issuance, reissuance, or renewal of any and all licenses issued to any person, and prohibit the issuance, reissuance or, renewal of any licenses, if, after a hearing held after ten days' notice to such person the applicant or licensee, it finds that such the person has violated any provision of this title subtitle .

The duration of any the revocation shall be fixed by the Commission up to a maximum of two years, taking into account (i) evidence of repeated or habitual disregard for conservation, health and safety laws and regulations; (ii) abusive conduct and behavior toward Marine Patrol officers; and (iii) the severity of any damage that has occurred, or might have occurred, to the natural resources, the public health, or the seafood industry.

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

Drafting Note: No change in the law.

~~§§ 28.1-36.1 . Repealed by Acts 1974, c. 96.—~~

~~§§ 28.1-36.6. Repealed by Acts 1974, c. 96.—~~

Article 6.

Marking of Boats, Nets and Other Devices.

§ 28.1-73. 28.2-233. *License plates or tags or identification generally.*— It shall be the duty of the Marine Resources The Commission to shall provide metal license plates or, tags or identification numbers when required by statute or regulation, of such design or designs, with such letters and / or figures stamped or painted thereon, as may be deemed necessary or proper to licensees in a form and manner prescribed by the Commission.

Drafting Note: Language is added which reflects the agency's current practice of furnishing identification numbers.

§ 28.1-74. *Inspectors to distribute license plates or tags; duty to attach to boats, nets or other devices.*—Such metal license plates or tags shall be furnished by the Marine Resources Commission to the various inspectors, who shall furnish the same to such licensee who is required by statute or regulation to attach and display such metal license plate or tag. If the license be for a haul seine or purse net, the licensee shall securely attach and display the metal license plate at a conspicuous place on the starboard side of the boat used in fishing such device. If the license be for a pound net, fyke net, gill net of any type, drift net or other similar device, for the taking of fish, the licensee shall securely attach and display the metal

license plate on one of the offshore stakes or buoys of the fishing device. Each of the aforesaid nets set in the water shall be marked by a buoy or stake easily visible on the surface which shall display the metal license plate which was issued by the inspector. Any of the aforesaid nets in the water not identified in this manner may be seized by a duly authorized inspector to be held for any forthcoming legal proceeding.

Drafting Note: This section is stricken and incorporated into proposed § 28.2-233 and proposed § 28.2-234.

§ 28.1-75. Repealed by Acts 1966, c. 684.—

§ 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.

Drafting Note: This section is stricken and moved to subsection B of proposed § 28.2-234.

§ 28.2-234. License tags and identification numbers to be fastened; penalty.—A. License tags or identification numbers shall be attached and displayed in the following manner:

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

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

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

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

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

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

Drafting Note: Several existing sections have been consolidated into this general provision. Subsections A 1 and A 2 are existing §§ 28.1-48 C and 28.1-74. Subsection A 3 is existing §§ 28.1-48 C, 28.1-74 and 28.1-171. Subsection A 4 is existing § 28.1-119.1. Subsection A 5 refers to existing regulations on the identification of fish pots and existing § 28.1-173.2 regarding the identification of crab pots. Subsection B is taken from stricken § 28.1-76 in which the "failure to tag" is punishable as a Class 1 misdemeanor.

§ 28.1-77. 28.2-235. Duty to apply for new plate or tag in case of loss ; penalty.—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 the licensee shall 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 for 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 . Failure to do so for twenty-four hours after the discovery of the loss of any such plate or tag shall be guilty of is a Class 3 misdemeanor.

Drafting Note: The penalty for not applying for a new tag within twenty-four hours has been reduced from a Class 1 to a Class 3 misdemeanor.

§ 28.2-236. Seizure of unmarked devices.—Any fishing device, not marked, tagged or identified in the required manner, may be seized by an officer and held for any forthcoming legal proceeding.

Drafting Note: Proposed § 28.2-236 is language in existing § 28.1-74 which has been stricken.

~~§ 28.1-70. 28.2-237. Removal of abandoned pole or stake; stakes as identification markers; revocation of licenses for failure to remove stakes.— A. Any person ; firm or corporation fishing a pound net or any other type of fishing device requiring the use of fixed poles or stakes, shall remove all such abandoned poles or stakes from the bottom of the water where located; provided that ; however, one pole or stake may be left standing at least four feet above mean high water at old stands as an identification marker.~~

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

~~B. The Commission may revoke any or all fishing licenses issued to such person ; firm or corporation, as set forth in § 28.1-36 § 28.2-232 , if abandoned poles or stakes are not promptly removed. If any person; firm or corporation fails Failure to remove such poles or stakes ; he is guilty of a Class 1 misdemeanor and punished as provided in § 18.2-12 of the Code of Virginia . The person, firm or corporation responsible for removal of such poles or stakes shall be the person; firm or corporation who held the last license most recent licensee for such the fishing device is responsible for removing the poles or stakes .~~

Drafting Note: No change in the law.

~~§ 28.2-238. Concealing name or number of vessel; penalty.—Any captain or owner who covers or conceals the name, registration number, or fishing license tag of any boat licensed and engaged in the fisheries under this subtitle is guilty of a Class 1 misdemeanor.~~

Drafting Note: Proposed § 28.2-238 is language from existing §§ 28.1-54 and 28.1-190 with the penalty being the same for violating § 28.1-54.

~~§ 28.1-78. 28.2-239. Exemptions from article.—Nothing contained in this article shall be construed to apply applies to boats used purely for pleasure recreation purposes , or for the taking of fish or shellfish for family use only , by rod and line or with hand lines , for family use only .~~

Drafting Note: No change in the law.

CHAPTER 3.

FINFISH.

CHAPTER DRAFTING NOTE: This chapter is devoted to the licensing and restrictions on taking finfish for food. Previously these provisions were part of an article in Chapter 4 entitled "Fish and Fishing Generally." The new chapter is divided into two articles: (i) the application process and license fees, and (ii) restrictions on harvesting, including those which apply to harvesting activities and seasonal limitations.

Article 1.

Licenses.

~~§ 28.1-47. 28.2-300. License application to fish with certain nets.—Any resident of Virginia or nonresident person 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, or rod and line shall apply to any inspector except that the the Commissioner for a license. An applicant for a license to fish with a fixed device shall make application apply in writing to the inspector of officer assigned to the district in which the fixed device is proposed to be located ; and . Every applicant shall state on oath the his true name or names and address or addresses of the person or persons applying for license, ; the place at which where the net, seine, fyke, weir, or other device is to be fished ; and that during the period of the license, which shall be from January 1 to December 31, inclusive, of each year, they ; and that he will not violate any of the laws of this Commonwealth in relation to the taking and catching of fish.~~

Drafting Note: The penalty for falsely swearing appears in § 28.2-230. Language indicating the license year is stricken since proposed § 28.2-229 contains such language.

~~§ 28.1-48. 28.2-301. License tax fee for fishing in tidal waters ; register mark .— A. Every resident or nonresident who shall apply applicant for a 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 an inspector a specific the following license tax fee ; 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 :

1. On each pound net, \$25;
2. On each stake gill net of 1200 feet in length or under, with a fixed location, \$15;
3. On all other gill nets up to 600 feet, \$10; all such nets over 600 feet and up to 1200 feet, \$15;
4. On each thresh net, skirt net, slot traps, prop nets, trap net, or similar device, \$8; all other gill nets over 600 feet and up to 1200 feet, \$15;
5. On each cast or throw net or similar device, \$8;
6. On each fyke net head, weir, or similar device, \$8;
7. On each person taking or catching eels or otherwise fishing by a means commonly known as using fish pots, \$12;
8. On each person using or setting fish trotlines, \$12 : It shall be unlawful to set a fish trotline on the ocean side of Accomack and Northampton Counties. The Commission inspectors may confiscate any fish trotline set in such area ;
9. On each person using or operating a fish dip net, \$6;
10. On each haul seine under 500 yards in length used for catching fish, under 500 yards in length, \$29;
11. On each haul seine from 500 yards up to 1000 yards in length used for catching fish, from 500 yards in length to 1000 yards in length, \$88.

B. The Commission shall have the power to establish a license commensurate with other licenses in an amount not more than \$100 for any device used for the taking or catching of finfish, fish or shellfish in the waters of the Commonwealth, that is not mentioned in this title. The Commission shall have the authority to specify any restrictions or control over the device or the person operating the device they may deem advisable when issuing such a license.

C. 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. 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 1,000 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 for 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.

Drafting Note: The language in subsection A which discusses payment in lieu of other taxes is stricken (i) since there is no license required to sell seafood and (ii) existing language could be interpreted as exempting nonresidents from having to purchase a harvesters license or paying other taxes or fees associated with harvesting. Existing subsection A 3 has been divided into A 3 and A 4 to clarify that license fees for gill nets vary by the size of the net. Existing subsection A 4 is obsolete language. The unlawful activity of setting a trotline in subsection A 7 has become proposed § 28.2-310. Subsection B has been stricken and incorporated into existing § 28.1-23 (proposed § 28.2-201). Subsection C is stricken since requirements for license plates and tags for nets have been consolidated in § 28.2-234.

~~§ 28.1-52.2.~~ 28.2-302. Commercial fishing pier ; license fee; penalty .—A. ~~An~~ The owner of a commercial fishing pier shall pay an annual license fee in the amount of fifty dollars shall be charged for each commercial fishing pier that is over or upon the subaqueous beds of the Commonwealth.

B. No net fishing shall not be permitted within 300 yards of the sides or end of a commercial fishing pier ; provided, however, the . The Commission may decrease this distance if ; in the opinion of the Commission, it considers 300 yards is considered to be an excessive

distance because of the size of the body of water where the pier is located. A violation of this subsection is a Class 3 misdemeanor.

C. The construction or erection of a commercial fishing pier on a subaqueous bed of the Commonwealth shall be is subject to the permit requirements of § 62.1-3 10.2-1203 .

D. For purposes of this section, a commercial fishing pier shall be means any pier that is open to the public and used primarily to fish from the pier whose primary purpose is to allow fishing by the public for a fee ; provided, however, that a . A public fishing pier operated by a political subdivision that is open to the public to fish from the pier shall be considered to be a commercial fishing pier , although no fee is charged.

The provisions of this section may be enforced by any law-enforcement officer of the Commonwealth or the political subdivision in which the pier or any part thereof is located.

Drafting Note: A penalty provision has been added for a violation of subsection B. Under existing § 28.1-187 an unspecified penalty is a Class 3 misdemeanor penalty. The last paragraph is stricken since the MRC has responsibility for the licensing and permitting of the pier. Other laws and ordinances as they may relate to activity on such piers are currently enforced by local or state authorities.

Article 2.

Taking of Fish, Net, and Device Restrictions.

28.1-49. Repealed by Acts 1970, c. 629.—

§ 28.1-49.1. 28.2-303. Size of fish that may be caught; purchase or possession of undersized fish *Taking and sale of sturgeon prohibited; penalty* .—Except as otherwise provided by regulation adopted pursuant to §§ 28.1-23 through 28.1-26 of this Code , it shall be unlawful for any person to take, catch or possess any sturgeon fish; cobia (bonita) which is less than twenty inches in length; or more than ten percent or two by count, whichever is greater, of summer flounder (fluke) less than twelve inches in length. Whenever any person has possession of more than 100 pounds in the aggregate of summer flounder, the taking, catching or possession of which is or might be unlawful due to their size, a lot of 100 pounds of such species may be separated by any inspector from the whole quantity thereof for purposes of determining whether more than 10% thereof are under the lawful size for purposes of this provision. If less than ninety percent are within the lawful size, such person shall be presumed guilty of having violated this provision. Measure of length for purposes of this section shall be from nose to tip of tail . Any sturgeon fish caught by any person or any fish below the lawful size herein provided shall be at once immediately returned to the water.

It shall be unlawful for any dealer or wholesaler of fish for human consumption to buy from others or to otherwise possess for purposes of resale any fish, the taking, catching or possession of which is unlawful, or to possess for purpose of resale any fish, the taking, catching or possession of which is unlawful due to the size thereof, as provided herein, unless in the latter case at least ninety percent of the fish of each type mentioned herein are of a lawful size. Whenever a dealer or wholesaler of fish has possession of more than 100 pounds in the aggregate of any variety or species, the taking, catching or possession of which is or might be unlawful due to their size, a lot of 100 pounds of each species or variety may be separated by any inspector from the whole quantity thereof for purposes of determining whether less than 90% thereof were under or over the lawful size for purposes of this provision. If less than ninety percent are within the lawful size the dealer or wholesaler shall be presumed guilty of having violated this provision, if the fish were bought from others or otherwise possessed for purposes of resale sturgeon .

A violation of this section is a Class 1 misdemeanor.

Drafting Note: Most of this section has been stricken because it is covered by regulations. New penalty language has been added which punishes offenses as Class 1 misdemeanors.

§ 28.1-50. 28.2-304. Taking, possessing, etc., channel bass and rockfish ; confiscation of such fish illegally taken ; *penalty* .— A. Except as otherwise provided by regulation adopted pursuant to §§ 28.1-23 through 28.1-26 of this Code , it shall be unlawful for any person ; firm or corporation to take, catch, and/ or have in possession possess , offer for sale or transport during any one day more than two channel bass (red drum) over thirty-two inches in length or more than two rockfish (striped bass) over forty inches in length or more than five percent or two by count, whichever is greater, of any rockfish (striped bass) of less than fourteen inches in length.

All such measurements are to be long from tip of nose to tip of tail.

Any person ; taking or catching more than two such channel bass over thirty-two inches in length or more than two rockfish over forty inches in length or more than five percent or two by count, whichever is greater, of any rockfish (striped bass) of less than fourteen inches in length, shall immediately release and return such fish to into the water at the place where the fish were taken or caught.

Any person, firm or corporation who has more than two of either such fish over the legal maximum size or more than five percent or two by count, whichever is greater, of any such fish under the legal minimum size in their possession, during any one day, shall be deemed guilty of violating the provision of this section.

B. Any inspector officer who finds more than two such fish channel bass over the legal maximum size or more than five percent or two by count, whichever is greater, of any such fish under the legal minimum size in the possession of any person ; firm or corporation shall immediately confiscate such fish.

Every game warden and every other law-enforcement officer of this State and its subdivisions shall have the authority to enforce the provisions of this section.

C. A violation of any provision of subsection A is a Class 1 misdemeanor.

Drafting Note: Language has been stricken which refers to the size and allowance limits on rockfish and a minimum size limit on red drum since these appear in regulations. Enforcement language is stricken since all sworn officers have this authority. A Class 1 misdemeanor penalty provision has been added.

~~§ 28.1-51. 28.2-305. Size of mesh and length and depth of certain nets ; pound net, haul seine and shallow water defined ; penalty .— A. It shall be is unlawful for any person to use a pound net, head, or picket, or mullet net (that is under 200 yards long) having a smaller mesh than 2", stretched measure, after having been tarred, for the purpose of catching food fish. Nor shall any haul seine or mullet net be longer than 1,000 yards in length and if over 200 yards long, shall not have mesh less than 3", stretched measure, and no mullet net shall be deeper than 40 meshes; the following nets:~~

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

2. A haul seine longer than 1,000 yards and if over 200 yards long having mesh less than three inches, stretched measure; and

3. A mullet gill net deeper than forty meshes.

B. It is unlawful 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 area , 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 "shallow 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.

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

Drafting Note: Obsolete terms "head or picket nets" and "stand" are stricken. Proposed subsection A clarifies the language of the first paragraph by listing the unlawful uses of various nets. The paragraph which defines the types of nets is stricken and moved to the proposed definitions section of this subtitle (§ 28.2-200).

~~§ 28.1-51.1. 28.2-306. Use of certain fishing devices in certain waters.—It shall be is unlawful for any person to use any snatch hook, grab hook or gang hook for the purpose of taking or catching fish in the Rappahannock River below the Downing Bridge at Tappahannock, between January 1 and March 15 of each year . The provisions of this section are applicable to both residents and nonresidents. Nothing in this section shall apply to any licensed fixed fishing device.~~

A violation of this section is a Class 3 misdemeanor.

Drafting Note: A penalty provision has been added.

§ 28.1-51.2. Repealed by Acts 1976, c. 47.—

~~§ 28.1-52. 28.2-307. Length of fixed fishing structures device ; gill nets ; penalty .—A. No It is unlawful for any person to use a single fixed fishing structure shall have device having 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 Clear and unobstructed intervals of at least 200 feet shall be maintained 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 300 yards apart. In addition, a clear passageway at least 200 feet wide shall be maintained, reaching from all regular navigable channels to all established boat landings. All stakes shall project not less than four feet above the surface of the water of at all stages of the tide. Any stake not complying with this condition shall be ~~withdrown~~ removed by the licensee .~~

~~No net shall be placed B. It is unlawful to place a net within 300 yards of the side or end of any fixed fishing device, unless in the same row.~~

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

~~B. § 28.2-308. Setting of gill nets in oceanfront ; penalty .— From the Friday immediately preceding Memorial Day through September 15 of each year, gill net operators along the southern oceanfront boundary of the United States Dam Neck Military Base south to the North Carolina border shall maintain unimpeded breaks of 500 feet between adjacent rows of nets. Gaps between such gill nets in the same row shall occur no less than every 2,000 feet. These gill nets shall be set at a minimum of 400 feet seaward from the mean ~~highwater~~ high water mark.~~

Violation of this section is a Class 3 misdemeanor.

Drafting Note: Existing § 28.1-52 has been divided into proposed §§ 28.2-307 and 28.1-308. Language in existing § 28.1-52 (proposed § 28.2-307) which allows the setting of gill nets of 1,800 feet south of the entrance of the Eastern Bay has been stricken since the location cannot be identified.

§ 28.1-52.1. Expired.—

~~§ 28.1-52. 28.2-309. Distance nets may extend across body of water or channel; prohibition; regulations; penalty.—A. It shall be is unlawful to set or fish any net or nets across any river, bay, estuary, creek, or inlet which are longer than one-fourth the width of the body of water from mean low water to mean low water at the point where the net or nets are set or fished.~~

~~B. It shall be is unlawful to set or fish any net, other than a menhaden net, in any portion of a marked channel of a river, bay, estuary, creek, or inlet which has navigation aids installed or approved by any agency of government. However, the prohibitions and restrictions on setting nets contained in this subsection shall not apply to any net set on the eastern or ocean side of the Counties of Accomack and Northampton Counties . Beginning January 1, 1992, the The Commission shall have the authority to promulgate regulations ~~permitting~~ governing the setting of any net on the eastern or ocean side of the Counties of Accomack and Northampton Counties .~~

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

~~C. Every game warden and every other law enforcement officer of this Commonwealth and its subdivisions shall have the authority to enforce the provisions of this section.~~

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

Drafting Note: In subsection B “permitting” is stricken and “governing” inserted to clarify that the agency retains the authority to establish specific regulations for the use and placement of nets in this area. Language in old subsection C is stricken since it is unnecessary. Subsections have been rearranged to provide better organization.

§ 28.2-310. Trotline prohibited on ocean side of Eastern Shore; penalty.—It shall be unlawful to set a fish trotline on the ocean side of the Counties of Accomack and Northampton. The

Commission officers may seize any fish trotline set in such an area.

A violation of this section is a Class 3 misdemeanor.

Drafting Note: This section is language taken from existing § 28.1-48(7) (proposed 28.2-301) which sets license fees.

~~§ 28.1-80. 28.2-311. Chickahominy river in Charles City ; penalty .—It shall be is unlawful for any person ; firm, corporation, or association to take or catch fish , or shellfish , or marine organisms , on or within 500 yards below the Chickahominy Dam at Walker's, on the Chickahominy river River , in Charles City County, Virginia, other than with rod and reel and line or hand line.~~

A violation of this section is a Class 3 misdemeanor.

Drafting Note: The reference to Charles City County is stricken to clarify that the prohibition on fishing below Walker's Dam applies to the entire river, which is bordered by both Charles City County and James City County.

~~§ 28.1-81. 28.2-312. Rappahannock river River and certain of its tributaries ; penalty .—It shall be is unlawful for any person ; firm or corporation to use any haul seine (i) within 100 yards of mean low-water mark, or 3 2 feet of water in depth at mean low water, whichever shall be is closer to the shore, or (ii) over any oyster ground held under lease from the Commonwealth and marked as required by law in the waters of the Rappahannock River east of Downing Bridge at Tappahannock, and in its tributaries east of Downing Bridge. The restriction hereinabove set forth as to hauling seine within a certain number of feet of shore or in water of a certain depth in clause (i) shall be inapplicable where the unrevoked written consent of the adjacent landowner has been obtained.~~

A violation of this section is a Class 3 misdemeanor.

Drafting Note: No change in the law.

~~§ 28.1-81.1. Repealed by Acts 1978, c. 347.—~~

~~§ 28.1-55. 28.2-313. Killing fish by means of explosives, drugs , or poisons ; possession; penalty .— A. It shall be is unlawful to capture or kill any species of fish , shellfish, or marine organisms 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.— B. It shall be is unlawful to have in possession, or to possess, sell , or offer to sell, within the Commonwealth, any fish , shellfish, or marine organisms killed or captured by means of explosives, drugs , or poisons, whether the same were so killed or captured within or without the jurisdiction of Virginia.~~

A violation of this section is a Class 3 misdemeanor.

Drafting Note: Existing §§ 28.1-55 and 28.1-56 have been combined into proposed § 28.2-314. The addition of "shellfish" and "marine organisms" is necessary because of the change in the definition of fish. Previously the definition of fish (§ 28.1-1) included both finfish and shellfish.

~~§ 28.1-57. Repealed by Acts 1983, c. 307.—~~

~~§ 28.1-57. Repealed by Acts 1974, c. 434.—~~

Article 3.

Restrictions on Trawling.

~~§ 28.1-67. Trolls, trawl 28.2-314. Trawl nets and drag nets prohibited ; sale of fish .—Except as may be provided in § 28.1-69.1 § 28.2-315 of this Code, it shall be is unlawful for any person ; firm or corporation to operate, for the purpose of taking or catching fish, a troll or (i) to take or catch fish, shellfish, or marine organisms with a trawl net, drag net, or similar device drawn through the waters by a vessel, boat, or other craft in any waters of the Commonwealth, or waters under the jurisdiction of the Commonwealth, except a regular licensed haul seine, authorized by law ; or (ii) to buy, sell, or offer for sale any fish taken or caught in the waters of the Commonwealth, or under the jurisdiction of the Commonwealth, with a troll or trawl net,~~

drag net, or similar device.

A violation of this is a Class 1 misdemeanor.

Drafting Note: Deleted the term troll since it's obsolete. The exemption which allows the use of a licensed haul seine is stricken since it would not be used in this manner. A penalty of a Class 1 misdemeanor has been added because of the device's impact on the fishery.

~~§ 28.1-69. Repealed by Acts 1970, c. 18.—~~

~~§ 28.1-69.1. 28.2-315. Fishing with trawl net within three-mile limit ; license fee .—A. It shall be unlawful to catch fish , shellfish, or marine organisms within the three-mile limit of the Virginia Atlantic shoreline with trawl nets or similar devices. However, the Marine Resources Commission may issue licenses to residents or nonresidents to trawl within such the three-mile limit from Cape Charles north to the Maryland line, except the months of during September and October and from 36° 40' north latitude south to the North Carolina line at any time, and from Cape Henry south to 36° 40' north latitude between October 1 and May 1 of each year .~~

~~B. The Commission, whenever it deems it advisable to do so to protect or promote the fisheries, may close and open the area, or any part thereof, described in paragraph subsection A hereof for to trawling or restrict the manner, method, size, and season of catch.~~

~~C. In the exercise of its authority granted pursuant to this section, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising such authority.~~

~~§ 28.1-70. License fee.—A C. The license fee to fish in the area with a trawl net or similar device may be granted upon payment of a fee of in the area described in subsection A shall be \$100 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 .~~

Drafting Note: Existing §§ 28.1-69.1 and 28.1-70 have been combined. Because of the change in the definition of fish the terms shellfish and marine organisms have been inserted. Subsection C is stricken because there is no longer any need for such a procedure in light of the regulatory process established in Article 2 of Chapter 2 of this subtitle. Proposed subsection C is existing § 28.1-70. Language prohibiting the proration of a fee is stricken because such a prohibition exists under a general provision (proposed § 28.2-229).

~~§ 28.1-68. 28.2-316. Trawling boat not granted license for other fishing device ; penalty .— No It is unlawful for any 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 equipped for trawling and having a trawl net on board, to be licensed for any other net or fishing device .~~

A violation of this section is a Class 1 misdemeanor.

Drafting Note: New language clarifies what is unlawful activity. A Class 1 misdemeanor penalty has been added because of the impact of such activity on the fishery.

~~§ 28.1-71. 28.2-317. Prima facie evidence of violation ; penalty .— The finding of any Any vessel, boat, or other craft found in the waters of the Commonwealth, or in the waters under the joint jurisdiction of the Commonwealth, equipped for trolling, or trawling, and having a trawling 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 constitute 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.~~

Drafting Note: No change in the law.

~~§ 28.1-72. 28.2-318. Exemption from article for certain trawling activity .—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 prohibit (i) the use of trawl nets to catch fish outside the territorial limits of Virginia or (ii) the transport of such fish into Virginia ports for sale .~~

Drafting Note: No change in the law. Language revisions only.

§ 28.1-72.1. 28.2-319. Forfeiture of fishing gear, etc.—Any net, pot, or other fishing device or gear used in the violation of any of the provisions of this article shall be forfeited to the Commonwealth ; such and subject to the forfeiture to be enforced under the provisions of Chapter 8 (§ 28.1-184 et seq.) of this title Chapter 22 (§ 19.2-369 et seq.) of Title 19.2 . Any property seized under authority of this article shall be held to await the proceedings by information prescribed by such chapter ; and upon such seizure being made, the . The officer or other person making the same seizing the property shall forthwith immediately give notice thereof to the Commonwealth's attorney attorney for the Commonwealth whose duty it is to file such information.

Drafting Note: Clarifies that the forfeiture of fishing gear shall fall under the forfeiture provisions of Title 19.2 and not a separate procedure established under Title 28.1.

CHAPTER 4.

USE OF PURSE NETS FOR TAKING MENHADEN.

CHAPTER DRAFTING NOTE: Chapter 4 contains provisions relating to the menhaden fishery. Under Title 28.1, these statutes appeared as Article 2 of Chapter 4 (Fish for Manufacture Into Fish Meal, Oil, etc.). The application process has been consolidated so that residents and nonresidents will file the same application for a license. The service of process provision for nonresident menhaden fisherman has been updated to conform to current procedures.

Article 1.

Licenses.

§ 28.1-60. Nonresidents generally.—(1) ; (2) ~~Repealed.~~

(2) License for taking menhaden fish. - A nonresident person, firm or corporation may take or catch the fish known as "menhaden," for the purpose of converting the same into oil, fish scrap, fish meal or guano; provided such person, firm or corporation has applied for and obtained license to take and catch such fish 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 Marine Resources 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 watercraft, 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 watercraft, 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 Marine Resources 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 § 28.1-50.

(5) Service of process. - Every such licensee shall by written power of attorney appoint the Secretary of the Commonwealth and his successors 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. 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.

Drafting Note: This section is stricken since nonresidents fishing for menhaden can use the application process established in existing § 28.1-61 (proposed § 28.2-400). The service of process provision which is stricken appears as proposed § 28.2-401.

~~§ 28.1-61. 28.2-400. Application for license for resident or nonresident to catch fish menhaden for manufacture into fish meal, oil, etc. — (1) General provisions.~~ - Every person, firm or corporation ~~A. Any nonresident~~ owning or holding by lease or charter a purse net, seine, or vessel of any description ~~to be engaged in catching fish used in any of the waters of this Commonwealth, or waters within the jurisdiction of this Commonwealth, to catch menhaden to be manufactured into fish meal, oil, or guano, or for any other purpose~~, shall make application ~~apply to the Commissioner of Marine Resources for a license. A resident shall apply for a license to the Commissioner through the inspector for officer assigned to the district in which is located the fish processing factory where such are to be manufactured is located~~, 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.~~ - ~~B. If it be the applicant for a license is a corporation applying for such license~~, the application shall be made by an officer or one of the directors of ~~such the~~ corporation; if the applicant ~~be is~~ a partnership, the application shall be made by a general partner ~~thereof~~; if the applicant ~~be is~~ a joint venture or other firm, by a member thereof; ~~and if the applicant be is an individual, by such individual.~~

~~(3) Form and contents of application.~~ ~~C. The application shall be in writing; shall be and sworn to by the applicant before a notary public or other person authorized to administer oaths, and shall disclose:~~

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

~~(b) Repealed.~~

~~(c) 2. The name of each and every vessel; steamer, or other watercraft for which such a license is desired.~~

~~(d), (e) Repealed.~~

~~(f) 3. The place where location of the factory which is to manufacture process the fish menhaden so taken and caught into fish meal, oil, or guano or for any other purpose, is located~~

~~(g) 4. That, during the period of this license, the applicant will not violate any of the laws of this State the Commonwealth in regard to the taking and catching of fish in the waters thereof.~~

~~(4) Repealed.~~

Drafting Note: This section is changed so it applies to residents and nonresidents. The provision in existing § 28.1-60 which requires nonresidents to apply to the Commissioner has been inserted into this section. Other changes are stylistic.

§ 28.2-401. Service of process for nonresident individuals, foreign corporations, general and limited partnerships.—A. A nonresident applicant who is an individual shall by written power of attorney appoint the Secretary of the Commonwealth his agent, upon whom shall be served all lawful process against or notice to, such licensee, and who shall be authorized to enter an appearance in his behalf. The service shall only be made in duplicate upon the Secretary of the Commonwealth. The power of attorney shall be filed with the Secretary of the Commonwealth, and copies certified by him shall be received as evidence in all the courts of this Commonwealth. No judgment shall be entered against the licensee until after the process has been served for at least ten days.

Whenever lawful process against, or notice to, any such individual is served, the Secretary of the Commonwealth shall immediately mail a copy of such process or notice to such individual. The Secretary of the Commonwealth shall collect the fee prescribed in § 14.1-103 for the service of process or notice, which shall be paid by the plaintiff at the time of such service. The costs shall be recoverable by the plaintiff as a part of the taxable costs if he prevails in the suit or action.

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

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

Drafting Note: Subsection A, which applies to nonresident individuals, is taken from existing § 28.1-60(5). The current \$2.50 process or notice charge has been removed and the appropriate section which details the cost has been referenced. The Secretary of the Commonwealth currently charges \$15. Subsection B reflects current procedure for service of process for foreign corporations, partnerships and limited partnerships which will provide consistency in the service of process for these entities.

~~§ 28.1-50.~~ **28.2-402. License fee to take fish menhaden with purse nets ; excepted waters .—**
A. Any 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 known as menhaden 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 officer or agent a specific license tax fee ; 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:

1. On each sail vessel fishing with purse nets of not more than 400 meshes deep, twenty-one dollars and fifty cents;

2. On each sail vessel fishing with purse net of more than 400 meshes deep, seventy-five dollars;

3. 1. On each power boat or steam vessel under seventy gross tons fishing with purse net, \$3 three dollars per gross ton, but not more than \$150 ; and for such vessels .

2. On each vessel over seventy gross tons fishing with purse net \$5 , five dollars per gross ton, provided the maximum license fee for such vessels shall not be more than \$600 ; .

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

Such inspector The officer or agent shall thereupon grant a license to use such net or other device ; and state in such the license the name or names of the person or persons who shall use the same ; and the amount of tax the license fee as prescribed by law; and the term for which such license is granted shall begin on January 1 in any year and end on December 31 of the same year .

It shall be lawful for a resident of this Commonwealth, except such persons, firms or corporations as may be engaged in the taking or catching of fish known as menhaden 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 Commonwealth for the purpose of taking and catching fish.

B. Except as provided in subsection C of this section, no license granted under the provisions of this section shall be deemed to authorize fishing in the following waters, wherein it shall be unlawful to fish in the manner and for the purpose set forth in subsection A of this section:

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

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

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

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

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

C. Only during the period from the first Monday in May through the third Friday in November, licenses granted to vessels under seventy gross tons in accordance with subdivision A 3 of this section shall in addition authorize fishing in the following waters: in the Rappahannock River eastward and southward from a line extending from Towles Point to Burnham Wharf and from Orchard Point to Towles Point; in Dividing Creek eastward from a line extending from Jarvis Point to Ditchley Pump House; in Indian Creek eastward from a line directly across the creek at Rappahannock Oyster Company; in Dymers Creek eastward from a line directly across the creek at the eastern end of Standard Products dock.

Drafting Note: The language in subsection A which discusses payment in lieu of other taxes is stricken since there is no license required to sell the product and the language could be interpreted as exempting out-of-state menhaden fisherman from obtaining a nonresident harvesters license. Existing subsections A 1 and A 2 are stricken since sail vessels are no longer used in fishing with nets. Existing subsection A 3 is stricken since there are no vessels under 20 horsepower entering this fishery. Language setting the term of a license is stricken since it is established in proposed § 28.2-229. Existing subsection B relating to the prohibition on menhaden

fishing in certain areas has been moved to proposed § 28.2-409. The paragraph which states it's lawful for a resident to use any vessel or net for fishing is unnecessary and has been deleted.

~~§ 28.1-62. 28.2-403. Action of Commissioner on such application; transfer of license of disabled vessel; delegation of authority to inspectors ; appeals from actions of inspectors .— Should A. If the Commissioner of Marine Resources be is satisfied that the disclosures required by § 28.1-61-28.2-400 have been duly made ; and that the application conforms in other respects to the provisions of said that section, and upon payment of the license tax fee specified in § 28.1-50-28.2-402, the inspector Commissioner, or the officer through whom ; or in whose district the application was made , shall issue to the applicant a license for each of the purse nets, seines, vessels ; steamers , or other watercraft specified in the application ,which . The license shall state the name of the licensee and the name of the vessel ; steamer, or other watercraft licensed.~~

~~If any vessel ; steamer, or other watercraft so licensed becomes disabled for use during the period of such license, the licensee may, with the consent of the Commissioner of Marine Resources , hire or charter a vessel ; steamer, or other craft belonging to a nonresident to take the place of replace the disabled one so disabled for the unexpired period of such license ; in which . In such a case the inspector 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 .~~

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

Drafting Note: The \$1.00 fee for the transfer of a license is stricken on the recommendation of MRC because of administrative costs involved.

~~§ 28.1-62. 28.2-404. Appeals from actions of Commissioner.—Any person ; firm, or corporation aggrieved by any action of the Commissioner of Marine Resources taken under the provisions of § 28.1-62 28.2-403 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 processed is located , or in which the applicant resides or has its his principal office for a review and correction of the ruling of the Commissioner of Marine Resources as provided in Chapter 2 (§ 28.1-23 et seq.) Article 3 (§ 28.2-216 et seq.) of Chapter 2 of this title subtitle .~~

Drafting Note: No change in the law.

~~§ 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.~~

Drafting Note: This section is stricken since the language regarding concealing the name or number of a vessel has been included in proposed § 28.2-238 and the prohibition on the carrying a scrape, dredge, or patent tongs when menhaden fishing is moved to proposed § 28.2-405.

~~§ 28.2-405. Carrying patent tongs, etc., while fishing for menhaden ; penalty .—It shall be unlawful for any captain or owner to carry or permit to be carried aboard his vessel, when fishing for menhaden, any scrape, dredge, or patent tongs.~~

A violation of this section is a Class 1 misdemeanor.

Drafting Note: The proposed section is stricken language from existing § 28.1-54 and includes a penalty of a Class 1 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.~~

Drafting Note: This section is stricken since herring is no longer caught in pound nets or similiar nets.

~~§ 28.2-406: Reserved.~~

~~§ 28.1-64. 28.2-407. Penalty for violation of §§ 28.1-61 through 28.1-63; forfeiture Forfeiture of fishing gear ; etc . 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 §§ 28.1-61 to 28.1-63 such person, firm or corporation shall be guilty of a misdemeanor. Any net ; pot, or other fishing device or gear used in the violation of any of the provisions of §§ 28.1-61 through 28.1-63 to take or catch menhaden by any person in violation of §§ 28.2-225 and 28.2-230 shall be forfeited to the Commonwealth ; such . Such forfeiture to be enforced under the provisions of Chapter 8 (§ 28.1-184 et seq.) of this title shall be subject to the provisions of Chapter 22 (§ 19.2-369 et seq.) of Title 19.2 . Any The property seized under authority of this article shall be held to await the proceedings of information prescribed by such chapter; and upon such seizure being made, the officer or other person making the same seizing the property shall forthwith immediately give notice thereof to the Commonwealth's attorney attorney for the Commonwealth whose duty it is to file such information.~~

Drafting Note: Language is stricken which makes it a Class 1 misdemeanor to fish without a license or swear falsely on an application since these are covered under general provisions (proposed §§ 28.2-225 and 28.2-230 respectively). The reference to forfeiture for violations of §§ 28.1-61 through 28.1-63 is vague, referring to sections relating to the menhaden application (existing § 28.1-61, proposed § 28.2-400), the Commissioner's action on the transfer of a license (existing § 28.1-62, proposed § 28.2-403) and appeals of the Commissioner's action (existing § 28.1-63, proposed § 28.2-404). The intent of the section is to make a person's menhaden gear subject to forfeiture when he is fishing without a license or has lied on a license application. Other language clarifies that forfeiture of gear falls under the procedures established in Title 19.2.

Article 2.

Area and Seasonal Restrictions.

~~§ 28.1-58. 28.2-408. Food fish not to be taken, bought, or sold for manufacture into fish meal, oil, etc. ; percentage allowable ; penalty .— A. It shall be is 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 any purpose, food fish ; to in an amount greater than one percent of the whole catch without immediately opening . If food fish represent more than one percent of the whole catch, the net shall be opened immediately and turning loose any such the food fish released while yet alive ; .~~

~~B. It is unlawful or for any steamer or any 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 his possession food fish ; to in a greater an amount greater than one percent of the bulk for the purpose of manufacturing them into guano fertilizer , fish meal, or oil ; ; or for any person to use in any manner any food fish , to a greater in an amount greater than one percent of the bulk for the purpose of fertilizing or improving the soil.~~

~~C. Any person ; firm or corporation and/or any captain or master of any vessel violating any provisions provision of this section or having in possession more than one percent 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 upon conviction of violating any provision of this section be guilty of a Class 1 misdemeanor, and the license on such person's boat or net shall be revoked by court order for the remainder of the season.

Drafting Note: Language stricken in the last paragraph is duplicative. Other changes are revisions in language only.

§ 28.2-409. Menhaden fishing prohibited in certain areas; exception.—A. Except as provided in subsection B of this section, it shall be unlawful to take or catch menhaden with purse nets in the following waters:

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

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

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

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

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

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

Drafting Note: This proposed section is the stricken language from existing § 28.1-59 B and C (proposed § 28.2-402).

~~§ 28.1-65. 28.2-410.~~ Closed season for menhaden fishing; forbidden nets ; *penalty* .—Except as provided in ~~§ 28.1-65.1~~ ~~§ 28.2-409~~ , it shall be ~~is~~ unlawful for any person ; ~~firm, or corporation~~ to take or catch with a purse net ~~or~~ purse seine in the waters of this Commonwealth, or waters within its jurisdiction, menhaden fish to be manufactured into fish meal, oil, or guano or for any other purpose, between the day Saturday following the third Friday of November and the day Sunday preceding the first Monday in May of each year; however, . However, in the waters east of the Chesapeake Bay Bridge Tunnel within the three mile limit of the Virginia shoreline such prohibition shall be between the Friday before Christmas and the day Sunday preceding the first Monday in May of each year . It shall ~~is~~ 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 ~~1 3/4~~ inches; however, on and after the third Monday in May, 1970, it shall be unlawful for any person, ~~firm or corporation~~ to use any purse net or other net for the aforesaid purposes having a stretched mesh of less than 1 3/4 inches. Any person ; ~~firm, or corporation~~ violating any of the provisions of this section shall be deemed ~~is~~ guilty of a Class 1 misdemeanor.

Drafting Note: Language is stricken which refers to obsolete net mesh requirements.

~~§ 28.1-65.1. 28.2-411.~~ Season for vessels of less than seventy gross tons to take or catch menhaden for purposes other than use as fish meal or oil ; *penalty* .— ~~From~~ Except from the first Monday of March to, but not including, the first Monday of May, it shall be ~~lawful is~~ unlawful for vessels with a gross weight of less than seventy tons to use *purse nets* to take or catch with purse net menhaden for purposes other than use as fish meal or oil.

A violation of this section is a Class 1 misdemeanor.

Drafting Note: Because of the impact these vessels have on the fishery, a Class 1 misdemeanor has been assessed for a violation of this section.

CHAPTER 5.

OYSTERS AND CLAMS.

CHAPTER DRAFTING NOTE: Chapter 5 of Title 28.1, which consisted of twelve articles, has been reorganized into two chapters. The new Chapter 5 contains four articles. Article 1 contains the application procedures, license requirements and fees for taking oysters and clams. Article 2 consolidates all of the harvesting restrictions (i.e., seasonal, device, and geographical). The record keeping and tax requirements have been combined in Article 3. The final article contains the procedures for surveying of the Baylor survey grounds. Requirements for obtaining a license to take scallops and other references to scallops have been removed since scallops no longer exist in commercial quantities in Virginia waters.

Article 1.

Licenses.

~~§ 28.1-121. 28.2-500.~~ Who deemed nonresident *Residency and certain oyster licenses* .— No person shall be deemed a resident of Virginia within the meaning of this chapter who is not a taxpayer in the Commonwealth, 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 Virginia and has actually lived within the Commonwealth 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 ~~No~~ residence restriction as to residence in this section shall ~~prevent~~ *prohibit* any person from obtaining any required license when required for buying fish or shellfish ; or for the shucking of oysters ; provided, further, that in . In dredging or scraping private planting grounds on permission of the ~~Commission~~ *Commissioner*, the residence restriction as to the residence in this section shall not apply to the crew, ~~master~~ *captain*, or owner of any boat engaged by the leaseholder to dredge or scrape private planting grounds for oysters only.

Drafting Note: The residency requirements for leasing grounds in the first paragraph are stricken. The definition of resident in § 28.2-200 will now apply throughout the entire subtitle.

~~§ 28.1-120. § 28.2-501.~~ Taking oysters or clams by hand or with tongs.—(1) Application for license to take or catch oysters or clams .— A. Any resident of this Commonwealth who shall be duly qualified and desires to take or catch oysters or clams from the waters of the Commonwealth, not leased for planting purposes, by hand or with ordinary or patent tongs, or

by any other instrument allowed by law device other than a scrape or dredge ; shall first apply to an inspector *the Commissioner* for a license.

(2) License fees. - The license fee for taking oysters shall be as follows:

(a) For each person taking or catching oysters by hand or with ordinary tongs, ten dollars.

(b) For each person taking or catching oysters with patent tongs, thirty-five dollars.

(3) Fee for taking clams. - License fee for taking clams shall be as follows:

(a) For each person taking or catching clams by hand or with ordinary tongs, fifteen dollars.

(b) For each person taking or catching clams with patent tongs, thirty-five dollars.

The license for taking clams by tongs, ordinary or patent, shall entitle the holder thereof to take only clams from the public bottoms in the waters of the Commonwealth but not from public oyster rocks, beds and shoals or from leased oyster ground, and is not to be construed, in anywise, to permit or authorize the taking of oysters at any time. However, the Commission may authorize the taking of clams from the public oyster rocks, beds, and shoals of the lower York River below the patent tong line when it determines that commercial quantities of oysters are not present or are not likely to return due to the presence of oyster diseases.

(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 States of Maryland and Virginia, except upon such grounds in those waters as may be set aside for public clamming or scalloping purposes by the Marine Resources Commission.

(6) Restriction on size of clams. - It shall be unlawful for any person to harvest or ship any clams smaller in size than the legal size fixed by the Commission.

(7) Exhibition of license. - Any person engaged in taking oysters or clams from public grounds shall have such license available for inspection and shall exhibit it whenever requested by an inspector. Failure to exhibit the license upon demand of any inspector shall be a misdemeanor and prima facie evidence that such person is working without a license; provided, however, that if such person exhibit a license issued prior to the time of his arrest to the inspector before the date of trial, the inspector shall request the court to dismiss the charge.

(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 1 bushel of oysters or 250 clams in any 1 day without having a license.

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

§ 28.1-129. Application for license to dredge or scrape. — B. Any resident desiring to dredge or scrape for oysters in the waters where dredging is permitted, shall make application *apply* in writing for such privilege to the inspector of *officer assigned* to the district in which he resides ; *which* . The application shall be sworn to ; and shall plainly state the name of his vessel, the owner or owners thereof , the *commander captain* or person in charge , and the length of vessel or gross tonnage at which it is rated. *Such* The application shall further state the district in which the owner resides; that the applicant is a resident qualified under the requirements of this section; that no nonresident owns the vessel, in whole or in part, and that it is not held with any intention, or under any agreement, to return it at any subsequent time to a nonresident.

Drafting Note: Subsection (1) of existing § 28.1-120 and existing § 28.1-129 have been combined into proposed § 28.2-501, which sets out the license application procedures for this chapter. The license fees of 2(a)(b) and 3(a)(b) in existing § 28.1-120 are stricken and moved to proposed § 28.2-502. The paragraph in subsection (3) dealing with the taking of clams from public bottoms is stricken and moved to proposed § 28.2-503. Subsection (4) is stricken and

relocated as proposed subsection F of § 28.2-506. Subsection (5) is stricken and relocated as proposed § 28.2-536. Subsection (6) is stricken and relocated as § 28.2-537. Subsection (7) is deleted since similar language appears in § 28.2-231. Subsection (8) of existing section § 28.1-120 is stricken because an exemption is provided under the general licensing provision (proposed § 28.2-225). The penalty provision of subsection (9) is stricken since the remaining language of this section describes the application process.

§ 28.2-502. License fees for taking oysters or clams in tidal waters.—Every resident who applies for a license to take or catch oysters and clams shall pay as follows:

- 1. For each person taking or catching oysters by hand or with ordinary tongs, ten dollars;*
- 2. For each person taking or catching oysters with patent tongs, thirty-five dollars;*
- 3. For each person taking or catching clams by hand or with ordinary tongs, fifteen dollars;*
- 4. For each person taking or catching clams with patent tongs, thirty-five dollars; and*
- 5. For each dredge used for taking or catching clams, fifty dollars.*

Drafting Note: The introductory statement and proposed divisions 1 through 4 of this section are subsections (1), (2) and (3) of existing § 28.1-120. Subdivision 5 of this section is from existing § 28.1-133.

~~*§ 28.1-130. Registration and issuance of license.—Upon being satisfied of the facts stated in such application, the inspector shall register such vessel 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.*~~

Drafting Note: This section is repealed. It is unnecessary since the license is issued upon payment of the fee.

~~*§ 28.1-133. License tax.—Before any license is issued for dredging or scraping, the applicant shall pay an annual license tax of fifty 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 is 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.*~~

Drafting Note: This section is stricken. The first sentence requiring a license fee for a dredge appears as subdivision 5 of proposed § 28.2-502. The remainder of the section is part of the general provision for exhibiting of a license (proposed § 28.2-231).

§ 28.2-503. License for taking clams with tongs.—The license for taking clams, by ordinary or patent tongs, shall entitle the holder to take only clams from the public bottoms in the waters of the Commonwealth but not from the public oyster rocks, beds, and shoals or from leased oyster grounds. Such a license does not permit the taking of oysters. The Commission may authorize the taking of clams from the public oyster rocks, beds, and shoals of the lower York River below the patent tong line when it determines that commercial quantities of oysters are not present and are not likely to return due to the presence of oyster diseases.

Drafting Note: This proposed section is taken from § 28.1-120 with minor revisions in language.

~~*§ 28.1-110. 28.2-504. Tax on handling bivalves License fee graduated; penalty.—(A) Tax graduated by amount of oysters handled. A. Every person, firm or corporation engaged in the business of shucking or packing oysters in this State Virginia shall pay a license tax for the privilege of transacting such business, to be graduated by fee based on the amount of oysters shucked or packed by him during the period for which his license is granted previous year.*~~

~~(B) Repealed.~~

~~(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 1,000, a tax of \$7.50; (2) for 1,000 gallons or over, up to 10,000, a tax of \$20; (3) for 10,000 gallons or over, up to 25,000, a tax of \$45; (4) for 25,000 gallons or over, up to 50,000, a tax of \$75; (5) for 50,000 gallons or over, up to 100,000, a tax of \$125; (6) for 100,000 gallons or over, up to 200,000, a tax of \$175; (7) for 200,000 gallons or over, a tax of \$275.~~

B. The license fee to engage in the business of shucking or packing oysters is the following:

- 1. For under 1,000 gallons, \$7.50;*
- 2. For 1,000 gallons up to 10,000, twenty dollars;*
- 3. For 10,000 gallons up to 25,000, forty-five dollars;*
- 4. For 25,000 gallons up to 50,000, seventy-five dollars;*
- 5. For 50,000 gallons up to 100,000, \$125;*
- 6. For 100,000 gallons up to 200,000, \$175; and*
- 7. For 200,000 gallons or more, \$275.*

~~(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) Violation. - 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 subsection ,or making false reports shall be is guilty of a Class 1 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 taxed as other specific property.~~

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

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

Drafting Note: The new language in subsection B is a listing of the graduated fees which were stricken in the previous paragraph. Subsection (D) is repealed since such a procedure is no longer necessary due to the automation of oyster statistics. These statistics are collected pursuant to existing § 28.1-87 (proposed § 28.2-538). The first sentence of subsection (E) is stricken as unnecessary and the penalty for making a false report is stricken since it would be covered under the reporting requirements of existing § 28.1-87 (proposed § 28.2-538). Subsection (F) is repealed because under §§ 58.1-1100 and 58.1-1101 capital is defined as intangible personal property and as such is exempt from state taxation according to the Department of Taxation. Subsection (G) is repealed since it is unnecessary with the repeal of subsection (F). Existing subsection (H) is proposed subsection C.

~~§ 28.1-142. 28.2-505. Sale of shells to Commission.— (1) A. Each shucker or packer of oysters shall sell to the Commission at the prevailing market price up to twenty per centum percent of the shells, unless said the shells are planted in Virginia waters.~~

~~(2) B. On or before December first 1 of each year, the Commission shall notify each shucker or packer whether it will purchase by the following June first 1 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.~~

Drafting Note: No change in the law.

Article 2.

Fishing for Oysters and Clams; Device Restrictions.

~~§ 28.1-82. 28.2-506. Season for taking oysters from public rocks ; penalty .—A. The season for~~

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

(2) ~~Repealed.~~

(3) 2. All other areas of the waters of the Commonwealth , from October first 1 until June first 1 .

By patent tongs:

(1) ~~Repealed.~~

(2) Anywhere in the Commonwealth where patent tongs are not prohibited; B. The season for taking oysters by patent tongs from the public oyster beds, rocks, or shoals shall be from October first 1 to March first; the 1. The Commission may ; however, set an alternate opening date, no later than November first 1 , for any area in the State Commonwealth where the use of patent tongs is permitted, when in its opinion the condition of the oyster oysters warrants.

C. 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 in subsections A and B of this section except the date for removal of shellfish from restricted areas as set forth in Chapter 7 (§ 28.1-175 et seq.) 8 of this title subtitle and except as provided in §§ 28.1-85 and 28.1-85.1 § 28.2-507 .

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

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

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

B. In the exercise of its authority granted pursuant to this section, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising such authority.

A violation of this section is a Class 1 misdemeanor.

Drafting Note: Subsection B is deleted since the procedure is obsolete as other regulatory procedures have replaced it. The second paragraph under proposed subsection D is stricken and rewritten for clarity as proposed subsection E. Proposed subsection F is taken from existing § 28.1-120(4) (proposed § 28.2-501). A Class 1 misdemeanor penalty has been added. Proposed subsection F was previously located in a section with a Class 1 misdemeanor penalty.

§ 28.1-85. 28.2-507. Opening and closing public rocks.—A. The Commission or Commissioner with the approval of the Commission may, whenever it or he deems it advisable so to do , in order to protect or promote the growth of oysters, may (i) close and open any area or restrict the manner or method of taking oysters in any area of the natural, or public ; rocks, grounds, or shoals for purposes of repletion and rehabilitation , and may (ii) establish seed beds and plant shells and other culch thereon , or (iii) take any other restorative measures which it or he

may deem best. Said area Areas may be closed for an entire season, or part of a season, or may be closed for so many days per week. Before closing any such area, an officer shall post notice of such the closing shall be posted by the inspector or other officer for at least five days in two or more public places in the district in which the area is located for at least five days, and in . 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 reopened at any time by the Commission or Commissioner with the approval of the Commission, but any area which has been closed and reopened at a later time may be closed by the Commission or Commissioner at any time without notice.

B. In the exercise of its authority granted pursuant to this section, the Commission or the Commissioner shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising such authority.

Drafting Note: Subsection B is stricken since it refers to an obsolete regulatory procedure.

~~§ 28.1-82.~~ 28.2-508. Prohibited area for patent tongs ; penalty .—It shall be is unlawful for anyone any person to use or employ patent tongs for the purpose of taking or catching to take or catch oysters from the natural or public rocks, beds, or shoals of the Commonwealth in the following areas:

(1) 1. In the Piankatank River and its tributaries above a line beginning at the extreme westernmost point on a wooden jetty (point "A") on the south property line of lot 9-A owned by E. B. Bottom and lot 8-A of Gwynn's Island Estate subdivision, Mathews County (Deed Book 55; page No. 279), said point located north 57° 07', west 176.00 feet from the east side of said lot 8-A and 9-A. Said point is located on the extreme northwest section of Gwynn's Island known as Cherry Point, Mathews County; thence 71° 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 gable of hotel, located on the extreme easternmost point of Stingray Point, Middlesex County. This area is to include all of Piankatank River and its tributaries from Cherry Point of Gwynn's Island to Stove Point in Middlesex County, and all of the area of Jackson Creek and its tributaries from Stove Point to Stingray Point;

(2) 2. In the Rappahannock River and its tributaries, above a line drawn from the southernmost point of Belle Island, which line begins at latitude 37° 46' 37" north, longitude 76° 35' 40" west; thence south 27° 47' 25.82" west 14,292.65 feet to the easternmost point of Punchbowl Point, which is located at latitude 37° 44' 32" and longitude 76° 37' 03" west; provided that in the area of the Rappahannock where the use of patent tonging is permitted, the Commission shall have authority to close or open such area, or any part, for patent tonging, and restrict or limit the manner, method, and amount of harvest in such area. In the exercise of its authority granted pursuant to this subdivision, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising such authority;

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

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

(5) 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) 6. In the Corrotoman River above a line beginning at point on Corrotoman Point, which line begins at latitude 37° 39' 56" north, longitude 76° 28' 21" west; thence north 70° 02' 46.79"; thence west 4,338.37 feet to a point on Millenbeck Point which is located at latitude 37° 40' 10" north and longitude 76° 29' 12" west. This line, as described, is to include all of the Corrotoman River and its tributaries from Corrotoman Point to Millenbeck Point ; provided that in the area of the Corrotoman River where the use of patent tonging is permitted, the Commission shall have the authority to close or open such area, or any part, for patent tonging, and restrict or limit the manner, method, and amount of harvest in such area .

In the exercise of its authority granted pursuant to this paragraph, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising such authority.

A violation of this section is a Class 1 misdemeanor.

Drafting Note: Language in subdivisions 2 and 6 relating to the Commission's authority to close certain oyster grounds to patent tongs is stricken since existing § 28.1-85 (proposed § 28.2-507) gives the Commission such authority. The regulatory process contained in these two subdivisions is stricken since it is obsolete. A penalty provision has been added which is consistent with other violations of oyster laws.

§ 28.1-84. 28.2-509. Maximum weight for patent tongs ; *teeth length; penalty* .—It shall be unlawful for any person to use patent tongs exceeding 100 pounds in gross weight , including any attachments thereto or thereon, excluding other than rope , for the taking or catching of oysters. The teeth of said the patent tongs shall not exceed four inches in length. The having possession of a pair of patent tongs exceeding this weight or teeth length and while oysters are in a the boat at the same time, shall constitute prima facie evidence of a violation of this section.

A violation of this section is a Class 3 misdemeanor.

Drafting Note: No change in the law. A penalty provision has been added.

§ 28.1-85.1. Repealed by Acts 1985, c. 125.--

§ 28.1-86. Repealed by Acts 1966, c. 684.--

§ 28.1-125. 28.2-510. Buying, selling , or possessing uncultured oysters ; *penalty* .—It shall be unlawful for any person to buy, sell, or possess oysters under the prescribed size and over the shells so over the shell allowance taken from the natural public rocks, beds , and shoals . If upon trial for this offense the accused person asserts the claim or defense that the uncultured oysters were taken from private planting grounds, the burden of proving such a defense or fact shall be upon the accused.

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

Drafting Note: The new language regarding burden of proof is taken from existing § 28.1-127 (proposed § 28.2-513). A penalty provision has been added which makes a violation of this section a Class 3 misdemeanor.

§ 28.1-126. Repealed by Acts 1985, c. 125.--

§ 28.1-124. 28.2-511. Culling oysters.— A. In addition to any other penalty prescribed by law, any person charged with violating any regulation governing the culling of oysters shall be required, by the officer making the charge, to scatter the entire cargo of oysters on the public rocks under the supervision of an inspector the officer and at the expense of the person charged with the violation. Provided that in In lieu of throwing the cargo overboard , the person charged with the 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 is a distinct and separate offense from any other violation. A person who has posted a cash bond who and is acquitted shall be refunded the cash bond ; if . If the person is found guilty , the

cash bond shall be forfeited and deposited to the credit of the Special Oyster Replenishment Fund.

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

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

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

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

Drafting Note: The last paragraph of this section is stricken and appears as proposed § 28.2-514. A penalty provision has been added. Minor revisions in language.

§ 28.2-512. *Interfering with oyster inspections; penalty.—It is unlawful for any person possessing unshucked oysters to (i) resist or interfere with an officer while he examines oysters suspected of being uncultured or (ii) refuse to admit an officer to a boat or oyster house for the purpose of such inspection.*

A violation of this section is a Class 1 misdemeanor.

Drafting Note: This section is stricken language from the last sentence of the second paragraph of existing § 28.1-127. A penalty provision has been added which is consistent with existing § 28.1-191.

§ 28.1-127. 28.2-513. *Prima facie evidence of culling violation; defense.—It shall be unlawful for a person to have any oysters or shells on the culling board, deck, washboard, or other receptacle above the hold of the boat or in the deckhouse of the boat or 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 place oysters or shells on the culling board or deck from the hold, upon the approach of the oyster inspector or police boat officer, shall be prima facie evidence of the violation of the Commission's culling regulations.*

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 the Commission's regulations; if upon trial for such offense the accused person asserts the claim or defense that the 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.

Drafting Note: The first sentence of the second paragraph is stricken and moved to proposed § 28.2-510 B. The second sentence in the second paragraph is stricken and moved to proposed § 28.2-512.

§ 28.2-514. *Possession of shucked oysters; penalty.—It is unlawful for any person to possess more than one-half gallon of shucked oysters on board a boat harvesting on the public rocks.*

A violation of this section is a Class 3 misdemeanor.

Drafting Note: This proposed section is the last sentence of existing § 28.1-124 (proposed § 28.2-511).

§ 28.1-128. *Where lawful to issue permits to dredge; carrying dredge or dredging equipment on boat —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 Johnson's Rock, Thoroughfare Rock,*

Fox's Island Rock, John's Rock, Klondike Rock, Onancock Rock, Crammy Hack Rock, and California Rock, during the months of March and April, 1978 .

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, and has said license or permit available for inspection on board of said boat.

It shall be unlawful for any dredge or any equipment to be used in dredging, approved by license or permit, to be carried or transported on board a boat of the licensee or permittee, or his employee, except when actually in use, or going to or coming from the grounds on which the dredging is permitted or licensed to take place or to and from one dock to another dock for maintenance and repairs to such boat and/or equipment.

Drafting Note: This section is repealed. The prohibition regarding the use of dredges and scrapes for taking oysters already exists in § 28.1-132 (proposed § 28.2-523). Obsolete language is stricken in the first paragraph. The second paragraph is stricken because the same language appears in existing § 28.1-134(2) (proposed § 28.2-516). The third paragraph is stricken since the same language appears in existing § 28.1-134(2) (proposed § 28.2-516).

~~§ 28.1-134. 28.2-515. Dredging or scraping on private ground. —(1) When and by whom dredging allowed ; permit required.— It shall be lawful for any Any resident of the Commonwealth holding under legal assignment an oyster-planting ground of at least three acres in one tract or adjoining tracts and having paid the rent therefor, to may dredge or scrape the same his tracts at any time, except on Sunday or at night ; unless he obtains if the resident has obtained from the Marine Resources Commission a permit for each boat which is so used to dredge or scrape the specified private oyster ground . The permit shall show the name of the lessee and the name or number of the boat, date of issue , and date of expiration. The expiration date shall not be more than twelve months from the date of issue and may be renewed for like periods from time to time . The Commission may , after a hearing , refuse to grant a permit or renew the a permit to dredge or scrape any oyster-planting ground unless it is proved that the holder has planted seed oysters or shells thereon and is using the planting ground for the cultivation of oysters and . The Commission may refuse to grant the permit if it appears to the satisfaction of the Commission at the hearing that the holder of the ground is a habitual violator of the seafood laws. An applicant for the permit shall have the right of appeal from any decision of the Commission refusing to grant the permit as provided in Chapter 2 (§ 28.1-23 et seq.) of this title Article 3 (§ 28.2-216 et seq.) of Chapter 2 .~~

~~(2) Dredging § 28.2-516. Oyster dredging or oyster dredging equipment on boat ; penalty. —It shall be is unlawful for any person to have on board a boat, a dredge or equipment normally used for dredging oysters , unless he has a license or permit to dredge ; or a license to dredge and has the license . The license or permit shall be available for inspection on board the boat.~~

~~It shall be unlawful for any dredge or any equipment to be used in dredging, approved by license or permit, to be carried or transported on board a boat of the licensee or permittee, or his employee, except when actually in use or going to or coming from the ground on which dredging is permitted, or licensed to take place, or to and from one dock to another dock for maintenance and repairs to such boat, equipment or both. It is unlawful to carry or transport an oyster dredge or oyster dredging equipment on board a licensee's, permittee's, or his employee's boat, except when the boat is traveling to or from (i) the ground on which dredging is permitted or licensed to take place or (ii) docks for maintenance and repair of the boat or equipment.~~

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

~~(3) § 28.2-517. Marking ground.— No A person shall have the privilege previously granted of dredging or scraping not dredge or scrape his oyster-planting ground unless he has first properly designated and marked the oyster-planting ground as prescribed by the Commission in accordance with § 28.1-100 (6) (e) 28.2-607 . In addition to any other requirements, the The initials of the lessee shall be displayed on all lease corners in black letters on a white background not less than five inches in length. If it appears to the inspector that such ground is not properly marked, he may immediately suspend the dredging permit until the ground is properly marked.~~

~~(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 the planting ground.~~

Drafting Note: Existing § 28.1-134 has been divided into proposed §§ 28.2-515, 28.2-516, and 28.2-517. Language has been added in proposed § 28.2-516 to clarify that this section applies to

dredging oysters. A penalty provision has been added in proposed § 28.2-516 to conform to § 28.2-132 (proposed § 28.2-523).

~~§ 28.1-146. 28.2-518. Dredging for oysters in James River ; penalty .—It shall be unlawful for any person to dredge for oysters in the James River during the open season for taking oysters from the public rocks and shoals ; provided, however, that the Marine Resources . However, the Commission may grant a permit to applicants therefor to dredge in specified areas.~~

A violation of this section is a Class 6 felony.

Drafting Note: A penalty provision has been added penalty for dredging oysters which is consistent with § 28.1-132 (proposed § 28.2-523).

~~§ 28.1-143. 28.2-519. Use of rakes or scrapes on ocean side of Eastern Shore ; penalty .—It shall be unlawful for any person to use ; or employ rakes other than hand rakes, dredges, scrapes, rakes other than hand rakes, or other like devices for the purpose of taking or catching to take or catch oysters, crabs, clams, or shells from the natural public rocks, beds, or shoals on the eastern or ocean side of the Counties 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.~~

A violation of this section is a Class 3 misdemeanor.

Drafting Note: The reference to oysters has been removed from subsection A to avoid conflict because existing § 28.1-132 (proposed § 28.2-523) provides a felony penalty for taking oysters with a dredge or scrape in any waters. The penalty provision has been updated to conform to the current classification for misdemeanor offenses in this subtitle.

~~§ 28.1-128.01. 28.2-520. Use of hydraulic dredges prohibited ; penalty .— A. It shall be unlawful for any person at any time to take and or catch hard-shell clams through the use of a hydraulic dredges dredge provided, however, that the . The Marine Resources Commission and the Virginia Institute of Marine Science may use hydraulic dredges to take and catch hard-shell clams on an experimental basis. In no event shall However, a permit to take and catch hard-shell clams through the use of hydraulic dredges shall not be issued to any other person.~~

B. Any person who takes or catches hard-shell clams using a hydraulic dredge is guilty of a Class 1 misdemeanor.

Drafting Note: A penalty provision has been added. A Class 1 misdemeanor penalty for use of hydraulic dredges is proposed because of the efficiency of the device and its impact on the fishery. Other changes are revisions in language.

~~§ 28.1-135. 28.2-521. Revocation of license or permit to dredge.—The Commission, after a hearing, on testimony of an officer of the Commission at such a 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 may revoke all permits and licenses held by said the person to dredge on public and/ or private grounds ; and to may refuse to issue any licenses or permits for such purposes for period of one year. Before any the Commission holds a hearing is held pursuant to this section there must be , it shall provide at least five days' written notice given to the permit or license holder, by written notice permittee or licensee. Notice shall be served either by a Commission officer or by certified mail addressed to the permit or license holder at the address given on the permit or license.~~

Drafting Note: No change in the law.

~~§ 28.1-131. 28.2-522. Prima facie evidence of violation.—In any prosecution for the violation of the preceding any sections of this article against the master or commander captain or crew of a vessel ; or any of his crew, or any person on board thereof , proof that such the vessel was equipped with a crank, dredge, or scrape shall be prima facie evidence of the violation of such section.~~

Drafting Note: No change in the law.

~~§ 28.1-132. 28.2-523. Penalty.— If any Any person take or catch who takes or catches oysters 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, or regulations of the Commission, he shall be deemed is guilty of a Class 6 felony ; and upon conviction thereof shall~~

be confined in the penitentiary not less than 1 year, and fined not less than \$100 nor more than \$1,000, either or both .

Drafting Note: The penalty provision has been changed to conform to the current classification of criminal offenses in § 18.2-10.

§ 28.1-128.1. 28.2-524. *Fishing in Pocomoke Sound and Tangier Sound Taking oysters or clams in certain areas; limitations* .— A. Notwithstanding any other provisions of law, the The Commission, in order to protect and promote the oyster or clam fishery in that area of the Pocomoke Sound and Tangier Sound described herein , shall have authority to may open and close such area the following areas , or any part parts thereof, for the taking of oysters or clams or prescribe the manner, method, size, and season of oyster or clam catch whenever it deems it advisable to do so. Such area :

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

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

B. In the exercise of its authority granted pursuant to this section, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. This publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising its authority.

§ 28.1-128.2. *Taking oysters or clams in Chesapeake Bay between Smith's Point and Windmill Point*.—A. Notwithstanding any other provisions of law, the Commission, in order to protect and promote the oyster or clam fishery in that area of the Chesapeake Bay described herein, shall have authority to open and close such area, or any part thereof, for taking oysters or clams, or prescribe the manner, method, size and season of oyster or clam catch whenever it deems it advisable to do so. Such area is

2. *That portion of Chesapeake Bay between Smith Point and Windmill Point* contained within the boundaries of a line commencing at Smith Point Lighthouse, thence southerly through a line of nun buoys numbered "C79," "C77," "C73," "C71," "C69," "C67," "C65," to a beacon designated BR "R," all as they are now positioned or as they may be subsequently repositioned by the United States Coast Guard, thence northwesterly to Windmill Point Lighthouse, thence continuing northwesterly along a sector line to the mean low water line on Windmill Point, thence northerly along the mean low water line around Fleets Island to a point which is south of a beacon numbered 5M, thence north to the beacon numbered 5M, thence northeasterly to a beacon numbered 6M"B," thence northerly to corner 4 of Public Ground No. 28, thence along the western and northern line of Public Ground No. 28 through corners 3, 2 and 1 to corner 8 thereof, thence northeasterly to corner 1 of Public Ground No. 29, thence along the western and northern line of Public Ground No. 29 through corner 4 thereof to an intersection point of Public Ground No. 29 and Public Ground No. 117, thence northerly to the mean low water line on Bull Neck, thence northerly along the mean low water line to Smith Point, thence southeasterly to Smith Point Lighthouse, the point of beginning.

B. In the exercise of its authority granted pursuant to this section, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required of the Commission in exercising such authority.

§ 28.1-128.4. Taking oysters and clams in Piankatank River.—A. Notwithstanding any other provisions of law, the Commission, in order to protect and promote the oyster or clam fishery in that area of the Piankatank River described herein, shall have authority to open and close such area, or any part thereof, for the taking of oysters or clams or prescribe the manner, method, size, and season of oyster or clam catch whenever it deems it advisable to do so. Such area is

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

B. In the exercise of its authority granted pursuant to this section, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising such authority.

Drafting Note: Existing §§ 28.1-128.1, 28.1-128.3, and 28.1-128.4, which authorize the Commission to regulate the taking of oysters and clams in specific areas, have been combined into proposed § 28.2-524. Subsection B of each of these sections is stricken since it refers to an obsolete regulatory process.

§ 28.1-128.2. 28.2-525. Fishing in Chesapeake Bay immediately west of Tangier Island.—A. Notwithstanding any other provisions of law, the Commission, in order to protect and promote the fishery in that area of the Chesapeake Bay described herein, shall have authority to may open and close such area ; or any part thereof, or prescribe the manner, method, size and season of catch whenever it deems it advisable to do so . Such area is contained within the boundaries of a point beginning at the southeastern point of Tangier Island, thence, in a southeastern direction to Tangier Sound Light; thence, in a southwestern direction to can buoy C "1"; thence continuing in a southwestern direction to nun buoy N C "34"; thence, in a northwestern direction to nun buoy N "2"; thence, continuing the same direction to the 36-foot deep contour; thence, along the 36-foot deep contour to the Virginia-Maryland Boundary Line; thence, in a northeastern direction to Smith Island, Hog Neck; thence, in a southeastern direction along the western side of Smith Island, Cheesman Island, Shank Island, Goose Island and Tangier Island to the point of beginning.

B. In the exercise of its authority granted pursuant to this section, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required of the Commission in exercising such authority.

Drafting Note: Subsection B is stricken since it refers to an obsolete regulatory process.

§ 28.1-136. 28.2-526. Oyster measures ; standards; penalty .—A. It shall not be lawful at any time is unlawful for any person to buy or sell oysters in this State in the shell by any measure other than one-half bushel or one bushel metallic measures except as provided in paragraph subsection B of this section ; and such . 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 measured 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 18 1/2" across the top, seventeen inches across the bottom, and 21 1/2" diagonally from the inside chine to the top ; except that oysters . Oysters harvested from the public rocks in the Potomac river River or its tributaries may be bought or sold in one bushel metallic measures which shall measure eighteen inches across the top, 16 1/2" across the bottom, and twenty-one 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 Any seller of any oysters or oyster shells who fails to furnish a full measure as defined in this section, or a buyer of any seed oysters or oyster shells who accepts less than a full measure as defined in this section, he shall be is guilty of a Class 1 misdemeanor.

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

Drafting Note: No change in the law.

~~§ 28.1-137.~~ 28.2-527. Theft of oysters, clams, shells, etc. ; *penalty.* — If any Any person take, steal or carry who steals, or takes or carries away ; without permission of the owner, (i) bedded or planted oysters ; or clams ; bedded or planted , (ii) oysters deposited by any person making up a cargo for market, or (iii) shells or seed planted for formation of oyster beds by the State Commonwealth or any person, firm, or corporation, he shall be deemed is guilty of the larceny thereof .

§ 28.2-528. *Revocation of licenses for theft of oysters.*— After any person is convicted for any violation of taking oysters from public ground, the The Commission, without notice and hearing required by § 28.1-36 § 28.2-232 , immediately shall revoke all existing licenses to take or catch finfish or fish, shellfish , or marine organisms , issued to such person to any person convicted of unlawfully taking oysters from the public grounds . No new licenses shall be issued to such person for a minimum of one month or a maximum of two years after such conviction in the discretion of the Commission.

Drafting Note: Existing § 28.1-137 is divided into proposed §§ 28.2-527 and 28.2-528, with some revisions in language.

~~§ 28.1-138.~~ 28.2-529. Converting shells into lime ; *penalty.* —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 conversion into lime, unless and except said the person has obtained permission from the Commission to convert said shells into lime .

A violation of this section is a Class 3 misdemeanor.

Drafting Note: A penalty provision has been added.

~~§ 28.1-139.~~ 28.2-530. Taking oysters or loading on vessel on Sunday or in nighttime at night; *penalty.* —A. No person shall It shall be unlawful for any person to take oysters in the waters of this State , from either public or private grounds, on Sunday or in the nighttime 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 nighttime between the hours of sunset and sunrise.

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

C. The provisions of subsection A of this section shall not apply to the taking or catching, by hand during the prescribed hours of daylight on Sunday, of not more than one bushel of oysters for immediate household personal use. The presence, on board a boat or other vehicle being used during any Sunday harvesting, of any gear normally associated with the harvesting of oysters other than by hand shall be is prima facie evidence of a violation of the provisions of this section.

A violation of this section is a Class 3 misdemeanor.

Drafting Note: Language is added which specifies the penalty.

~~§ 28.1-139.1.~~ 28.2-531. Taking clams on Sunday or in nighttime at night ; *exception ; penalty.* — No person shall It shall be unlawful for any person to take clams in the waters of this State, from either public or private grounds, on Sunday or in the nighttime between the hours of sunset and sunrise. This section shall not apply to the taking of clams on Sunday by hand or hand rake between the hours of sunrise and sunset ; provided that such if the clams be are for

immediate household personal use only and not for planting or for sale or any other commercial use.

A violation of this section is a Class 3 misdemeanor.

Drafting Note: A penalty provision has been added.

~~§ 28.1-140. 28.2-532. Protection of oysters and clams of Virginia; labeling ; penalty .—It shall be unlawful for any person ; firm or corporation to offer for sale, sell and/ or distribute oysters or clams as Virginia oysters or clams unless such oysters and clams have been in the waters of the Commonwealth of Virginia or the Potomac River for a period of at least six months.~~

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

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

A violation of this section is a Class 3 misdemeanor.

Drafting Note: A penalty provision has been added.

~~§ 28.1-141. 28.2-533. Oysters on crab dredging boat ; penalty .—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 in excess of one bushel possess aboard a boat more than one bushel of oysters . Any person violating any provisions of this section shall be guilty of a Class 1 misdemeanor and punished as provided by law .~~

Drafting Note: No change in the law.

~~§ 28.1-160. 28.2-534. Possession of oysters while taking clams or scallops ; penalty .— If any person shall have in his possession any The possession of oysters while taking or catching clams or scallops during the season in which it is not lawful unlawful to take or catch oysters from the natural public rocks, beds, or shoals, he shall be is prima facie guilty evidence of violating a violation of the law against taking or catching oysters ; therefrom during such season, and upon conviction, the during the prohibited season. The penalty shall be the same as for taking or catching oysters from the natural public rocks, beds, or shoals ; during the prohibited season as provided in § 28.2-506 .~~

Drafting Note: Reference to scallops is stricken since they do not exist in Virginia waters.

~~§ 28.1-97. 28.2-535. Permit to buy or carry seed oysters from certain grounds ; penalty . (1) Permit required. - A. It shall be is unlawful for any person ; without first having obtained a permit therefor, as hereinafter provided, to buy or carry oysters from the eastern side of the Counties of Accomack and Northampton or from the James River seed area to be planted in this State the Commonwealth , whose shells measure less than three inches in length ; from the eastern side of Accomack and Northampton Counties, or from James River above the seed line, as heretofore established without first obtaining a permit . 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 A permit shall be required for each boat, vessel, or motor vehicle used to carry such cargo. The applicant shall obtain the permit from the inspector for officer assigned to the district wherein such where the cargo is loaded ; or from an officer of a police boat, for each boat, vessel, or motor vehicle to be used, which . The 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 captain; the destination of the oysters; and the identity of the permit applicant. The cargo may be loaded under the supervision of the inspector officer , and in the order of the presentation of the permit to the inspector officer in the seed oyster district in which such the 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) B. Oath required. Before such a permit shall be is granted, the owner, operator, or mate of such boat, vessel, or motor vehicle or other conveyance shall make sign an 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 to carry seed oysters measuring less than the size aforesaid three inches out of this State the Commonwealth , and that he will not~~

sell such oysters to any other person for the purpose of carrying the same oysters out of the State Commonwealth . The signed oath so taken and subscribed, together with and a memorandum copy 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) C. 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, and 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. Any such permittee who takes seed oysters to a place not specified in his permit and does not notify the Commissioner within twenty-four hours of the change in planting location is guilty of a Class 1 misdemeanor. Any such permittee who takes the oysters out of state shall be guilty of a Class 1 misdemeanor. The owner or master captain of any boat, vessel, or motor vehicle , or other conveyance found buying or carrying seed oysters from the place aforesaid these public grounds to any point in this State Commonwealth without a permit therefor shall be is guilty of a Class 1 misdemeanor.

Drafting Note: The stricken portion of subsection C has been rewritten for clarity.

§ 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 Marine Resources, at any time to carry public rocks oysters from the James River seed area, i.e., is 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 .

Drafting Note: Existing § 28.1-98 is stricken since it duplicates § 28.1-97 (proposed § 28.2-535). The definition of the James River seed area has been moved to the definitions section (proposed § 28.2-200).

§ 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 .

Drafting Note: This section is repealed since it duplicates a more recent prohibition in existing § 28.1-89 (proposed § 28.2-546).

§ 28.2-536. Taking clams in certain areas; penalty.—It is unlawful to take or catch clams in Pocomoke Sound above a line drawn from Drum Bay Point, in the County of Accomack, and running a north-northwest course to the line between the States of Maryland and Virginia, except upon such grounds in those waters as may be set aside by the Commission for public clamming.

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

Drafting Note: The proposed section is subsection (5) of existing § 28.1-120 (proposed § 28.2-501). A penalty provision is added which reflects the penalty imposed for violating § 28.1-120.

§ 28.2-537. Restriction on size of clams ; penalty.—It is unlawful for any person to harvest or ship clams smaller in size than the legal size established by the Commission.

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

Drafting Note: The proposed section is subsection (6) of existing § 28.1-120 (proposed § 28.2-501). A penalty provision is added which reflects the penalty imposed for violating 28.1-120.

§ 28.1-120.1. Regulations for conservation of surf clams.—The Commission is authorized and empowered to promulgate such regulations as it deems necessary and appropriate to promote the conservation and wise use of the surf-clam resource.

Drafting Note: This section is stricken and incorporated into subsection A 1 of proposed § 28.2-201.

§ 28.1-163. Catching of scallops; season; 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 whatsoever 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 fifty dollars 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 13/4"; and it shall be unlawful for any person to take, catch, or have in his possession scallops of a size smaller than 13/4", 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 Marine Resources Commission 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 Marine Resources Commission 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.

Drafting Note: This section is repealed since scallops do not exist in commercial quantities in Virginia waters.

Article 3.

Oyster Records and Taxes.

§ 28.1-87. 28.2-538. Record of oysters handled; tax penalty.—All purchasers licensed oyster buyers, planters, packers, importers of shucking stock or shippers shall keep accurate and itemized records, in a manner and form approved on forms issued by the Commission, which shall contain (i) the number of bushels of oysters, before shucking, that come from public grounds, private grounds, or are imported; (ii) the name of the person from whom the oysters were purchased or obtained; (iii) the number of bushels and price paid per bushel for each seller; and (iv) if from public grounds, from what the grounds' general area thereof. Any seller accepting cash in payment for his oysters shall be required to sign an acknowledgment of the transaction and shall receive a copy of such the acknowledgment from the buyer. Such records shall be open for inspection by the Commissioner and a copy available to him or any employee designated by him to inspect or receive the same; and a . A failure to keep such a record shall be unlawful and shall be punishable as hereinafter provided is a Class 1 misdemeanor .

§ 28.2-539. Inspection tax.— The purchasers All licensed oyster buyers, planters, packers, importers of shucking stock or shippers shall pay a to the Commissioner an inspection tax; to be known as inspection tax, to the Commonwealth of Virginia, or to the person authorized to receive the same, of three cents for each bushel of oysters taken, caught, imported, or purchased; it being the intent and purpose of this section to impose a tax upon all oysters taken, caught, imported or purchased, except . However, the tax shall not be imposed on those oysters which are to be replanted in the waters of the Commonwealth. The proceeds from this tax shall be paid into the general fund of the state treasury.

§ 28.2-540. Who pays inspection tax; schedule for payment.— The inspection tax shall be paid to the Commission Commissioner by the owner, master captain, or operator of any boat, or vessel, or motor vehicle, or the purchaser, importer, or shipper, regardless of whether he is a packer, planter, or an individual working on public grounds, when the oysters do not go to a shucking or packinghouse. If the oysters are going to a shucking or packinghouse located in the Commonwealth of Virginia, then the tax shall be paid by the shucking house or packer. If the

tax has not previously been paid, the tax shall be paid by such purchaser, packer, importer, or shipper.

The inspection tax shall be paid to the ~~Commission~~ *Commissioner* semi-monthly. For oysters harvested or imported during the first fifteen days of each month, payment shall be made on or before the twentieth day of each month. For oysters harvested or imported during the last half of each month, payment shall be made to the Commission on or before the fifth day of the following month.

Drafting Note: Existing § 28.1-87 has been divided into proposed §§ 28.2-538, 28.2-539, and 28.2-540. The word "purchasers" has been stricken and replaced with "licensed oyster buyers" in order to be consistent with terms used in existing § 28.1-92. The Class 1 misdemeanor penalty which has been specified for proposed § 28.2-538 is the penalty under existing § 28.1-95 (proposed § 28.2-549) for violating any provision of the article.

~~§ 28.1-02. 28.2-541. Tax on oysters taken from public rocks Replenishment tax.~~—A. There is imposed upon all oysters taken from the public rocks, beds, or shoals the following replenishment tax: (i) on all oysters taken from the seed area of the James River, or from any other area designated as a seed area by the Commission, selling for \$1.50 or less per bushel, five cents per bushel; ; selling for \$1.51 through \$2.50 per bushel, ten cents per bushel; ; selling for \$2.51 through \$3.50 per bushel, fifteen cents per bushel; ; selling for \$3.51 through \$4.50 per bushel, twenty cents per bushel; ; selling for \$4.51 through \$5.50 per bushel, twenty-five cents per bushel; ; selling for \$5.51 through \$6.50 per bushel, thirty cents per bushel; ; selling for \$6.51 or above per bushel, fifty cents per bushel; and (ii) on all oysters taken from any public rocks, beds, or shoals other than the James River seed area or any other area designated as a seed area by the Commission, fifty cents per bushel.

~~B. The tax shall be paid to the Commission as specified in § 28.1-02 by the oyster buyer who purchases oysters taken from the public rocks, beds or shoals.~~

~~C. Any person taking or catching oysters which are taken or caught from any public grounds and which are to be planted or used by the taker or catcher and not sold to a buyer, shall file the same report as required of a buyer.~~

~~D. B. The Commission may revoke the permit or license of any person who fails to comply with the requirements of this section shall be subject to revocation by the Commission.~~

Drafting Note: Subsection B is stricken and moved to existing § 28.1-92 (proposed subsection A of § 28.2-543). Subsection C is stricken and included in proposed subsection B of § 28.2-544.

~~§ 28.1-94. 28.2-542. Public Oyster Rocks Replenishment Fund.~~—All oyster replenishment taxes collected by the ~~Marine Resources Commission~~ shall be credited and deposited in the state treasury and credited to a special Public Oyster Rocks Replenishment Fund, to be used only for administration of the program; and for replenishment, planting, and replanting the public oyster rocks, beds, and shoals of this State *Commonwealth*, 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 ~~Marine Resources Commission~~. *Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrant of the Comptroller issued on vouchers signed by persons designated by the Commission.*

Drafting Note: Language is added from existing § 28.1-94.1 (proposed § 28.2-550) which describes the procedures for the expenditures of moneys from the Fund.

~~§ 28.1-02. Records of oysters taken from public rocks and reports to be made.—The Commission shall issue to licensed oyster buyers in this Commonwealth forms that shall be used in reporting to the Commission. 28.2-543. Payment of replenishment tax; payment schedule.—A. The replenishment tax shall be paid to the Commission by all oyster buyers who purchase oysters taken from the public rocks, beds or shoals.~~

~~B. Oyster~~ Such taxes shall be paid to the Commission by the oyster buyer in semimonthly payments. For oysters purchased during the first fifteen days of each month, payment shall be made to the Commission on or before the twentieth day of each month. For oysters purchased during the last half of each month, payment shall be made to the Commission on or before the fifth day of the following month. ~~The~~

~~C. The Commission may revoke the permit or license of any person who violates this section.~~

§ 28.2-544. *Reports required of oyster buyers.*—A. All oyster buyer buyers shall send to the Commission a complete report and taxes due the Commission on all oysters purchased during such periods of time ~~on the form above described~~ *described in § 28.2-543*, setting forth the total number of bushels of oysters taken from the public grounds, the general area from which taken, and the price paid, together with all taxes as required by ~~§ 28.1-93; however, the 28.2-541.~~

B. *Any person taking or catching oysters from any public grounds which are planted or used by the taker or catcher and not sold to a buyer, shall file the same report as required of a buyer. This information provided herein shall be used only for the collection of taxes mentioned in this section replenishment taxes and for the Commission's information to the Commission.*

C. *The Commission may revoke the permit or license of any person who violates this section.*

Drafting Note: Existing § 28.1-92 has been divided into proposed §§ 28.2-543 and 28.2-544. Proposed § 28.2-543 contains new subsection A, which is the stricken language of subsection B of existing § 28.1-93 (proposed § 28.2-541). Language regarding the revocation of a license for failure to comply with the section is included since this provision applied to § 28.1-93. With the addition of subsection A and the revocation provision, the requirements for payment of the replenishments tax are consolidated into proposed § 28.2-543. Proposed § 28.2-544 combines language from existing 28.1-94 and subsection C of existing § 28.1-93 (proposed § 28.2-541) along with the revocation provision of § 28.1-93. This consolidates the reporting requirements for the replenishment tax into proposed § 28.2-544.

§ 28.1-89. 28.2-545. *Export tax; disposition of funds; permit to carry, etc., oysters out of State.*—In addition to all other taxes imposed by law, there shall be an export, or out-of-state tax of twenty cents per bushel imposed on all oysters, including seed oysters, taken from any of the public oyster grounds of this State Commonwealth and shipped unshucked from this State Commonwealth. A record shall be kept on all out-of-state shipments. The provisions of this section shall not be applicable to the sale of seed oysters to the Potomac River Fisheries Commission.

All funds received or collected pursuant to this section shall be paid into the state treasury to the credit of the Public Oyster Replenishment Fund for the purpose of such fund.

§ 28.2-546. *Permit to carry oysters out of state.*—A. 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 Commonwealth any size or kind of oysters taken from the natural public rocks, beds, or shoals in the waters of this Commonwealth until he has first obtained for each cargo a permit to do so from an inspector officer and has paid to the inspector officer the required export, inspection, and replenishment taxes with buyer's report. In place of a cargo permit, the Commissioner may grant a monthly permit at the beginning of each calendar month to a packing or shucking house located in the Commonwealth of Virginia, provided that the packing or shucking house is in compliance with the provisions of this section.

B. The permit shall state the name of the boat or license number of the motor vehicle; the name and address of the owner and/or master captain of the boat or owner and/or operator of the motor vehicle. The permit shall state the name and address of the person, firm or corporation to whom the cargo of oysters are to be delivered. The permit shall specify the number of bushels and whether they are seed or shucking stock.

Before such the permit shall be granted, the applicant shall certify, before an inspector officer, that the cargo will not be delivered or discharged to any other person; firm or corporation.

C. *It shall be the duty of the Commission to grant such permit unless, after examination of the seed areas, it finds that the granting of the permit will injure or deplete the seed areas and that the supply of seed oysters is insufficient to meet the demand for seed oysters by planters in Virginia. The Commission may cease the granting of such permits whenever it finds that the seed areas are becoming depleted, and that to continue to grant such permits would seriously injure the seed areas.*

Drafting Note: Existing § 28.1-89 is divided into proposed §§ 28.2-545 and 28.2-546. Subsection C is language taken from existing § 28.1-96.

§ 28.1-88. 28.2-547. *Right to inspection of Authority to inspect 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 Any officer is authorized to inspect as to the

quality, size and measure of 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.

Drafting Note: Language is stricken which refers to the different names previously used for marine patrol officers.

~~§ 28.1-90. 28.2-548. Duty to inspect; collection of tax and receipt for same.~~—It shall be the duty of the ~~inspector~~ *officer* in whose district a cargo of oysters is to be loaded; or a ~~police boat captain in the area;~~ (i) to inspect ~~such~~ *the* oysters as they are loaded and to see *ensure* that all measurements are a full measure of oysters as defined in § 28.1-136; 28.2-526 and that ~~they~~ *the* oysters are properly culled; and (ii) 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~~ *officer* shall furnish the owner, ~~master captain,~~ 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 ~~shall~~ be carried in the possession of by the ~~master captain or operator of the boat, vessel,~~ or motor vehicle and ~~must~~ *shall* be exhibited when requested by any ~~inspector or police boat captain,~~ *officer*. A copy of ~~which~~ *the* receipt shall be sent to the office of the Commissioner of Marine Resources.

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

Drafting Note: No change in the law.

~~§ 28.1-91. Repealed by Acts 1970, c. 726.~~

~~§ 28.1-96. Carrying oysters out of State, or buying for that purpose; permit required.~~—A. 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 Marine Resources and countersigned by the inspector or police boat captain; and it shall be the duty of the Commission to grant such permit unless, after examination of the seed areas, it shall ascertain that it will injure or deplete the seed areas to grant such permits, and that the supply of seed oysters is insufficient to meet the 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.

B. In the exercise of its authority granted pursuant to this section, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising such authority.

Drafting Note: This section is stricken. The language in subsection A requiring a permit for carrying oysters out of state duplicates existing § 28.1-89 (proposed § 28.2-546). Language regarding the duty of the Commissioner to grant a permit to carry oysters out of state has been moved to subsection C of proposed § 28.2-546. Subsection B of § 28.1-96 is stricken since it refers to an obsolete regulatory procedure.

~~§ 28.1-95. 28.2-549. Violations; recovery of taxes; penalty.~~—Any person who violates any provision of this article shall be *is* guilty of a *Class 1* misdemeanor. Any person willfully failing to pay such taxes to the Commission ~~when and as required by law shall be in the manner required by this article~~ is guilty of larceny of such tax money and punished as provided by law for the crime of larceny a *Class 1* misdemeanor. The Commission may maintain an action at law against any person required to pay taxes to the Commission for the amount of taxes due, plus interest, and a penalty of fifteen percent to be added to the tax in the amount of six percent if the failure is for not more than one month, with an additional six percent for each additional month, or fraction thereof, during which the failure continues, not to exceed thirty percent in the aggregate.

Drafting Note: The classification for failure to pay taxes has been changed from larceny to a

Class 1 misdemeanor which is consistent with the penalty for not paying sales tax (§ 58.1-625) and an employer's failure to pay the required tax to the Tax Commissioner (§ 58.1-485). The language added regarding a monetary penalty parallels what appears in the tax code.

Drafting Note: No change in the law.

~~§ 28.1-94.1. 28.2-550. Authority of Commissioner to make certain contracts; funds received to be paid into Public Oyster Rock Replenishment Fund.—The Commissioner with the approval of the Marine Resources Commission is authorized to may contract with any person ; firm or corporation for the purpose of taking or dredging to take or dredge submerged oyster shells or any other subaqueous materials from the tidal waters of the Commonwealth, and shall have the authority to plant, use , or sell such shells or other materials in whatever manner the Commission deems to be in the best interests of the Commonwealth.~~

~~Notwithstanding the provisions of the Virginia Public Procurement Act (§ 11-36 et seq.), the Commission, when it makes a determination in writing that competitive bidding or competitive negotiation is not feasible or fiscally advantageous to the Commonwealth, may authorize other methods of purchasing and contracting for seed oysters, house shells, reef shells, shell bed turning, and other goods and services for oyster ground replenishment which it deems are in the best interest of the Commonwealth and which are fair and impartial to suppliers. It may establish pricing for its awards and purchases ; ; use selection methods by lot ; and may open, close , and revise its purchases according to changing conditions of the natural resources, markets, and sources of supply.~~

~~All funds received or collected under this section shall be paid into the state treasury to the credit of a fund to be known as the Special Public Oyster Rock Replenishment Fund for the purposes of such fund. Expenditures and disbursements from such fund shall be made by the State Treasurer on warrants of the Comptroller issued on vouchers signed by such person or persons as shall be so authorized and designated by the Marine Resources Commission.~~

Drafting Note: The stricken language regarding disbursements from the Funds has been moved to existing § 28.1-94 (proposed § 28.1-542).

Article 4.

Surveys and Resurveys.

~~§ 28.1-100. Baylor survey; surveying and resurveying planting grounds and marking lines.—(1) 28.2-551. 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 pursuant to Chapter 511 of the 1892 Acts of Assembly , entitled an act to protect the oyster industry of the Commonwealth, approved on February 20, 1892, 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 . The surveys and reports filed in accordance with the acts aforesaid this Act of Assembly shall be construed in all the courts of the Commonwealth to be are 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 so filed, and further, that there are no natural other public oyster beds, rocks , or 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 public oyster beds, rocks , or shoals of the Commonwealth referred to in this section shall not extend inshore of the mean low-water mark of said such body of water, notwithstanding any surveys, plats, markers, or lines to the contrary notwithstanding .~~

~~(2) § 28.2-552. Resurvey on motion of Commission or on application of citizens.—The Marine Resources Commission may select and appoint ; on such terms as may be agreed upon, any surveyor to survey or resurvey any oyster-planting grounds either in his own or any other county, and to reestablish and permanently mark any line or lines of the Baylor survey of natural oyster rocks ; which ; in the judgment of the Commission ; it may be finds necessary to define.~~

Drafting Note: Existing § 28.1-100 is divided into proposed §§ 28.2-551 and 28.2-552.

~~§ 28.1-101. 28.2-553. Reestablishment ; etc., of lines of Baylor survey; procedure; evidence of reestablished lines ; sale of Baylor survey charts and plats .—The Marine Resources Commission may reestablish, relocate , and remark all lines of the Baylor survey which cannot be otherwise relocated because of the loss or destruction of previous marks which formerly existed . In~~

reestablishing 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 reestablished the Commission may establish a new line.

When such ground or grounds, line or lines shall have been reestablished and relocated, the same the reestablishment and relocation shall be taken and accepted as conclusive evidence in all courts of the Commonwealth that the such grounds so ascertained to be natural are public oyster rocks, beds, or shoals are such; and that all grounds lying outside of such boundaries are rental grounds open to rental under the laws of this State. Plats shall be made under the direction of the Commission showing the reestablishment of such lines, and shall be recorded in the appropriate clerk's office.

§ 28.2-554. *Sale of Baylor survey charts and plats.*— The Commissioner of Marine Resources shall have available at all times to sell at five dollars per copy to the public copies of the Baylor survey charts and plats, to be offered for sale to the public, in such manner as the Commissioner may determine and a fee of three dollars per copy shall be charged therefor.

Drafting Note: Existing § 28.1-101 is divided into proposed §§ 28.2-553 and 28.2-554. The increased cost per copy reflects the costs of the Baylor Survey map as well as fishery regulatory information included in the packet.

§ 28.1-101.1. *Repealed by Acts 1964, c. 302.*

§ 28.1-101.2. *28.2-555. Crossings of Baylor survey.*—The State Highway and Transportation Board, in the performance of its duties, is hereby authorized to Commonwealth Transportation Board may maintain, repair, reconstruct, or replace any existing crossings of the Baylor survey; provided further, that. Such authorization is hereby granted for any Baylor survey crossing determined by the Board to be necessary across the Hampton Roads from Newport News to Portsmouth, across the Elizabeth River at Norfolk, and construction parallel to an existing crossing of the James River from Newport News to Isle of Wight County.

Drafting Note: No change in the law.

§ 28.1-101.3. *Certain historic lines to be continued.*—Where private leaseholds granted by the Marine Resources Commission or its predecessors appear to be within the Baylor survey as reestablished pursuant to § 28.1-101, if it shall be established to the reasonable satisfaction of the Commission, by petitions duly filed prior to December 31, 1987, that the present or former leaseholders or their predecessors in title were granted the leaseholds in question in good faith more than twenty years previously and have made substantial improvements in such leasehold bottoms since that time, the Commission shall reestablish the lines of the Baylor survey along the survey lines between the private leaseholds and the public grounds of the Baylor survey as set forth on the surveys for the private leaseholds previously approved, and any notice to vacate such leaseholds shall be of no effect; however, such changed lines shall not result in private grounds being wholly surrounded by Baylor survey grounds.

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

Drafting Note: This section is repealed since the deadline for petitioning the Commission to reestablish the lines of the Baylor survey has passed.

§ 28.1-101.4. *28.2-556. Erosion control devices within the Baylor survey.*—The natural public oyster beds, rocks, and shoals shall not include any area needed for an erosion control structure if the Commission, after considering the comments of the Virginia Institute of Marine Science and the Department of Conservation and Recreation, and any other relevant evidence, finds that: (i) shoreline erosion has occurred at the site and is expected to continue; (ii) such erosion is increasing the sediment load to public waters, causing degradation of water quality; (iii) the proposed project is a technically and environmentally preferable way to control erosion at the site; and (iv) the Commonwealth's interest in protecting water quality by controlling erosion at the site outweighs the value of the portion of the natural oyster beds, rocks, and shoals affected by the erosion control structure. Whenever the area of the natural oyster beds, rocks, and shoals is so changed, the Commission shall cause such change to be reflected make the changes on its Baylor survey charts.

Drafting Note: No change in the law.

~~§ 28.1-102. 28.2-557. Unlawful to threaten or hinder surveyor; rights of surveyor ; penalty~~.—It shall be is 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 The surveyor shall have the right to enter upon the any person's lands of any person or persons for that purpose in the performance of his duties .

A violation of this section is a Class 3 misdemeanor.

Drafting Note: A penalty provision has been added.

~~§ 28.1-103. 28.2-558. Placing permanent markers.~~—Whenever the Commission makes or directs any surveys or resurveys of the Virginia's public oyster rocks of the Commonwealth are made by or under the direction of the Marine Resources Commission , 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 . The Commission shall pay the cost of such markers .

Drafting Note: No change in the law. Clarifying language only.

~~§ 28.1-104. 28.2-559. Removal of oysters planted by mistake.~~—When, by any resurvey of oyster-planting ground or survey made to reestablish reestablishing the lines of the state Baylor survey of natural oyster beds, rocks, or shoals, which shall hereafter be made under the direction of the Marine Resources Commission, it shall appear appears that any holder, without his own default, and by mistake of any officer of the Commonwealth employee of the Commission, has had assigned to him and included in the plat of his assignment any portion of the natural public oyster beds, rocks , or shoals, as defined by law, and such the holder shall file a petition with the Commission for leave permission to remove such oysters or shells from such ground ; and that without default of the holder and by mistake of an officer of the Commonwealth 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 . The Commission may allow the holder a reasonable time, not exceeding three years, within which to remove such oysters, their increase progeny and the their shells therefrom .

Drafting Note: No change in the law. Clarifying language only.

~~§ 28.1-105. 28.2-560. Larceny of oysters and shells ; penalty~~.—Any person other than such the holder ; of an oyster-planting ground ; or his agent, agents or employees going who goes upon such ground and taking takes oysters and shells therefrom before the expiration of the time allowed such holder, shall be deemed is guilty of larceny thereof .

Drafting Note: No change in the law.

~~§ 28.1-106. 28.2-561. Removal of markers of planting grounds.~~—It shall be is unlawful for any person to intentionally or knowingly injure, remove , or displace any boundary oyster stakes stake , range monuments monument , 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 to designate, locate, survey, or map any shellfish grounds.

A violation of this section is a Class 3 misdemeanor.

Drafting Note: A penalty provision has been added. Clarifying language only.

~~§ 28.1-107. 28.2-562. Maps to be filed; evidential value.~~—All maps of the bays, rivers , and creeks of this Commonwealth made by the Marine Resources Commission showing the location of oyster-planting grounds in these waters, shall be filed in the office of the Marine Resources Commission.

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

Drafting Note: No change in the law.

CHAPTER 6.

PLANTING GROUNDS.

CHAPTER DRAFTING NOTE: This chapter, which previously appeared as several articles in Chapter 5 of Title 28.1, consolidates all the licensing provisions for planting grounds (oysters and clams) and bathing grounds. Separate articles are devoted to the requirements for the leasing of riparian oyster-planting grounds and of general oyster-planting grounds. This will enable the user of the Code to better understand the extent of such requirements. Previously these requirements were contained in two lengthy sections.

Article 1.

Riparian Oyster-Planting Grounds.

~~§ 28.1-108. Assignments of planting grounds to riparian owners~~ 28.2-600. Riparian planting ground assignments; eligibility; fee.—A. Any owner of land bordering on a body of water in the oyster-growing area of this Commonwealth whose shore front measures at least 205 feet at the low-water mark, who has not had as much as one-half acre of ground already assigned him on the front, or whose lease has terminated and is not to be renewed, may apply for planting grounds to the ~~Commissioner~~ ~~Commission~~ Commissioner. The ~~Commission~~ Commissioner shall assign to him such ground wherever the owner may designate in front of his land that is within his riparian waters, provided the ground does not encroach into an existing oyster-planting ground lease assigned under ~~§ 28.1-100 Article 2~~ (§ 28.2-603 et seq.) of this chapter. The fee for such assignment shall be \$1.50. Such ground shall not exceed in area one-half acre, and shall not be less than 105 feet wide along the shore, beginning at low-water mark, extending out not more than 210 feet, or to the middle of the channel or body of water, or to the middle of the channel, whichever is the shorter distance. The grounds shall be surveyed, plotted, marked, assigned, and recorded in all respects as provided for assignments to persons in ~~§ 28.1-100 of the Code of Virginia Article 2~~ (§ 28.2-603 et seq.) of this chapter. Any riparian assignment that was duly recorded in the clerk's office of the county or city ~~wherein~~ where the grounds are located, or at the Commission office prior to July 1, 1986, shall continue in effect.

B. § 28.2-601. Riparian assignments; entitlements; obligations.— The riparian leaseholder shall have the exclusive right to the use thereof of such ground for the purpose of planting or gathering oysters and clams.

C. The assignment made pursuant to this section § 28.2-600 shall pass with the transfer of the adjacent highland to the subsequent owner of highland and cannot be held separated from the highland. A transfer of highland ownership shall require that there be a transfer of the riparian assignment within eighteen months after the transfer of the highland ownership under the following conditions and provisions :

1. The application for transfer shall be in the form prescribed by the Commission ; and shall be filed with the ~~Commission~~ Commissioner .

2. The ~~Commission~~ Commissioner 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.

3. The cost of any new surveys required under this section shall be borne by the person making the transfer, and the cost and fees shall be the same as for surveys made by the ~~Commission~~ of general oyster-planting ground .

4. The application shall be accompanied by a transfer fee of five dollars.

5. ~~The engineering office of the Commission~~ The Commissioner shall return the approved application for transfer and plat with any correction to the applicant. A copy of the transfer and plat shall be recorded at the ~~Commissioner's~~ office of the ~~Commission~~ .

6. ~~Repealed.~~

7. ~~Should 6.~~ If no application for transfer be is received by the ~~Commission~~ Commissioner within eighteen months after the transfer of the highland ownership, the riparian assignment shall become vacant and open to assignment.

D. ~~Repealed.~~

§ 28.2-602. Riparian assignments; special terms and conditions.— This section applies The provisions of this article apply to all Virginia counties and cities of the Commonwealth bordering on bodies of water ; in its oyster-growing areas, except if they shall not be applicable apply to

riparian lands located above the James River Bridge bridge in the James River or its tributaries. In any Virginia county or city in this Commonwealth where more than one-half acre of ground per waterfront tract has heretofore been assigned to a riparian owner, the ground in excess of one-half acre shall be deemed to be ground held under a regular lease and assignment, and not a riparian assignment.

This section, so far as the quantity of land to be assigned to and held by riparian owners is concerned, shall not apply to Northampton County, but § 6 of Chapter 254 of the Acts of Assembly of 1883 and 1884 shall continue in force as to the county. For Northampton County, however, § 6 of Chapter 254 of the 1883-1884 Acts of Assembly, not this article, shall govern the quantity of land to be assigned to and held by riparian owners. Nothing herein contained shall be construed as authorizing in this article authorizes a rental of a lesser amount per acre than that provided by law for riparian owners in Northampton County of the land assigned them as such riparian owners. Nothing in the section which restores to riparian owners in Northampton County one-fourth of their respective waterfronts ; suitable for planting oysters, shall be so construed as to permit permits the owners of waterfronts to compel occupants of the fronts to remove their oysters from any fourth of the shores, if the residue of the shore is already in the landowner's possession ; or is unoccupied.

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

Drafting Note: Existing § 28.1-108 has been divided into proposed §§ 28.2-600, 28.2-601, and 28.2-602. The assignment fee assessed in existing § 28.1-44 has been moved to proposed § 28.2-600. The striking of "Commission" and insertion of "Commissioner" in this article reflects the Commissioner's responsibility for administering the program.

Article 2.

General Oyster-Planting Grounds.

~~§ 28.1-100.~~ 28.2-603. General oyster-planting grounds.— ~~(1) Grounds comprising. The residue of waterfront in excess of what Waterfront that is not already assigned or reserved for the riparian owners, and the residue of the beds of the bays, rivers, and creeks and shores of the sea other than those within lying outside the limits of navigation projects adopted and authorized by the Congress and those not required for the disposal of materials dredged incident to the maintenance of such projects, and grounds other than natural public oyster beds, rocks , or shoals, as defined by law and included in the Baylor survey, may be occupied for the purpose of planting or propagating oysters thereon , and may be leased by the Commission Commissioner upon the receipt of a proper application therefor .~~

~~(2) § 28.2-604. Eligible applicants ; provisions of section incorporated in lease .— Application for assignment of general oyster-planting ground may be made by (i) any resident of the Commonwealth, or (ii) any county, municipality, or political subdivision of the Commonwealth, or by (iii) any firm, or corporation chartered under the laws of this Commonwealth for the purpose of oyster culture and the oyster business provided that at least sixty percent of the stock of any such corporation must be is wholly owned by residents of the Commonwealth of Virginia .~~

~~(3) § 28.2-605. Application for assignment.— All applications for assignment of general oyster-planting grounds shall be made in writing, in duplicate, to the Marine Resources Commission. Applications shall be given priority considered in the same order in which they are received, except that no application for any ground then under lease shall be considered valid for that portion under lease. The application shall state, as nearly as possible, the number of acres applied for and definite location, with the name of one or more prominent points or objects adjacent to such ground. It shall be the duty of any resident, firm , or corporation desiring to obtain a location for planting or propagating oysters to apply to have the location ascertained determined , designated, surveyed , and assigned.~~

~~(4) § 28.2-606. Posting of notice of applications.— Notice of the application shall be (i) posted by the Commission for not less than sixty days at the courthouse of the county or city in which the ground applied for lies, and in at least two or more prominent places in the vicinity of the ground and shall in addition, be (ii) published at least once a week for four consecutive weeks in a newspaper of general circulation in that county or city.~~

~~(5) -Repealed.~~

~~(6) § 28.2-607. Survey and marking of ground.— If a protest is not filed in the Commission office within sixty days after posting of the notice of application, the chief engineer of the~~

Marine Resources Commission Commissioner shall designate select a surveyor to survey the grounds and make a plat in duplicate of the same . The surveyor shall forward the plat of survey to the office of the Marine Resources Commission Commissioner to be approved by the engineer of the Commission . If no protest to the application or surveying of ground is made before the expiration of within thirty days after the plat of survey is recorded in the Commissioner's office of the Marine Resources Commission , the ground applied for shall be assigned provided that :

(a) That the 1. The application and assignment complies with all applicable provisions of law and if , in the judgment of the Commission it shall be wise to do so Commissioner the assignment is in the public interest .

(b) 2. All fees, costs, and the annual rental have rent have been paid for the lease of the ground. The ground shall be marked at the expense of the applicant.

(c) The Commission shall prescribe the methods and manner of marking oyster-planting ground. No lessee of oyster-planting ground shall mark such . The grounds otherwise than shall be marked in accordance with the rules and Commission regulations established by the Commission for marking oyster grounds .

(7) § 28.2-608. Application, surveying fee , and recording fee fees .— Any applicant for general oyster-planting ground or for riparian oyster ground shall pay an application fee of twenty-five dollars and in addition shall pay to the Commission for any ; the Commission's surveying done by the Commission an amount equal to the costs including the cost of the survey and of preparing the original and one copy of a the plat thereof. Before an assignment or transfer, the applicant shall pay ; and the cost of recording each assignment or transfer and plat in the Commission office. The fee for recording each assignment shall be \$1.50. No ground shall be assigned until all the prescribed fees prescribed herein have been paid.

(8) § 28.2-609. Restrictions on assigned acreage and applications.— No assignment, except in the Chesapeake Bay, shall exceed 250 acres. No An applicant, after having had as much as 250 acres of general oyster planting ground assigned to him, shall again make application not apply 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 is not made within six months after the expiration of the notice required by statute to be posted for sixty days , the application shall, upon the expiration of six months, lapse and become null and void, unless the Commissioner allows an extension is allowed by the Commission . In cases where When a protest has been filed with the Commission against the granting of an application, the application shall not lapse until the Commission has finally acted upon the application.

(9) § 28.2-610. Restriction on acreage owned or operated.— No person ; firm or corporation shall own or operate more than 3,000 acres of general oyster planting grounds in the waters of this Commonwealth other than in the Chesapeake Bay ; and should . If ground in excess of 3,000 acres be is 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 bequest, he or they shall, nevertheless, have , the person has a right to lawfully hold the ground for and during the period of one year and shall have a legal right to assign it. Should If no assignment be is made within one year the oyster-planting ground so acquired , the ground in excess of 3,000 acres ; shall revert to the Commonwealth of Virginia, and may be applied for by any person having a legal right to do so.

(10) § 28.2-611. Application for general planting ground in Chesapeake Bay; acreage allowed; annual rental.— Application for general planting ground in the Chesapeake Bay in waters from fifteen feet deep or more in depth shall be made to the Marine Resources Commission Commissioner . The Commission Commissioner shall have the right to accept or reject any application as it may deem best for the public interests; and the number of . No more than 5,000 acres to may be assigned to any applicant shall not exceed 5,000 acres . The assignment shall not interfere with the established fishing rights and any . Any such application, surveying, and marking shall conform to the law pertaining to oyster-planting grounds. The annual rental rent per acre in the Chesapeake Bay ; in waters from fifteen feet or more in depth, shall be such an amount per acre as be determined by the Commission may designate , but in no case shall be less than seventy-five cents annually per acre.

(11) § 28.2-612. Payment of annual rental; penalty for default.—The applicant shall pay to the Commission the annual rental for such ground at the rate rent of one dollar fifty cents \$1.50 per acre or any fraction thereof, annually, except as provided for the Chesapeake Bay ; and for bathing ground. Such rental payment shall be due on September 1 of each year after the date of assignment, and, plus a ten percent penalty if not paid on or before December 5 ; a ten percent

penalty shall be added to the annual rental charge, and the Commission may proceed to levy for rental and penalty .

~~(12)~~ § 28.2-613. Duration of lease.— Each assignment of *general oyster planting ground* shall continue in force for a period of twenty years from the date of assignment, unless the assignment is terminated in one of the manners provided by law . New or initial assignments made after July 1, 1980, shall continue in force for a *ten-year term of ten years* . The interest in such ground shall be construed as a *is* chattel real.

Upon the death of the renter, testate as to the lease, it shall vest in the named beneficiary subject to the rights of creditors, if he is a resident of this Commonwealth, provided that he files an application for transfer with the Commission within eighteen months after the date of death. If the named beneficiary is not a resident he shall have eighteen months after the date of death to transfer the lease to a qualified holder.

Upon the death of the renter, intestate as to the lease, the lease shall be vested vest in the personal representative, if there is one , who shall transfer the lease to a qualified holder within eighteen months.

If there is no qualification on the renter's estate within one year of his death, the Commission may within six months thereafter transfer the lease to a qualified holder upon receipt of a transfer duly executed by all of the lawful heirs of the renter both resident and nonresident .

If there is no transfer under any of the above, the ground shall become vacant and open to assignment.

Upon expiration of the initial or any subsequent term of the assignment, the Commission shall, on application of the holder, renew the assignment for an additional *ten-year term of ten years* . The Commission shall not renew or extend an assignment where there has been neither significant production of *shellfish oysters or clams* nor reasonable plantings of *shellfish oysters, clams* or cultch during any portion of the ten-year period immediately prior to the application for renewal, unless the Commission finds that there was good cause for the failure to produce or plant *shellfish oysters, clams* or cultch or finds that the assignment is directly related to and beneficial to the production of oyster-planting grounds immediately adjacent to the assignment.

~~(12a)~~ -Repealed.

~~(12b)~~ § 28.2-614. Requiring lessee or transferor to have ground surveyed and plat recorded; canceling lease for failure of lessee to have survey.—If the ~~chief engineer and the Commission should determine~~ *Commissioner determines* that in any past assignment of *or in any attempt to transfer* oyster ground ~~or when there is any attempt to transfer oyster ground~~ , that there has not been a survey, or a recorded plat, or both, acceptable to the Commission and which, in their opinion, does not accurately describe the metes and bounds of the leased ground, the ~~Commission~~ *Commissioner* shall require the lessee, the transferor, or both ; to have the ground surveyed and the plat recorded.

If the lessee fails to order the survey or resurvey within six months after date of notification to the lessee or transferor, by certified mail, the ~~Commission~~ *Commissioner* shall cancel the lease on its books and may accept applications ~~therefor~~ *for this ground* from the general public.

~~(12c)~~ § 28.2-615. Payment of costs for service, etc. ; required under subsection ~~(12b)~~ .—The cost of the surveys and recording fees required under subsection ~~(12b)~~ hereof by § 28.2-614 shall be borne by the lessee or transferor and the cost and fees shall be the same as for surveys made by the Commission.

~~(13)~~ § 28.2-616. Possession gives no preference as to assignment.—Any person, firm or corporation in possession of any *general oyster-planting ground* which has not been assigned according to law shall have no preference as to having it assigned to him ; but the . The ground shall be open to the first applicant.

~~(14)~~ § 28.2-617. Recordation of plat.—The plat and assignment, as soon as practicable after completion, and after the ground has been assigned to the applicant, shall be filed for record in the office of the ~~Marine Resources~~ *Commission*.

~~(15)~~ § 28.2-618. Commonwealth 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~~ *The Commonwealth will shall guarantee to any person who*

has complied with ground assignment requirements the absolute right to the renter to continue to use and occupy the ground for the term of the lease, subject to:

~~(a)~~ subsection ~~(12)~~ of this section 1. Section 28.2-613 ;

~~(b)~~ riparian 2. Riparian rights;

~~(c)~~ the 3. The the right of fishing in waters above the bottoms, provided (i) that no person exercising the right of fishing shall use any device which is fixed to the bottom, or which, in any way, interferes with the renter's rights or damages the bottoms, or the oysters planted thereon, and (ii) that crab pots and gill nets which are not staked to the bottom shall not be construed as considered devices which are fixed to the bottom unless the crab pots and gill nets are used over planted oyster beds in waters of less than four feet at mean low water on the seaside of Northampton and Accomack Counties; and

~~(d)~~ established 4. Established fishing stands, but only if the fishing stand license fee is timely received from the existing licensee of the fishing stand and no new applicant shall have priority over the oyster lease. However, a fishing stand location ; assigned prior to the lease of the oyster ground ; is 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)~~ § 28.2-619. When leases become vacant.— In any -case where When the Commission finds that the person in whose name the lease was made, a lessee is dead ; or unknown, and there is no one actually claiming claims such property as an heir or assignee of the former lessee , the ground shall become vacant and open to assignment.

~~(17)~~ § 28.2-620. Delinquent ground.—Any ground or area which becomes delinquent shall be open and available to be leased, after the following conditions have been complied with met :

~~(a)~~ 1. The Commission must have Commissioner has notified the person in writing on or about September 1 of that year of the amount of rent due - ;

2. If the rent becomes delinquent, the Commissioner has mailed a second notice must be mailed by certified mail on or about June 1 of the following year - ; and

~~(b)~~ If the 3. The person holding the lease does not pay all rents and penalties due on or before June 30 of the following year the assignment shall terminate .

~~(c)~~ -Repealed.

~~(18)~~ § 28.2-621. Effect of proposal for navigation project.— From and after the date on which When the Commissioner of Marine Resources receives information to the effect that with regard to a specified navigation improvement project, that the Secretary of the Army has been authorized by congressional action to cause conduct a survey to be made on any such a specified navigation improvement project, the Commissioner shall obtain the consent and approval of the Governor before leasing any public oyster-planting grounds which may be required for dredging operations or spoil disposal areas in connection with the project. If after the completion of the survey and a submission of the District Engineers' district engineers' report thereon to the Chief of Engineers, United States Army, the proposed navigation improvement project is not authorized, the affected ground will again become available for lease and assignment.

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

~~(19)~~ § 28.2-622. Consolidation of lease.—Upon written request by a leaseholder the Commission may consolidate into one lease contiguous leases held by the same leaseholder. The consolidation, upon approval by the Commission, shall be considered a new lease.

Drafting Note: Existing § 28.1-603 is divided into proposed §§ 28.2-603 through 28.2-622 with minor revisions in language. References to the chief engineer have been stricken since the term was eliminated from this title in 1984. The assignment fee assessed in existing § 28.1-44 has been moved to proposed § 28.2-608. References to shellfish in proposed § 28.2-613 have been stricken and oysters and "clams" inserted to clarify that only oysters and clams are harvested from these planting grounds.

Article 3.

Assignment, Transfer, Condemnation; Other Grounds.

~~§ 28.1-100.1.~~ 28.2-623. Excusing rent payment on condemned oyster grounds in the Lynnhaven River and tributaries.—Whenever leased oyster ground in the Lynnhaven River and its tributaries has been condemned by the Commissioner of the State Department of Health for not less than 180 consecutive days, other than regular seasonal condemnation, the lessee, after prior written notice to the Commission, may elect choose not to pay the rent on the condemned acreage for the year immediately following the year in which the one hundred eightieth day of condemnation occurs. This election choice may continue until the condemnation is terminated. ~~Provided, however, that~~ However, if the lessee avails himself of this section makes such a choice, (i) oysters or clams shall not be taken from such leased area by the lessee for any reason during the condemnation period; (ii) the lease shall continue to run ; and (iii) the lessee may renew the lease as provided by law; and provided further, that the Marine Resources Commission however, the Commissioner may not make a new lease assignment or transfer an existing lease that lies wholly or partially within a condemned area unless such the applicant executes a release that he will not exercise his rights under this section for the duration of the lease.

Drafting Note: No change in the law.

~~§ 28.1-111.~~ 28.2-624. Natural Public rocks, etc., not to be used or staked off ; penalty .—It shall be is 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 public 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 officer for that district or any other officer of the Marine Resources Commission ; shall require any such person to remove all stakes, watchhouses, or other obstructions from the natural public beds, rocks, or shoals or from any bottom which has not been assigned to him according to law; failure . The failure of any person to remove such stakes or other obstructions within ten days of receiving the written notice in writing is received by said person shall constitute is a separate and additional unlawful act and violation of this title of the Code of Virginia, and the section. The stakes or other obstructions shall be removed by the inspector or other officer of the Commission at the cost of the person unlawfully placing or having placed said the stakes or other obstructions.

A violation of this section is a Class 3 misdemeanor.

Drafting Note: The reference to scalloping grounds is stricken since they are nonexistent. A penalty provision has been added.

~~§ 28.1-112.~~ 28.2-625 . Transfer or assignment.—A person holding a valid an existing lease of oyster-planting ground ; may transfer ; or assign all or any part of the lease to another under the following conditions and provisions:

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

(2) 2. The application for transfer or assignment shall be in the form prescribed by the Commission Commissioner and shall be filed with the Commission.

(3) 3. The Commission or its chief engineer Commissioner shall require a new survey if there is not a no survey exists of the exact parcel or parcels of grounds to be transferred or assigned.

(4) 4. The cost of any new surveys required under this section shall be borne by the person making the transfer, and the cost and fees shall be the same as for surveys made by the Commission Commissioner .

(5) 5. The application shall be accompanied by the transfer fee of five dollars if the parcel or parcels are ten acres or less in area and ten dollars if the parcel or parcels are more than ten acres in area .

(6) 6. The engineering office of the Commission Commissioner shall record in his office the application for transfer or assignment with any correction or new plat it may deem he deems necessary in the office of the Marine Resources Commission .

(7) 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 any ground remaining under the old lease.

(8) -Repealed-

Drafting Note: Language has been inserted to clarify that the Commissioner rather than the Commission is responsible for administering the leasing program.

~~§ 28.1-113. 28.2-626. Refund of rent paid under mistake.—Whenever it is made to appear to the Marine Resources Commission, by satisfactory evidence, the Commissioner finds that any a person has ; under mistake of law or fact, mistakenly paid to the Commonwealth any sum or sums of money ; that he then and there not being is not legally obligated to pay the same , the Commission, if of the opinion that justice so requires, Commissioner may refund the same money . All amounts refunded under this section shall be paid out of the then current appropriations made for the Commissioner's use of the Commission .~~

Drafting Note: Language has been inserted to clarify that the Commissioner rather than the Commission is responsible for administering the program.

~~§ 28.1-114. 28.2-627. Relief from rent.—The Marine Resources Commission Commissioner may forgive ground rent for oyster leases in any area declared a disaster area for oyster culture. A disaster area may be declared when any natural or man-made manmade condition arises which precludes satisfactory culture of oysters in that area. Such declaration for an area shall be made by the Marine Resources Commission Commissioner upon the advice of the Director of the Virginia Institute of Marine Science on or before the first day of July 1 of each year, and ground rent due and payable in September following such declaration may be forgiven for the ensuing tax year and such . Such relief may continue until the Marine Resources Commission Commissioner with the approval of the Virginia Institute of Marine Science shall declare declares the area again productive.~~

Drafting Note: Changes reflect the Commissioner's administrative responsibilities.

~~§ 28.1-115. 28.2-628. Condemnation of oyster bottoms and grounds.—The Department of Transportation ; 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 7 (§ 33.1-89 et seq.) of Chapter 1 of Title 33.1 of the Code of 1950 relating to the exercise of the right of eminent domain by the State Department of Transportation in acquiring lands for highway purposes.~~

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

Drafting Note: No change in the law.

~~§ 28.1-116. 28.2-629. Rights of owner to waters within lawful survey.— (a) If any creek, cove , or inlet within the jurisdiction of this Commonwealth makes flows into or runs through the lands of any person, is less than 100 yards in width at mean low water , and is comprised within the limits of his lawful survey, as defined in § 62.1-2 28.2-1202 , such person or other lawful occupant shall have the exclusive right to use such the creek, cove , or inlet for sowing or planting oysters or other shellfish ; provided, however, that . However, in the County of Mathews the owners or lawful occupants of land on both sides of any creek, cove , or inlet, except Horn Harbor, Winter Harbor , and Milford Haven, suitable for the planting of oysters, above the point where such creek, cove , or inlet is 100 yards in width, shall have the exclusive right to use such creek, cove, or inlet for planting oysters therein, the . The right of the owners or occupants of land on the opposite sides of such creek, cove , or inlet to extend extends to the middle of the channel ; wherever that may be from time to time .~~

~~(b) The Commission shall, to the extent practicable, in leasing oyster planting ground in Winter Harbor give priority to those eligible applicants who were, before July 1, 1972, users of grounds in Winter Harbor, and who apply for assignment within ninety days of July 1, 1972.~~

Drafting Note: Subsection (b) is stricken since it is obsolete.

§ 28.1-117. Repealed by Acts 1975, c. 186--

§ 28.1-118. 28.2-630. 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 Article 1 (§ 28.2-600 et seq.) of this chapter and also to this provision and to the following condition ; namely : That any landowner desiring who desires 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 who 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 the oyster grounds as shall be are reasonably needed for the building of the bulkhead or , wharf , or channel shall cease ; but if such . If the bulkhead, wharf , or channel be has not commenced as specified in such the notice within three months after such the oyster grounds shall be were vacated, then the former lessee or holder of such oyster grounds shall have the right to resume possession of such the oyster grounds as he may have has vacated in favor of such landowners, subject to the provisions of this chapter ; provided further that anyone . Any person constructing a channel under provision of the this section shall compensate the lessee of 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 . 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.

Drafting Note: No change in the law.

§ 28.1-119. 28.2-631. Ground Grounds for clams.— All The provisions in this title chapter referring or relating to the leasing of oyster grounds shall also include the right of the Commission Commissioner to lease grounds for the purpose of planting, growing, storing , and harvesting clams. The Commission Commissioner may use the same application and assignment forms and procedures for leasing ground grounds for the purpose of producing clams as provided for leasing grounds for the purpose of producing oysters.

Drafting Note: The stricken language reflects the Commissioner's responsibility to administer the oyster-and clam-planting grounds.

§ 28.1-162. 28.2-632. 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 20 twenty or more citizens to the oyster inspector of officer assigned to the district in which the land lies, laid off and designated as public clamming or scalloping grounds; or the Marine Resources Commission Commissioner may do so without such petition if in its judgment it is expedient , provided in its his opinion no oyster interests will suffer thereby and the clams or scallops are of sufficient quantity for a person to realize at least 225 clams or \$1.50 per day catching and taking clams or scallops from such ground ; and, if . If the ground is laid off, the Commission Commissioner shall have designate by stakes 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 where the ground lies ; all . All cost of surveying, platting , and recording to be shall be paid by the applicants; and such applicant. Such ground shall be set apart and remain as a public clamming or scalloping ground for the common use of the citizens of this State Virginia for so long as the Commission may deem best Commissioner determines , and shall not be assigned to anyone during such period.

Drafting Note: References to public scalloping ground have been stricken since there are no public scalloping grounds.

§ 28.1-118.1. 28.2-633. Bathing grounds; assignment; rental.—Any person desiring to obtain a location for bathing grounds shall apply to the Commission Commissioner to have his the location designated, surveyed , and assigned for the purpose aforesaid, and for the ground shall pay an . An annual rental fee of seven dollars and fifty cents \$7.50 per acre shall be charged for obtaining such a location . The cost for the assignment of bathing grounds shall be three dollars. Any such application, surveying, assigning , and marking shall conform to the law pertaining to oyster-planting grounds. Any license so granted Such licenses shall be for public or commercial bathing grounds for public or commercial use only.

Should If any lessee of bathing ground have has his ground or any portion thereof resurveyed or should if he reassign reassigns any or all of the ground, the resurvey or reassignment shall not be construed to be considered a twenty-year renewal of his lease, or as a new assignment of the ground, but shall be deemed to be a continuation of the original assignment, subject to all the limitations and conditions under which the ground was originally

assigned.

The lessee of any bathing ground, the rent of which is to be paid to the following September of any year, may abandon his holdings at any time without being liable for the payment of the rent for the following year, provided he notifies the ~~inspector, deputy inspector~~ *an officer* or the ~~Commissioner~~ *Commissioner* in writing of his intention ~~so to do so~~ before September 1. This notice, when received by the ~~inspector or deputy inspector~~ *officer*, shall be immediately forwarded by the ~~inspector or deputy inspector~~ *him* to the office of the Commissioner.

Drafting Note: The assignment charge in existing § 28.1-44 has been moved to this section.

Article 4.

Restrictions.

~~§ 28.1-122. 28.2-634.~~ *Nonresidents not to take or plant oysters, etc ; taking, planting oysters prohibited; penalty .—*If any person other than a resident of this State , as defined in this article § 28.2-200 , ~~shall take or catch~~ *takes or catches fish or shellfish ; oysters, clams, or other mollusks* in any of the waters of this State, *Commonwealth*, or in any of the waters under the *Commonwealth's* jurisdiction of this State , for market or profit, ~~or if he is guilty of a Class 1 misdemeanor.~~ *If any person other than a resident of this State , as defined in § 28.2-200, or a corporation authorized by law to occupy and hold oyster-planting grounds, rent rents any oyster-planting grounds ; or plant shellfish plants oysters, clams, or other mollusks* in any of the waters of the State, *Commonwealth*, or waters under the *Commonwealth's* jurisdiction of the State , ~~he shall be is~~ *guilty of a Class 1 misdemeanor*, and such rental, lease or assignment ~~shall be is~~ 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 . The burden of proof of residency under this section is the defendant's.~~ *This section shall not apply to any oyster-planting ground against which foreclosure proceedings have been instituted or title to which is acquired by reason because of the lessee's death of the lessee, and provided further that any . Any property interest to title so acquired under this provision shall not extend for a period of more longer than twelve months from the time the title vests.*

Drafting Note: The references to fish are stricken since they are inaccurate. The intent of this is to prohibit nonresidents from harvesting mollusks not fish. The references to shellfish are stricken since nonresidents are permitted to take crabs. Since shellfish has been defined to include crabs as well as mollusks, for purposes of this section it is necessary to make a distinction between crabs and mollusks such as oysters and clams.

~~§ 28.1-123. 28.2-635.~~ *Citizens Residents not to be interested associated with nonresident.—* ~~If any citizen of Virginia shall Any resident who is associated for market or profit be concerned or interested with any person not a resident thereof nonresident in taking or catching shellfish oysters, clams, or other mollusks in any of the waters of the Commonwealth, or in waters under the jurisdiction of the Commonwealth, or in planting oysters , clams or other shellfish therein mollusks , or shall who knowingly permit participates with any person, not a resident of Virginia, to engage nonresident in any such business in his name for market or profit, he shall be is guilty of a Class 1 misdemeanor ; but the . The residence 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.~~

Drafting Note: As in § 28.2-634, it is necessary to make a distinction between shellfish and oysters, clams, and other mollusks.

~~§ 28.1-126. Repealed by Acts 1985, c. 125.—~~

~~§ 28.1-144. 28.2-636.~~ *Leasing of certain bottoms in Rappahannock River prohibited.—*No part of the bottom of the Rappahannock River, lying in or near the center of ~~such the~~ 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 may be leased or assigned. The bottom is declared to be a part of the public oyster beds and rocks of such river the Rappahannock River .~~

Drafting Note: No change in the law.

~~§ 28.1-148.~~ *Mouth of Rappahannock River defined.—*Whenever the mouth of the Rappahannock River is used in Title 28.1 of the Code it shall mean: Beginning on the west edge

of a concrete breakwater located on the extreme eastmost point 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 § 28.1-83, Code of Virginia.

Drafting Note: This section is stricken and moved to the subtitle definitions (proposed § 28.2-200).

§ 28.1-144.1. Temporary restrictions on the leasing of certain oyster grounds in the Chesapeake Bay.—Except as to applications for leases pending on January 1, 1978, for a one-year period beginning on July 1, 1978, the Commission shall not lease or assign any part of the bottom of that area of the Chesapeake Bay, known as Back River, which is contiguous to the Cities of Poquoson and Hampton and York County, if the Commission finds that such part of the bottom of that area has not been leased or assigned since January 1, 1968, and is currently producing oysters. No application for a lease or assignment of such bottom shall lapse as provided for in § 28.1-100 (8) until ninety days after the expiration of the prohibition contained herein.

Drafting Note: This section is repealed since the time of the temporary restriction has lapsed.

§ 28.1-145 28.2-637 . Leasing of certain bottoms in James River prohibited.—The Marine Resources Commission Commissioner shall have no power to not 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 . Such a prohibition shall not affect existing leases or their renewal .

Drafting Note: No change in the law.

§ 28.1-147. 28.2-638. Authority of Governor to authorize dredging of channel in navigable waters.— To the extent that When the approval, consent , or authorization of the Commonwealth is necessary or expedient for any person ; firm, corporation, association or government, or for any agency of any or all of the foregoing, or any combination thereof, to dredge a channel of any navigable stream, the bed of which is owned by the Commonwealth, for the purpose of deepening, widening , or relocating such channel and making related improvements, the Governor is authorized may, on behalf of the Commonwealth , to grant such approval ; consent or authorization upon such terms and conditions as he deems appropriate after the receipt by him of advisory reports from the Virginia Institute of Marine Science, the State Water Control Board, the Marine Resources Commission, the Board of Game and Inland Fisheries, the Director of the Department of Conservation and Recreation, the Director of the Department of Historic Resources, the State Port Authority , and the Commonwealth Transportation Board.

Drafting Note: No change in the law.

§ 28.1-149 28.2-639 . Certain natural public oyster rocks in Rappahannock River.— All of Russ' Rock and Little Carter's Rock are declared to be natural public oyster rocks, beds , and shoals and unassignable to any person for private use, in the same manner and to the same extent as if the same rocks, beds, and shoals had been embraced within the original Baylor survey ; and the Commissioner of Marine Resources 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 .

Drafting Note: The language requiring surveying and platting of this area is stricken since these tasks have been accomplished.

§ 28.1-150 28.2-640 . Declaring certain grounds in Mobjack Bay natural public oyster rocks.—The following grounds in Mobjack Bay, in the County of Gloucester, to wit: First, a lot of oyster-planting ground containing 218.75 acres surveyed by Fred E. Reudiger, civil engineer, and assigned to F. W. Darling by George B. Taliaferro, oyster inspector, by an assignment recorded in oyster plat book number 4, page 31 in the clerk's office of Gloucester County, Virginia; second , those portions of a lot of oyster ground surveyed by Fred E. Reudiger, civil engineer, and assigned to J. Weymouth by George B. Taliaferro, oyster inspector, by his assignment recorded in oyster plat book number 4, page 35 in the clerk's office of Gloucester County,

Virginia, and a lot of oyster ground surveyed by Fred E. Reudiger, civil engineer, and assigned to S. J. Watson by George B. Taliaferro, oyster inspector, by an assignment recorded in oyster plat book number 4, page 31, in the clerk's office of Gloucester County, Virginia, which 2 portions of the 2 plats adjoin the 218.75-acre lot of oyster ground above described, which was assigned to F. W. Darling and which portions are cut off from the residue of the Weymouth and Watson lots of oyster ground above described, by a line beginning where the boundary of J. Weymouth's ground, which runs north 47°, 32' east, 78.61 chains, intersects the boundary of F. W. Darling's ground, which runs south 42° east, 30 chains, and from this point of intersection running south 42° east, until it intersects with the line of S. J. Watson's ground, which runs south 51°, 26' west 113.79 chains (these portions of the Weymouth and Watson lots of oyster ground are cut off by the boundary line hereinbefore previously described without regard to acreage thereof; the acreage is estimated not to exceed 50 acres), shall be regarded, deemed, and taken to be natural are declared public 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 public rocks, beds, and shoals in the waters of the Commonwealth, and subject in all respects to the laws of the State Commonwealth in relation to natural public oyster rocks, beds, and shoals, and the taking of oysters therefrom, but. Such grounds shall be subject, also, to the existing rights of any lessees of such ground, if there be any such right.

Drafting Note: No change in the law.

§ ~~28.1-151~~ 28.2-641. Declaring certain areas in Hill's Bay, Mathews County, as natural public oyster rocks, beds, and shoals.—The following ground in Hill's Bay on the west side of Gwynn's Island, Mathews County, contained within the following boundaries is hereby declared to be natural public oyster rocks, beds, and shoals and unassignable to any person for private use: Beginning at corner No. 8, Public Ground No. 5 of Mathews County; thence along Public Ground line to corners Nos. 9, 10, 11, 12, 13, and 14 in a northeasterly direction; thence a due east course to the low-water mark on the west side of Gwynn's Island; thence following the meanders of the low-tide line in a southwesterly direction to corner No. 5 of J. R. Forrest's oyster lease of 2.01 acres; thence following said oyster lease in a westerly direction to corner No. 4 of said lease; thence in a westerly direction to the point of beginning. The oyster lease of O. V. Sparrow's 10.51 acres, near Cherry Point, is hereby excluded from the previously described area herein described.

Drafting Note: No change in the law.

§ ~~28.1-152~~ 28.2-642. Declaring certain other areas in Hill's Bay, Mathews County, as natural public 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 public oyster rocks, beds, and shoals and unassignable to any person for private use.

The point of beginning is located at the low-tide line on the west side of the Gwynn's Island Bridge, said bridge connecting the mainland and Gwynn's Island; thence following the west right-of-way of said Gwynn's Island Bridge to a point on the south side of Public Ground No. 5, Mathews County; thence along the south side of Public Ground No. 5 in a southwest direction to Public Ground corner No. 2; thence in a generally west direction along said Public Ground corner No. 3; thence in a generally northwest direction along said Public Ground to Public Ground corner No. 4; thence in a generally northwest direction along said Public Ground to Public Ground corner No. 5; thence in a generally northwest direction on the west side of Public Ground No. 5 to a point; thence in a northwest direction along the south side of C. M. Forrest's 4.10-acre oyster ground lease to a point; thence in a northwesterly direction along the southwest side of J. E. Forrest's 10.17-acre oyster ground lease to a point; thence in an easterly direction along the northern side of J. E. Forrest's 10.17-acre oyster ground lease to a point on the south side of Public Ground No. 5, Mathews County; thence in a northwesterly direction along the south side of Public Ground No. 5 to Public Ground corner No. 6; thence in a generally north direction along the western side of said Public Ground No. 5 to Public Ground corner No. 5; thence in a northerly direction along said Public Ground to Public Ground corner No. 4; thence in a northerly direction along the west side of Public Ground No. 5 to a point; thence following the south edge of Shelton Rowe's, Julian Rowe's and Robert Callis'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 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.

Drafting Note: No change in the law.

§ ~~28.1-153~~ 28.2-643 . Declaring certain areas in Chesapeake Bay, Mathews County, as ~~natural~~ public oyster rocks, beds , and shoals.—The following ground in Chesapeake Bay, Mathews County, contained within the following boundaries is hereby declared to be ~~natural~~ public oyster rocks, beds , and shoals and unassignable to any person for private use.

Beginning, as a point of reference, at survey station "Sand," located near the south end of Gwynn's Island; thence due east to the low-water mark on the east side of Gwynn's Island to the true point of beginning; thence due east along the south end of Gwynn's Island; thence due east to the low-water mark on the east Public Ground No. 6, Mathews County; thence following the west side of Public Ground No. 6, Mathews County, in a northerly direction to Public Ground corner No. 8; thence following said Public Ground in a northerly direction to Public Ground corner No. 7; thence following said Public Ground in a northerly direction to Public Ground corner No. 6; thence in a northerly direction, following said Public Ground to Public Ground corner No. 5; thence in a northerly direction following said Public Ground to Public Ground corner No. 4; thence in a northerly direction following said Public Ground to Public Ground corner No. 3; thence in a generally west direction following the south side of Public Ground No. 6 to Public Ground corner No. 2; thence in a generally westerly direction following said Public Ground to Public Ground corner No. 1; thence in a southwesterly direction to the intersection of Public Ground No. 5, Mathews County; thence following the northeast side of Public Ground No. 5 in a southeasterly direction to the low-tide line at Cherry Point on the north side of Gwynn's Island; thence following the low tide on the north side of Gwynn's Island to a point; thence following the low-tide line on the east side of Gwynn's Island in a southerly direction to the true point of beginning.

Drafting Note: No change in the law.

§ ~~28.1-154~~ 28.2-644 . Declaring certain areas near Hole in the Wall, in Mathews County, as ~~natural~~ public 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~~ public oyster rocks, beds , and shoals and unassignable to any person for private use:

1. Beginning at Virginia Marine Resources Commission's survey Station Marsh, located in the marsh on the south side of 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 Marine Resources Commission's survey Station Sand; thence in a due east course to the intersection of Public Ground No. 6, Mathews County; thence following along west side of said Public Ground in a southeasterly direction to a point due east of Station Marsh; thence due west to Station Marsh, or point of beginning.

2. Beginning at the northeast corner of Haufler's survey No. 6565; thence in an easterly direction along the line of Milford Haven to a point which is on Public Ground No. 7; thence in a southerly direction along the boundary line of Public Ground No. 7 to a point; thence due west to a point which is the southeastern corner of Callis Ground No. 7222; thence in a northerly direction along Callis Ground No. 7222 and Callis Ground No. 10447 to a point where the eastern boundary of Callis Ground No. 10447 intersects the eastern boundary of Haufler's Ground No. 6565; thence in a northerly direction to the point of beginning.

Drafting Note: No change in the law.

§ ~~28.1-155~~ 28.2-645 . Declaring certain areas in Pocomoke Sound, Accomack County, as ~~natural~~ public oyster rocks, beds , and shoals.—The following area in Pocomoke Sound, Accomack County, contained within the following boundaries is hereby declared to be ~~natural~~ public oyster rocks, beds , and shoals and unassignable to any person for private use:

Beginning at a point on the low-water mark on the north end of Saxis Island, said point being due south from the low-water mark and marked by a concrete marker designated as survey point "B" on a map of Pocomoke Sound; thence from the true point of beginning at low water following in a southwesterly direction the low-water mark on the northwest side of Saxis Island to a point, said point being the northeast side of Starling Creek; thence southwesterly across the mouth of Starling Creek to a point; thence following the low-water mark in a southwesterly direction to a point ; 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; thence northwesterly to Public Ground corner No. 19; thence northeasterly to Public Ground corner No. 1; thence in a northerly direction to Public Ground corner No. 14 of Public Ground No. 9; thence northerly to Public Ground corner No. 15; thence northeasterly to Public Ground corner No. 16; thence northeasterly toward Public Ground corner No. 17 to a point ; ~~said point being due north to the true point of beginning;~~ thence due south to the point of beginning.

~~Provided, however, that~~ *However*, nothing in this section shall be construed as prohibiting *prohibit* the assignment of a portion of such area to riparian owners under the provisions of § 28.1-108 of the Code of Virginia Article 1 (§ 28.2-600 et seq.) of this chapter .

Drafting Note: No change in the law.

§ ~~28.1-156~~ 28.2-646 . Declaring certain areas in Piankatank River near Stove Point, Middlesex County, as ~~natural~~ public 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~~ to be public oyster rocks, beds, and shoals and unassignable to any person for private use:

Beginning at survey station "R" on extreme southern tip of Stove Point as a point of reference; thence in a southerly direction to the low-water mark on the southern tip of Stove Point; thence in a northerly direction following the low-water mark on the west side of Stove Point to a point due west of survey station "Billy"; thence in a due west course to Public Ground No. 3, Middlesex County; thence in a southerly direction to Public Ground corner No. 6 of said Public Ground; thence in a southerly direction to Public Ground corner No. 5; thence in an easterly direction to Public Ground corner No. 4; thence in a southeasterly direction to Public Ground corner No. 3; thence in a southeasterly direction to a point, said point being on Public Ground No. 5, of Mathews County; thence in a northeasterly direction, following Public Ground No. 5, Mathews County, to a point; thence in a northwesterly direction to Public Ground corner No. 14 of Public Ground No. 2, Middlesex County; thence in a north-northwesterly direction to Public Ground corner No. 13 of said Public Ground; thence in a westerly direction to corner No. 4 of J. T. Ward's 57.48-acre lease; thence in a northerly direction following the west side of said J. T. Ward's lease to corner No. 5 of the hereinabove mentioned lease; thence in a due west course to the low-water mark on the eastern side of Stove Point; thence following in a southerly direction the low-water mark of the east side of Stove Point to the point of beginning.

~~Provided, however, that~~ *However*, nothing in this section shall affect any oyster ground assignments that are now in effect ~~nor shall this section be construed as prohibiting or prohibit~~ assignment of a portion of such area to riparian owners under the provisions of § 28.1-108 of the Code of Virginia Article 1 (§ 28.2-600 et seq.) of this chapter .

§ ~~28.1-157~~ 28.2-647 . Declaring certain areas near the mouth of the Poquoson River, in York County, as ~~natural~~ public oyster rocks, beds and shoals.—The following ground near the mouth of the Poquoson River in York County, contained within the following boundaries is ~~hereby~~ declared to be ~~natural~~ public oyster rocks, beds , and shoals and unassignable to any person for private use.

Tract No. 1. Beginning at low-water mark on the extreme east side of Goodwin Islands at a point known as Tues Point; thence following the low-water mark on the eastern side of Goodwin Islands in a general southerly direction to the extreme southern point of said Goodwin Islands; thence in a southerly direction to corner No. 7 of the 27.72 acre oyster lease of C. E., W. T. and J. T. Crockett, H. H. Hansford and S. E. Wescott; thence in a general easterly direction to corner No. 6 of said oyster lease; thence in a southerly direction to corner No. 5 of said oyster lease; thence in a general westerly direction to corner No. 4 of said oyster lease; thence due south to the low-water mark on the east side of Crab Neck; thence following the low-water mark on the east side of said Crab Neck in a general southerly direction to the extreme tip of said Crab Neck, known as York Point; thence in a general south-southwesterly direction to corner No. 3 of Public Ground No. 9, York County; thence in a southeasterly direction along the northeast side of said Public Ground to Public Ground corner No. 4; thence in a general southerly direction on the east side of said Public Ground to corner No. 1 of said Public Ground; thence in a general southeasterly direction to Public Ground corner No. 3 of Public Ground No. 8, York County;

thence in a northeasterly direction following the west side of Public Ground No. 8 to Public Ground corner No. 2; thence in an easterly direction along the northern side of Public Ground No. 8 to Public Ground corner No. 1; thence in a southwest direction along the east side of Public Ground No. 8 to Public Ground corner No. 4; thence in a due east course to the low-water mark on the east side of the mouth of Bennett's Creek; thence following the low-water mark in a general easterly direction to Marsh Point, said point is located at the extreme southeast side of the mouth of the Poquoson River; thence in a general northwesterly direction on a line toward Tues Point to a point on the southeast side of Public Ground No. 7, York County; thence in a southwest direction along the southeast side of Public Ground No. 7 to Public Ground corner No. 4; thence in a northwesterly direction along the southwest side of said Public Ground No. 7 to Public Ground corner No. 1; thence in a northeasterly direction along the northwest side of said Public Ground No. 7 to a point; thence following the south line of the oyster ground of C. E. Crockett and A. P. Thomas, said lease containing 12.70 acres, in a general westerly direction to corner No. 3 of said oyster lease; thence following the west side of said oyster lease in a general northerly direction to corner No. 2 of said lease; thence in a northeasterly direction along the northwest side of said oyster lease to a point, said point being located on a line from Tues Marsh to Marsh Point, thence in a northwesterly direction to the low-water mark to Tues Point, or the point of beginning.

Tract No. 2. Beginning at the low-water mark on the extreme east side of Plumtree Point, said point located on the north side of the mouth of Back River, said point is the eastmost point on said side of river; thence in a general north-northwesterly direction toward corner No. 3 of Public Ground No. 7, York County, to a point on the south side of M. F. Quinn's 90.40 acre oyster ground lease; thence in a westerly direction along the south line of M. F. Quinn's oyster lease to a point, said point being located on the southeast side of York County, Public Ground No. 7; thence in a southwesterly direction along the southeast side of Public Ground No. 7, York County, to a point, said point is located along a line from Tues Point to Marsh Point; thence in a general southeasterly direction along the heretofore described line to the low-water mark on Marsh Point, said Marsh Point being the extreme east point of the south side of the mouth of Poquoson River; thence in a general southeasterly direction along the low-water mark to the point of beginning.

Drafting Note: No change in the law.

§ ~~28.1-158~~ 28.2-648 . Declaring certain ground in Mobjack Bay, in Gloucester and Mathews Counties, to be ~~natural~~ public 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~~ public oyster rocks, beds , and shoals and unassignable to any person for private use , in the same manner and to the same extent as if the same rocks, beds, and shoals 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.

Drafting Note: No change in the law.

§ ~~28.1-159~~ 28.2-649 . Acts which remain in force.—The following acts of the General Assembly are continued in force:

CHAPTER 632 of the Acts of Assembly of 1901-2 1901-1902 , approved April 2, 1902, relating

to the natural oyster rocks, beds , and shoals in Nemini and Currioman Bays, in the County of Westmoreland.

CHAPTER 294 of the Acts of Assembly of 1901-2 1901-1902 , 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 , to be a natural oyster bed, rock or shoal.

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

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

CHAPTER 862 of the Acts of Assembly of 1897-98 1897-1898 , 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 Assembly of 1930, approved March 24, 1930, relating to certain natural oyster beds, rocks and shoals in Mathews County.

Drafting Note: No change in the law.

~~§ 28.1-161~~ 28.2-650 . Dredging clams in polluted areas for replanting in public clamming grounds.—The Commissioner of Marine Resources shall have authority to ~~may~~ dredge clams or have the same clams dredged in polluted areas for the purpose of replanting the same them in public clamming grounds which have been or which may thereafter be set aside .

Drafting Note: No change in the law.

§ 28.1-164. Reserved.—

CHAPTER 7.

CRABS.

CHAPTER DRAFTING NOTE: This chapter has been reorganized into three articles consisting of (i) general provisions, (ii) licensing requirements, and (iii) restrictions on harvesting. This is consistent with the approach taken in structuring other chapters. Definitions which appear in sections on licensing requirements or harvesting restrictions have been removed and combined into a definition section.

Article 1.

General Provisions.

§ 28.2-700. Definitions.—As used in this chapter, unless the context requires a different meaning:

“Crab dredge” means a device, which may have teeth on the bar, that is designed and used to catch crabs buried in the bottom.

“Crab pot” means a device made of wire or thread net used to catch crabs.

“Peeler crab” means a crab that has a soft shell fully developed under the hard shell, or a crab on which there is a pink or white line or rim on the edge of that part of the back fin next to the outer section of this fin.

“Peeler pot” means a wire mesh pot baited with only live adult male (jimmy) blue crabs and food for these crabs.

Drafting Note: The definition of “crab dredge” is taken from existing § 28.1-165.1. The definitions of crab pot and peeler pot are taken from existing § 28.1-165(3) (proposed § 28.2-702). The definition of “peeler crab” is existing § 28.1-169.

~~§ 28.1-173.3~~ 28.2-701 . Crab traps and crab pounds; regulations; penalty.—A. The Commission shall promulgate regulations governing the use, placement, and maintenance of crab traps and crab pounds.

B. Any person convicted of violating any provision of a regulation promulgated under this section shall be is guilty of a Class 3 misdemeanor.

Drafting Note: No change in the law.

Article 2.

Licenses.

~~§ 28.1-166.~~ 28.2-702. Licenses to take crabs; amount of tax; restrictions on privilege fee .— A. Any resident of Virginia or nonresident person 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 ; firm or corporation desiring to engage in the business of buying or marketing crabs for packing or canning the same in any way crabs , shall pay to any inspector officer the taxes and be subject to the provisions set forth in the other sections of this chapter and the following subdivisions following fees :

1. For each person taking or catching crabs by dip nets, net, ordinary trotline, hand rake, or with any device not otherwise licensed by this section other than a hand line, eight dollars. No boat shall be used to pull or push any rake.

2. For each person taking or catching crabs with patent trotlines, ~~thirty-one dollars~~ \$31 .

3. For each boat operator catching blue crabs by means of a device made of wire or thread net and commonly known as a with a crab pot, ~~twenty-nine dollars~~ \$29 ; or if catching crabs with one or more assistants, ~~forty-eight dollars~~ \$48 . No such pot or device shall be used which has a mesh less than 1 1/2". A holder of a crab pot license may use peeler pots ; exempt from mesh size limitations, without securing an additional license. A peeler pot is defined as a wire mesh pot baited with only live adult male (jimmy) blue crabs and food for these crabs. The placing of such food in a peeler pot is prohibited from September 16 through May 14. During the months of June, July and August, however, any person fifteen years of age or under may be an assistant to a boat operator catching blue crabs by means of a device made of wire or thread net without obtaining a license.

4. For each boat used for the purpose of taking or catching hard crabs with dredges, ~~fifty-eight 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 \$58 .

5. No person who is licensed to catch crabs shall be required to procure further license for marketing or shipping his own catch.

6. 5. For each crab trap or crab pound, five dollars.

7. 6. For each person scraping crabs with a scrape, ~~sixteen dollars~~ \$16 .

C. Any person who is licensed to catch crabs is not required to obtain a license for marketing or shipping his own catch.

Drafting Note: Language has been stricken in subdivision 1 prohibiting the use of a boat to push a rake, in subdivision 3 restricting the size of the crab pot mesh and exempting peeler pots from mesh limitations, and in subdivision 4 prohibiting dual use of a crabbing boat. These provisions have been relocated in § 28.2-705. The definition of peeler pot in subdivision 3 has been moved to proposed § 28.2-700. The exemption of assistants from obtaining a license which appears in subdivision 3 is moved to proposed § 28.2-703. Subdivision 5 is stricken and appears as subsection C in this section.

§ 28.2-703. License for certain assistants not required.—During June through August, any person fifteen years of age or under may be an assistant to a boat operator catching blue crabs by crab pots without obtaining a license.

Drafting Note: The language in this section is taken from subdivision 3 of existing § 28.1-165 (proposed § 28.2-702).

§ 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.

Drafting Note: This section is stricken and moved to proposed § 28.2-234(3).

~~§ 28.1-172.1 28.2-704 . Sale of crabbing licenses for crabbing .— In order to appraise the anticipated level of harvesting for the purpose of taking seasonal conservation measures, the The Commission may require the purchase of licenses before each crab season begins. It may set time periods for the sale of licenses to crab for taking crabs in order to determine the appropriateness of instituting seasonal conservation measures and may grant extensions to individual applicants when it finds exceptional circumstances exist.~~

Drafting Note: No change in the law.

~~§ 28.1-173. Repealed by Acts 1990, c. 446.—~~

~~§ 28.1-174. Crabs for household use.—Anyone may take or catch by dip net or by two crab pots, as much as one bushel of hard crabs and two dozen peeler crabs per day for household or personal use only, without obtaining a license.~~

If crabs are taken or caught in any other manner, for any purpose, all provisions of this chapter relating to crabs shall apply thereto.

Drafting Note: This section is stricken and moved to the general license exemptions in proposed § 28.2-226.

Article 3.

Restrictions on Harvesting Crabs.

§ 28.2-705. License restrictions; exemption.—A. It is unlawful to:

1. Take crabs with a rake which is pulled or pushed by a boat;
2. Use a crab pot which has a mesh less than 1 1/2 inches;
3. Place food for adult male (jimmy) crabs in a peeler pot from September 16 through May 14. A peeler pot is exempt from mesh size limitations;
4. Use a boat when buying crabs which is also used to take or catch hard crabs with dredges, when the Commission has limited the taking of crabs under § 28.2-713.

B. Any person who violates any provision of this section is guilty of a Class 3 misdemeanor.

Drafting Note: The restrictions in this section are taken from existing § 28.1-165 (proposed § 28.2-702). Subdivision 1 is taken from existing § 28.1-165(A 1), subdivision 2 is taken from existing § 28.1-165(A 3), subdivision 3 is taken from existing § 28.1-165(A 3), subdivision 4 is taken from existing § 28.1-165(A 4).

~~§ 28.1-165.1. Use limits of scrape and dredge; "crab dredge" defined; prohibition on Saturday crab dredging.—For the purposes of this chapter a crab scrape shall have a mouth no larger than four feet overall and the bar shall have no teeth. A crab scrape may be hauled only by hand, and no boat shall have more than two such scrapes overboard at any time. Any person having a scrape on board shall have no hard crabs in possession. 28.2-706. Restrictions on crab scraping.—It is unlawful for any person to:~~

1. Use a crab scrape having a mouth longer than four feet and a toothed bar;
2. Haul a scrape, except by hand; or
3. Have more that two scrapes overboard.

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

For purposes of this chapter a "crab dredge" shall be a device designed and used to dig into the bottom for the purpose of catching buried crabs and which may have teeth on the bar. § 28.2-707. Restrictions on crab dredging.—A. It shall be is unlawful for any boat licensed to dredge crabs to use more than two dredges at any time when dredging for crabs in the approved tidal waters of the Commonwealth . Such boat may use only one dredge on each side of the boat or join two dredges together for use over the stern of the boat. No single dredge shall exceed eight feet in width across the inside mouth of the dredge. When two or more

dredges are fixed together, their total width shall not exceed sixteen feet. No crab dredge shall use hydraulic methods to dislodge the crabs from the bottom. No crab dredges as described in this section shall be used on Saturdays.

B. It is unlawful to dislodge crabs from the bottom with a crab dredge using hydraulic methods.

C. It is unlawful to use a crab dredge on Saturday.

~~§ 28.1-166. Use of dredges.—No dredges shall be used~~ *D. It is unlawful to use a dredge for catching crabs between April 1 and December 1 of any year ; however, the Marine Resources Commission, when in its judgment it is deemed advisable on account of due to weather conditions and it is not contrary to the public interest to do so , may open any season as early as November 16 and it may likewise may extend any season as late as until April 16 ; nor shall dredges be used at any time of the year .*

E. It is unlawful to use dredges to take crabs 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. In the exercise of its authority granted pursuant to this section, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising such authority.

Any person who violates any provision of this section is guilty of a Class 3 misdemeanor.

Drafting Note: Existing § 28.1-165.1 is divided into proposed §§ 28.2-706 and 28.2-707. Proposed § 28.2-706 is limited to restrictions on the use of crab scrapes. A penalty provision has been added to § 28.2-706. Proposed § 28.2-707 is combined with existing § 28.1-166 (proposed subsection D) to consolidate the restrictions on crab dredging. The last two sentences of existing § 28.1-166 are stricken since they referred to an obsolete regulatory procedure.

~~§ 28.1-167~~ *28.2-708 . Limitations on sizes of crabs to be taken ; inspection of catch; exemption*
— A. It shall be is unlawful for any person to catch, take or have in his possession at any time more than ten hard crabs per United States standard bushel or thirty-five hard crabs per barrel, which measure less than five inches across the shell from tip to tip of the longest spikes, or to destroy them in any manner ; but shall immediately return the same . Those undersized crabs in excess of the allowance level shall be immediately returned to the water alive. Adult female crabs, peeler crabs and soft crabs are exempt from these limitations except that the Commission may change such size restriction for a period not to exceed sixty days to respond to significant ecological changes .

In the exercise of its authority granted pursuant to this section, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising such authority.

The inspector shall have the authority to B. Any officer may grade or cull any number of barrels, baskets or containers of crabs in any person's possession which he may deem necessary

If the inspector officer finds in excess of more than ten undersize hard crabs per United States standard bushel or thirty-five hard crabs per barrel, he shall seize the entire quantity of crabs in or from each such barrel, basket or container ; which was inspected, and found to contain in excess of ten hard crabs per United States standard bushel or thirty-five hard crabs per barrel, shall be seized by the inspector , and all such the person who possessed the crabs shall be immediately returned return them to the water by the person who possessed such crabs . The refusal Refusal to return the crabs to the water shall constitute is a distinct and separate offense from any other violation.

The aforesaid requirement to return the crabs to the waters shall apply to crabs taken and in possession of a crabber or catcher and shall not apply to crabs Crabs which have been purchased by a buyer and are in the buyer's possession ; nor shall it apply to of a buyer and crabs which have been transported a distance of at least five miles from the nearest salt water are exempt from this requirement .

D. The Commission may change such size restrictions for a period not to exceed sixty days

to respond to significant ecological changes.

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

Drafting Note: The second paragraph is stricken since it refers to an obsolete regulatory procedure. Subsection D is the last clause of the existing first paragraph. A penalty provision has been added. Other changes are linguistic only.

~~§ 28.1-170~~ 28.2-709 . Closed season for taking crabs in certain area.—It ~~shall be~~ is unlawful for any person to take or catch crabs for resale ~~erabs~~ from the following area from the first day of June to the fifteenth day of 1 through September 15 ; both inclusive, of every year . Ownership of a current license to take or catch crabs shall be prima facie evidence that such taking ~~and~~ or catching of crabs was for resale purposes . The limits of the area are defined as follows:

Beginning at the point of origin of the center line of the Hampton Roads Bridge Tunnel facility where such facility commences in the City of Norfolk, Virginia, and following the shoreline in a general easterly direction, and also extending 200' out from the mean low-water mark of such shoreline into the Chesapeake Bay, to the ~~Nansemond Hotel~~ Harrison's fishing pier , Ocean View, and thence in a general northerly direction to Thimble Shoal Lighthouse; thence running in approximately a northeasterly direction to Cape Charles Lighthouse, located on Smiths Island; and thence in approximately a southwestern direction to Cape Henry Lighthouse, and bounded by the shoreline; and thence following the shoreline in a general westerly direction back to the point of beginning.

A violation of this section is a Class 3 misdemeanor.

Drafting Note: Reference to the Nansemond Hotel is stricken since the hotel no longer exists. Harrison's fishing pier is the closest identifiable structure. The change in landmarks will decrease the size of the sanctuary approximately 1/4 mile. A penalty provision has been added.

~~§ 28.1-173.1~~ 28.2-710 . Unlawful to place crab, eel, or fish pots in certain channels.—It ~~shall be~~ is unlawful to place or maintain any crab, eel, or fish pot in a navigable channel which has navigation aids installed or approved by any agency of the United States government or in any portion of a government marked channel of a river, bay, estuary, creek or inlet. The owner or user of any crab, eel, or fish pot who has located such ~~erab, eel, or fish~~ pot in accordance with ~~he provisions~~ of this section shall be relieved of civil liability for any damages resulting from the location of such ~~erab, eel, or fish~~ pot.

A violation of this section is a Class 3 misdemeanor.

Drafting Note: A penalty provision is added.

~~§ 28.1-173.1.1~~ 28.2-711 . Crab pots; unlawful activities; penalty.—It ~~shall be~~ is unlawful to knowingly place, set , or leave any crab pot in any of the tidal tributaries of the Commonwealth between December 15 and January 31. ~~In its discretion,~~ ~~the~~ The Commission may change the time period during which such activities are prohibited. Proof that any crab pot was located in any of the tidal tributaries of the Commonwealth ~~such tributary~~ during the time prohibition period ~~when such activities are prohibited shall constitute~~ constitutes a rebuttable presumption that such pot was knowingly placed, set , or left in that location.

Violation of the provisions of this section shall be is a Class 4 misdemeanor.

Drafting Note: No change in the law.

~~§ 28.1-173.2~~ 28.2-712 . Identification of crab pots.—Any person ; ~~corporation or association~~ owning or using a crab pot ~~or pots~~ , for whom a license is ~~prescribed in~~ required by this title subtitle , shall display and maintain ~~his or its current license~~ an identification number, issued by the ~~Marine Resources Commission~~ Commissioner , on the float or stake attached to each such crab pot, in a legible and visible manner and in figures of not less than one inch in height. The identification of the owner of such crab pot by ~~virtue of~~ the license number above described shall not ~~give rise to any result in~~ liability on its owner for its location so long as the crab pot is placed in the waters of this State ~~Commonwealth~~ in compliance with the laws thereof ~~Virginia law~~ .

A violation of this section is a Class 1 misdemeanor.

Drafting Note: References to a license number are stricken since the agency's current

practice is to issue an identification number. Although the penalty when unspecified is a Class 3 misdemeanor, in order to be consistent with the general provisions requiring tagging and display (proposed § 28.2-234), a Class 1 misdemeanor is assessed for violating this section.

~~§ 28.1-168~~ 28.2-713 . Limiting the taking of crabs by one boat in one day.—Whenever ~~in the discretion of the Commission~~, the interest of conservation ~~and/~~ or the crabbing industry ~~so require requires~~ , 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~~ Violation of such a regulation is hereby declared to be a Class 1 misdemeanor.

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

Drafting Note: No change in the law.

~~§ 28.1-160. 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.~~

Drafting Note: This section is stricken and incorporated in the definitions (proposed § 28.2-700).

CHAPTER 7 8 .

HEALTH AND SANITATION PROVISIONS.

CHAPTER DRAFTING NOTE: This chapter has been reorganized with regulatory and enforcement powers of the Marine Resources Commission and the Health Department consolidated and placed in a “general provisions” article. The Health Department is authorized to use depuration as an alternative technology for the cleaning of contaminated shellfish. Because of its length, § 28.1-179, which provides for the removal and transportation of shellfish from polluted grounds, has been divided into eleven sections. This will enable readers of the Code to better understand the extent of the requirements for removing shellfish from contaminated grounds.

Article 1.

General Provisions.

~~§ 28.1-176.1. 28.2-800.~~ Definitions.— For the purposes of As used in this chapter , unless the context requires a different meaning :

A. “Crustacea” ~~shall mean means~~ all edible species of crab, lobster and shrimp, either shelled or in the shell, fresh, cooked or frozen whether raw or processed .

“Depuration” means the process that uses a controlled aquatic environment to reduce the level of bacteria or viruses in live shellfish.

“Establishment” means any vehicle, vessel, property or premises where crustacea, finfish or shellfish are transported, held, stored, processed, packed, repacked, or pasteurized in preparation for marketing.

B. “Finfish” ~~shall mean means~~ any cold-blooded, strictly aquatic, water breathing craniate vertebrate with fins, including cyclostomes, ~~elasmobrachs~~ elasmobranchs and higher gilled aquatic vertebrates with cartilaginous or bony skeletons or any parts thereof .

C. “Packing house” shall mean any establishment or place where shellfish or crustacea are processed, stored or prepared for market.

D. “Relay” ~~shall mean means~~ to move commercial-size shellfish for the purpose of natural purification from water which is not approved to water which is approved or conditionally approved by the State Health Commissioner pursuant to § 28.1-178.6. The term does not include the replanting of subcommercial-size or seed-stock shellfish .

E. “Shellfish” shall mean all edible species of oyster, clam, mussel, scallop and conch, either shucked or in the shell, fresh, cooked or frozen. means all species within the phylum Mollusca

including but not limited to oysters, clams, mussels, scallops, conchs and whelks, whether raw or processed.

Drafting Note: The definition of "deuration" has been added to reflect new shellfish purification technology. The definition of "packing house" has been deleted and replaced with the more detailed and appropriate term "establishment." The definition of "finfish" was modified to correct a spelling error in "elasmobranch" and to explain that the definition applies to the organism whether whole in in part. The definition of "relay" has been changed to remove references to "commercial" or "subcommercial" size shellfish because of enforcement problems associated with those distinctions. The definition of "shellfish" has been revised for clarity and to include greater detail.

~~§ 28.1-180. Who to enforce preceding sections; rules and regulations; duty of Commonwealth's attorney.— 28.2-801. Authority to promulgate regulations; enforcement. — A. The State Health Commissioner and the Commissioner of Marine Resources are hereby charged with the enforcement of shall enforce 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 and regulations promulgated thereunder .~~

~~B. The State Board of Health and the Marine Resources Commission may promulgate regulations necessary to carry out the provisions of this chapter.~~

~~C. The Marine Resources Commission, whenever it determines that an emergency exists, may promulgate regulations which relate to shellfish in condemned areas, in order to protect the health of the public, without complying with the requirements of §§ 28.2-209 and 28.2-210. Such regulations shall become effective upon their passage by the Marine Resources Commission. These regulations shall be enforced by revoking any permits which may have been issued.~~

Drafting Note: Proposed § 28.2-801 consists of existing § 28.1-180 and existing subsection J of § 28.1-179. Proposed subsections A and B are from existing § 28.1-180. The reference to the duties of the attorney for the Commonwealth in § 28.1-180 is stricken since it is not necessary. Proposed subsection C is from the first paragraph of subsection J of § 28.1-179. By combining these sections the enforcement and regulatory authorities of the Health Department and MRC appear in one section.

~~§ 28.1-183 28.2-802 . Powers of officers charged with enforcement ; entry to establishment; seizure; destruction .— A. For the purpose of carrying out the provisions of §§ 28.1-177 through 28.1-182 this chapter, the State Health Commissioner and the Commissioner of Marine Resources ; and such agents or assistants of either of the Commissioners as are now or may be hereafter appointed or their designees may enter upon premises any establishment located in the Commonwealth, 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 where crustacea or shellfish may be found, and if it appears that the provisions of such sections, or any of them, have any provision of this chapter has been violated, may, with or without a warrant, arrest any person or persons who are is or who have has been, or who is are believed to be or have been, in charge of such oysters, clams, crab meat or scallops, the crustacea or shellfish and may seize, in the name of the Commonwealth, and take possession of such oysters, clams, crab meat or scallops, and crustacea or shellfish.~~

~~B. The State Health Commissioner and the Commissioner of Marine Resources, or their designees, may seize and take possession of any boat, vessel, barge, car, motor vehicle or other conveyance used in violation of the provisions of such sections; however, such any provision of this chapter. Such boat, vessel, barge, car, motor vehicle or other conveyance may be held only until the accused has been admitted to bail as provided by Chapter 9 (§ 19.2-119 et seq.) of Title 19.2 of this Code, or has been served with and released on summons.~~

~~C. When any oysters, clams, crabs or scallops crustacea or shellfish of an accused are seized pursuant to the provisions of this section, such they may be destroyed at the discretion of the State Health Commissioner, the Commissioner of Marine Resources or their authorized agents or assistants, and if designees. If the accused is acquitted of the charges, he shall be recompensed the value thereof compensated for their value , based on the average selling price on the day of seizure.~~

Drafting Note: Proposed § 28.2-802 has been divided into three subsections and edited to incorporate the proposed definition of establishment. The relocation of existing §§ 28.1-180, 28.1-183 and subsection J of § 28.1-179 consolidates powers and duties of the two agencies into

one article.

Article 2.

Control of Crustacea, Finfish and Shellfish; Violations
and Penalties.

§ ~~28.1-175~~ 28.2-803 . Examination, analysis and inspection of fish, shellfish, growing areas, packinghouses, 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 A. The State Health Commissioner is hereby directed may in his discretion, or shall at the request of the Governor or , the Marine Resources Commission , or the Commissioner of Marine Resources, to make conduct an examination or analysis of the fish crustacea, finfish and shellfish, whether on the planting grounds, in packinghouse an establishment , or in any other place or places in this State Commonwealth , from which such fish and shellfish the products are to be taken or sold for food purposes.

B. The State Health Commissioner in making such examination may make an analysis of analyze the seawater water and bottom sediment in and adjacent to the crustacea, finfish, or 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 , and he 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 C. The State Health Commissioner in making such examination of oyster packinghouses or other places so designated conducting his analysis shall examine the packinghouses and plants establishments wherein fish in which crustacea, finfish and shellfish are handled and the sanitary conditions surrounding the packinghouse and plant establishment . The Health Commissioner, when making an examination of the packinghouses and plants, At that time, he may or may not make an analysis of analyze the fish crustacea, finfish and shellfish in the packinghouse or plant at the time the inspection or examination is made establishment .

Drafting Note: This section has been divided into three subsections and edited to incorporate current practices and new definitions. The addition of crustacea to this section reflects current practices. Language which refers to the use of acceptable scientific methods is stricken since it is unnecessary.

§ ~~28.1-176~~ 28.2-804 . Polluted ground ; crustacea, finfish or shellfish.—When the State Health Commissioner determines, as a result of an examination, analysis or inspection, made pursuant to this chapter, that (i) the crustacea, finfish, or shellfish upon such ground, or in such packinghouses, or fish or crab meat in packinghouses establishment or other places where they are sold ; or offered for sale as in the preceding section (§ 28.1-176) described , are or may be unfit for market; or that (ii) such shellfish growing area is polluted or has a pollution hazard so great as to render it an unfit ground upon from which to take oysters from crustacea, finfish or shellfish for processing or consumption; or that (iii) such packinghouse establishment or other place is so insanitary as to render it an unfit place in which to prepare fish, crustacea, finfish or shellfish or crab meat for market, the State Health Commissioner he shall notify the Commissioner of Marine Resources ; and owner/or the owner or operator of such grounds, packinghouse, establishment or other place of such fact that the crustacea, finfish or shellfish are unfit for market .

§ 28.2-805. Notice to cease activity.— Upon receipt of such notice, the owner or operator of such grounds, packinghouse establishment , or other place, shall cease to take crustacea, finfish, or shellfish from such ground, except as is hereinafter provided, and shall cease to prepare for market, or to sell ; or offer for sale, or to dispose of in any manner, fish, crustacea, finfish, or shellfish or crab meat in such packinghouses establishments or other places ; as herein mentioned, until the cause for such notice shall have has been removed or relieved to the satisfaction of the State Health Commissioner.

And the § 28.2-806. State Health Commissioner to establish standards.— The State Health Commissioner may establish ; alter and change ; in his discretion, at any time, standards, examinations, analysis analyses and inspections which shall control the taking and marketing from a health standpoint, of fish, crustacea, finfish or shellfish ; and crab meat; and he . He shall be the sole judge as to of whether or not such fish, crustacea, finfish or shellfish and crab meat are sanitary and fit for market and also of such standards , examinations, analysis and inspection .

Drafting Note: Existing § 28.2-176 has been divided into proposed §§ 28.2-804, 28.2-805, 28.2-806 and edited for clarity, with new definitions incorporated. Inclusion of crustacea and finfish in these sections reflects current practices.

~~§ 28.1-177~~ 28.2-807 . Condemnation of polluted growing area ; *procedure* .— ~~When from~~ *If*, after examination of ~~or~~ analysis of the crustacea, finfish or shellfish, ~~finfish or crustacea~~ in a shellfish, finfish or crustacea growing area, or the bottom in or adjacent to such area, or the water over such area, or the sanitary or pollution conditions adjacent to or in near proximity to a shellfish, finfish or crustacea growing area, the State Health Commissioner determines that the shellfish, finfish or crustacea , *finfish or shellfish* growing in such area ~~is~~ are unfit for market, he shall, after notifying the Commissioner of Marine Resources, ~~cause limits or establish~~ boundaries of such the area upon in which such the crustacea, finfish or shellfish ; ~~finfish or crustacea~~ are located or planted to be fixed, which . This area shall be condemned ; and remain so until such time as the Health Commissioner shall find *finds* such crustacea, finfish or shellfish, ~~finfish or crustacea~~ or area , sanitary and not polluted. The ~~Commissioner of Marine Resources Commission~~ , with instructions from the State Health ~~Department Commissioner~~ , shall erect markers or signs designating condemned areas. The necessary markers or signs shall be supplied to the ~~Commissioner of Marine Resources Commission~~ by the State Health ~~Department Commissioner~~ .

§ 28.2-808. *Periods of condemnation.*— A crustacea, finfish or shellfish ; ~~finfish or crustacea~~ growing area and the crustacea, finfish or shellfish, ~~finfish or crustacea~~ located thereon may be condemned for the following periods:

(1) ~~Condemned for 1.~~ For an indefinite period, which shall remain in effect until some major improvement in pollution abatement occur on the stream in question based upon water quality and sources of pollution .

(2) 2. Seasonally 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) 3. Conditionally condemned areas which are sanitary and open under normal conditions, but which because of potential pollution hazards , for finite periods of time, based on predictable pollution events. Such conditionally condemned areas may be closed by the State Health Commissioner at any time without advance notice or a prior hearing, provided that relative to said area there must be a hearing *is held* within thirty days after the area is condemned, unless it is reopened within said *this* period.

Areas not condemned as stated in this and the above two numbered paragraphs are in effect approved.

The Commissioner shall take samples and reevaluate the water quality in condemned areas at least monthly, weather permitting.

Drafting Note: Existing § 28.1-177 has been divided into proposed §§ 28.2-807 and 28.2-808. The revisions in proposed § 28.2-808 are made to more accurately reflect the intent of the National Shellfish Sanitation Program procedures for classification of growing areas.

~~§ 28.1-178~~ 28.2-809 . *Emergency closing of ground.*—The State Health Commissioner may close or declare any crustacea, finfish or shellfish growing area in this State as polluted without a hearing or an 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~~ . In such event, the State Health Commissioner ~~must~~ shall, within thirty days after such closure or declaration, either reopen said the area or make the examination, inspection, and analysis provided for in §§ 28.1-175, ~~28.1-176~~ and ~~28.1-177~~ 28.2-803 through 28.2-808 . If such grounds or area are *is* not reopened or declared not polluted within thirty days after closure or declaration of pollution, any leaseholder in said the growing area may demand and have a public hearing as to the conditions of the ground or area.

Drafting Note: No change in law.

~~§ 28.1-179~~ 28.2-810 . *Removal, transportation, etc., from polluted ground ; penalty* .—A. No *It* is unlawful for any person ; firm or corporation shall to take, catch, transport, sell, offer for sale, remove, receive, keep or store shellfish from condemned areas, or relay shellfish taken from such areas, until the ~~Commissioner~~ Commissioner of Marine Resources or his designee has issued a special permit which the . The permittee ~~must~~ shall carry the permit when engaged in such operation.

B. Before It is unlawful for any person ; firm or corporation takes to take or removes remove shellfish from private grounds in condemned areas he shall have without written authority in his possession from the owner or lessee, in addition to the permit as herein required required by subsection A of this section .

C. It is unlawful for any person to transport, relay, or move shellfish from condemned areas after sunset or before sunrise, except by motor vehicle properly sealed as required by § 28.2-812. It is unlawful to mix clean shellfish and shellfish from condemned areas in the same cargo.

§ 28.2-811. Permits for transporting, relaying or depurating; revocation.— No permit for transporting or relaying shall be issued to any person, firm or corporation for the purpose of buying and selling shellfish from condemned areas. A. Permits for transporting and relaying shall only be issued to (i) persons ; firms or corporations that catch shellfish from condemned areas and that want to move such shellfish to an approved area ; and (ii) to those persons who buy shellfish from condemned areas from the catcher and who transport or relay the shellfish to their or other approved grounds. Permits for transporting shellfish for depuration in a facility approved by the State Health Commissioner shall be issued only to persons who purchase from the catcher or catch shellfish taken from certain condemned areas identified by the State Health Commissioner.

B. Upon evidence of a permit holder offering for sale and not planting shellfish from condemned areas, the Commissioner of Marine Resources shall promptly revoke all permits held by such person.

C. The special permit, after having been issued, may be revoked at any time by the Commissioner of Marine Resource, when in his judgment, it is in the best interest of the industry. Any person having his permit revoked may demand a hearing before the Marine Resources Commission at its next scheduled meeting.

No permits § 28.2-812. Sealing motor vehicles used in transporting.— Permits shall not be issued to any motor vehicle transporting or relaying shellfish from condemned areas unless such the motor vehicle has an enclosed body with doors which can be sealed by an inspector officer . An inspector shall have the authority to officer may refuse to issue such a permit if he determines the motor vehicle cannot be properly sealed.

If shellfish from condemned areas are to be transported or relayed, at any time, for depuration or relaying by a motor vehicle , an inspector officer shall seal the body of the motor vehicle before departure and . It is unlawful for the seal shall not to be broken by anyone except an inspector officer at the point of final destination location where the cargo is to be discharged for relaying or transplanting in an approved area or depuration . After the seal is has been broken , an inspector officer shall supervise the relaying of the shellfish from the truck motor vehicle to the approved area or the unloading of the motor vehicle at the depuration facility .

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

B. § 28.2-813. Maintenance of records.— Any person ; firm or corporation holding a valid permit to remove, transport or , relay , or transport for depuration shellfish from condemned areas shall keep accurate records and submit monthly reports to the Commission, which shall designate Commissioner of Marine Resources. The reports shall include the following information: (i) the areas from which the shellfish were removed; (ii) the areas to which the shellfish were relayed; (iii) the name of the depuration facility to which the shellfish were delivered; (iv) the dates of the removal, delivery to the depuration facility or relaying; (v) the number of bushels or number by count of shellfish removed, delivered for depuration or relayed; (vi) the name of the permit holder; (vii) the name and address of each person employed and engaged in the operation; (viii) the names or numbers of the boats; and (ix) the license numbers of the trucks motor vehicles used in the operation.

§ 28.2-814. Submission of reports. — During any month covered by permit in which no removal or , relaying is or depuration activity is in operation occurs , a report shall be submitted to the Commission Commissioner of Marine Resources indicating that no shellfish were removed or , relayed or depurated . It shall be the responsibility of the permit holder to keep accurate records and make reports of the removal or , relaying or depuration , to the main office of the Commission Commissioner of Marine Resources on or before the tenth day of the month following the month of operation. The permit shall set out the expiration date thereof .

~~C. § 28.2-815. Application for special permit. - Application for the special permit provided for in subsection A of this section, before the removal, transportation or relaying of shellfish from condemned areas, §§ 28.2-810 and 28.2-811 shall be made on forms provided by the Commissioner of Marine Resources before the removal, transportation or relaying of shellfish from condemned areas. This permit shall not be transferable.~~

~~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 such permit revoked may demand a hearing before the Commission at the next scheduled meeting of the Commission.~~

~~D. § 28.2-816. Supervision of removal, relaying or depuration ; seasons established.—A. Shellfish removal or relaying ; from condemned areas shall be under the supervision of the Commissioner of Marine Resources Commission and the Department of State Health Commissioner .~~

~~B. The season for the removal or relaying of shellfish shall be:~~

~~1. The season for the removal or relaying, of shellfish from private grounds shall be from April 1 to November 1 from private grounds .~~

~~2. The season for the removal or relaying of shellfish from public grounds shall be from May 1 to August 15 from public grounds .~~

~~3. The above dates for the opening and closing of seasons may be changed by the Marine Resources Commission, and the Marine Resources Commission may refuse to grant permits for removal of shellfish from condemned areas of the waters of the Commonwealth.~~

~~C. The Marine Resources Commission, after consultation with the Department of Health, shall establish the season for removal of shellfish for depuration from certain condemned areas designated by the State Health Commissioner.~~

~~E. § 28.2-817. Displaying identification when transporting shellfish.— Any conveyance engaged in transporting shellfish which have been caught within condemned areas for the purpose of relaying ; or depuration to another area , or depuration facility where they may be cleansed and made fit for market, shall display a yellow flag of not less than thirty inches in length and eighteen inches in width before any shellfish are placed thereon ; and the . The flag shall be displayed during the entire relaying and transporting operation.~~

~~F. It shall be the duty of the inspector of the Marine Resources Commission, § 28.2-818. Identification of relay areas.—Officers and employees of the Department of Health ; to shall examine the area to which shellfish from condemned areas are relayed and see ensure that adequate and proper corner stakes or buoys have been put in place by the lessee before a permit is issued to transport to or plant the area. When shellfish from condemned grounds are relayed onto approved grounds, a twenty-five-foot open area shall be maintained between each bed. Each corner stake or buoy shall be marked by a yellow flag or bunting of not less than fifteen inches by fifteen inches, and the marking shall remain until a special permit to remove the shellfish for sale or shipment has been obtained from the State Health Commissioner.~~

~~G. No § 28.2-819. Movement and unloading of shellfish from condemned area.—A. It shall be unlawful for any person ; firm or corporation shall to 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 . Shellfish removed from condemned areas shall move be taken directly to (i) the approved planting ground or , (ii) to conveyances holding a proper permit for relaying to cleansing areas designated in the permit or (iii) a depuration facility approved by the State Health Commissioner .~~

~~H. B. The loading and unloading, ashore, of shellfish taken from condemned areas shall only be at points locations designated by the Marine Resources Commission. Should the occasion arise for any In the instance of an emergency unloading of any conveyance engaged in transporting shellfish from a condemned area, the Marine Resources Commission shall be notified immediately and disposition of the cargo shall be made under the supervision of the Commission an officer .~~

~~I. There shall be no transportation, relaying or any movement of shellfish from condemned areas after sunset or before sunrise except by motor vehicle properly sealed pursuant to subsection A. Clean shellfish and shellfish from condemned areas shall not be mixed in any~~

quantity in the same cargo.

J. The Marine Resources Commission, whenever it deems that an emergency exists, may promulgate regulations to protect the health of the public, which relate to shellfish from condemned areas, without complying with the requirements of §§ 28.1-24 and 28.1-25. Such regulations shall become effective upon their passage by the Commission. These regulations shall be enforced by revoking any permits which may have been issued.

§ 28.2-820. *Harvesting, transporting or transplanting of seed-stock oysters.*— Nothing in this section chapter shall prohibit the harvesting, transporting, or transplanting of seed-stock oysters from any public seed area, in such a manner and at such times as the Marine Resources Commission may establish by regulation. The Marine Resources Commission shall consider limitations based on the size of seed-stock oysters which may be harvested, controls on the methods of transportation, and such restrictions on the transplanting process as it deems necessary to protect the health of the public. The Commission shall consult with the Department of Health, Bureau of Shellfish Sanitation, State Health Commissioner prior to the adoption of any such regulation.

In the exercise of its authority granted pursuant to this section, the Commission shall cause notice of any such action to be taken to be posted in two or more public places in each locality affected at least five days prior to the Commission meeting at which such action may be considered. Such publication shall be in lieu of any other notice and shall be the only procedure required by the Commission in exercising such authority.

Drafting Note: Existing § 28.1-179 has been divided into proposed §§ 28.2-810 through 28.2-220.

Proposed § 28.2-810 consists of existing subsection A of 28.1-179. Language is added to clarify what constitutes unlawful activity. New language of subsection C is existing subsection J of § 28.1-179. The phrase "or his designee" is added because relay permits are issued in the field by marine patrol officers.

Proposed § 28.2-811 consists of proposed subsection A, which is the third paragraph of existing subsection A of § 28.1-179; proposed subsection B is the revocation language contained in the sixth paragraph of existing subsection A of § 28.1-179; and proposed subsection C is revocation language taken from existing subsection C of § 28.1-179. The first sentence of the proposed § 28.2-811 is stricken since it contradicts the remainder of the section. New language is added in proposed subsection A which allows the use of depuration facilities as an alternative approach for cleansing shellfish. The language parallels existing language for relaying.

Proposed § 28.2-812 consists of the fourth and fifth paragraphs of existing § 28.1-179. Language is added which places the same requirements on the sealing of motor vehicles used for transporting shellfish to depuration facilities that currently exists for motor vehicles used in relaying. The last paragraph regarding revocation of permits is stricken and moved to subsection B of proposed § 28.2-811.

Proposed § 28.2-813 is the first sentence of existing subsection B of § 28.1-179. Language is added which requires permit holders to maintain records for depuration facilities. The phrase "number by count" is added since shellfish are usually measured by the bushel (oysters) or by count (clams).

Proposed § 28.2-814 is the last two sentences of existing subsection B of § 28.1-179 and includes new language which requires the submission of reports for depuration facilities.

Proposed § 28.2-815 is existing subsection C of § 28.1-179. The language regarding the revocation of the special permit is stricken and is relocated as subsection C of proposed § 28.2-811.

Proposed § 28.2-816 is existing subsection D of § 28.1-179. Subsection C is new language which gives VMR and the Department of Health authority to establish the season for removal of shellfish to depuration facilities.

Proposed § 28.2-817 is existing subsection E of § 28.1-179 and includes new language requiring the display of identification on conveyances before transporting shellfish to depuration facilities.

Proposed § 28.2-818 is existing subsection F of § 28.1-179. The new language requiring a twenty-five-foot open area reflects current MRC practice.

Proposed § 28.2-819 combines existing subsections G and H of § 29.1-179. Language is added which includes depuration facilities as an appropriate destination for the cleansing of shellfish. Existing subsection I of § 28.1-179 is stricken and relocated as subsection C of proposed § 28.2-810. The first paragraph of existing subsection J of § 28.1-179 dealing with emergency regulation is stricken and appears as subsection C of proposed § 28.2-801.

Proposed § 28.2-820 is the second paragraph of existing subsection J of § 28.1-179 dealing with the harvesting of seed-stock oysters. The last paragraph regarding posting of notice is stricken since it refers to an obsolete regulatory procedure.

~~§ 28.1-181.~~ 28.2-821 Violations.— A. 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 § 28.1-170, 28.2-810. Any person who violates this section or to in any way violate any provision found in of this chapter is guilty of a Class 1 misdemeanor .

B. Upon conviction of violating any provision of this chapter any boat, vessel, motor vehicle and/ or equipment used in committing said the violation may be forfeited as provided by the provisions of Chapter 8 (<§ 28.1-184 et seq.>) of this title Chapter 9 (§ 19.2-369 et seq.) of Title 19.2 .

Drafting Note: Proposed § 28.2-821 includes new language which provides for a Class 1 misdemeanor penalty for a violation of any provision of the shellfish sanitation chapter. Without such a penalty, a violation of a provision for which a penalty is not specified is a Class 3 misdemeanor. The penalty for existing § 28.1-183.2, which deals with the importing of fish and shellfish into waters, is a Class 1 misdemeanor. This would make the penalty uniform. The cite for the forfeiture provision has been corrected.

~~§ 28.1-36.01.~~ 28.2-822. Suspension or revocation of licenses.— If the The Commissioner of Marine Resources finds that may immediately suspend any licenses of any license holder who has committed more than one violation of Chapter 7 (<§ 28.1-175 et seq.>) of this title, he may immediately suspend any and all licenses issued to such person this chapter . Such The suspension shall be effective until the day following the next meeting of the Commission to take place after ten days' notice to such person. The Commissioner, at the request of such the person, shall, within forty-eight hours, provide an opportunity for such person him to show why such the suspension is unjust, and for good cause shown the Commissioner shall vacate such suspension. No person whose license is suspended pursuant to the provisions of this section shall engage in any fishery by working with or under another who is licensed, or upon another licensed vessel, or otherwise .

Drafting Note: Language is stricken regarding the specific activities which are prohibited while a person is under suspension since the definition of fishery (fisheries) includes all fishing related activities. No change in the law.

~~§ 28.1-182.~~ 28.2-823. Certification of oysters and elams shellfish from out of State outside the Commonwealth .— All oysters and elams shellfish in the shell imported ; brought, or transported into this State Virginia for processing or consumption within this State must the Commonwealth shall have a certificate from the appropriate agency of the state of origin that said oysters and elams the shellfish came from clean, approved areas of water of that state. Any such oysters or elams Shellfish 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 Virginia; and shall be replanted in compliance with the provisions and requirements of § 28.1-170 of this chapter, destroyed or returned to the state of origin .

Drafting Note: Changes are to clarify that as an alternative the shellfish may be destroyed by the State Health Commissioner, or returned to the state of origin.

~~§ 28.1-183.1.~~ 28.2-824. Common carriers.—Common carriers transporting seafoods designated in this chapter must shall carry a bill of lading listing the seafood cargo, the shipper and the consignee. In the event If such cargo is found to be in violation of any of the provisions of this chapter or regulations promulgated thereunder , it shall be taken possession of as provided in § 28.1-183 28.2-802 , the shipper shall be held liable and the common carrier shall be relieved of the violations and penalties set forth in this chapter.

Drafting Note: Language is added to clarify the ability to enforce regulations.

~~§ 28.1-183.2.~~ 28.2-825. Importing fish or , shellfish or crustacea for introduction into waters of

State the Commonwealth .— A. It shall be unlawful for any person ; ~~firm or corporation~~ to import any fish or , shellfish or crustacea into the Commonwealth with the intent of placing such fish or , shellfish or crustacea into the waters of the Commonwealth unless one of the following conditions exists:

~~(a)~~ 1. The fish or , shellfish is or crustacea are coming from within the continental United States from a state or waters which is at that time are on the *Marine Resources Commission's* list of approved states and waters, and is a species which is at that time on the *Marine Resources Commission's* list of approved species; or

~~(b)~~ 2. The person ; ~~firm or corporation~~ has notified the *Commissioner of Marine Resources* of such intent and has received written permission from the *Commissioner of Marine Resources*

The list of approved states and waters shall be published by the *Commissioner of Marine Resources* , and a state or water shall be placed on or removed from such list only with the concurrence of the Director of the Virginia Institute of Marine Science. The *Commissioner of Marine Resources* , with the concurrence of the Director of the Virginia Institute of Marine Science, is authorized to change such the list when he deems it *determines that it is necessary* for the protection of the waters of the Commonwealth.

The list of approved species shall be published by the *Commissioner of Marine Resources* , and a species shall be placed on or removed from such list only with the concurrence of the Director of the Virginia Institute of Marine Science. The *Commissioner of Marine Resources* , with the concurrence of the Director of the Virginia Institute of Marine Science, is authorized to change such the list when he deems it *determines that it is necessary* for the protection of the waters of the Commonwealth.

B. The notification of intent to import shall be in writing and submitted to the *Commissioner of Marine Resources* at least thirty days prior to the date of importation ; and . *The notice shall contain information as to state: (i) the specific fish or , shellfish or crustacea to be imported, (ii) from what waters the fish or , shellfish is or crustacea are being taken, (iii) the period of time over which importation is to be accomplished, (iv) the quantities involved, and (v) into what waters the fish or , shellfish is or crustacea are to be placed.*

~~Violation~~ A violation of this section shall constitute is a *Class 1* misdemeanor.

Drafting Note: No change in the law.

CHAPTER 8. 9.

ENFORCEMENT OF TITLE SUBTITLE II ; JURISDICTION.

CHAPTER DRAFTING NOTE: Minimal changes have been made in the enforcement chapter and only for the purpose of eliminating duplication or providing consistency with current criminal procedures under Titles 18.2 and 19.2. The enforcement provisions which are specific to the Marine Resources Commission, because of the unique circumstances of patrolling waters of the Commonwealth, remain unchanged.

~~§ 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 the violation may be made before a magistrate or the judge or clerk of any court, and upon the affidavit the magistrate, judge or clerk may issue his warrant for the apprehension of the offender.~~

Drafting Note: This section is repealed since the MRC currently follows the procedures for issuing a warrant for arrest and seizure set forth in Title 19.2.

~~§ 28.1-185. 28.2-900. Arrest and seizure with or without warrant ; larceny; violations of boating laws and Title 62.1 .— The Commissioner or any members of the Marine Resources Commission, all inspectors, police captains of boats, and other employees designated by the Commissioner in the service, shall have the power A. Officers may , with or without warrant, to (i) arrest any person or persons found violating any of the fish or shellfish laws provision of this subtitle , and to (ii) seize any net, pot, or other fishing device or gear used in violating such laws and to (iii) seize crustacea, finfish and fish, shellfish or marine organisms taken or handled in violation of this title subtitle .~~

Any property declared forfeited by any of the provisions of this title, 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 magistrate or of a court not of record.

~~§ 28.1-185.1. Arrest for larceny or for violation of Title 62.1, with or without warrant. B. All inspectors shall have the power to officers may arrest, with or without a warrant, any person who commits in his presence (i) any larceny committed upon or adjacent to the waters of the Commonwealth, (ii) any violation of the provisions of Chapter 17 (§ 62.1-166 et seq.) of Title 62.1 of the Code of Virginia 7 (§ 29.1-700 et seq.) of Title 29.1, or any regulations promulgated pursuant thereto thereunder, or (iii) any violation of the provisions of Chapters Chapter 18 (§ 62.1-187 et seq.) or 20 (§ 62.1-194 et seq.) of Title 62.1 of the this Code of Virginia. Such inspectors shall also have the power to arrest any person for such violations with a warrant.~~

Drafting Note: Proposed § 28.2-900 combines existing §§ 28.1-185 and 28.1-185.1 dealing with MRC's arrest authority. The second paragraph of existing § 28.1-185 is stricken since such authority exists in § 19.2-372. Proposed subsection B includes an updated Code reference; the boating laws were relocated as a result of a title revision from Chapter 17 of Title 62.1 to Chapter 7 of Title 29.1. The last sentence is stricken since it is redundant.

~~§ 28.1-185.2. 28.2-901. When person detained for violation may be issued summons Summons issued instead of being taken into custody; effect of failure to appear.—A. Whenever any person is detained by or is in the custody of an arresting officer for any violation of the laws of Virginia enforceable pursuant to § 28.1-185 or § 28.1-185.1 and punishable as a misdemeanor 28.2-900, the arresting officer shall take the name and address of each person so detained and issue a summons or otherwise notify him in writing to appear at a time and court to be specified in the summons or notice. When the person gives his written promise to appear at the designated time and place, the officer shall forthwith immediately release him from custody.~~

~~B. If any detained person is believed by the arresting officer to be (i) believes a detained person is likely to disregard a summons issued under the provisions of this section; or if any person is (ii) reasonably believed by the arresting officer to be believes a detained person is likely to cause harm to himself or to any other person another, or if the person refuses to give his written promise to appear, the officer may take the offender, vessel and property may be taken into custody and. The person shall be brought before the nearest or most accessible judicial officer or other person qualified to admit bail having jurisdiction. If the arrest is made in a state other than where the offense was committed, the offender and property may be taken to the state where the offense was committed, to be dealt with under the laws of that state.~~

~~C. The failure of any person to appear as required by a summons issued under the provisions of this section shall suspend all licenses issued to the person pursuant to this title subtitle until such time as he appears to answer the charges against him. Failure to appear shall bar the issuance of any further license to the person until he appears.~~

Drafting Note: Language in subsection B regarding the arrest of an offender in another state is stricken since procedures for extradition exist in Chapter 8 (§ 19.2-84 et seq.) of Title 19.2.

~~§ 28.1-186. 28.2-902. Procedure after arrest and seizure.—Any person so arrested may be carried (i) taken before a county or municipal court court of competent jurisdiction for trial, or may be (ii) committed to jail pending trial or, (iii) admitted to bail or released on recognizance as provided by general law; or the arresting officer may issue, or (iv) issued a summons requiring such person him to appear for trial at a time and place specified therein before a court having jurisdiction to try the offense; such. The time specified in the summons shall not; however, be less than five days from the date of arrest unless such person request requests an earlier hearing. Any person failing to appear as directed in such the summons shall be guilty of a Class 1 misdemeanor, regardless of the disposition of, and in addition to, the charge upon which he was originally arrested and upon such failure. If the person fails 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 subsection A of § 28.2-900 may be held by the inspector officer 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 pending final outcome of the proceedings.

Drafting Note: Language is added in the last paragraph to clarify how long the seized property can be held.

~~§ 28.1-187. 28.2-903. Violations constitute misdemeanor.—A violation of any of the provisions provision of this title subtitle or regulation promulgated thereunder, unless otherwise specifically~~

provided, shall constitute is a Class 3 misdemeanor. A second or subsequent violation of any provision of this subtitle or regulation promulgated thereunder committed by the same person within twelve months of a prior violation shall constitute is a Class 1 misdemeanor.

Drafting Note: Clarifies that a second violation of any statute or regulation is a Class 1 misdemeanor.

~~§ 28.1-188. Repealed by Acts 1983, c. 323.~~

~~§ 28.1-188.1. 28.2-904. Pursuit and detention across the Maryland-Virginia line.—When, in the opinion of the legally constituted authorities of the Commonwealth, there has occurred on the waters of Virginia a violation of the laws of the Commonwealth enforceable pursuant to § 28.1-185 or § 28.1-185.1 of this Code 28.2-900, or when, in the opinion of the legally constituted authorities of Maryland, there has occurred on the waters of Maryland a violation of any provision of the Natural Resources Article, Annotated Code of Maryland, the offender may be pursued by the legally constituted authorities of the state where the offense was committed up to and across the Maryland-Virginia boundary into the state where the offender flees. If a capture is made in continuous pursuit, the offender, vessel and property shall be dealt with as authorized by the laws of the state where the offense was committed.~~

The provisions of this section shall be effective as long as the State of Maryland has in force similar provisions authorizing legally constituted authorities of Virginia to make pursuit and arrests in Maryland for violations of the laws of Virginia.

Drafting Note: No change in the law.

~~§ 28.1-189. Repealed by Acts 1970, c. 726.~~

~~§ 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.~~

Drafting Note: This section is stricken and has been incorporated into proposed § 28.2-238.

~~§ 28.1-191. 28.2-905. 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 subtitle, shall be guilty of a Class 1 misdemeanor.~~

Drafting Note: No change in the law.

~~§ 28.1-192. 28.2-906. Failure to perform duty.—The failure of any officer or other person to perform any duty required of him by any provisions of the preceding chapters of this title subtitle shall constitute is a Class 1 misdemeanor.~~

Drafting Note: No change in the law.

~~§ 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.~~

Drafting Note: This section is repealed since it is unnecessary. Proposed § 28.2-906 provides a penalty if an officer fails to adequately perform his duty.

~~§ 28.1-193. 28.2-907. Jurisdiction of courts.—Any proceeding under any section of the preceding chapters of this title may subtitle shall be before a court of record or not of record of competent jurisdiction in the county or city wherein, or in any county or city (i) in which the offense was committed or (ii) adjacent to the waters in which the offense was committed.~~

Drafting Note: No change in the law.

CHAPTER 10.

COMPACTS AND JOINT LAWS WITH OTHER STATES.

CHAPTER DRAFTING NOTE: Several sections related to various interstate compacts are not

effective until a proclamation has been signed by the governors of the compact states. In those instances where such a proclamation has been signed, the conditional language has been removed from the statute, thus giving the statute the full force of law.

Article 1.

Atlantic States Marine Fisheries Compact.

§ ~~28.1-202.~~ 28.2-1000. Atlantic States Marine Fisheries Compact.—

ARTICLE I

The purpose of this compact is to promote the better utilization of the fisheries, marine, shell and anadromous of the Atlantic seaboard by the development of a joint program for the promotion and protection of such fisheries, and by the prevention of the physical waste of the fisheries from any cause. It is not the purpose of this compact to authorize the states joining herein to limit the production of fish or fish products for the purpose of establishing or fixing the price thereof, or creating and perpetuating monopoly.

ARTICLE II

This agreement shall become operative immediately as to those states executing it whenever any two or more of the states of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida have executed it in the form that is in accordance with the laws of the executing state and the Congress has given its consent. Any state contiguous with any of the aforementioned states and riparian upon waters frequented by anadromous fish, flowing into waters under the jurisdiction of any of the aforementioned states, may become a party hereto as hereinafter provided.

ARTICLE III

Each state joining herein shall appoint three representatives to a Commission hereby constituted and designated as the Atlantic States Marine Fisheries Commission. One shall be the executive officer of the administrative agency of such state charged with the conservation of the fisheries resources to which this compact pertains or, if there be more than one officer or agency, the official of that state named by the governor thereof. The second shall be a member of the legislature of such state designated by the Commission or Committee on Interstate Cooperation of such state, or if there be none, or if said Commission on Interstate Cooperation cannot constitutionally designate the said member: such legislator shall be designated by the governor thereof; provided, that if it is constitutionally impossible to appoint a legislator as a commissioner from such state, the second member shall be appointed by the governor of said state in his discretion. The third shall be a citizen who shall have a knowledge of and interest in the marine fisheries problem, to be appointed by the governor. The Commission shall be a body corporate with the powers and duties set forth herein.

ARTICLE IV

The duty of the said Commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the consideration of the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Atlantic seaboard. The Commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the aforementioned states.

To that end the Commission shall draft and, after consultation with the Advisory Committee hereinafter authorized, recommend to the governors and legislatures of the various signatory states legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Atlantic seaboard. The Commission shall, more than one month prior to any regular meeting of the legislature in any signatory state, present to the governor of the state its recommendations relating to enactments to be made by the legislature of that state in furthering the intents and purposes of this compact.

The Commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend the

adoption of such regulations as it deems advisable.

The Commission shall have power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs, or joint stocking by some or all of the states party hereto, and when two or more of the states shall jointly stock waters the Commission shall act as the coordinating agency for such stocking.

ARTICLE V

The Commission shall elect from its number a chairman and a vice-chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provision of this compact into effect, and shall fix and determine their duties, qualifications and compensation. Said Commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place but must meet at least once a year.

ARTICLE VI

No action shall be taken by the Commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting states present at any meeting. No recommendation shall be made by the Commission in regard to any species of fish except by the affirmative vote of a majority of the compacting states which have an interest in such species. The Commission shall define what shall be an interest.

ARTICLE VII

The Fish and Wildlife Service of the Department of the Interior of the Government of the United States shall act as the primary research agency of the Atlantic States Marine Fisheries Commission, cooperating with the research agencies in each state for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the Commission.

An Advisory Committee to be representative of the commercial fishermen and the salt water anglers and such other interest of each state as the Commission deems advisable shall be established by the Commission as soon as practicable for the purpose of advising the Commission upon such recommendations as it may desire to make.

ARTICLE VIII

When any state other than those named specifically in Article II of this compact shall become a party thereto for the purpose of conserving its anadromous fish in accordance with the provisions of Article II the participation of such state in the action of the Commission shall be limited to such species of anadromous fish.

ARTICLE IX

Nothing in this compact shall be construed to limit the powers of any signatory state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state imposing additional conditions and restrictions to conserve its fisheries.

ARTICLE X

Continued absence of representation or of any representative on the Commission from any state party hereto shall be brought to the attention of the governor thereof.

ARTICLE XI

The states party hereto agree to make annual appropriations to the support of the Commission in proportion to the primary market value of the products of their fisheries, exclusive of cod and haddock, as recorded in the most recent published reports of the Fish and Wildlife Service of the United States Department of the Interior, provided no state shall contribute less than two hundred dollars per annum and the annual contribution of each state above the minimum shall be figured to the nearest one hundred dollars.

The compacting states agree to appropriate initially the annual amounts scheduled below, which amounts are calculated in the manner set forth herein, on the basis of the catch record of 1938. Subsequent budgets shall be recommended by a majority of the Commission and the cost thereof allocated equitably among the states in accordance with their respective interests

and submitted to the compacting states.

SCHEDULE OF INITIAL STATE CONTRIBUTIONS

Maine	\$ 700	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

Section 1. This compact shall continue in force and remain binding upon each compacting state until renounced by it. Renunciation of this compact must be preceded by sending six months' notice in writing of intention to withdraw from the compact to the other states party hereto.

Section 2. Without further submission of said compact, the consent and approval of Congress is hereby given to the states of Connecticut, North Carolina, South Carolina, Georgia, and Florida, and for the purpose of the better utilization of their anadromous fisheries, to the states of Vermont and Pennsylvania, to enter into said compact as signatory states and as parties thereto, in addition to the states which have now ratified the compact.

Section 3. The Atlantic States Marine Fisheries Commission constituted by the compact shall make an annual report to Congress not later than sixty days after the beginning of each regular session thereof. Such report shall set forth the activities of the Commission during the calendar year ending immediately prior to the beginning of such session.

Section 4. The right to alter, amend, or repeal the 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 or responsibilities in the Atlantic States Marine Fisheries Commission under the general compact.

Article 2.

Potomac River Compact; Related Laws.

§ ~~28.1-203~~. 28.2-1001. Potomac River Compact.—

PREAMBLE

Whereas, Maryland and Virginia are both vitally interested in conserving and improving the valuable fishery resources of the Tidewater portion of the Potomac River, and

Whereas, certain provisions of the Compact of 1785 between Maryland and Virginia having become obsolete, Maryland and Virginia each recognizing that Maryland is the owner of the Potomac River bed and waters to the low-water mark of the southern shore thereof, as laid out on the Mathews-Nelson Survey of 1927, and that Virginia is the owner of the Potomac River bed and waters southerly from said low-water mark as laid out, and that the citizens of Virginia have certain riparian rights along the southern shore of the river, as shown on said Mathews-Nelson Survey, and, in common with the citizens of Maryland, the right of fishing in said river, Maryland and Virginia have agreed that the necessary conservation and improvement

of the Tidewater portion of the Potomac fishery resources can be best achieved by a Commission comprised of representatives of both Maryland and Virginia, charged with the establishment and maintenance of a program to conserve and improve these resources, and

Whereas, at a meeting of the Commissioners appointed by the Governors of the State of Maryland and the Commonwealth of Virginia, to wit: Carlyle Barton, M. William Adelson, Stephen R. Collins, Edward S. Delaplaine and William J. McWilliams, Esquires, on the part of the State of Maryland, and Mills E. Godwin, Jr., Howard H. Adams, Robert Y. Button, John Warren Cooke and Edward E. Lane, Esquires, on the part of the Commonwealth of Virginia, at Mount Vernon, Virginia, on the twentieth day of December, in the year one thousand nine hundred and fifty-eight, the following Potomac River Compact of 1958 between the Commonwealth of Virginia and the State of Maryland was mutually agreed to by the said Commissioners:

Now, therefore, be it resolved by the Commissioners appointed by the Governors of the State of Maryland and the Commonwealth of Virginia, meeting in joint session, that they do unanimously recommend to the said respective Governors that there be a new compact, to be designated as the "Potomac River Compact of 1958," and that the said new compact be referred as promptly as possible to the legislatures of the State of Maryland and the Commonwealth of Virginia for appropriate action, and to the end and after ratification and adoption by said legislatures the same be submitted to the Congress of the United States for approval.

ARTICLE I

COMMISSION-MEMBERSHIP AND ORGANIZATION

§ 1. Commission created. - The Potomac River Fisheries Commission, hereinafter designated as "Commission," is hereby created.

§ 2. Members. - The Commission shall consist of 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 Marine Resources 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 a 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 coterminous 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 64 A 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. Employees of the Commission shall also be eligible for the health and related insurance for state employees in § 2.1-20.1 of the Code of Virginia or Article 64 A, § 48 A of the Annotated Code of Maryland, whichever is applicable.

ARTICLE II

JURISDICTIONAL BOUNDARIES

The territory in which the Potomac River Fisheries Commission shall have jurisdiction shall be those waters of the Potomac River enclosed within the following described area:

Beginning at the intersection of mean low-water mark at Point Lookout and an established line running from Smiths Point to Point Lookout, marking Chesapeake Bay waters; thence following the mean low-water line of the shore northwesterly across the respective mouths of all creeks to Gray Point at the westerly entrance into Rowley Bay; thence in a straight line northwesterly to the southerly extremity of Kitts Point; thence along the mean low-water line to the southwesterly point of St. Inigoes Neck; thence in a straight line westerly to the most easterly point of St. Georges Island; thence following the mean low-water line in a general northwesterly direction, across the respective mouths of all creeks and inlets to the southwesterly point of Huggins Point; thence in a straight line southwesterly to the eastern extremity of the sandbar known as Heron Island; thence northwesterly following the ridge of Heron Island Bar to its westerly extremity; thence southwesterly in a straight line to the most southerly point of Blackiston Island; thence in a straight line northwesterly to the southern extremity of Colton's Point; thence following the mean low-water line, westerly, excluding all creeks and inlets, to the point marking the southeasterly entrance into St. Catherine Sound; thence westerly in a straight line to the southern extremity of St. Catherine Island Sandbar; thence northwesterly, along the westerly edge of said sandbar continuing along the mean low-water line of the southwesterly side of St. Catherine Island to the northwesterly point of said island; thence westerly in a straight line to Cobb Point Bar Lighthouse; thence northwesterly along the ridge of Cobb Point Sandbar to the southerly extremity of Cobb Point; thence following the mean low-water line in general northwesterly and northerly directions across the respective mouths of all creeks and inlets to a point at the easterly entrance into Port Tobacco River, due east of Windmill Point; thence in a straight line westerly to Windmill Point; thence southwesterly following the mean low-water line across the respective mouths of all creeks and inlets to Upper Cedar Point; thence southwesterly in a straight line across the mouth of Nanjemoy Creek to a point on shore at the village of Riverside; thence following the mean low-water line, southwesterly, northwesterly and northerly across the respective mouths of all creeks and inlets to Smiths Point; thence northerly in a straight line to Liverpool Point; thence northerly in a straight line to Sandy Point; thence following the mean low-water line northerly, across the respective mouths of all creeks and inlets to Moss Point; thence northerly in a straight line across Chicamuxen Creek to the southernmost point of Stump Neck; thence following the mean low-water line northeasterly, across the respective mouths of all creeks and inlets, to a point at the southerly entrance into Mattawoman Creek; thence in a straight line northeasterly across the mouth of Mattawoman Creek to the southwesterly point of Cornwallis Neck; thence following the mean low-water line northeasterly, across the respective mouths of all creeks and inlets, to Chapman Point; thence in a straight line northeasterly to Pomonkey or Hillis Point; thence following the mean low-water line in a northerly direction across the respective mouths of all creeks and inlets, to a point on Marshall Hall shore, due south of Ferry Point; thence northeasterly in a straight line to Bryan Point; thence northeasterly in a straight line to the northwest extremity of Mockley Point; thence northeasterly in a straight line to Hatton Point; thence northerly in a straight line to the southwesternmost point of Indian Queen Bluff; thence following the mean low-water line northerly across the respective mouths of all creeks and inlets, to Rosier Bluff Point; thence in a straight line northerly to the intersection with the District of Columbia line at Fox Ferry Point; thence following the boundary line of the District of Columbia southwesterly to a point on the lower or southern shore of the Potomac River, said point being the intersection of the boundary line of the Commonwealth of Virginia with the boundary line of the District of Columbia; thence following the mean low-water line of the Potomac River on the southern, or Virginia shore, as defined in the Black-Jenkins Award of 1877 and as laid out in the Mathews-Nelson Survey of 1927, beginning at the intersection of the Potomac River and the District of Columbia line at Jones Point and running to Smiths Point; and thence in a straight line across the mouth of the Potomac River on the established line from Smiths Point to Point Lookout, to the mean low-water mark at Point Lookout, the place of beginning.

ARTICLE III

COMMISSION POWERS AND DUTIES

§ 1. Oyster bars. - The Commission shall make a survey of the oyster bars within its jurisdiction and may reseed and replant said oyster bars as may from time to time be necessary.

§ 2. Fish and seafood. - The Commission may by regulation prescribe the type, size and description of all species of finfish, crabs, oysters, clams and other shellfish which may be taken or caught, within its jurisdiction, the places where they may be taken or caught, and the manner of taking or catching.

§ 3. Research. - The Commission shall maintain a program of research relating to the conservation and repletion of the fishery resources within its jurisdiction, and to that end may cooperate and contract with scientists and public and private scientific agencies engaged in similar work, and may purchase, construct, lease, borrow or otherwise acquire by any lawful method such property, structures, facilities, or equipment as it deems necessary.

§ 4. Licenses. - (a) The Commission shall issue such licenses as it may prescribe which shall thereupon be required for the taking of finfish, crabs, oysters, clams or other shellfish from the waters within the jurisdiction of the Commission, and for boats, vessels and equipment used for such taking. Recognizing that the right of fishing in the territory over which the Commission shall have jurisdiction is and shall be common to and equally enjoyed by the citizens of Virginia and Maryland, the Commission shall make no distinction between the citizens of Virginia or Maryland in any rule, regulation or the granting of any licenses, privileges, or rights under this compact.

(b) Licenses for the taking of oysters and clams and the commercial taking of finfish and crabs within the jurisdiction of the Commission shall be granted only to citizens of Maryland or Virginia who have resided in either or both States for at least twelve months immediately preceding the application for the license. Within six months after the effective date of this compact, the Commission shall adopt a schedule of licenses, the privileges granted thereby, and the fees therefor, which may be modified from time to time in the discretion of the Commission.

(c) The licenses hereby authorized may be issued at such 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 Institute of Marine Science, 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, which inspection tax may not exceed the higher severance tax per bushel on oysters that is imposed by the Commonwealth of Virginia or the State of Maryland in the waters of their respective jurisdictions, upon all oysters caught within the limits of the Potomac River. The tax shall be paid by the buyer at the place in Maryland or Virginia where the oysters are unloaded from vessels and are to be shipped no further in bulk in vessel, to an agent of the Commission, or to such officer or employee of the Virginia Marine Resources Commission or of the Maryland Department of 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 of 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 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia (1950 Edition, as amended from time to time), and of § 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 office of the Commission, the office of the clerk of court in each county of Maryland and Virginia contiguous to the waters within the Commission's jurisdiction, the office of the Virginia Division of Legislative Services Registrar of Regulations, the office of the Maryland Department of Legislative Reference, the office of the Virginia Marine Resources Commission, and the office of the Maryland Department of 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 one, nineteen hundred fifty-eight, shall be and remain applicable in the Potomac River except to the extent changed, amended, or modified by regulations of the Commission adopted in accordance with this compact.

§ 3. Existing licenses. - The rights and privileges of licensees to take and catch finfish, crabs, oysters, clams, and other shellfish in the Potomac River, which are in effect at the time this compact becomes effective, shall continue in force for a period of six months at which time every such license and every such right and privilege shall be abrogated.

ARTICLE VIII

EFFECT OF RATIFICATION

These articles shall be laid before the Legislatures of Virginia and Maryland, and their approbation being obtained, shall be confirmed and ratified by a law of each State, never to be repealed or altered by either, without the consent of the other.

ARTICLE IX

EFFECTIVE DATE

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.

Drafting Note: Language in § 2 of Article 4 has been changed to reflect current procedures.

§ ~~28.1-203.1~~ 28.2-1002. 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 *Potomac River Compact* approved by this chapter article, it being the policy of this Commonwealth to perform and carry out the compact and accomplish the its 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.

Drafting Note: The second paragraph is stricken since the compact is already in effect.

§ ~~28.1-227~~ 28.2-1003. Authority to regulate dredging of soft shell clams.—The Potomac River Fisheries Commission shall have the power to make, adopt and publish such rules and regulations as may be necessary or desirable for authorizing and regulating the dredging of soft shell clams in areas within its geographical jurisdiction and may levy license fees for such dredging in amounts to be set in its discretion.

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.

Drafting Note: The second paragraph is stricken since this section became effective on February 16, 1965 by proclamation of the Governors of Virginia and Maryland.

§ ~~28.1-228~~ 28.2-1004. Authority to authorize and regulate experimental oyster hatchery program.—The Potomac River Fisheries Commission shall have the power to make, adopt and permit such rules and regulations and to take such action as may be necessary or advisable for authorizing and regulating a pilot program for experimental oyster hatchery seed planting, growing, and harvesting with private planters and public and private scientific agencies engaged in similar work in its jurisdiction, and may set aside available barren natural oyster rocks for this purpose and to allow dredging of same for inspection, sampling and harvesting under the supervision and control of the Potomac River Fisheries Commission and in cooperation with the Maryland or Virginia public scientific agencies, Chesapeake Biological Laboratory and Virginia Institute of Marine Science.

The provisions of this section shall not take effect until a similar act becomes effective in the State of Maryland, whereupon the Governor of Virginia shall issue a proclamation declaring the provisions of this section to be effective.

Drafting Note: No change in the law.

§ ~~28.1-229~~ (For effective date see note) Authority to regulate dredging of oysters with hand scrapes.—The Potomac River Fisheries Commission shall have the power to make, adopt and publish such rules and regulations as may be necessary or desirable for authorizing and regulating the dredging of oysters with hand scrapes in areas of the Potomac River within its geographical jurisdiction and may levy license fees for same.

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.

Drafting Note: This section is set out twice and this version is stricken and replaced by the 1982 amended version (proposed § 28.2-1005). Existing § 28.1-229 became effective July 16, 1974 by proclamation of the Governors of Virginia and Maryland.

§ 28.1-229. 28.2-1005. (For effective date see note) Authority to regulate dredging of oysters.—The Potomac River Fisheries Commission shall have the power to make, adopt and publish such rules and regulations as may be necessary or desirable for authorizing and regulating the dredging of oysters in areas of the Potomac River within its geographical jurisdiction and may levy license and repletion fees for same.

Drafting Note: No change in the law.

CHAPTER 9. 11.

VIRGINIA INSTITUTE OF MARINE SCIENCE.

CHAPTER DRAFTING NOTE: The changes in Chapter 11 are principally revisions in language for the sake of clarity.

§ 28.1-195. 28.2-1100. Virginia Institute of Marine Science continued; duties.—The Virginia Institute of Marine Science ; shall hereafter be referred to as the Institute ; is continued within the College of William and Mary as provided in Chapter 5 (§ 23-30 et seq.) of Title 23 of this Code. All references in this Code to the Virginia Institute of Marine Science hereafter shall be deemed references to the Virginia Institute of Marine Science within the College of William and Mary . It shall be the duty of the The Institute shall :

(a) To conduct 1. Conduct studies and investigations of all phases of the seafood and commercial fishing and sport fishing industries;

(b) To consider 2. Consider means by which ways to conserve, develop and replenish fisheries resources may be conserved, developed and replenished and to advise the Marine Resources Commission and other agencies and private groups on these matters;

(c) To conduct 3. Conduct studies and investigations of problems pertaining to the other segments of the maritime economy;

(d) To conduct 4. Conduct studies and investigations of marine pollution in cooperation with the State Water Control Board and the Department of Health and make the resulting data and possible corrective their recommendations available to the appropriate agencies;

(e) To conduct 5. Conduct hydrographic and biological studies of the Chesapeake Bay and the , its tributaries thereof , and all the tidal waters of the Commonwealth and the contiguous waters of the Atlantic Ocean;

(f) To engage 6. Engage in research in the marine sciences;

(g) To make 7. Conduct such special studies and investigations concerning the foregoing these subjects as it may be requested to do by the Governor; and

(h) To engage 8. Engage in research and provide training, technical assistance and advice to the Board on Conservation and Development of Public Beaches on erosion along tidal shorelines, the Soil and Water Conservation Board on matters relating to tidal shoreline erosion , and to other agencies upon request.

The above These studies shall include consideration of the seafood and other marine resources including , such as the waters, bottoms, shore lines, tidal wetlands, and beaches , and all phenomena and problems matters related to marine waters and the means by which these marine resources might be conserved, developed and replenished.

Drafting Note: Language in the first paragraph is stricken as it is unnecessary since Title 23 contains the enabling statute.

§ 28.1-196. 28.2-1101. Use of services of other agencies; solicitation, etc., of funds; taking fish and other marine organisms.— A. In conducting its studies and investigations under § 28.1-195 28.2-1100, the Institute is authorized to obtain and make use of the services of any agency;

public or private. The Institute is further authorized, with the prior written approval of the Governor and subject to any other provisions of 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 work and cooperate with appropriate state agencies and with similar agencies and institutions in other states and the United States in conducting the work authorized hereby: may:

1. Use the services of any public or private agency;
2. With the prior written approval of the Governor and subject to other provisions of law, solicit, accept and use funds available from any public or private source; and
3. Cooperate with appropriate state agencies and with similar agencies and institutions in other states and the federal government.

B. The Institute, its officers, agents, and employees, or persons operating under its direction may take or cause to be taken for scientific purposes, any fish, shellfish or other marine organism at any time from the waters of Virginia, and with the consent of the Marine Resources Commission, may cause or permit to be sold such fishes or parts of fishes so taken fish, shellfish or marine organisms or parts thereof as may not be necessary for such scientific purposes.

Drafting Note: Stricken language has been presented in list form. The striking of the word "fishes" reflects the new definition which distinguishes between finfish, shellfish and marine organism.

§ 28.1-107. Repealed by Acts 1970, c. 204.--

§ 28.1-107.1. Repealed by Acts 1984, c. 137.--

§ 28.1-108. Expired.--

§ 28.1-109. Repealed by Acts 1984, c. 734.--

§ 28.1-200. 28.2-1102. Destroying, etc., property of Institute a misdemeanor.—It shall be unlawful and constitute a Class 1 misdemeanor for anyone without authority to destroy, remove, damage, or molest any property of the Institute.

Drafting Note: No change in the law.

§ 28.1-201. Reserved.--

Title 3.1

CHAPTER 11 25.3.

VIRGINIA MARINE PRODUCTS BOARD.

CHAPTER DRAFTING NOTE: The Virginia Marine Products Board, which currently appears as Chapter 11 of Title 28.1, has been moved to Title 3.1 (Agriculture). The Board is within the Department of Agriculture and Consumer Services and is treated as an agricultural commodity board. While no changes have been made in the duties and responsibilities of the Board, proposed § 3.1-684.60 authorizes the Board to hold meetings in any seafood-producing area of the state. Current law requires the Board to meet in either Tidewater or Richmond.

§ 28.1-230. 3.1-684.59. Virginia Marine Products Commission continued as Virginia Marine Products Board continued ; composition; appointment of members; terms ; chairman; executive secretary .— A. The Virginia Marine Products Commission Board within the Department of Agriculture and Consumer Services is continued and shall hereafter be known as the Virginia Marine Products Board . The Marine Products Board shall consist of eleven members representative of the seafood industry of this Commonwealth. Members of the Marine Products Board shall be appointed by the Governor from among those persons who earn their livelihood from the seafood industry. One member of the Marine Products Board shall be involved in the Virginia menhaden fishery and all members shall be predominantly dependent upon the seafood industry for their livelihood . The members of the Marine Products Board shall serve for terms of three years, provided that beginning with the first appointment, five members shall be appointed for terms of one year, three members for terms of two years and three members for

terms of three years *three-year terms* . No member shall be eligible for appointment to more than two consecutive three-year terms. ~~The first terms hereunder shall commence July 1, 1979.~~

~~§ 28.1-231. Chairman. B. The Marine Products Board shall elect one of its members as chairman, whose term shall be three years or until his successor is elected.~~

~~§ 28.1-237. Executive secretary and other employees; bonds. C. The Marine Products Board may appoint an executive secretary and such other employees as may be necessary at salaries to be fixed by the Marine Products Board, subject to the provisions of Chapter 10 (§ 2.1-110 et seq.) of Title 2.1. All employees handling money under this chapter shall be required to furnish surety bonds.~~

Drafting Note: Proposed § 3.1-684.59 combines existing §§ 28.1-230, 28.1-231 and 28.1-237. In subsection A redundant language is stricken and the reference to initial staggered terms is removed since it is unnecessary. Language in subsection C requiring bonding is stricken since bonding requirements are specified in Chapter 2 (§ 2.1-11.1 et seq.) of Title 2.1.

~~§ 28.1-232. 3.1-684.60. Expenses of members; principal office; place of meetings.—The members of the Marine Products Board shall serve without compensation, but shall be eligible for reimbursement for actual expenses incurred in attending meetings of the Marine Products Board. The Marine Products Board's office shall be located in Tidewater Virginia , and all meetings shall be held either in Tidewater Virginia or in the City of Richmond in seafood-producing areas of the Commonwealth .~~

Drafting Note: Language is added which gives the agency the flexibility to hold meetings in areas where the seafood industry is located.

~~§ 28.1-233. Administration of funds.—All funds collected and allocated from marine fisheries license fees shall be appropriated to and administered by the Virginia Marine Products Board.~~

Drafting Note: This section is stricken and incorporated into proposed § 3.1-684.63.

~~§ 28.1-234. 3.1-684.61. Function and purpose Purpose and authority of Marine Products Board.—The Marine Products Board shall (i) plan and conduct marketing, educational and promotional campaigns and programs for Virginia marine products, (ii) carry on research and testing programs and (iii) conduct activities relating to the catching, processing, conservation and marketing of Virginia marine products and is authorized to . The Marine Products Board may investigate, study and formulate recommendations with regard to the regarding regulation, conservation and management of marine resources of the State Commonwealth .~~

Drafting Note: No change in the law.

~~§ 28.1-235. 3.1-684.62. Contracts, expenditures, etc., to effectuate purposes of chapter; debts ; etc., not liabilities of Commonwealth .—The Marine Products Board may make contracts ; and expend money of from the Virginia Marine Products Fund appropriated to the Marine Products Board; and do whatever it deems to be necessary to effectuate carry out the purposes of this chapter. The contracts, debts and liabilities of the Marine Products Board shall not be an obligation of the Commonwealth, but shall be met utilizing the sums paid into the Virginia Marine Products Fund and appropriated to its use .~~

Drafting Note: No change in the law.

~~§ 28.1-238. 3.1-684.63. Creation and administration of Virginia Marine Products Fund ; continued .— A. The " Virginia Marine Products Fund " is hereby continued and hereinafter referred to as the Fund . Such fund is appropriated to The Fund shall be administered by the Virginia Marine Products Board and shall be used exclusively for the administration of this chapter, including payment for personal services and expenses of employees and agents of the Marine Products Board, rent, services, materials and supplies necessary and useful to effectuate the purposes and objectives of this chapter . The Fund shall consist of moneys collected and allocated from marine fisheries license fees required under Subtitle II of Title 28.2 which shall be deposited in the state treasury to the credit of the Fund. The unexpended balance of the Virginia Marine Products Fund at the end of each biennium shall not be transferred or revert to the general fund of the state treasury. All revenues which are allocated to the Marine Products Board, as provided in § 28.1-233, shall be credited to the Virginia Marine Products Fund.~~

~~§ 28.1-239. How moneys expended.—All The disbursement of moneys allocated and appropriated by this chapter shall be expended by the Virginia Marine Products Board from the Fund shall be on warrants of the Comptroller or the State Treasurer issued on vouchers signed~~

by the duly authorized officer of the Virginia Marine Products Board.

Drafting Note: Proposed § 3.1-684.63 consolidates existing §§ 28.1-233, 28.1-238 and 28.1-239.

~~§ 28.1-236.~~ 3.1-684.64. Cooperation with other organizations.—The Marine Products Board may cooperate with other state, regional and national seafood organizations in research, advertising, publicity, education, and other means of promoting the sale and use of seafood, and may expend moneys of the Virginia Marine Products Fund for such ~~purpose purposes~~.

Drafting Note: No change in the law.

Subtitle III.

Habitat.

CHAPTER 12.

SUBMERGED LANDS.

CHAPTER DRAFTING NOTE: Chapter 12 contains those provisions related to the management of state-owned submerged lands which appear in Title 62.1. This chapter is divided into two articles. The first article deals with the Marine Resources Commission's public trust and proprietary responsibilities over submerged lands and emergent islands. Existing § 62.1-3 has been reorganized into four new sections. The first of these (§ 28.2-1203) sets out those statutorily authorized activities which may occur in and upon submerged lands. The second (§ 28.2-1204) establishes the Commissions' authority to regulate uses of the submerged lands. The third (§ 28.2-1205) sets forth the criteria to be used by the MRC in determining whether to grant or deny a permit. The fourth (§ 28.2-1206) contains all the language related to permit fees and regulations that are currently specified in the Code.

The second article sets out the enforcement procedures and penalty provisions. Existing § 62.1-194.1:11 has been moved from Chapter 20 (Miscellaneous Offenses) because it specifically references the MRC's authority to remove obstructions from state waters. The section (§ 28.2-1212) granting the MRC authority to issue notes to comply and stop work orders, require restoration, and assess penalties and civil charges comprises the bulk of this article. These provisions are currently set only in the tidal wetlands chapter and apply to submerged lands and sand dunes by cross-reference. To avoid any confusion as to the applicability of this authority, the specific provisions have been set out in this chapter as well as Chapter 14 (Coastal Primary Sand Dunes).

Article 1.

Ownership and Uses of Submerged Lands.

~~§ 62.1-1.~~ 28.2-1200. Ungranted beds of bays, rivers, creeks and shores of the sea to remain in common.—All the beds of the bays, rivers, creeks and the shores of the sea within the jurisdiction of ~~this the~~ Commonwealth, and not conveyed by special grant or compact according to law, shall ~~continue and~~ remain the property of the Commonwealth of Virginia; and may be used as a common by all the people of the Commonwealth for the purpose of fishing and fowling, and of taking and catching oysters and other shellfish; ~~subject to the provisions of Title 28.1, and any future laws that may be passed by the General Assembly.~~ ~~And no~~ No grant shall hereafter be issued by the State Librarian to pass any estate or interest of the Commonwealth in any natural oyster bed, rock, or shoal, whether ~~the bed, rock or shoal shall ebb or not it ebbs~~ bare or not.

Drafting Note: No change in the law. Unnecessary language has been removed and corrections to sentence structure have been made.

~~§ 41.1-4.1.~~ 28.2-1201. Unappropriated islands which rise from common lands.—A. All islands which rise ~~from either~~ by natural or artificial causes from lands which are a common under ~~§ 62.1-1,~~ 28.2-1200 shall remain in public ownership and shall continue as a common. This section shall not apply to accretions to privately owned lands or islands, whether or not they are used as commons.

B. Any unappropriated island or land ~~now existing or hereafter~~, whether currently in existence or subsequently created, that hereafter abuts a barrier island of the ~~eastern shore~~ Eastern Shore is hereby dedicated as a natural area preserve within the meaning of § 10.1-213.

Drafting Note: Because the Commission has jurisdiction and management responsibilities over these beds, this section is being moved into Title 28.2. Language has been revised, but there is no change in the law.

§ 62.1-2. 28.2-1202. Rights of owners to extend to mean low-water mark.— A. Subject to the provisions of § 62.1-1 § 28.2-1200, the limits or bounds of the several tracts of land lying on such the bays, rivers, creeks and shores within the jurisdiction of the Commonwealth, and the rights and privileges of the owners of such lands, shall extend to the mean low-water mark; but no farther, unless except where a creek or river, or some part thereof, is comprised within the limits of a lawful survey.

B. For the purposes of this section, "lawful survey" shall mean means the boundaries of any land, including submerged lands, held under a special grant or compact as required by § 62.1-1 § 28.2-1200, whenever such boundaries shall have having been determined by generally accepted surveying methods and procedures and evidenced by a plat or map thereof recorded in the circuit court clerk's office of the court wherein deeds are recorded in of the county or city wherein such in which the land lies.

Drafting Note: The existing paragraphs have been designated as separate subsections, cross-references have been changed to reflect new section numbers, and unnecessary language has been removed. While the language has been revised, there is no change in the law.

§ 62.1-3. Authority required for use of subaqueous beds.—It shall be unlawful and constitute a Class 1 misdemeanor for anyone to build, dump, or otherwise trespass upon or over or encroach upon or take or use any materials from the beds of the bays and ocean, rivers, streams, creeks, which are the property of the Commonwealth, unless such act is pursuant to statutory authority or a permit by the Marine Resources Commission. Statutory authority is hereby conferred for the doing of such acts as are necessary for (i) the erection of dams, the construction of which has been authorized by proper authority; (ii) the uses of subaqueous beds authorized under the provisions of Title 28.1; (iii) the construction and maintenance of congressionally approved navigation and flood-control projects undertaken by the United States Army Corps of Engineers, United States Coast Guard, or other federal agency authorized by Congress to regulate navigation, navigable waters, or flood control; (iv) piers, docks, marine terminals and port facilities owned or leased by or to the Commonwealth or a political subdivision thereof; and (v) the placement of private piers for noncommercial purposes by owners of the riparian lands in the waters opposite such riparian lands, provided such private piers shall not extend beyond the navigation line or lawful private pier lines established by proper authority.

The Marine Resources Commission shall have the authority to issue permits for all other reasonable uses of state-owned bottomlands, including but not limited to, the taking and use of material, the placement of wharves, bulkheads, dredging and fill, by owners of riparian lands, in the waters opposite such riparian lands, provided that such wharves, bulkheads and fill shall not extend beyond any lawfully established bulkhead line.

The Marine Resources Commission is hereby authorized and empowered, but not in conflict with the United States Corps of Army Engineers, to establish bulkhead lines and lawful private pier lines on or over bays, rivers, creeks, streams and the shores of the ocean, to the extent owned by or subject to the jurisdiction of the Commonwealth for that purpose, and to issue and publish maps and plats showing such lines.

The Marine Resources Commission shall have the authority to issue permits for recovery of underwater historic property pursuant to this section and § 10.1-2214.

The permits issued by the Marine Resources Commission shall be in writing and shall specify such conditions, terms and royalties as the Marine Resources Commission deems appropriate.

In granting or denying any permit for the use of state-owned bottomlands, the Commission shall be guided in its deliberations by the provisions of Article XI, Section 1 of the Constitution of Virginia, and shall consider, among other things, the effect of the proposed project upon other reasonable and permissible uses of state waters and state-owned bottomlands, its effect upon the marine and fisheries resources of the Commonwealth, its effect upon the wetlands of the Commonwealth, except when its effect upon said wetlands has been or will be determined under the provisions of Chapter 2.1 (§ 62.1-13.1 et seq.) of this title, and its effect upon adjacent or nearby properties, its anticipated public and private benefits, and, in addition thereto, the Commission shall give due consideration to standards of water quality as established by the State Water Control Board.

No permit for a marina or boatyard for commercial use shall be granted unless the owner or other applicant prior to issue presents a plan for sewage treatment or disposal facilities which is approved by the State Department of Health. The Marine Resources Commission shall consult with any state agency, including the Virginia Institute of Marine Science, the Water Control Board, the State Department of Transportation and the State Corporation Commission whenever the decision of the Marine Resources Commission on an application for a permit relates to or affects the particular concerns or activities of other state agencies.

A fee of \$25 shall be paid for issuing each such permit as charge for such permit, but if the cost for the project or facility is to be more than \$10,000, the fee paid shall be \$100. A fee of twenty-five dollars shall be paid for issuing each permit for recovery of underwater historic property. When the activity or project for which a permit is requested involves the removal of bottom material, the application shall so state and the Marine Resources Commission shall specify in each such permit issued a royalty of not less than twenty cents per cubic yard for new removal; provided that no royalty for the removal of bottom material shall exceed the amount of sixty cents per cubic yard of material removed. In fixing the amount of royalty to be paid for removal of bottom material, the Commission shall consider, among other things, the primary and secondary purposes of the removal of bottom material, whether the material has any commercial value and whether it will be used for any commercial purpose, the use to be made thereof and any public benefit or any adverse effect upon the public in connection with the removal or disposal, the physical characteristics of the material removed, and the expense of its removal and disposal. Nothing contained herein shall preclude the imposition of additional assessments not to exceed an amount treble the normal permit fee and royalties provided above where it appears that the project or facility for which an application for permit is made has been completed or work thereon already commenced at the time such application is made. Bottom material removed attendant to maintenance dredging shall be exempt from any royalty.

The Virginia Department of Transportation shall be exempt from all such fees and royalties otherwise assessable pursuant to this section.

All counties, cities and towns of the Commonwealth shall be exempt from permit fees and royalties other than the permit issuing fee; provided that a permit as required under this section be issued prior to the commencement of any of the work to be accomplished under said permit.

All royalties or funds that are collected from such agreements or contracts shall be paid into the state treasury to the credit of the Special Public Oyster Rocks Replenishment Fund for the purposes of such fund. Expenditures and disbursements of all sums from such fund shall be made by the State Treasurer on warrant of the Comptroller issued on vouchers signed by such person or persons as shall be so authorized and designated by the Marine Resources Commission.

All permits heretofore issued pursuant to this section or prior § 62-2.1 are hereby ratified, validated and confirmed.

Any person aggrieved by a decision of the Marine Resources Commission pursuant to this section shall have the right to judicial review of said decision as provided in § 28.1-33.

Drafting Note: While § 62.1-3 is being stricken, nearly all of its provisions are being retained in the following four new sections: § 28.2-1203 includes all of the provisions of the existing first paragraph; § 28.2-1204 includes all of the provisions of the existing second, third, and fourth paragraphs relating to the Commission's authority over uses of state-owned bottomlands; § 28.2-1205 includes all of the provisions of the existing fifth, sixth, seventh, and thirteenth paragraphs relating to permits for the use of state-owned bottomlands; and § 28.2-1206 includes most of the provisions of the existing eighth, ninth, tenth, and eleventh paragraphs relating to permit fees, royalties and exemptions. The provisions of the twelfth (next to last) paragraph have been deleted because they are unnecessary. While these four new sections make minor language revisions, there is no change in the law.

§ 28.2-1203. *Unlawful use of subaqueous beds; penalty.*—A. It shall be unlawful for any person to build, dump, trespass or encroach upon or over, or take or use any materials from the beds of the bays, ocean, rivers, streams, or creeks which are the property of the Commonwealth, unless such act is performed pursuant to a permit issued by the Commission or is necessary for the following:

1. *Erection of dams, the construction of which has been authorized by proper authority;*
2. *Uses of subaqueous beds authorized elsewhere in this Title;*

3. Construction and maintenance of congressionally approved navigation and flood-control projects undertaken by the United States Army Corps of Engineers, United States Coast Guard, or other federal agency authorized by Congress to regulate navigation, navigable waters, or flood control;

4. Construction of piers, docks, marine terminals, and port facilities owned or leased by or to the Commonwealth or any of its political subdivisions; or

5. Placement of private piers for noncommercial purposes by owners of the riparian lands in the waters opposite those lands, provided that the piers do not extend beyond the navigation line or private pier lines established by the Commission or the United States Army Corps of Engineers.

B. A violation of this section is a Class 1 misdemeanor.

Drafting Note: No change in the law. This section reorganizes the provisions of the first paragraph of existing § 62.1-3 into two subsections. The statutorily authorized uses of state-owned bottomlands have been set out as subdivisions 1 through 5 of subsection A.

§ 28.2-1204. Authority of Commission over submerged lands.—The Commission is authorized to:

1. Issue permits for all reasonable uses of state-owned bottomlands not authorized under subsection A of § 28.2-1203, including but not limited to, dredging, the taking and use of material, and the placement of wharves, bulkheads, and fill by owners of riparian land in the waters opposite their lands, provided such wharves, bulkheads, and fill do not extend beyond any lawfully established bulkhead lines;

2. Issue permits to recover underwater historic property pursuant to §§ 10.1-2214 and 28.2-1203; and

3. Establish bulkhead and private pier lines on or over the bays, rivers, creeks, streams, and shores of the ocean which are owned by or subject to the jurisdiction of the Commonwealth for this purpose, and to issue and publish maps and plats showing these lines; however, these lines shall not conflict with those established by the United States Army Corps of Engineers.

Drafting Note: Reorganizes and incorporates all of the provisions of the second, third, and fourth paragraphs of existing § 62.1-3. While the language has been revised, there is no change in the law.

§ 28.2-1205. Permits for the use of state-owned bottomlands.—A. When determining whether to grant or deny any permit for the use of state-owned bottomlands, the Commission shall be guided in its deliberations by the provisions of Article XI, Section I of the Constitution of Virginia. In addition to other factors, the Commission shall also consider the public and private benefits of the proposed project and its effect on the following:

1. Other reasonable and permissible uses of state waters and state-owned bottomlands;

2. Marine and fisheries resources of the Commonwealth;

3. Tidal wetlands, except when this has or will be determined under the provisions of Chapter 13 (§ 28.2-1300 et seq.) of this Title;

4. Adjacent or nearby properties; and

5. Water quality.

B. The Commission shall consult with other state agencies, including the Virginia Institute of Marine Science, the State Water Control Board, the Virginia Department of Transportation, and the State Corporation Commission, whenever the Commission's decision on a permit application relates to or affects the particular concerns or activities of those agencies.

C. No permit for a marina or boatyard for commercial use shall be granted until the owner or other applicant presents to the Commission a plan for sewage treatment or disposal facilities which has been approved by the State Department of Health.

D. All permits issued by the Commission for the use of state-owned bottomlands or to recover underwater historic property shall be in writing and specify the conditions, terms and

royalties which the Commission determines are appropriate.

E. Any person aggrieved by a decision of the Commission under this section is entitled to judicial review in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

Drafting Note: Reorganizes and incorporates all of the provisions found in the fifth, sixth, seventh, and thirteenth paragraphs of existing § 62.1-3. Although the language has been revised and cross-references have been changed to reflect new section and chapter numbers, there is no change in the law.

§ 28.2-1206. Permit fees; royalties; exemptions.—A. The fee paid to the Commission for issuing each permit to recover underwater historic property shall be twenty-five dollars.

B. The fee paid to the Commission for issuing each permit to use state-owned bottomlands shall be twenty-five dollars, but if the cost of the project is to exceed \$10,000, the fee paid shall be \$100.

C. When the activity or project for which a permit is requested will involve the removal of bottom material, the application shall indicate this fact. If granted, the permit shall specify a royalty of not less than twenty cents, nor more than sixty cents, per cubic yard of bottom material removed. In fixing the amount of the royalty, the Commission shall consider, among other factors, the following:

1. The primary and secondary purposes for removing the bottom material;
2. Whether the material has any commercial value and whether it will be used for any commercial purpose;
3. The use to be made of the removed material and any public benefit or adverse effect upon the public which will result from the removal or disposal of the material;
4. The physical characteristics of the material to be removed; and
5. The expense of removing and disposing of the material.

D. Where it appears that the project or facility for which a permit application is made has been completed or work thereon commenced at the time application is made, the Commission may impose additional assessments not to exceed an amount of three times the normal permit fee and royalties.

E. Bottom material removed attendant to maintenance dredging shall be exempt from any royalty. The Virginia Department of Transportation shall be exempt from all fees and royalties otherwise assessable under this section. All counties, cities, and towns of the Commonwealth shall pay the required permit fee but shall be exempt from all other fees and royalties assessable under this section if the permit is issued prior to the commencement of any work to be accomplished under the permit.

F. All fees and royalties collected pursuant to this section shall be paid into the state treasury to the credit of the Special Public Oyster Rock Replenishment Fund.

Drafting Note: Reorganizes and incorporates nearly all of the provisions of paragraphs eight through eleven of existing § 62.1-3. The final sentence in paragraph eleven has been omitted because it is unnecessary and duplicative of language in existing § 28.1-94.1 (new § 28.2-542). While the language has been revised, there is no change in the law.

§ 62.1-3.02. When Commissioner may approve permit for encroachment on subaqueous beds without notice to or approval by other state agency.—Any application for a permit to trespass upon or over or encroach upon the subaqueous beds which are the property of the Commonwealth, which meets all of the following criteria may be approved by the Commissioner without notice to or approval by any other state agency, except that notice only shall have been given to the Virginia Institute of Marine Science:

- (a) The total cost of the project does not exceed \$50,000;
- (b) The application is not protested by any citizen nor objected to by any state agency;
- (c) The project is not a part of any project that will involve another Marine Resources

Commission permit; and

(d) The project constitutes a shore erosion control project recommended by the soil and water conservation district in which the project is located.

Drafting Note: This section is being stricken because its provisions are being combined with those of existing § 62.1-3.01 to form proposed § 28.2-1207.

~~§ 62.1-3.01. 28.2-1207. When Commissioner or authorized representative may Authority to approve permit permits for encroachment on subaqueous beds ; notice .— A. Any application for a permit to trespass upon or over or encroach upon the subaqueous beds which are the Commonwealth's property of the Commonwealth, which meets all the requirements of § 62.1-3 and meets the following criteria, may be approved by the Commissioner or his authorized representative if the application meets the requirements of §§ 28.2-1205 and 28.2-1206 and the following criteria are satisfied :~~

~~(a) 1. The total value of the project does not exceed \$50,000;~~

~~(b) Is 2. The application is not protested by any citizen nor or objected to by any state agency; and~~

~~(c) Is not a part of any project that will involve another Marine Resources Commission permit 3. The project for which the permit is sought will not require any other permit from the Commission .~~

B. If the permit application is for a shore erosion control project recommended by the soil and water conservation district in which the project is to be located and the criteria listed in subsection A of this section are satisfied, the Commission may, after giving notice of the application to the Virginia Institute of Marine Science, approve the application without giving notice to or awaiting the approval of any other state agency.

Drafting Note: This section combines the provisions of existing §§ 62.1-3.01 and 62.1-3.02. Subsection A contains the provisions of existing § 62.1-3.01 and subsection B contains the provisions of existing § 62.1-3.02. While the language has been revised, there is no change in the law.

~~§ 62.1-4. 28.2-1208. Granting easements in ; and or leasing of, the beds of certain waters.— A. The Marine Resources Commission may , with the approval of the Attorney General and the Governor, may grant easements in ; and may or lease ; the beds of the waters of the Commonwealth ; without outside of the Baylor Survey. Every such easement or lease may executed pursuant to this section shall be for a period not exceeding to exceed five years ; may include the right to renew the same for an additional period not exceeding five years each and shall specify the rent royalties and such other terms deemed expedient and proper. Such easements and leases may include the right to renew the same for an additional period not to exceed five years , and, in addition to any other rights, may authorize the grantees and lessees to prospect for and take from the bottoms covered thereby, oil, gas, and such other specified minerals and mineral substances as are therein specified; provided, that . However, no such easement or lease shall in any way affect or interfere with the rights vouchsafed to the people of the Commonwealth concerning fishing, fowling, and the catching and taking of oysters and other shellfish ; in and from the leased bottoms so leased, and or the waters covering the same above .~~

B. All easements granted and leases made under the authority granted by pursuant to this section ; shall be executed for, and in the name and for and on behalf of , the Commonwealth ; by the Attorney General ; and shall be countersigned by the Governor.

C. All rents or royalties collected from such easements or leases shall be paid into the state treasury to the credit of the Special Public Oyster Rocks Rock Replenishment Fund for the purposes of such fund . Expenditures and disbursements of all sums from such fund shall be made as provided in § 62.1-3 .

The D. Prior to December 1 of each year, the Commissioner of Marine Resources and the Attorney General shall make reports to the General Assembly of all such easements granted or leases so made, such reports to be made on or before December 1 preceding the convening of each regular session thereof on all easements and leases executed pursuant to this section during the preceding twelve months .

E. The Commission shall, in cooperation with the Division of Mineral Resources of the

Department of Mines, Minerals and Energy and with the assistance of affected state agencies, departments and institutions, develop ~~maintain~~ a State Subaqueous Minerals Management Plan which shall supplement the State Minerals Management Plan set forth in § 2.1-512.1. The Subaqueous Minerals Management Plan shall include provisions for the holding of public hearings and public advertising for competitive bids or proposals for mineral leasing and extraction activities. The Marine Resources Commission shall promulgate any regulations it deems necessary to develop the Subaqueous Minerals Management Plan.

Drafting Note: Reorganizes the provisions of existing § 62.1-4 into five subsections, removes unnecessary language, and deletes the final sentence because it is duplicative of the authority granted to the Commission in proposed § 28.2-103. In proposed subsection E, "develop" has been stricken and replaced with "maintain" because the Commission has already developed the State Subaqueous Minerals Management Plan. While the language has been revised, there is no change in the law.

~~§ 62.1-3.03. 28.2-1209. Maintenance or removal of structures erected upon or over state-owned subaqueous bottoms.—Any person, firm, or corporation, constructing or erecting any structure upon or over state-owned subaqueous bottoms, or their grantees or assignees for value, shall be responsible for the maintenance or removal of such the structure upon its abandonment or its falling into a state of disrepair. except that However, public service corporations may abandon cables, conduit and pipes upon prior approval of the Marine Resources Commission. This responsibility is hereby imposed upon grantees or assignees for value of those persons, firms, or corporations which erect or construct such structure.~~

Drafting Note: No change in the law. The words "firm, or corporation" were stricken because the Code-wide definition of person already includes these entities. The final sentence of existing § 62.1-3.03 has been modified and relocated as a clause in the first sentence.

~~§ 62.1-5. Repealed by Acts 1987, c. 488.~~

Article 2.

Enforcement and Penalties.

~~§ 62.1-194.1-1. 28.2-1210. Removal of obstructing obstructions or hazardous property from state waters.—Whenever any wharf, pier, piling, bulkhead or boat is found in or upon the bays, oceans, rivers, streams or creeks of the Commonwealth in a state of abandonment or in such disrepair as to constitute a hazard or obstruction to the lawful use of such waterway, the Marine Resources Commission shall be empowered to may ascertain the lawful owner of such the property and have the owner require him to repair or remove the property from the waters of the Commonwealth. If the identity or whereabouts location of the lawful owner be remains unknown and unascertainable after a diligent search and after lawful the posting of proper notice to at the last known address of any known the owner, if known, the Marine Resources Commission may have the property removed from the waterways of the Commonwealth after giving notice by publication once in a newspaper of general circulation in the area where such property is located.~~

Drafting Note: This section is being moved to Title 28.2 because it directly references certain powers of the Commission. While the language has been revised, there is no change in the law.

~~§ 62.1-3.1. 28.2-1211. Injunction against violation of § 62.1-3. 28.2-1203. — Upon application of the Marine Resources Commission to a The circuit court of record of the city or county wherein in which any act is done or facility or project is found, which is unlawful under the provision provisions of § 62.1-3 and upon reasonable notice and after hearing, the court § 28.2-1203, shall have the authority, upon application by the Commission, reasonable notice, and after a hearing, to enjoin any further unlawful act and to direct the person guilty thereof party or the Marine Resources Commission, at the costs cost of the person found to have acted unlawfully guilty party, to remove, tear down or otherwise take such other steps as are necessary to protect and preserve the subject property of the Commonwealth.~~

Drafting Note: No change in the law. Cross-references have been changed and language has been revised.

~~§ 62.1-13.16:1. 28.2-1212. Reporting, site inspections and notice to comply; Commission or wetlands board to issue stop work order or restoration order Monitoring, inspections, compliance and restoration.—A. With respect to permits required pursuant to this chapter, Chapter 1 (§ 62.1-1 et seq.) or Chapter 2.2 (§ 62.1-13.21 et seq.) of this title, the The Commissioner or Board Chairman may require of the person responsible for carrying out the provisions of the permit~~

such permittees to implement monitoring and reports as they may reporting procedures he believes are reasonably deemed necessary to safeguard the property and interests of the Commonwealth protected by this chapter . With respect to any reported activity not authorized by the aforementioned chapters or with respect to the violation of any permit issued pursuant thereto, they may direct

B. The Commissioner may require such on-site inspections as are deemed he believes are reasonably necessary to determine whether the measures required by the permit are being properly performed, or whether the provisions of the aforementioned chapters this chapter are being violated. Prior to conducting such inspections, the Commissioner shall provide notice shall be provided to the resident owner, occupier or operator ; Such resident owner, occupier or operator , who shall be given an opportunity to accompany the site inspector. If it is determined that there is a failure to comply with the permit, the Commissioner or Board Chairman shall serve notice upon the person who is responsible for carrying out the provisions of the permit permittee at the address specified by him in his permit application or by delivery at the site of the permitted activities to the person supervising such those activities and designated in the permit to receive such the notice. Such The notice shall set forth describe the measures needed for compliance and the time within which such these measures shall be completed. Upon failure Failure of such the person to comply within the specified period ; he may be deemed to be in is a violation of this section and upon conviction shall be subject to the penalties provided in this chapter .

B. C. Upon receipt of a sworn complaint of a substantial violation of this chapter ; Chapter F (§ 62.1-1 et seq.) or Chapter 2.2 (§ 62.1-13.21 et seq.) of this title from the designated enforcement officer, the Commissioner or Board Chairman may, in conjunction with or subsequent to a notice to comply as specified in subsection A B of this section, issue an order requiring all or part of the activities on the site to be stopped until the specified corrective measures have been taken. In the case of an activity not authorized by the aforementioned chapters under this chapter or where the alleged permit noncompliance is causing, or is in imminent danger of causing, significant harm to the subaqueous bottoms ; wetlands or the coastal primary sand dunes protected by the aforementioned chapters this chapter , such an the order may be issued without regard to whether the person has been issued a notice to comply as specified in subsection A B of this section. Otherwise, such an the order may be issued only after the permittee has failed to comply with such a the notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority, permit holder or the Commission, permittee, or the resident owner, occupier , or operator for appropriate relief to the circuit court of the jurisdiction wherein where the violation was alleged to have occurred. Upon completion of corrective action, the order shall immediately be lifted. Nothing in this section shall prevent the Commissioner or Board Chairman from taking any other action specified in § 62.1-13.16.

C. D. Upon receipt of a sworn complaint of a substantial violation of this chapter ; Chapter F (§ 62.1-1 et seq.) or Chapter 2.2 (§ 62.1-13.21 et seq.) of this title from a designated enforcement officer, the Commission or a wetlands board may order that the affected site be restored to predevelopment conditions its previous condition if the Commission or board deems finds that restoration is necessary to recover lost resources or to prevent further damage to resources. Such an The order shall specify the restoration necessary and establish a reasonable time for its completion. Such orders The order shall be issued only after a hearing with at least thirty days notice to the affected person of the hearing's time, place and purpose thereof, and they shall become effective immediately upon issuance by the Commission or board . The Commission or board shall require such any scientific monitoring plans as plan it deems believes is necessary to ensure that such projects result in the successful reestablishment of wetlands, restoration of subaqueous bottoms or coastal primary sand dunes protected by the aforementioned chapters this chapter and may require that a prepaid contract acceptable to the Commission or board be in effect for the purposes purpose of carrying out the scientific monitoring plan. In addition, the The Commission or board may also require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it securing to the Commonwealth compliance with the conditions set forth in the restoration order. The appropriate court, upon petition by the Commission or board , shall have authority to may enforce any such restoration order by injunction, mandamus , or other appropriate remedy. Failure to complete the required restoration shall constitute is a violation of this chapter.

D. E. The duties of the Commissioner or the Board Chairman prescribed in under this section may be delegated to their his respective designees designee ; however, such respective designees the designee shall not be those persons who are also be a designated as enforcement officers officer .

Drafting Note: Existing § 62.1-13.16:1 applies to subaqueous beds, wetlands, and coastal primary sand dunes. Because proposed Chapter 12 relates only to subaqueous beds, all references to wetlands boards, wetlands, and coastal primary sand dunes have been deleted. Existing § 62.1-13.16:1, in modified form, also appears as proposed §§ 28.2-1317 and 28.2-1417. While this change results in some duplication, it will be more convenient and less confusing for users of the Code. No change in the law.

§ ~~62.1-9.1~~ 28.2-1213. Penalties.—A. Without limiting the remedies which may be obtained ~~in~~ *under* this chapter, any person who violates any provision of this chapter or who violates or fails, neglects , or refuses to obey any Commission notice, order, rule, regulation , or permit condition authorized by this chapter shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$25,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred for the purpose of abating environmental damage to ; or ~~the restoration of wetlands~~ *restoring state-owned bottomlands* therein, in such a manner as the court may, by order, direct, except that where the violator is the county, city, or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

B. Without limiting the remedies which may be obtained ~~in~~ *under* this chapter, and with the consent of any person who has violated any provision of this chapter or who has violated or failed, neglected , or refused to obey any Commission order, rule, regulation , or permit condition authorized by this chapter, the Commission may provide, in an order issued by the Commission against such person, for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Civil charges shall be in lieu of any appropriate civil penalty which could be imposed under subsection A of this section. Civil charges may be in addition to the cost of any restoration ordered by the Commission ~~or a wetlands board~~ .

Drafting Note: The reference to the wetlands board is being stricken because the Commission has sole jurisdiction over the use of subaqueous beds. The civil penalties assessable under existing § 62.1-9.1 are for improper conduct relating to the use of state-owned bottomlands (as opposed to wetlands). Yet, when a court in its discretion orders that these penalties be paid to the county, city, or town in which the violation occurred, the moneys may only be used to abate environmental damage to or restore “wetlands” in the jurisdiction. So that the actual damage caused by the violation can be addressed through the use of these penalties, the term “wetlands” is stricken and replaced with “state-owned bottomlands.”

CHAPTER 13.

WETLANDS.

CHAPTER DRAFTING NOTE: Chapter 13 contains all of the provisions relating to tidal wetlands which are currently located in Chapter 2.1 of Title 62.1. This chapter is divided into four articles. The first article consists of the general provisions including definitions and those powers and duties of the Marine Resources Commission specifically related to the regulation of activities in tidal wetlands. Article 2 includes the Model Wetlands Zoning Ordinance and provisions relating to the establishment of local wetlands boards and their responsibilities. Article 3 sets forth the permit requirements and public content review procedures to be followed by the Marine Resources Commission and the local wetlands boards. Article 4 contains the enforcement and penalty provisions. The major change in this chapter is the incorporation of much of the policy language under the powers and duties of the Marine Resources Commission and local wetlands boards.

Article 1.

General Provisions.

§ ~~62.1-13.2~~ 28.2-1300. Definitions.— For the purposes of *As used in this chapter, the following words shall have the meanings respectively ascribed to them unless the context requires a different meaning :*

(a) ~~“Commission” means the Virginia Marine Resources Commission.~~

(b) ~~“Commissioner” means the Commissioner of Marine Resources.~~

(c) ~~“Person” means any corporation, association, or partnership, one or more individuals, or any unit of government or agency thereof.~~

(d) "Tidewater Virginia" means 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, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York; and the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach and Williamsburg.

(e) "Governmental activity" means any or all of the services provided by the Commonwealth or a county, city or town to its citizens for the purpose of maintaining public facilities and shall include but shall not be limited to such services as constructing, repairing and maintaining roads, sewage facilities, supplying and treating water, street lights, and construction of public buildings.

(f) "Vegetated wetlands" means all that land lying between and contiguous to mean low water and an elevation above mean low water equal to the factor one and one-half times the mean tide range at the site of the proposed project in the county, city or town in question; and upon which is growing on July 1, 1972, or grows thereon subsequent thereto, any one or more of the following: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), saltgrass (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* spp.); sea lavender (*Limonium* spp.); marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), sea oxeye (*Borrichia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile edentula*), southern wildrice (*Zizaniopsis miliacea*), cattails (*Typha* spp.), three-squares (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex* spp.), yellow pond lily (*Nuphar* sp.), marsh fleabane (*Pluchea purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), smartweeds (*Polygonum* sp.), arrowhead (*Sagittaria* spp.), sweet flag (*Acorus calamus*), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*) and switch grass (*Panicum virgatum*).

The vegetated wetlands of Back Bay and its tributaries and the vegetated wetlands of the North Landing River and its tributaries shall mean all marshes subject to flooding by normal tides, including wind tides, provided this shall not include hurricane or tropical storm tides and upon which one or more of the following vegetation species are growing or grows thereon subsequent to the passage of this amendment: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), black needlerush (*Juncus roemerianus*), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), cattails (*Typha* spp.), three-squares (*Scirpus* spp.), dock (*Rumex* sp.), smartweed (*Polygonum* sp.), yellow pond lily (*Nuphar* sp.), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), arrowhead (*Sagittaria* sp.), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*) and switch grass (*Panicum virgatum*).

(g) "Wetlands board" or "Board" means a board created as provided in § 62.1-13.6.

(h) "Wetlands zoning ordinance" means that ordinance set forth in § 62.1-13.5.

(i) "County, city or town" shall mean the governing body of such county, city or town.

(j) "Back Bay and its tributaries" means the following as shown on the U.S. Geological Survey Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the Virginia-North Carolina state line; Capsies Creek north of the Virginia-North Carolina state line; Deal Creek; Devil Creek; Nawney Creek; Redhead Bay, Sand Bay, Shipps Bay, North Bay, and the waters connecting them; Beggars Bridge Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black Gut; and all coves, ponds and natural waterways adjacent to or connecting with the above-named bodies of water.

(k) "North Landing River and its tributaries" means the following as based on United States Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River from the Virginia-North Carolina line to Virginia Highway 165 at North Landing Bridge; the Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge; all named and unnamed streams, creeks and rivers flowing into the North Landing River and the Chesapeake and Albemarle Canal except the following: West Neck Creek north of Indian River Road; Poctay River west of Blackwater Road; Blackwater River west of its forks located at a point approximately 6400 feet due west of the

point where the Blackwater Road crosses the Blackwater River at the village of Blackwater; Millbank Creek west of Blackwater Road.

(l) "Nonvegetated wetlands" means all that land lying contiguous to mean low water and which land is between mean low water and mean high water not otherwise included in the term "vegetated wetlands" as defined herein and also includes those unvegetated areas of Back Bay and its tributaries and the North Landing River and its tributaries subject to flooding by normal tides including wind tides but not including hurricane or tropical storm tides.

(m) "Wetlands" means both vegetated and nonvegetated wetlands.

"Back Bay and its tributaries" means the following, as shown on the United States Geological Survey Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the Virginia-North Carolina state line; Capsies Creek north of the Virginia-North Carolina state line; Deal Creek; Devil Creek; Nawney Creek; Redhead Bay, Sand Bay, Shippo Bay, North Bay, and the waters connecting them; Beggars Bridge Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black Gut; and all coves, ponds and natural waterways adjacent to or connecting with the above-named bodies of water.

"County, city, or town" means the governing body of the county, city, or town.

"Governmental activity" means any of the services provided by the Commonwealth or a county, city, or town to its citizens for the purpose of maintaining public facilities, including but not limited to, such services as constructing, repairing and maintaining roads; providing street lights and sewage facilities; supplying and treating water; and constructing public buildings.

"Nonvegetated wetlands" means unvegetated lands lying contiguous to mean low water and between mean low water and mean high water, including those unvegetated areas of Back Bay and its tributaries and the North Landing River and its tributaries subject to flooding by normal and wind tides but not hurricane or tropical storm tides.

"North Landing River and its tributaries" means the following, as shown on the United States Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River from the Virginia-North Carolina line to Virginia Highway 165 at North Landing Bridge; the Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge; and all named and unnamed streams, creeks and rivers flowing into the North Landing River and the Chesapeake and Albemarle Canal except West Neck Creek north of Indian River Road, Pocaty River west of Blackwater Road, Blackwater River west of its forks located at a point approximately 6400 feet due west of the point where Blackwater Road crosses the Blackwater River at the village of Blackwater, and Millbank Creek west of Blackwater Road.

"Vegetated wetlands" means lands lying between and contiguous to mean low water and an elevation above mean low water equal to the factor one and one-half times the mean tide range at the site of the proposed project in the county, city, or town in question, and upon which is growing any of the following species: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), saltgrass (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* spp.), sea lavender (*Limonium* spp.), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), sea oxeye (*Borrichia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile edentula*), southern wildrice (*Zizaniopsis miliacea*), cattail (*Typha* spp.), three-square (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex* spp.), yellow pond lily (*Nuphar* sp.), marsh fleabane (*Pluchea purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), smartweed (*Polygonum* sp.), arrowhead (*Sagittaria* spp.), sweet flag (*Acorus calamus*), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), or switch grass (*Panicum virgatum*).

"Vegetated wetlands of Back Bay and its tributaries" or "vegetated wetlands of the North Landing River and its tributaries" means all marshes subject to flooding by normal and wind tides, but not hurricane or tropical storm tides, and upon which is growing any of the following species: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), black needlerush (*Juncus roemerianus*), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), cattail (*Typha* spp.), three-square (*Scirpus* spp.), dock (*Rumex* sp.), smartweed (*Polygonum* sp.), yellow pond

lily (Nuphar sp.), royal fern (Osmunda regalis), marsh hibiscus (Hibiscus moscheutos), beggar's tick (Bidens sp.), arrowhead (Sagittaria sp.), water hemp (Amaranthus cannabinus), reed grass (Phragmites communis), or switch grass (Panicum virgatum).

"Wetlands" means both vegetated and nonvegetated wetlands.

"Wetlands board" or "board" means a board created pursuant to § 28.2-1303.

"Wetlands zoning ordinance" means the ordinance set forth in § 28.2-1302.

Drafting Note: No change in the law. Existing § 62.1-13.2 is being stricken and the definitions contained in it are being placed in proper form and alphabetical order in proposed § 28.2-1300. Definitions of the terms "Commission," "Commissioner," and "Tidewater Virginia" have already been included in the title-wide definition section (§ 28.2-100), and the term "Person" is already defined in § 1-13.19. To avoid duplication, they are not included in the proposed new section. Cross-references have been changed to reflect proposed section number changes, and unnecessary language in the definitions of "Nonvegetated wetlands," "Vegetated wetlands," and "Vegetated wetlands of Back Bay and its tributaries" has been removed.

~~§ 62.1-13.2:1. Repealed by Act 1974, c. 96.~~

~~§ 62.1-13.17. Commission may receive gifts, etc.—The Commission may receive gifts, grants, bequests, and devises of wetlands and of money which shall be taken and held for the uses prescribed by the donor, grantor, or testator and in accord with the purposes of this chapter. The Commission shall manage such wetlands in such a way as to maximize their ecological value and in accord with the purposes of this chapter.~~

Drafting Note: This section is being stricken and its provisions included under the Commission's powers and duties in proposed § 28.2-1301.

~~§ 62.1-13.1. Declaration of policy.—The Commonwealth of Virginia hereby recognizes the unique character of the wetlands, an irreplaceable natural resource which, in its natural state, is essential to the ecological systems of the tidal rivers, bays and estuaries of the Commonwealth. This resource is essential for the production of marine and inland wildlife, waterfowl, finfish, shellfish and flora; is valuable as a protective barrier against floods, tidal storms and erosion of the shores and soil within the Commonwealth; is important for the absorption of silt and of pollutants; and is important for recreational and aesthetic enjoyment of the people for the promotion of tourism, navigation and commerce.~~

~~Continued destruction of Virginia's coastal wetlands will greatly contribute to the pollution of the Commonwealth's rivers, bays and estuaries; will diminish the abundance of Virginia's marine and inland animals and waterfowl, finfish, shellfish and flora as sources of food, employment and recreation for the people of Virginia; will increase costs and hazards associated with floods and tidal storms; and will accelerate erosion and the loss of lands productive to the economy and the well-being of our citizens.~~

~~Therefore, in order to protect the public interest, promote the public health, safety and the economic and general welfare of the Commonwealth, and to protect public and private property, wildlife, marine fisheries and the natural environment, it is declared to be the public policy of this Commonwealth to preserve the wetlands and to prevent their despoliation and destruction and to accommodate necessary economic development in a manner consistent with wetlands preservation.~~

Drafting Note: This section is being stricken and most of the language is being included either as a duty of the Commission under proposed § 28.2-1301 or as a duty of wetlands boards under proposed § 28.2-1302.

~~§ 62.1-13.4. Marine Resources Commission to develop guidelines.—In order to implement the policy set forth in § 62.1-13.1 and to assist counties, cities or towns in regulation of vegetated and nonvegetated wetlands, the Commission shall, with the advice and assistance of the Virginia Institute of Marine Science, which will evaluate wetlands by type and maintain a continuing inventory of vegetated wetlands, from time to time promulgate in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) guidelines which scientifically evaluate vegetated and nonvegetated wetlands by type and which set forth the consequences of use of these wetlands types. In addition, the Commission may promulgate regulations in accordance with the Administrative Process Act which are necessary to carry out its powers and duties under the provisions of this title. In developing guidelines or regulations, the Commission shall consult with any affected state governmental agency.~~

Drafting Note: This section is being stricken and its provisions placed in proposed §§ 28.2-103 and 28.2-1301.

§ 28.2-1301. *Powers and duties of the Commission.*—A. The Commission may receive gifts, grants, bequests, and devises of wetlands and money which shall be held for the uses prescribed by the donor, grantor, or testator and in accordance with the provisions of this chapter. The Commission shall manage any wetlands it receives so as to maximize their ecological value.

B. The Commission shall preserve and prevent the despoliation and destruction of wetlands while accommodating necessary economic development in a manner consistent with wetlands preservation.

C. The Commission shall manage all unappropriated marsh or meadowlands lying on the Eastern Shore of Virginia which remain ungranted pursuant to the provisions of § 41.1-4.

D. In order to perform its duties under this section and to assist counties, cities, and towns in regulating wetlands, the Commission shall promulgate and periodically update guidelines which scientifically evaluate vegetated and nonvegetated wetlands by type and describe the consequences of use of these wetlands types. The Virginia Institute of Marine Science shall provide advice and assistance to the Commission in developing these guidelines by evaluating wetlands by type and continuously maintaining and updating an inventory of vegetated wetlands.

E. In developing guidelines or regulations under this chapter, the Commission shall consult with all affected state agencies. Consistent with other legal rights, consideration shall be given to the unique character of the Commonwealth's tidal wetlands which are essential for the production of marine and inland wildlife, waterfowl, finfish, shellfish and flora; serve as a valuable protective barrier against floods, tidal storms and the erosion of the Commonwealth's shores and soil; are important for the absorption of silt and pollutants; and are important for recreational and aesthetic enjoyment of the people for the promotion of tourism, navigation and commerce.

Drafting Note: This section incorporates many of the provisions of existing §§ 62.1-13.1, 62.1-13.4, and 62.1-13.17. Subsection A is existing § 62.1-13.17. The first sentence of subsection B is taken from the last clause of existing § 62.1-13.1, with the policy language being converted into a duty of the Commission. Subsection C reflects the management responsibility of the Commission which it currently exercises over certain unappropriated marsh and meadowlands. Subsection D is taken from existing § 62.1-13.4. Subsection E is taken from existing § 62.1-13.1 and the last sentence of existing § 62.1-13.4.

§ 62.1-13.4:1. Repealed by Acts 1974, c. 96.

§ 62.1-13.20. *Exemptions.*—Nothing in this chapter shall affect (1) any project in vegetated wetlands commenced prior to July 1, 1972, or any project in nonvegetated wetlands commenced prior to January 1, 1982; however, this section shall not be deemed to exclude from regulation under this chapter any activity which expands or enlarges upon a project already in existence or under construction at the time of such date, except for those activities exempted under § 62.1-13.5 (3) (h); (2) any project or development in vegetated wetlands for which, prior to July 1, 1972, or in nonvegetated wetlands for which, prior to January 1, 1982, a plan or plan of development thereof has been filed pursuant to ordinance or other lawful enactment with either an agency of the federal or state government, or with either the planning commission, board of supervisors, or city council of the jurisdiction in which the project or development is located; (3) any project or development in vegetated wetlands, whether commenced prior to July 1, 1972, and in nonvegetated wetlands whether commenced prior to January 1, 1982, if located or to be located in whole or in part on ground or in an area an interest in which was authorized by the General Assembly to be conveyed prior to July 1, 1972, for vegetated wetlands and July 1, 1982, for nonvegetated wetlands; and (4) for the North Landing River and its tributaries exemptions (1) and (2) above shall take effect July 1, 1975, for vegetated wetlands, and January 1, 1982, for nonvegetated wetlands.

For exemptions (1) and (2) herein to be effective, the project or development must be certified as exempt by the Commission or appropriate local wetlands board. The request for certification must be filed prior to January 1, 1984. Projects or developments which have been determined by the Commission or the appropriate local wetlands board prior to July 1, 1982, to be exempt from the provisions of this chapter shall be considered to be certified. If the request for certification is not granted or denied within 120 days from receipt of request by the Commission or a local wetlands board, the certification will be conclusively presumed to have been granted. The time limitations and public hearing requirements imposed by § 62.1-13.5 shall not apply to the certification process. Upon request by any person holding a certification issued

by the Commission or a local wetlands board, the clerk of the circuit court having jurisdiction over the property on which the certified project is located shall record such certification in the appropriate deed book of the circuit court.

Drafting Note: This section is being repealed because the MRC believes there are no projects or developments which would still qualify for any of these exemptions.

§ 62.1-13.10. Jurisdiction of Commission not affected.—Nothing in this chapter shall affect the Commission's sole jurisdiction over areas and activities as defined by Title 28.1 or § 62.1-3.

Drafting Note: This section is being repealed because it is unnecessary. The Commission's jurisdiction is specified in § 28.2-101.

Article 2.

Wetlands Zoning Ordinance and Wetlands Boards.

§ 62.1-13.5. 28.2-1302. Counties, cities and towns authorized to adopt *Adoption of wetlands zoning ordinance; terms of ordinance.*—Any county, city or town may adopt the following ordinance, which, after January October 1, ~~1982~~ 1992, shall serve as the only wetlands zoning ordinance under which any wetlands board is authorized to operate. Any county, city, or town which has adopted the ordinance prior to October 1, 1992, shall amend the ordinance to conform it to the ordinance contained herein by October 1, 1992.

Upon notification by any county, city or town that such ordinance has been adopted, the Commission shall immediately forward to the wetlands board of such county, city or town any application then pending before the Commission over which that wetlands board would have had jurisdiction, had such ordinance been in effect at the time of filing by the applicant; however, if so requested by the applicant, such application shall remain within the jurisdiction of the Commission:

Wetlands Zoning Ordinance

§ 1. The governing body of, acting pursuant to Chapter 2.1 13 (§ 28.2-1300 et seq.) of Title 62.1 28.2 of the Code of Virginia, for purposes of fulfilling the policy standards set forth in such chapter, adopts this ordinance regulating the use and development of wetlands.

§ 2. Definitions. For the purposes of this ordinance As used in this ordinance, unless the context requires a different meaning :

(a) "Commission" means the Virginia Marine Resources Commission.

(b) "Commissioner" means the Commissioner of Marine Resources.

(c) "Person" means any corporation, association or partnership, one or more individuals, or any unit of government or agency thereof.

(d) "Governmental activity" means any or all of the services provided by this to its citizens for the purpose of maintaining this and shall include but shall not be limited to such services as constructing, repairing and maintaining roads, sewage facilities, supplying and treating water, street lights and construction of public buildings.

(e) "Vegetated wetlands" means all that land lying between and contiguous to mean low water and an elevation above mean low water equal to the factor one and one-half times the mean tide range at the site of the proposed project in this; and upon which is growing on the effective date of this act or grown thereon subsequent thereto, any one or more of the following: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), saltgrass (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* sp.), sea lavender (*Limonium* sp.), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), sea oxeye (*Borrichia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile edentula*), southern wildrice (*Zizaniopsis miliacea*), cattails (*Typha* spp.), three-squares (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex* sp.), yellow pond lily (*Nuphar* sp.), marsh fleabane (*Pluchea purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), smartweed (*Polygonum* sp.), arrowhead (*Sagittaria* spp.), sweet flag (*Acorus calamus*), water hemp (*Amaranthus cannabinus*),

reed grass (*Phragmites communis*); and switch grass (*Panicum virgatum*).

The vegetated wetlands of Back Bay and its tributaries and the vegetated wetlands of the North Landing River and its tributaries shall mean all marshes subject to flooding by tides, including wind tides, provided this shall not include hurricane or tropical storm tides, and upon which one or more of the following vegetation species are growing or grows thereon subsequent to the passage of this amendment: saltmarsh cordgrass (*Spartina alterniflora*); saltmeadow hay (*Spartina patens*); black needlerush (*Juncus roemerianus*); marsh elder (*Iva frutescens*); groundsel bush (*Baccharis halimifolia*); wax myrtle (*Myrica* sp.); arrow arum (*Peltandra virginica*); pickerelweed (*Pontederia cordata*); big cordgrass (*Spartina cynosuroides*); rice cutgrass (*Leersia oryzoides*); wildrice (*Zizania aquatica*); bulrush (*Scirpus validus*); spikerush (*Eleocharis* sp.); cattails (*Typha* spp.); three-squares (*Scirpus* spp.); dock (*Rumex* sp.); smartweed (*Polygonum* sp.); yellow pond lily (*Nuphar* sp.); royal fern (*Osmunda regalis*); marsh hibiscus (*Hibiscus moscheutos*); beggar's tick (*Bidens* sp.); arrowhead (*Sagittaria* sp.); water hemp (*Amaranthus cannabinus*); reed grass (*Phragmites communis*); and switch grass (*Panicum virgatum*).

(f) "Wetlands board" or "board" means a board created as provided in § 62.1-12.6 of the Code of Virginia.

(g) "Back Bay and its tributaries" means the following as shown on the U.S. Geological Survey Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the Virginia-North Carolina State line; Capsies Creek north of the Virginia-North Carolina State line; Deal Creek; Devil Creek; Nawney Creek; Redhead Bay; Sand Bay; Shipps Bay, North Bay, and the waters connecting them; Beggars Bridge Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black Gut; and all coves, ponds and natural waterways adjacent to or connecting with the above-named bodies of water.

(h) "North Landing River and its tributaries" means the following as based on the United States Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River from the Virginia-North Carolina line to Virginia Highway 165 at North Landing Bridge; the Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge; all named and unnamed streams, creeks, and rivers flowing into the North Landing River and the Chesapeake and Albemarle Canal except the following: West Neck Creek north of Indian River Road; Poctay River west of Blackwater Road; Blackwater River west of its forks located at a point approximately 6400 feet due west of the point where the Blackwater Road crosses the Blackwater River at the village of Blackwater; Millbank Creek west of Blackwater Road.

(i) "Nonvegetated wetlands" means all that land lying contiguous to mean low water and which land is between mean low water and mean high water not otherwise included in the term "vegetated wetlands" as defined herein and also includes those unvegetated areas of Back Bay and its tributaries and the North Landing River and its tributaries subject to flooding by tides including wind tides but not including hurricane or tropical storm tides.

(j) "Wetlands" means both vegetated and nonvegetated wetlands.

"Back Bay and its tributaries" means the following, as shown on the United States Geological Survey Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the Virginia-North Carolina state line; Capsies Creek north of the Virginia-North Carolina state line; Deal Creek; Devil Creek; Nawney Creek; Redhead Bay; Sand Bay; Shipps Bay, North Bay, and the waters connecting them; Beggars Bridge Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black Gut; and all coves, ponds and natural waterways adjacent to or connecting with the above-named bodies of water.

"Commission" means the Virginia Marine Resources Commission.

"Commissioner" means the Commissioner of the Virginia Marine Resources Commission.

"Governmental activity" means any of the services provided by this (county, city, or town) to its citizens for the purpose of maintaining this (county, city, or town), including but not limited to such services as constructing, repairing and maintaining roads; providing sewage facilities and street lights; supplying and treating water; and constructing public buildings.

"Nonvegetated wetlands" means unvegetated lands lying contiguous to mean low water and between mean low water and mean high water, including those unvegetated areas of Back Bay and its tributaries and the North Landing River and its tributaries subject to flooding by normal and wind tides but not hurricane or tropical storm tides.

"North Landing River and its tributaries" means the following, as shown on the United States Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River from the Virginia-North Carolina line to Virginia Highway 165 at North Landing Bridge; the Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge; and all named and unnamed streams, creeks and rivers flowing into the North Landing River and the Chesapeake and Albemarle Canal except West Neck Creek north of Indian River Road, Pocatoy River west of Blackwater Road, Blackwater River west of its forks located at a point approximately 6400 feet due west of the point where Blackwater Road crosses the Blackwater River at the village of Blackwater, and Millbank Creek west of Blackwater Road.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

"Vegetated wetlands" means lands lying between and contiguous to mean low water and an elevation above mean low water equal to the factor one and one-half times the mean tide range at the site of the proposed project in the county, city, or town in question, and upon which is growing any of the following species: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), saltgrass (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* spp.), sea lavender (*Limonium* spp.), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), sea oxeye (*Borrchia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile edentula*), southern wildrice (*Zizaniopsis miliacea*), cattail (*Typha* spp.), three-square (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex* spp.), yellow pond lily (*Nuphar* sp.), marsh fleabane (*Pluchea purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), smartweed (*Polygonum* spp.), arrowhead (*Sagittaria* spp.), sweet flag (*Acorus calamus*), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), or switch grass (*Panicum virgatum*).

"Vegetated wetlands of Back Bay and its tributaries" or "vegetated wetlands of the North Landing River and its tributaries" means all marshes subject to flooding by normal and wind tides but not hurricane or tropical storm tides, and upon which is growing any of the following species: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), black needlerush (*Juncus roemerianus*), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), cattail (*Typha* spp.), three-square (*Scirpus* spp.), dock (*Rumex* sp.), smartweed (*Polygonum* sp.), yellow pond lily (*Nuphar* sp.), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), arrowhead (*Sagittaria* sp.), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), or switch grass (*Panicum virgatum*).

"Wetlands" means both vegetated and nonvegetated wetlands.

"Wetlands board" or "board" means a board created pursuant to § 28.2-1303 of the Code of Virginia.

§ 3. The following uses of and activities ~~on~~ in wetlands are ~~permitted~~, authorized if otherwise permitted by law:

~~(a)~~ 1. The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duckblinds, wildlife management shelters, footbridges, observation decks and shelters and other similar structures, provided that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the wetlands;

~~(b)~~ 2. The cultivation and harvesting of shellfish, and worms for bait;

~~(c)~~ 3. Noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shellfishing, horseback riding, swimming, skeet and trap shooting, and shooting on shooting preserves, provided that no structure shall be constructed except as permitted in ~~subsection (a)~~ subdivision 1 of this section;

4. Other outdoor recreational activities, provided they do not impair the natural functions or alter the natural contour of the wetlands;

~~(d) The cultivation~~ 5. *Grazing, haying, and cultivating* and harvesting of agricultural, forestry or horticultural products; ~~grazing and haying;~~

~~(e) 6. Conservation, repletion and research activities of the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries and other related conservation~~ *conservation-related agencies;*

~~(f) 7. The construction or maintenance of aids to navigation which are authorized by governmental authority;~~

~~(g) 8. Emergency decrees of measures decreed by any duly appointed health officer of a governmental subdivision acting to protect the public health;~~

~~(h) 9. The normal maintenance ; and repair of, or addition to , presently existing roads, highways, railroad beds, or the facilities of any person, firm, corporation, utility, federal, state, county, city or town~~ abutting on or crossing wetlands, provided that no waterway is altered and no additional wetlands are covered;

~~(i) 10. Governmental activity on in wetlands owned or leased by the Commonwealth of Virginia, or a political subdivision thereof; and~~

~~(j) 11. The normal maintenance of man-made manmade drainage ditches, provided that no additional wetlands are covered and provided further that this paragraph shall not be deemed to authorize construction of any drainage ditch; and . This subdivision does not authorize the construction of any drainage ditch.~~

~~(k) Outdoor recreational activities, provided that such activities do not (i) impair the natural functions of the wetlands, or (ii) alter the natural contour of the wetlands.~~

§ 4. ~~(a) A. Any person who desires to use or develop any wetland within this (county, city , or town), other than for these the purpose of conducting the activities specified in § 3 above of this ordinance , shall first file an application for a permit directly with the wetlands board directly or through with the Commission.~~

~~(b) An B. The permit application shall include the following: the name and address of the applicant; a detailed description of the proposed activity and activities; a map, drawn to an appropriate and uniform scale, showing the area of wetland wetlands directly affected, with the location of the proposed work thereon, indicating the area of existing and proposed fill and excavation, especially the location, width, depth and length of any proposed channel and the disposal area, and the location of all existing and proposed structures ; , sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands ; and ; a description of the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland of whom the applicant has notice; an estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure ; and such additional materials and documentation as the wetlands board may deem necessary require .~~

~~(c) C. A nonrefundable processing fee to cover the cost of processing the application, shall accompany each permit application. The fee shall be set by the applicable governing body with due regard for the services to be rendered, including the time, skill, and administrator's expense involved ; shall accompany each application .~~

§ 5. All applications and , maps , and documents relating thereto submitted shall be open for public inspection at the office designated by the applicable governing body and as stated specified in the advertisement for public hearing required in under § 6 of this ordinance .

§ 6. Not later than sixty days after receipt of such a complete application, the wetlands board shall hold a public hearing on such the application. The applicant, the local governing body, the Commissioner, the owner of record of any land adjacent to the wetlands in question, known claimants of water rights in or adjacent to the wetlands in question, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the Water Control Board, the Department of Transportation , and any governmental agencies agency expressing an interest therein in the application shall be notified by the board of the hearing . The board shall mail these notices by mail not less than twenty days prior to the date set for the hearing. The

wetlands board shall also cause notice of such the hearing to be published at least once a week for two weeks prior to such hearing in the a newspaper having a of general circulation in this (county, city , or town). Every such advertisement The published notice shall contain a reference to specify the place or places within the county or municipality this (county, city, or town) where copies of the proposed application may be examined. The costs of such publication shall be paid by the applicant.

§ 7. ~~In acting on any application for a permit, the board shall grant the application upon the concurring favorable A. Approval of a permit application shall require the affirmative vote of three members of a five-member board or four members of a seven-member board.~~

B. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard testify at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for the decision.

C. The board shall make its determination within thirty days from of the hearing. If the board fails to act within such that time, the application shall be deemed approved. Within forty-eight hours of its determination, the board shall notify the applicant and the Commissioner of such its determination and if . If the board has not made fails to make a determination within the thirty-day period , it shall promptly notify the applicant and the Commission that thirty days have passed and that the application is deemed approved. The term For purposes of this section, "act" referenced above shall be the action of means taking a vote on the application. If the application receives less than four concurring favorable affirmative votes ; for from a seven-member board and or less than three concurring favorable affirmative votes ; for from a five-member board, this will be a determination to deny the permit shall be denied .

The board shall transmit a copy of the permit to the Commissioner. D. If the application board's decision is reviewed or appealed, then the board shall transmit the record of its hearing to the Commissioner. Upon a final determination by the Commission, the record shall be returned to the board. The record shall be open for public inspection at the same office as was designated by the applicable governing body for the purposes of under § 5 of this ordinance .

§ 8. The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it , securing to the Commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after a hearing as provided herein held pursuant to this ordinance , suspend or revoke a permit if the board finds that the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth described in the application. The board may, after a hearing may , suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

§ 9. In fulfilling its responsibilities under this ordinance, the board shall preserve and prevent the despoliation and destruction of wetlands within its jurisdiction while accommodating necessary economic development consistent with wetlands preservation.

§ 9. (a) 10. A. In making its decision deciding whether to grant, to grant in modified form, or to deny an application for a permit , the board shall base its decision on these factors consider the following :

(1) Such matters raised through the 1. The testimony of any person in support of or in rebuttal opposition to the permit application ; ;

(2) Impact 2. The impact of the proposed development on the public health , safety, and welfare as expressed by the policy and standards of Chapter 2.1 of Title 62.1 of the Code of Virginia and any guidelines which may have been promulgated thereunder by the Commission. ; and

3. The proposed development's conformance with standards prescribed in § 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia.

(b) If the board, in applying the standards above, finds that the

B. The board shall grant the permit if all of the following criteria are met:

1. The anticipated public and private benefit of the proposed activity exceeds the its

anticipated public and private detriment and .

2. *The proposed development conforms with the standards prescribed in § 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia. that the*

3. *The proposed activity would does not violate or tend to violate the purposes and intent of this ordinance or Chapter 2-1 13 (§ 28.2-1300 et seq.) of Title 62-1 28.2 of the Code of Virginia and of this ordinance, the board shall grant the permit, subject to any reasonable condition or modification designed to minimize the impact of the activity on the ability of this : : : : (county, city or town), to provide governmental services and on the rights of any other person and to carry out the public policy set forth in Chapter 2-1 of Title 62-1 of the Code of Virginia and in this ordinance. Nothing in this section shall be construed as affecting the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity .*

C. *If the board finds that the anticipated public and private benefit from the proposed activity is exceeded by the anticipated public and private detriment or that the proposed activity would violate the purposes and intent of Chapter 2-1 of Title 62-1 of the Code of Virginia and of this ordinance any of the criteria listed in subsection B of this section are not met , the board shall deny the permit application with leave to but allow the applicant to resubmit the application in modified form.*

§ 10. *11. The permit shall be in writing, signed by the chairman of the board , and notarized. A copy of the permit shall be transmitted to the Commissioner.*

§ 11. *12. No permit shall be granted without an expiration date , and established by the board , in the exercise of its discretion, shall designate an expiration date for completion of such work specified in the permit from the date the board granted such permit. The board, however, may, upon proper application therefor, grant extensions . Upon proper application, the board may extend the permit expiration date.*

§ 12. *13. No permit granted by a wetlands board shall affect in any way affect the applicable zoning and land use ordinances of this (county, city , or town) or the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity .*

Drafting Note: The second paragraph of existing § 62.1-13.5 has been stricken and its provisions included in proposed § 28.2-1306. Cross-references have been changed to reflect new section, chapter and title numbers. Definitions have been changed to reflect the changes made in proposed § 28.2-1300. The final phrase of § 62.1-13.1 is modified so that it is now a duty of wetlands boards, and appears as new § 9 of the ordinance. In addition, the form and wording of the ordinance is modified in an effort to conform the ordinance to current drafting practices.

§ 28.1-13.5:1. Repealed by Acts 1974,c. 96.

§ 62.1-13.6. *28.2-1303. Appointment, terms, compensation, etc., of local wetlands boards; jurisdiction of county wetlands board over wetlands in town.—A. In and for any Every county, city , or town which has enacted or enacts a wetlands zoning ordinance pursuant to this chapter ; there shall be created create a wetlands board, which shall consist consisting of five or seven residents of the county, city or town that jurisdiction appointed by the local governing body of the county, city or town . All board members' terms of office shall be for five years each , except that the term of at least one of the original appointments shall be made for such terms that the term of one member shall expire each year expire during each of the succeeding five years . The chairman of the board shall notify the local governing body at least thirty days in advance of prior to the expiration of any member's term of office, and shall also promptly notify the local governing body promptly if any vacancy occurs. Such vacancies Vacancies shall be filled by the local governing body without delay upon receipt of such notice. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may serve successive terms. A member whose term expires shall continue to serve until his successor is appointed and qualified. Members of the board shall hold no other public office in the county or city except that they may be members of other than membership on the local planning or zoning commission, directors of soil and water conservation boards, or the local erosion commissions commission , or of the local board of zoning appeals , or as director of a soil and water conservation board . A member whose term expires shall continue to serve until his successor is appointed and qualified. When such members of these local commissions or boards are appointed to a local wetlands board, their terms of appointment shall be coterminous with their membership on the local planning or zoning commission, soil and water conservation*

boards, or local erosion commissions or on the local board of zoning appeals those boards or commissions .

B. Upon a hearing with at least fifteen days' notice thereof, any board member may be removed for malfeasance, misfeasance, or nonfeasance in office, or for other just cause, by the local governing body.

B. C. If a town does not enact a wetlands zoning ordinance within one year from the time the county in which the town is found enacts a wetlands zoning ordinance of its enactment by the surrounding county , application for permits to use and develop wetlands found in within the town shall be made to the county wetlands board.

C. D. Any county, city , or town which appoints creates a local wetlands board pursuant to this section may compensate the members of the board in accordance with such terms and conditions as the locality may prescribe.

D. E. Notwithstanding any other provision of this section, the Town of Dumfries in Prince William County may enact a wetlands zoning ordinance pursuant to the provisions of this chapter.

Drafting Note: The provisions of new subsection B are taken from existing § 62.1-13.8 (proposed § 28.2-1305). All other changes are revisions in language.

§ 62.1-13.7. 28.2-1304. Officers, meetings, rules, etc., of wetlands boards; records and reports.—The board shall annually elect from its membership a chairman and such other officers as it deems necessary who shall serve one-year for terms as such and may succeed themselves of one year . For the conduct of any hearing and the taking of any action, a quorum shall be not less than three members of a five-member board ; or nor less than four members of a seven-member board. The board may make, alter , and rescind rules and forms for its procedures, provided they are consistent with state law and local ordinances of the county, city or town and general laws of the Commonwealth, including this chapter . The board shall keep a full public record of its proceedings and shall submit a report of its activities to the local governing body at least once each year ; and a copy of its report to the Commission . The board shall forward a copy of each report to the Commission.

Drafting Note: No change in the law. All changes are revisions in language.

§ 62.1-13.8. 28.2-1305. Local governing body to supply meeting space and services for wetlands board ; removal of board member .— The governing body of the Every county, city , or town creating a wetlands board shall supply the board with reasonable meeting space ; for the use of the board and such reasonable necessary secretarial, clerical, legal , and consulting services as may be needed by the board . The local governing body is authorized to expend the necessary public funds necessary to comply with the provisions of this section . Any board member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the governing body which appointed him, after hearing held after at least fifteen days' notice.

Drafting Note: The last sentence of existing § 62.1-13.8 is being stricken and placed in subsection B of proposed § 28.2-1303. The other changes are revisions in language.

Article 3.

Permits and Review.

§ 62.1-13.9 28.2-1306 . Permits required for certain activities; issuance of permits by Commission.— No person A. It shall be unlawful for any person to conduct any activity which would require a permit under a wetlands zoning ordinance unless he has without such a permit therefor . Until such time as the county, city , or town in which a person proposes to conduct an activity which would require a permit under a wetlands zoning ordinance adopts the wetlands zoning ordinance , such the person shall apply for a permit directly to the Commission , except as provided in subsection B C of § 62.1-13.6 28.2-1303 . If an applicant desires to use or develop wetlands owned by the Commonwealth, he shall apply for a permit directly to the Commission , and in addition to the application fee required by the wetlands zoning ordinance, he shall pay such those fees and royalties as provided in § 62.1-3 assessed under § 28.2-1206 .

B. Upon notification by any county, city, or town that it has adopted the wetlands zoning ordinance, the Commission shall immediately forward to that jurisdiction's wetlands board any pending permit application over which that board would have had jurisdiction if the ordinance

had been in effect at the time the application was filed. However, if requested by the applicant, the application shall remain within the Commission's jurisdiction.

C. The Commission shall process such application permit applications in accordance with the provisions of the wetlands zoning ordinance and the Commissioner shall sign such permit; provided, however, that the Commission shall have the authority to may designate one or more hearing officers who may, in lieu of the Commission, conduct public hearings as required in § 62.1-13.5 under § 28.2-1302, and thereafter report such their findings and recommendations to the Commission.

Drafting Note: The second paragraph of existing § 62.1-13.5 has been stricken and its provisions incorporated in this section as a new subsection B. Cross-references have been changed. All other changes are revisions in language.

§ ~~62.1-13.5:2~~ 28.2-1307. Administrative procedures.—The Commission may, in conjunction with local wetlands boards and other affected state and federal agencies, develop administrative procedures to expedite the processing of applications for permits required under this chapter. ~~In any case in which~~ Whenever an application is received by the Commission for a permit over which a local board has jurisdiction under a wetlands zoning ordinance, the Commission shall forward a copy of the application to that board within seven days.

Drafting Note: No change in the law.

§ ~~62.1-13.3~~ 28.2-1308. Standards for use and development of wetlands; utilization of guidelines.— A. The following standards shall apply to the use and development of wetlands and shall be considered in the determination of whether applications any permit required by this chapter should be granted or denied:

(1) 1. Wetlands of primary ecological significance shall not be altered so that the ecological systems in the wetlands are unreasonably disturbed; and

(2) 2. Development in Tidewater Virginia, to the maximum extent practical, shall be concentrated in wetlands of lesser ecological significance, in vegetated wetlands which have been irreversibly disturbed before July 1, 1972, in nonvegetated wetlands as described herein which have been irreversibly disturbed prior to January 1, 1983, and in areas of Tidewater Virginia apart from the outside of wetlands.

(3) B. The provisions of the guidelines promulgated by the Commission pursuant to § 62.1-13.4 of this Code 28.2-1301 shall be considered in applying the foregoing standards listed in subsection A of this section.

Drafting Note: No change in the law. Cross-references have been changed and the section has been reorganized into two subsections.

§ ~~62.1-13.5:3~~ Not set out. 28.2-1309. —Emergency sand grading activities on nonvegetated wetlands located on the Atlantic Shoreline of Virginia Beach.—Notwithstanding the provisions of § 62.1-13.5 28.2-1302, sand grading activities are permitted on nonvegetated wetlands located on the Atlantic Shoreline of the City of Virginia Beach if otherwise permitted by law, and if the city manager has declared an emergency and has issued a permit for this purpose. Such activities may be conducted without advance notice and hearing; however, the city manager, upon request and after reasonable notice as to time and place, shall hold a hearing to affirm, modify, amend, or cancel such emergency permit. "Emergency," as used in this section, means a sudden and unforeseeable occurrence or condition; either as to its onset or as to its extent, of such disastrous severity or magnitude that governmental action beyond that authorized or contemplated by existing law is required because governmental inaction for the period required to amend the law to meet the exigency would work immediate and irrevocable harm upon the citizens or a portion of the citizenry of the Commonwealth or some clearly defined portion or portions thereof.

Drafting Note: Because this section does not have statewide application, it previously had not been set out in the Code.

§ ~~62.1-13.10~~ 28.2-1310. Commissioner of Marine Resources to review all decisions of wetlands boards.—The Commissioner shall review all decisions of the wetlands board and notify the Commission of any decision which in his opinion should be reviewed by the Commission boards and request the Commission to review a decision only when he believes the board failed to fulfill its responsibilities under the wetlands zoning ordinance.

Drafting Note: The new language reflects the practice of the Commissioner under current law (§ 62.1-13.11).

~~§ 62.1-13.11~~ 28.2-1311 . When Commission to review decision of wetlands board.— A. The Commission shall review a decision of a wetlands board made under a wetlands zoning ordinance when any of the following events occur :

~~(1)~~ 1. An appeal is taken from ~~such~~ the decision by the applicant for a permit or by the county, city , or town where the wetlands are located ; or .

~~(2)~~ 2. The Commissioner requests ~~such~~ the review. The Commissioner shall request such review only when he reasonably believes that the policy and standards of this chapter have not been adequately achieved or that any guidelines which may have been promulgated by the Commission have not been reasonably accommodated. In order to make ~~such~~ a the request, the Commissioner ~~must~~ shall notify the board and the , applicant , and the county, city , or town where the wetlands are located within ten days of receipt of notice to the Commissioner of the decision of the board receiving notice of the board's decision .

~~(3)~~ 3. Twenty-five or more freeholders of property within the county, city , or town in which the proposed project is located sign and submit a petition to the Commission ; provided, ~~such~~ requesting the review. The petition must include a statement of particulars setting forth shall indicate those specific instances wherein where the petitioners do allege that the board did fail to follow the policy, standards or guidelines of this chapter failed to fulfill its responsibilities under the wetlands zoning ordinance .

~~(4)~~ Where not otherwise provided, the foregoing B. All requests for review or appeal shall be made within ten days from of the date of initial determination by the board; and provided that the the board's decision. The Commission shall hear and decide ~~such~~ the review or appeal within forty-five days after notice of ~~such~~ of receiving the request for review or notice of appeal is received a . A continuance may be granted by the Commission on a motion of the applicant or , the freeholders as specified in subdivision ~~(3)~~ subsection A of this section , or the county, city , or town where the wetlands are located.

Drafting Note: The second sentence of subdivision 2 of subsection A has been stricken. It now appears, in modified form, in proposed § 28.2-1310. Existing language referring to the policy of this chapter has been stricken and replaced with language which references wetlands boards' responsibilities. All other changes are revisions in language.

~~§ 62.1-13.12~~ 28.2-1312 . Procedure for review ; notice of decision .— ~~(a)~~ A. The Commissioner shall cause notice of the review or appeal to be given to the board, to the applicant, to the county, city, or town where the wetlands are located, and where applicable, to the freeholders specified in § 62.1-13.11 ~~(3)~~ and to the county, city or town where the wetlands are located § 28.2-1311 .

~~(b)~~ B. The Commission shall hear the appeal or conduct the review on the record transmitted by the board to the Commissioner and ~~such~~ . The Commission may take such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. ~~And the~~ The Commission, in its discretion, may also receive such other evidence as the ends of justice require.

C. The Commission shall notify the parties of its decision within forty-eight hours of the appeal or review hearing.

Drafting Note: Subsection C incorporates the provisions of existing § 62.1-13.14, which is being stricken. The other changes revise language or conform this section to current drafting practices.

~~§ 62.1-13.14~~ Notice of Commission's decision.—The Commission shall notify the parties of its determination within forty-eight hours after the appeal or review.

Drafting Note: This section is being stricken and its provision included in subsection C of proposed § 28.2-1312.

~~§ 62.1-13.13~~ 28.2-1313 . When Commission to modify, remand , or reverse decision of wetlands board.—The Commission shall modify, remand , or reverse the decision of the wetlands board if :

~~(1)~~ 1. If the decision of the The wetlands board will not adequately achieve the policy and

standards of this chapter or will not reasonably accommodate any guidelines which may have been promulgated by the Commission hereunder, in reaching its decision, failed to fulfill its responsibilities under the wetlands zoning ordinance; or

(2) If the 2. The substantial rights of the appellant or the applicant have been prejudiced because the findings, conclusions, or decisions are of the board are:

- (a) a. In violation of constitutional provisions; or
- (b) b. In excess of statutory authority or jurisdiction of the wetlands board; or
- (c) c. Made upon unlawful procedure; or
- (d) d. Affected by other error of law; or
- (e) e. Unsupported by the evidence on the record considered as a whole; or
- (f) f. Arbitrary, capricious, or an abuse of discretion.

Drafting Note: The format of existing § 62.1-13.13 has been altered to conform it to current drafting practices. The stricken language in subdivision 1 is being replaced with language which does not refer to the policy of this chapter.

~~§ 62.1-13.14:1~~ 28.2-1314 . Time for issuance of permit.—No permit shall be issued until the time period within which a request for review or an appeal to the Commission may be made has expired; and, if any such request . If a request for review or appeal is made or an appeal is noted, no activity for which such the permit is required shall be commenced until the Commission has notified the parties of its determination.

Drafting Note: No change in the law. The changes are revisions in language.

~~§ 62.1-13.15~~ 28.2-1315 . Judicial review.—(1) An appeal from any Commission decision of the Commission concerning an application for a permit granted or denied directly by the Commission, granting or denying a permit or from any decision of the Commission decision on the review of or appeal from a board decision of the board may be taken by the applicant, any of the freeholders as set forth in § 62.1-13.11 (3) specified in subsection A of § 28.2-1311, or by the county, city, or town where the wetlands are located as provided in subsection (2) of this section . (2) Judicial review shall be in accordance with pursuant to the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

Drafting Note: No change in the law. A cross-reference has been changed and the language has been revised. The entire section now appears in one paragraph.

Article 4.

Enforcement and Penalties.

~~§ 62.1-13.16:~~ 28.2-1316. Investigations and prosecutions.—The Commission shall have the authority to may investigate all projects, whether proposed or ongoing, which alter wetlands. The Commission shall have the power to may prosecute all violations of any order, rule, or regulation of the Commission or of a wetlands board, or violation of any provision of this chapter. Wetlands boards shall have the authority to may investigate all projects, whether proposed or ongoing, which alter wetlands located within the city, town or county establishing such wetlands board their jurisdiction. Wetlands boards shall have the power to may prosecute all violations of any order of such boards, or their orders and any violation of any provision of the wetlands zoning ordinance contained in § 62.1-13.5 under which they were established.

Drafting Note: No change in the law. All changes are revisions in language.

~~§ 62.1-13.16:1:~~ 28.2-1317. Reporting, site inspections and notice to comply; Commission or wetlands board to issue stop work order or restoration order Monitoring, inspections, compliance, and restoration.—A. With respect to permits required pursuant to this chapter, Chapter 1 (§ 62.1-1 et seq.) or Chapter 2.2 (§ 62.1-13.21 et seq.) of this title, the The Commissioner or Board Chairman board chairman may require of the person responsible for carrying out the provisions of the permit such a permittee to implement monitoring and reports as they may reporting procedures they believe are reasonably deem necessary to ensure compliance with the provisions of the permit and this chapter. With respect to any reported activity not authorized by the aforementioned chapters or with respect to the violation of any permit issued pursuant thereto,

they may direct

B. The Commissioner or board chairman may require such on-site inspections as are deemed he believes are reasonably necessary to determine whether the measures required by the permit are being properly performed, or whether the provisions of the aforementioned chapters this chapter are being violated. Prior to conducting such inspections any inspection, the Commissioner or board chairman shall provide notice shall be provided to the resident owner, occupier, or operator: Such resident owner, occupier or operator, who shall be given an opportunity to accompany the site inspector. If it is determined that there is a failure to comply with the permit, the Commissioner or Board Chairman board chairman shall serve notice upon the person who is responsible for carrying out the provisions of the permit permittee at the address specified by him in his permit application or by delivery at the site of the permitted activities to the person supervising such those activities and designated in the permit to receive such the notice. Such The notice shall set forth describe the measures needed for compliance and the time within which such these measures shall be completed. Upon failure Failure of such the person to comply within the specified period; he may be deemed to be in is a violation of this section and upon conviction shall be subject to the penalties provided in this chapter.

B. C. Upon receipt of a sworn complaint of a substantial violation of this chapter; Chapter 1 (§ 62.1-1 et seq.) or Chapter 2.2 (§ 62.1-13.21 et seq.) of this title from the designated enforcement officer, the Commissioner or Board Chairman board chairman may, in conjunction with or subsequent to a notice to comply as specified in subsection A B of this section, issue an order requiring all or part of the activities on the site to be stopped until the specified corrective measures have been taken. In the case of an activity not authorized by the aforementioned chapters under this chapter or where the alleged permit noncompliance is causing, or is in imminent danger of causing, significant harm to the subaqueous bottoms, wetlands or the coastal primary sand dunes protected by the aforementioned chapters this chapter, such an the order may be issued without regard to whether the person has been issued a notice to comply as specified in pursuant to subsection A B of this section. Otherwise, such an the order may be issued only after the permittee has failed to comply with such a the notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority, permit holder or the permittee, resident owner, occupier, or operator for appropriate relief to the circuit court of the jurisdiction wherein where the violation was alleged to have occurred. Upon completion of corrective action, the order shall immediately be lifted. Nothing in this section shall prevent the Commissioner or Board Chairman board chairman from taking any other action specified in § 62.1-13.16 28.2-1316.

E D. Upon receipt of a sworn complaint of a substantial violation of this chapter; Chapter 1 (§ 62.1-1 et seq.) or Chapter 2.2 (§ 62.1-13.21 et seq.) of this title from a designated enforcement officer, the Commission or a wetlands board may order that the affected site be restored to predevelopment conditions if the Commission or board deems finds that restoration is necessary to recover lost resources or to prevent further damage to resources. Such an The order shall specify the restoration necessary and establish a reasonable time for its completion. Such orders The order shall be issued only after a hearing with at least thirty days' notice to the affected person of the hearing's time, place, and purpose thereof, and they shall become effective immediately upon issuance by the Commission or board. The Commission or board shall require such any scientific monitoring plans as it deems plan they believe necessary to ensure that such projects result in the successful reestablishment of wetlands; subaqueous bottoms or coastal primary sand dunes protected by the aforementioned chapters this chapter and may require that a prepaid contract acceptable to the Commission or board be in effect for the purposes purpose of carrying out the scientific monitoring plan. In addition, the The Commission or board may also require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it securing to the Commonwealth compliance with the conditions set forth in the restoration order. The appropriate court, upon petition by the Commission or board, shall have authority to may enforce any such restoration order by injunction, mandamus, or other appropriate remedy. Failure to complete the required restoration shall constitute is a violation of this chapter.

D. E. The duties of the Commissioner or the Board Chairman prescribed in board chairman under this section may be delegated to their respective designees; however, such respective these designees shall not be those persons who are also designated as enforcement officers.

Drafting Note: Existing § 62.1-13.16:1 applies to subaqueous beds, wetlands, and coastal primary sand dunes. Because proposed Chapter 13 relates only to wetlands, all references to subaqueous beds and coastal primary sand dunes have been deleted. Existing § 62.1-13.16:1, in its modified form, also appears in proposed §§ 28.2-1212 and 28.2-1417. While this change results in some duplication, it will be more convenient and less confusing for users of the Code. All other

changes are revisions in language.

~~§ 62.1-13.18. 28.2-1318. Violation of orders, rules and regulations Violations; penalty .—Any person who knowingly, intentionally, or negligently or continually violates any order, rule , or regulation of the Commission or of a wetlands board established pursuant to this chapter or violates , any provision of this chapter or of a wetlands zoning ordinance enacted pursuant to this chapter , or any provision of a permit granted by a wetlands board or the Commission pursuant to this chapter shall be is guilty of a Class 1 misdemeanor. Following a conviction, every day the violation continues shall be deemed is a separate offense.~~

Drafting Note: No change in the law. All changes are revisions in language.

~~§ 62.1-13.18:1. 28.2-1319. Injunctions.— In addition to and notwithstanding the provisions of § 62.1-13.18, upon the petition of the Commission or a wetlands board to the circuit court of record having jurisdiction in the city or county or city wherein where any act is done or is threatened to be done which is unlawful under the provisions of this chapter, the court may enjoin such the unlawful act and may order the person so acting unlawfully defendant to take such any steps as are necessary to restore, protect , and preserve the wetlands involved. This remedy shall be exclusive of and in addition to any criminal penalty which may be imposed under § 28.2-1318.~~

Drafting Note: No change in the law. All changes are revisions in language.

~~§ 62.1-13.18:2. 28.2-1320. Penalties.—A. Without limiting the remedies which may be obtained in under this chapter, any person who violates any provision of this chapter or who violates or fails, neglects , or refuses to obey any Commission or wetlands board notice, order, rule, regulation , or permit condition authorized by this chapter shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$25,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred for the purpose of abating environmental damage to ; or the restoration of restoring wetlands therein, in such a manner as the court may, by order, direct, except that where the violator is the county, city, or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury.~~

B. Without limiting the remedies which may be obtained in under this chapter, and with the consent of any person who has violated any provision of this chapter or who has violated or failed, neglected , or refused to obey any Commission or wetlands board order, rule, regulation, or permit condition authorized by this chapter, the Commission or wetlands board may provide, in an order issued by the Commission or wetlands board against such person, for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Civil charges shall be in lieu of any appropriate civil penalty which could be imposed under subsection A of this section. Civil charges may be in addition to the cost of any restoration ordered by the Commission or a wetlands board.

Drafting Note: No change in the law.

CHAPTER 14.

COASTAL PRIMARY SAND DUNES AND BEACHES.

CHAPTER DRAFTING NOTE: This chapter is divided into four articles in a format identical to that utilized in Chapter 13. The first article again contains general provisions, including definitions and duties of the Marine Resources Commission. The section which specified the standards for use or development of coastal primary sand dunes and beaches had been moved to the article dealing with permits and review procedures. The second article contains the model ordinance. The form and wording of the ordinance have been modified to conform with current drafting practices. The policy language regarding the requirement to preserve the coastal primary sand dunes and beaches while accommodating necessary economic development is set forth as a duty of the local wetlands board. Section 4 in the model ordinance has been expanded to clearly set out the specific information required in permit applications submitted in accordance with this chapter. Existing § 62.1-13.27 provided the Board, by reference, with the same administrative, appellate and enforcement authorities that had already been granted under the wetlands ordinance. The cross-referencing between chapters caused considerable confusion. As a result, the relevant provisions have been set out as new sections which have been tailored to coastal primary sand dunes and beaches. The duplication is more than offset by the clarity and ease of use which should result. The third article sets forth permit requirements and the public interest review procedures to be used by the Marine Resources Commission and local

wetlands boards. While there are a number of new sections, they are patterned after comparable sections in the wetlands ordinance as provided by § 62.1-13.27, which is being deleted. The fourth article sets out enforcement procedures and penalty provisions. As before, while there are a number of new sections in this article there is no change in the law. The sections merely reflect authorities and responsibilities already provided by § 62.1-13.27. They are set out here for clarity and to minimize the necessity for the user to go back and forth between chapters.

Article 1.

General Provisions.

~~§ 62.1-13.22. 28.2-1400~~ Definitions.— For the purposes of A. As used in this chapter, the following words shall have the meanings respectively ascribed to them unless the context requires a different meaning :

“Beach” means ~~(i)~~ the shoreline zone comprised of unconsolidated sandy material upon which there is a mutual interaction of the forces of erosion, sediment transport and deposition that extends from the low water line landward to where there is a marked change in either material composition or physiographic form such as a dune, bluff , or marsh, or ~~(ii)~~ where no such change can be identified, to the line of woody vegetation (usually the effective limit of stormwaves), or the nearest impermeable ~~man-made~~ *manmade* structure, such as a bulkhead, revetment , or paved road.

“Commission” means the Virginia Marine Resources Commission.

“Commissioner” means the Commissioner of the Virginia Marine Resources Commission.

“County or city” means the governing body of ~~such~~ *the* county or city.

“Coastal primary sand dune” or “dune” means a mound of unconsolidated sandy soil which is contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from ten percent or greater to less than ten percent, and upon any part of which is growing as of July 1, 1980, or grows thereon subsequent thereto, any one or more of the following species : American beach grass (*Ammophilla breviligulata*); beach heather (*Hudsonia tometosa*); dune bean (*Strophostylis umbellata* var. *paludigena* spp.); dusty miller (*Artemisia stelleriana*); saltmeadow hay (*Spartina patens*); seabeach sandwort (*Arenaria peploides*); sea oats (*Uniola paniculata*); sea rocket (*Cakile edentula*); seaside goldenrod (*Solidago sempervirens*); and short dune grass (*Panicum ararum*). For purposes of this chapter, “coastal primary sand dune” or “dune” shall not include any mound of sand, sandy soil , or dredge soil which has been *spoil* deposited by ~~man~~ any person for the purpose of the temporary storage of such material for later use .

“Coastal primary sand dune zoning ordinance” means ~~that~~ *the* ordinance set forth in § ~~62.1-13.25~~ *28.2-1403* .

“Governmental activity” means any ~~or all~~ of the services provided by the Commonwealth or a county or city to its citizens for the purpose of maintaining public facilities ~~and shall include~~ , including but not be limited to , such services as constructing, repairing and maintaining roads ; ~~providing street lights and sewage facilities ;~~ ; supplying and treating water ; ~~street lights~~ ; and constructing public buildings.

“Wetlands board” or “board” means the board created pursuant to § 28.2-1303.

B. Although separately defined in subsection A of this section, the terms “coastal primary sand dune,” “dune,” and “beach,” when used in this chapter, shall be interchangeable.

Drafting Note: The definitions of “Commission” and “Commissioner” are stricken because these terms are defined in the title-wide definition section (§ 28.2-100). Unnecessary language has been removed from the definition of “coastal primary sand dune,” and the word “soil” has been changed to “spoil” to correct a typographical error. A new subsection B is being added which indicates that the terms “coastal primary sand dune,” “dune,” and “beach” are interchangeable. This subsection is a modified version of subsection B of existing § 62.1-13.21.

§ 62.1-13.21. Legislative declaration; sand dunes and beaches protected.—A. The Commonwealth of Virginia hereby recognizes the importance of coastal primary sand dunes with their unique physiographic features which, in their natural state, serve as protective barriers from the effects of flooding and erosion caused by coastal storms, thereby protecting life and property; that such dunes provide an essential source of natural sand replenishment for beaches

and an important natural habitat for coastal fauna; and are important to the overall scenic and recreational attractiveness of Virginia's coastal area.

Inappropriate development on coastal primary sand dunes and beaches can destroy vegetation which stabilizes such features, alter the natural contour of these sand dunes and beaches, impede their natural formation and migration and interrupt wind and water currents which replenish the sand supply of beaches. Such alterations to coastal primary sand dunes and beaches may lead to increased shoreline erosion, coastal flooding, damage to fixed structures near the shore, loss of public and private open space, loss of wildlife habitat and increased expenditure of public funds.

Therefore, in order to reasonably protect the public interest, promote public health, safety, the general welfare of the Commonwealth, protect private and public property from erosion and flooding and protect wildlife and the natural environment, it is declared to be the public policy of the Commonwealth whenever reasonably necessary to preserve and protect coastal primary sand dunes and beaches and to prevent their despoliation and destruction and whenever practical to accommodate necessary economic development in a manner consistent with the protection of such features.

B. The provisions of this chapter shall apply to the protection of coastal primary sand dunes and beaches. Whenever coastal primary sand dunes are referred to in this chapter such references shall also include beaches.

Drafting Note: This section is being stricken and most of the language has been included either as a duty of the Commission in proposed § 28.2-1401, or as a duty of wetlands boards under proposed § 28.2-1403. The provisions of subsection B of existing § 62.1-13.21 have been reworded and included as a new subsection B of proposed § 28.2-1400.

§ 62.1-13.24. Guidelines.—In order to implement the policy set forth in § 62.1-13.21 and to assist cities and counties in the regulation of coastal primary sand dunes, the Commission shall, with advice and assistance from the Virginia Institute of Marine Science, promulgate guidelines which set forth the consequences of the use of these dunes. In developing these guidelines, the Commission shall consult with any affected state governmental agency.

Drafting Note: This section is being stricken and its provisions included as powers and duties of the Commission under proposed § 28.2-1401.

§ 28.2-1401. Powers and duties of Commission.—**A.** The Commission may receive gifts, grants, bequests, and devises of coastal primary sand dunes, beaches, and money which shall be held for the uses prescribed by the donor, grantor, or testator and in accordance with the provisions of this chapter.

B. The Commission shall preserve and protect coastal primary sand dunes and beaches and prevent their despoliation and destruction. Whenever practical, the Commission shall accommodate necessary economic development in a manner consistent with the protection of these features. The Commission shall manage any coastal primary sand dunes and beaches it receives so as to maximize their ecological value.

C. In order to perform its duties under this section and to assist counties and cities in regulating coastal primary sand dunes and beaches, the Commission shall, with the advice and assistance of the Virginia Institute of Marine Science, promulgate guidelines which describe the consequences of use of these dunes and beaches.

D. In developing guidelines or regulations under this chapter, the Commission shall consult with all affected state agencies. Consistent with other legal rights, consideration shall be given to the importance of coastal primary sand dunes with their unique physiographic features which, in their natural state, serve as protective barriers from the effects of flooding and erosion caused by coastal storms, thereby protecting life and property; provide an essential source of natural sand replenishment for beaches and an important natural habitat for coastal fauna; and enhance the scenic and recreational attractiveness of Virginia's coastal area.

Drafting Note: This section combines those provisions of existing §§ 62.1-13.17, 62.1-13.21, and 62.1-13.24 which prescribe the Commission's powers and duties under the Coastal Primary Sand Dune Protection Act. Subsection A and the final sentence of subsection B contain the provisions of existing § 62.1-13.17. The first two sentences of subsection B were taken from the policy language of existing § 62.1-13.21 and rewritten as a duty of the Commission. Subsection C contains the provisions of existing § 62.1-13.24. Subsection D is taken from existing § 62.1-13.21 and the last sentence of existing § 62.1-13.24.

~~§ 62-1-13.28. 28.2-1402.~~ (Repealed effective July 1, 1993) Exemptions.—A. Nothing in this chapter shall affect any project or development (i) for which a valid building permit or final site plan approval ~~has been~~ was issued prior to July 1, 1980; ~~or~~ (ii) which, if no building permit is required for such project, including a locally approved mining operation, ~~has been otherwise~~ was commenced prior to July 1, 1980, and certified as exempt by the Commission or appropriate wetlands board; or (iii) ~~which~~ was approved by the governing body of any county or city pursuant to any local ordinance whose principal purpose ~~is to~~ was the review of development in coastal primary sand dunes prior to July 1, 1980. Nothing in this section shall be deemed to ~~exclude~~ *excludes* from regulation any activity which expands or enlarges ~~upon~~ a project already in existence or under construction.

B. The Virginia Beach Wetlands Board shall make an ongoing determination in the Sandbridge Beach subdivision of the area bounded on the north by Dam Neck Naval Base, on the west by Sandfiddler Road, and on the south by White Cap Lane, to determine which structures or properties are in clear and imminent danger from erosion and storm damage due to severe wave action or storm surge. The owners of structures or properties so defined shall not be prohibited from erecting and maintaining protective bulkheads or other equivalent structural improvements of a type, size, and configuration approved by the Virginia Beach Wetlands Board. The Virginia Beach Wetlands Board shall not impose arbitrary or unreasonable conditions upon its approval of any such bulkhead or other structural improvement but shall maintain a continuing responsibility to ensure that each bulkhead or structural improvement constructed under the authority of this section is maintained in a condition which is safe, structurally sound, and otherwise in conformity with the reasonable conditions imposed by the Virginia Beach Wetlands Board. At the time the application is submitted, the applicant shall consent in writing to any subsequent construction which may occur whereby an adjacent property owner desires to tie in a bulkhead at no additional cost with that bulkhead proposed by the applicant. Such consent shall be considered a waiver of property line defenses relating to the bulkhead line.

C. *This section shall expire on July 1, 1993.*

Drafting Note: No change in the law. The provisions of this section expire on July 1, 1993.

Article 2.

Coastal Primary Sand Dune Ordinance and Boards.

~~§ 62-1-13.25. 28.2-1403.~~ Certain counties and cities authorized to adopt coastal primary sand dune ordinance.—Any of the following counties or cities which adopt a wetlands *zoning* ordinance pursuant to ~~§ 62-1-13.5 28.2-1302~~ may adopt the ordinance contained herein *coastal primary sand dune zoning ordinance which is set out in this section*: the Counties of Accomack, Lancaster, Mathews, Northampton and Northumberland and the Cities of Hampton, Norfolk, and Virginia Beach. In the event that a locality has not adopted a wetlands *zoning* ordinance pursuant to Chapter ~~2-1~~ (~~§ 62-1-13.1 et seq.~~) of Title ~~62-1 13~~ (~~§ 28.2-1300 et seq.~~) or *repeals it if already adopted*, such locality may adopt or *continue to administer* the ordinance contained herein; ~~however, such locality shall appoint~~ *provided the locality appoints* a wetlands board following the procedure specified in ~~§ 62-1-13.6 28.2-1303~~. Any county or city which has adopted the Coastal Primary Sand Dune Zoning Ordinance prior to ~~July October 1, 1980 1992~~, shall amend ~~such~~ the ordinance to conform it to the ordinance contained herein by ~~December October 1, 1980 1992~~. *The following ordinance is the only coastal primary sand dune zoning ordinance under which any board shall operate after October 1, 1992.*

Coastal Primary Sand Dune Zoning Ordinance

§ 1. The governing body of, acting pursuant to Chapter ~~2-2~~ (~~§ 62-1-13.21 et seq.~~) *14* (~~§ 28.2-1400 et seq.~~) of Title ~~62-1 28.2~~ of the Code of Virginia, ~~for the purposes of fulfilling the policy and standards set forth in such chapter,~~ adopts this ordinance regulating the use and development of coastal primary sand dunes. Whenever coastal primary sand dunes are referred to in this ordinance, such references shall also include beaches.

§ 2. ~~Definitions.~~ *For the purpose of As used in this ordinance, unless the context requires a different meaning:*

“Beach” means ~~(i)~~ the shoreline zone comprised of unconsolidated sandy material upon which there is a mutual interaction of the forces of erosion, sediment transport and deposition that extends from the low water line landward to where there is a marked change in ~~either~~ material composition or physiographic form such as a dune, bluff, or marsh, or ~~(ii)~~ where no such change can be identified, to the line of woody vegetation (usually the effective limit of

stormwaves), or the nearest impermeable ~~man-made~~ *manmade* structure, such as a bulkhead, revetment , or paved road.

"Coastal primary sand dune" hereinafter referred to as or "dune ;" ~~shall mean~~ *means* a mound of unconsolidated sandy soil which is contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from ten percent or greater to less than ten percent, and upon any part of which is growing on July 1, 1980, or grows thereon subsequent thereto, any one or more of the following species : American beach grass (*Ammophilla breviligulata*); beach heather (*Hudsonia tomentosa*); dune bean (*Strophostylis umbellata* var. ~~paludigena~~ *spp.*); dusty miller (*Artemisia stelleriana*); saltmeadow hay (*Spartina patens*); seabeach sandwort (*Arenaria peploides*); sea oats (*Uniola paniculata*); sea rocket (*Cakile edentula*); seaside goldenrod (*Solidago sempervirens*); and short dune grass (*Panicum ararum*). For purposes of this ordinance, "coastal primary sand dune" shall not include any mound of sand, sandy soil , or dredge soil which has been ~~spoiled~~ *spoiled* deposited by ~~man~~ *any person* for the purpose of the temporary storage of such material for later use .

"Commission" ~~shall mean~~ *means* the Virginia Marine Resources Commission.

"Commissioner" ~~shall mean~~ *means* the Commissioner of the Virginia Marine Resources Commission.

"County or city" ~~shall mean~~ *means* the governing body of such ~~the~~ *the* county or city.

"Governmental activity" ~~shall mean~~ *means* any or all of the services provided by the Commonwealth or a county or city to its citizens for the purpose of maintaining public facilities and shall include but not be , *including but not limited to* , such services as constructing, repairing , and maintaining roads ; ; *providing street lights and sewage facilities ; ;* supplying and treating water ; *street lights ;* and constructing public buildings.

"Wetlands board" or "board" means the board created as provided for in § 62.1-13.6 pursuant to § 28.2-1303 of the Code of Virginia.

§ 3. The following uses of and activities ~~on~~ *in* dunes are ~~permitted~~ *authorized* if otherwise permitted by law:

A. 1. The construction and maintenance of noncommercial walkways which do not alter the contour of the coastal primary sand dune;

B. 2. The construction and maintenance of observation platforms which are not an integral part of any dwelling and which do not alter the contour of the coastal primary sand dune;

C. 3. The planting of beach grasses or other vegetation for the purpose of stabilizing coastal primary sand dunes;

D. 4. The placement of sand fences or other material on or adjacent to coastal primary sand dunes for the purpose of stabilizing such features, except that this provision shall not be interpreted to authorize the placement of any material which presents a public health or safety hazard;

E. 5. Sand replenishment activities of any private or public concern , provided no sand shall be removed from any coastal primary sand dune unless authorized by lawful permit;

F. 6. The normal maintenance of any groin, jetty, riprap, bulkhead , or other structure designed to control beach erosion which may abut a coastal primary sand dune;

G. 7. The normal maintenance or repair of ~~presently~~ existing roads, highways, railroad beds , and facilities of the United States, this Commonwealth ; or any of its counties or cities, or those of any person ; ~~firm, corporation, or utility~~ , provided no coastal primary sand dunes are altered;

H. 8. Outdoor recreational activities, provided ~~that such~~ *the* activities do not alter the natural contour of the coastal primary sand dune or destroy ~~its~~ *the* vegetation *growing thereon* ;

I. 9. The conservation and research activities of the Virginia Marine Resources Commission, Virginia Institute of Marine Science, Department of Game and Inland Fisheries , and other related ~~conservation~~ *conservation-related* agencies;

J. 10. The construction and maintenance of aids to navigation which are authorized by

governmental authority;

~~K.~~ 11. Activities pursuant to any emergency declaration by the governing body of any local government or the Governor of the Commonwealth or any public health officer for the purposes of protecting the public health ~~or~~ and safety; and

~~L.~~ 12. Governmental activity ~~on~~ in coastal primary sand dunes owned or leased by the Commonwealth ~~of Virginia~~ or a political subdivision thereof.

§ 4. A. Any person who desires to use or alter any coastal primary sand dune within this (county or city), other than for ~~those~~ the purpose of conducting the activities specified in § 3 ~~herein~~ of this ordinance , shall first file an application directly with the wetlands board in accordance with § 4 of § 62.1-13.5 of the Code of Virginia or with the Commission .

B. The permit application shall include the following: the name and address of the applicant; a detailed description of the proposed activities and a map, drawn to an appropriate and uniform scale, showing the area of dunes directly affected, the location of the proposed work thereon, the area of any proposed fill and excavation, the location, width, depth and length of any disposal area, and the location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands; a description of the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land; an estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure; and such additional materials and documentation as the wetlands board may require. The wetlands board may establish a processing fee in accordance with § 4 of § 62.1-13.5 of the Code of Virginia. No person shall be required to file two separate applications for permits if the project to be undertaken would require that a permit be filed in accordance with § 62.1-13.5 as well as this ordinance. Under such circumstances the fee accompanying the application required by § 62.1-13.5 shall also be the fee for the purpose of this ordinance.

C. A nonrefundable processing fee shall accompany each permit application. The fee shall be set by the applicable governing body with due regard for the services to be rendered, including the time, skill, and administrator's expense. No person shall be required to file two separate applications for permits if the proposed project will require permits under this ordinance and Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia. Under those circumstances, the fee shall be established pursuant to this ordinance.

§ 5. All applications and , maps , and documents relating thereto submitted shall be open for public inspection at the office of the recording officer of this (county or city).

§ 6. Not later than sixty days after receipt of such a complete application, the wetlands board shall hold a public hearing on such the application. The applicant, the local governing body, the Commissioner, the owner of record of any land adjacent to the coastal primary sand dunes in question, known claimants of water rights in or adjacent to the coastal primary sand dunes in question , the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the State Water Control Board, the Department of Transportation , and any governmental agencies agency expressing an interest therein in the application shall be notified by the board of the hearing by mail . The Board shall mail these notices not less than twenty days prior to the date set for the hearing. The wetlands board shall also cause notice of such the hearing to be published at least once a week for two weeks prior to such hearing in the a newspaper having a of general circulation in this (county or city). The costs of such publication shall be paid by the applicant.

§ 7. In acting on any application for a permit, the board shall grant the application upon the concurring A. Approval of a permit application shall require the affirmative vote of three members of a five-member board or four members of a seven-member board.

B. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for the decision.

C. The board shall make its determination within thirty days from of the hearing. If the

board fails to act within such *that* time, the application shall be deemed approved. Within forty-eight hours of its determination, the board shall notify the applicant and the Commissioner of such *its* determination and if . If the board has not made *fails to make* a determination within the *thirty-day period* , it shall promptly notify the applicant and the Commission that *thirty days has passed* and that the application is deemed approved.

The board shall transmit a copy of the permit to the Commissioner. *D.* If the application *board's decision* is reviewed or appealed, then the board shall transmit the record of its hearing to the Commissioner. Upon a final determination by the Commission, the record shall be returned to the board. The record shall be open for public inspection at the office of the recording officer of this § (county or city).

§ 8. The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it , securing to the Commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after a hearing as *provided herein held pursuant to this ordinance* , suspend or revoke a permit if the board finds that the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work as set *forth described* in the application. The board may, after a hearing *may* , suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

§ 9. *In fulfilling its responsibilities under this ordinance, the board shall preserve and protect coastal primary sand dunes and beaches and prevent their despoliation and destruction. However, whenever practical, the board shall accommodate necessary economic development in a manner consistent with the protection of these features.*

§ 9 10 . A. In ~~making its decision~~ *deciding* whether to grant, to grant in modified form, or to deny an application for a permit, the board shall ~~base its decision on~~ *consider* the following factors :

1. ~~Such matters raised through the~~ *The* testimony of any person in support of or in ~~rebuttal~~ *opposition* to the permit application ; ;

2. ~~Impact~~ *The impact* of the *proposed* development on the public health , safety, and welfare as expressed by the policy and standards of Chapter 2-2 (§ 62-1-13.21 et seq.) of Title 62-1 of the Code of Virginia and any guidelines which may have been promulgated thereunder by the Commission. ; and

3. *The proposed development's conformance with standards prescribed in § 28.2-1408 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1401 of the Code of Virginia.*

B. If the board, in applying the standards above, finds that ~~the~~ *The board shall grant the permit if all of the following criteria are met:*

1. *The* anticipated public and private benefit of the proposed activity exceeds ~~the~~ *its* anticipated public and private detriment and that the .

2. *The proposed development conforms with the standards prescribed in § 28.2-1408 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1401 of the Code of Virginia.*

3. *The proposed activity would does not violate the purposes and intent of this ordinance or Chapter 2-2 14 (§ 28.2-1400 et seq.) of Title 62-1 28.2 of the Code of Virginia and of this ordinance, the board shall grant the permit, subject to any reasonable condition or modification designed to minimize the impact of the activity on the ability of this (county or city); to provide governmental services and on the rights of any other person and to carry out the public policy set forth in Chapter 2-2 of Title 62-1 of the Code of Virginia and in this ordinance. Nothing in this section shall be construed as affecting the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity .*

C. If the board finds that the anticipated public and private benefit from the proposed activity is exceeded by the anticipated public and private detriment or that the proposed activity would violate the purposes and intent of Chapter 2-2 of Title 62-1 of the Code of Virginia and of this ordinance *any of the criteria listed in subsection B of this section are not met* , the board shall deny the permit application with leave to *but allow* the applicant to resubmit the application in modified form.

§ 10 11 . The permit shall be in writing, signed by the chairman of the board , and notarized. *A copy of the permit shall be transmitted to the Commissioner.*

§ 14 12 . No permit shall be granted without an expiration date ; and established by the board ; in the exercise of its discretion, shall designate an expiration date for completion of such work specified in the permit from the date the board granted such permit. The board, however, may, upon proper application therefor, grant extensions . Upon proper application, the board may extend the permit expiration date.

§ 13. No permit granted by a wetlands board shall in any way affect the right of any person to seek compensation for any injury in fact incurred by him because of the permitted activity.

Drafting Note: Cross-references have been changed to reflect new section, chapter, and title numbers. The definitions have been placed in alphabetical order and amended to reflect the changes made in the chapter's definition section (proposed § 28.2-1400). The policy language in the third paragraph of § 62.1-13.21 has been modified and included in this proposed section as a duty of the Commission under § 9. Existing § 4 of the model ordinance has been changed to reflect the specific requirements of permit applications under this chapter, rather than simply referring to § 4 of the model wetlands zoning ordinance. In general, the form and wording of the ordinance has been modified in an effort to conform it with current drafting practices. An effort was also made to track the form and language of the wetlands zoning ordinance, as proposed in § 28.2-1302.

§ 62.1-13.27. Administration; appeals; enforcement.—In administering the provisions of this chapter and in order to provide for appellate review and enforcement, the Commission, Commissioner or wetlands board as appropriate shall, as to the Coastal Primary Sand Dune Protection Act or an ordinance adopted pursuant thereto, bear all those duties and responsibilities and follow those procedures specified in §§ 62.1-13.7 through 62.1-13.19 in the same manner and on the same basis as they administer and enforce the Wetlands Act or an ordinance adopted pursuant thereto.

Drafting Note: This section, which makes the provisions of existing §§ 62.1-13.7 through 62.1-13.19 (part of the wetlands chapter) applicable to this chapter, is being repealed. According to MRC, the cross-referencing of duties and responsibilities has caused confusion. Currently, users of the Code not only have to go back and forth between the Wetlands Protection Act (Chapter 2.1) and the Coastal Primary Sand Dune Protection Act (Chapter 2.2), but they must also determine which provisions of existing §§ 62.1-13.7 through 62.1-13.19 actually apply under Chapter 2.2. Consequently, MRC recommends that all provisions relating to the protection of coastal primary sand dunes and beaches be set out in one area of the Code, and that those provisions of existing §§ 62.1-13.7 through 62.1-13.19 which are necessary and applicable be repeated in this chapter. While this will result in a certain amount of duplication, it should provide users of the Code with a much more convenient and less confusing tool of reference.

§ 28.2-1404. Meetings, quorum, rules, etc., of wetlands boards; records and reports.—For the conduct of any wetlands board hearing and the taking of any action, a quorum shall be not less than three members of a five-member board nor less than four members of a seven-member board. The board may make, alter, and rescind rules and forms for its procedures, provided they are consistent with state law and local ordinances. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the local governing body at least once each year. The board shall forward a copy of each report to the Commission.

Drafting Note: This section is patterned after existing § 62.1-13.7 as modified under proposed § 28.2-1304. It is new language, but already applies to the Coastal Primary Sand Dune Act by virtue of existing § 62.1-13.27. It is being set out to avoid the confusion which existing § 62.1-13.27 now creates.

§ 28.2-1405. Local governing body to supply meeting space and services for wetlands board.—Every county or city enacting an ordinance pursuant to this chapter shall supply the board with reasonable meeting space and necessary secretarial, clerical, legal, and consulting services. The local governing body is authorized to expend the public funds necessary to comply with the provisions of this section.

Drafting Note: This section is patterned after existing § 62.1-13.8 as modified under proposed § 28.2-1305. It is new language, but already applies to the Coastal Primary Sand Dune Protection Act by virtue of existing § 62.1-13.27. It is now being set out to avoid the confusion which existing § 62.1-13.27 has created. It is unnecessary to repeat the last sentence of existing § 62.1-13.8. That sentence, which relates to the removal of board members, now appears in subsection B of proposed § 28.2-1303.

Permits and Review.

~~§ 62.1-13.26~~ 28.2-1406 . Permits required for certain activities; issuance of permits by Commission.— ~~No person~~ A. It shall be unlawful for any person to conduct any activity which would require a permit under a coastal primary sand dune zoning ordinance ~~unless he has without such a permit therefor~~ . Until such time as the county or city in which a person proposes to conduct an activity which would require a permit under ~~such~~ the ordinance adopts ~~such~~ the ordinance, such person shall apply for a permit directly to the Commission. ~~Permit applicants desiring to use or develop dunes or beaches owned by the Commonwealth shall also apply directly to the Commission.~~

B. The Commission shall process permit applications in accordance with the provisions of the Coastal Primary Sand Dune Zoning Ordinance and the Commissioner shall sign any permit granted; however, the Commission may designate one or more hearing officers who may, in lieu of the Commission, conduct public hearings as required under § 28.2-1403 and thereafter report their findings and recommendations to the Commission.

Drafting Note: The new sentences have been taken from existing § 62.1-13.9. They are being included because existing § 62.1-13.27, which makes the provisions of §§ 62.1-13.7 through 62.1-13.19 applicable to this chapter, is being repealed.

§ 28.2-1407. Administrative procedures.—The Commission may, in conjunction with local wetlands boards and other affected state and federal agencies, develop administrative procedures to expedite the processing of applications for permits required under this chapter. Whenever an application is received by the Commission for a permit over which a local board has jurisdiction under a coastal primary sand dune zoning ordinance, the Commission shall forward a copy of the application to that board within seven days.

Drafting Note: This is a new section. It is proposed that the Commission be given the same power to develop procedures for expediting the processing of permit applications under this chapter as it already has under the Wetlands Protection Act (existing § 62.1-13.5:2/proposed § 28.2-1307).

~~§ 62.1-13.23~~ 28.2-1408 . Standards for use of coastal primary sand dunes.—No permanent alteration of or construction upon any coastal primary sand dune shall take place which would : (i) impair the natural functions of the dune as ~~described herein~~ ; , (ii) physically alter the contour of the dune ; , or (iii) destroy vegetation growing thereon as ~~defined herein~~ unless the wetlands board ; or ~~in its absence~~ the Commission, ~~whichever is applicable~~, determines that there will be no significant adverse ecological impact, or that the granting of a permit ~~hereunder~~ is clearly necessary and consistent with the public interest , considering all material factors.

Drafting Note: No change in the law.

~~§ 62.1-13.25:1~~ ~~Not set out.~~ 28.2-1409.— Emergency sand grading activities on sand dunes located on the Atlantic Shoreline of Virginia Beach.—Notwithstanding the provisions of § ~~62.1-13.25~~ 28.2-1403 , sand grading activities are permitted on coastal primary sand dunes located on the Atlantic Shoreline of the City of Virginia Beach if otherwise permitted by law, and if the city manager has declared an emergency and has issued a permit for this purpose. Such activities may be conducted without advance notice and hearing; however, the city manager, upon request and after reasonable notice as to time and place, shall hold a hearing to affirm, modify, amend, or cancel such emergency permit. “Emergency,” as used in this section, means a sudden and unforeseeable occurrence or condition ; ~~either as to its onset or as to its extent~~, of such disastrous severity or magnitude that governmental action beyond that authorized ~~or contemplated~~ by existing law is required because governmental inaction for the period required to amend the law to meet the exigency would work immediate and irrevocable harm upon the citizens ~~or a portion of the citizenry~~ of the Commonwealth ~~or some clearly defined portion or portions thereof~~ .

Drafting Note: Because this section does not have statewide application, it previously had not been set out in the Code.

~~§ 62.1-13.10~~ 28.2-1410 . Commissioner of Marine Resources to review all decisions of wetlands boards.—The Commissioner shall review all decisions of the wetlands board and notify the Commission of any decision which in his opinion should be reviewed by the Commission boards and request the Commission to review a decision only when he believes the board failed to fulfill its responsibilities under the coastal primary sand dune zoning ordinance .

Drafting Note: The new language reflects the practice of the Commission under current law (§ 62.1-13.11). Existing § 62.1-13.11 is applicable to this chapter by virtue of existing § 62.1-13.27, which is being repealed.

§ 28.2-1411. When Commission to review decision of wetlands board.—A. The Commission shall review a decision of a wetlands board when any of the following events occur:

1. An appeal is taken from the decision by the applicant or by the county or city where the dunes are located.

2. The Commissioner requests the review. In order to make the request, the Commissioner shall notify the board, applicant, and county or city where the dunes are located within ten days of receiving notice of the board's decision.

3. Twenty-five or more freeholders of property within the county or city in which the proposed project is located sign and submit a petition to the Commission requesting the review. The petition shall indicate those specific instances where the petitioners allege that the board failed to fulfill its responsibilities under the coastal primary sand dune zoning ordinance.

B. All requests for review or appeal shall be made within ten days of the date of board's decision. The Commission shall hear and decide the review or appeal within forty-five days of receiving the request for review or notice of appeal. A continuance may be granted by the Commission on a motion of the applicant, the freeholders specified in subsection A of this section, or the county or city where the dunes are located.

Drafting Note: This section is patterned after existing § 62.1-13.11. It is new language, but already applies to the Coastal Primary Sand Dune Protection Act by virtue of existing § 62.1-13.27. It is now being set out to avoid the confusion which existing § 62.1-13.27 has created.

§ 28.2-1412. Procedure for review; notice of decision.—A. The Commissioner shall cause notice of the review or appeal to be given to the board, the applicant, the county or city where the dunes are located, and where applicable, to the freeholders specified in § 28.2-1411.

B. The Commission shall hear the appeal or conduct the review on the record transmitted by the board to the Commissioner. The Commission may take such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The Commission, in its discretion, may receive such other evidence as the ends of justice require.

C. The Commission shall notify the parties of its decision within forty-eight hours of the appeal or review hearing.

Drafting Note: This section is patterned after existing § 62.1-13.12 as modified under proposed § 28.2-1312. It is new language, but already applies to the Coastal Primary Sand Dune Protection Act by virtue of existing § 62.1-13.27. It is being set out to avoid the confusion which existing § 62.1-13.27 now creates. Subsection C incorporates the provisions of existing § 62.1-13.14, which are also applicable to this chapter by virtue of existing § 62.1-13.27.

§ 28.2-1413. When Commission to modify, remand or reverse decision of wetlands board.—The Commission shall modify, remand or reverse the decision of the wetlands board if:

1. The wetlands board, in reaching its decision, failed to fulfill its responsibilities under the coastal primary sand dune zoning ordinance; or

2. The substantial rights of the appellant or the applicant have been prejudiced because the findings, conclusions, or decisions of the board are:

a. In violation of constitutional provisions;

b. In excess of statutory authority or jurisdiction of the wetlands board;

c. Made upon unlawful procedure;

d. Affected by other error of law;

e. Unsupported by the evidence on the record considered as a whole; or

f. Arbitrary, capricious, or an abuse of discretion.

Drafting Note: This section is patterned after existing § 62.1-13.13 as modified under proposed § 28.2-1313. It is new language, but already applies to the Coastal Primary Sand Dune Protection Act by virtue of existing § 62.1-13.27. It is being set out to avoid the confusion which existing § 62.1-13.27 now creates.

§ 28.2-1414. *Time for issuance of permit.*—No permit shall be issued until the period within which a request for review or an appeal to the Commission may be made has expired. If a request for review is made or an appeal is noted, no activity for which the permit is required shall be commenced until the Commission has notified the parties of its determination.

Drafting Note: This section is patterned after existing § 62.1-13.14:1 as modified under proposed § 28.2-1314. It is new language, but already applies to the Coastal Primary Sand Dune Protection Act by virtue of existing § 62.1-13.27. It is being set out to avoid the confusion which existing § 62.1-13.27 now creates.

§ 28.2-1415. *Judicial review.*—An appeal from any Commission decision granting or denying a permit or from any Commission decision on the review of or appeal from a board decision may be taken by the applicant, any of the freeholders specified in subsection A of § 28.2-1411, or by the county or city where the dunes or beaches are located. Judicial review shall be pursuant to the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

Drafting Note: This section is patterned after existing § 62.1-13.15 as modified under proposed § 28.2-1315. It is new language, but already applies to the Coastal Primary Sand Dune Protection Act by virtue of existing § 62.1-13.27. It is being set out to avoid the confusion which existing § 62.1-13.27 now creates.

Article 4.

Enforcement and Penalties.

§ 28.2-1416. *Investigations and prosecutions.*—The Commission may investigate all projects, whether proposed or ongoing, which alter dunes or beaches. The Commission may prosecute all violations of any order, rule, or regulation of the Commission or of a wetlands board, or violation of any provision of this chapter. Wetlands boards may investigate all projects, whether proposed or ongoing, which alter dunes or beaches located within their jurisdiction. Wetlands boards may prosecute all violations of their orders and any violation of any provision of the coastal primary sand dune zoning ordinance which they administer.

Drafting Note: This section is patterned after existing § 62.1-13.16 as modified under proposed § 28.2-1316. It is new language, but already applies to the Coastal Primary Sand Dune Protection Act by virtue of existing § 62.1-13.27. It is being set out to avoid the confusion which existing § 62.1-13.27 now creates.

§ 28.2-1417. *Monitoring, inspections, compliance, and restoration.*—A. The Commissioner or board chairman may require a permittee to implement monitoring and reporting procedures they believe are reasonably necessary to ensure compliance with the provisions of the permit and this chapter.

B. The Commissioner or board chairman may require such on-site inspections as he believes are reasonably necessary to determine whether the measures required by the permit are being properly performed, or whether the provisions of this chapter are being violated. Prior to conducting such inspections, the Commissioner or board chairman shall provide notice to the resident owner, occupier, or operator, who shall be given an opportunity to accompany the site inspector. If it is determined that there is a failure to comply with the permit, the Commissioner or board chairman shall serve notice upon the permittee at the address specified in his permit application or by delivery at the site of the permitted activities to the person supervising the activities and designated in the permit to receive the notice. The notice shall describe the measures needed for compliance and the time within which these measures shall be completed. Failure of the person to comply within the specified period is a violation of this section.

C. Upon receipt of a sworn complaint of a substantial violation of this chapter from the designated enforcement officer, the Commissioner or board chairman may, in conjunction with or subsequent to a notice to comply as specified in subsection B of this section, issue an order requiring all or part of the activities on the site to be stopped until the specified corrective measures have been taken. In the case of an activity not authorized under this chapter or where the alleged permit noncompliance is causing, or is in imminent danger of causing, significant harm to the coastal primary sand dunes protected by this chapter, the order may be issued without regard to whether the person has been issued a notice to comply pursuant to subsection

B of this section. Otherwise, the order may be issued only after the permittee has failed to comply with the notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority, permittee, resident owner, occupier, or operator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. Upon completion of corrective action, the order shall immediately be lifted. Nothing in this section shall prevent the Commissioner or board chairman from taking any other action specified in § 28.2-1416.

D. Upon receipt of a sworn complaint of a substantial violation of this chapter from a designated enforcement officer, the Commission or a wetlands board may order that the affected site be restored to predevelopment conditions if the Commission or board finds that restoration is necessary to recover lost resources or to prevent further damage to resources. The order shall specify the restoration necessary and establish a reasonable time for its completion. The order shall be issued only after a hearing with at least thirty days' notice to the affected person of the hearing's time, place, and purpose, and shall become effective immediately upon issuance by the Commission or board. The Commission or board shall require any scientific monitoring plan they believe is necessary to ensure the successful reestablishment of coastal primary sand dunes protected by this chapter and may require that a prepaid contract acceptable to the Commission or board be in effect for the purpose of carrying out the scientific monitoring plan. The Commission or board may also require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it securing to the Commonwealth compliance with the conditions set forth in the restoration order. The appropriate court, upon petition by the Commission or board, may enforce any such restoration order by injunction, mandamus, or other appropriate remedy. Failure to complete the required restoration is a violation of this chapter.

E. The duties of the Commissioner or the board chairman under this section may be delegated to their respective designees; however, these designees shall not be designated enforcement officers.

Drafting Note: This section is patterned after existing § 62.1-13.16:1 as modified under proposed §§ 28.2-1212 and 28.2-1317. It is new language, but already applies to the Coastal Primary Sand Dune Protection Act because of its specific references to Chapter 2.2 and by virtue of existing § 62.1-13.27. It is being set out to avoid the confusion which existing § 62.1-13.27 now creates. Existing § 62.1-13.16:1 applies to subaqueous beds, wetlands, and coastal primary sand dunes. Because proposed Chapter 14 relates only to coastal primary sand dunes and beaches, all references to subaqueous beds and wetlands have been deleted.

§ 28.2-1418. Violations; penalty.—Any person who knowingly, intentionally, or negligently violates any order, rule, or regulation of the Commission or of a wetlands board, any provision of this chapter or of a coastal primary sand dune zoning ordinance enacted pursuant to this chapter, or any provision of a permit granted pursuant to this chapter is guilty of a Class 1 misdemeanor. Following a conviction, every day the violation continues is a separate offense.

Drafting Note: This section is patterned after existing § 62.1-13.18 as modified under proposed § 28.2-1318. It is new language, but is already applicable to the Coastal Primary Sand Dune Protection Act by virtue of existing § 62.1-13.27. It is being set out to avoid the confusion which existing § 62.1-13.27 now creates.

§ 28.2-1419. Injunctions.—Upon the petition of the Commission or a wetlands board to the circuit court of the county or city where any act is done or threatened which is unlawful under this chapter, the court may enjoin the unlawful act and order the defendant to take any steps necessary to restore, protect, and preserve the dunes or beaches involved. This remedy shall be exclusive of and in addition to any criminal penalty which may be imposed under § 28.2-1418.

Drafting Note: This section is patterned after existing § 62.1-13.18:1 as modified under proposed § 28.2-1319. It is new language, but already applies to the Coastal Primary Sand Dune Protective Act by virtue of existing § 62.1-13.27. It is being set out to avoid the confusion which § 62.1-13.27 now creates.

§ ~~62.1-13.27:1~~. 28.2-1420. Penalties.—A. Without limiting the remedies which may be obtained in under this chapter, any person who violates any provision of this chapter or who violates or fails, neglects , or refuses to obey any Commission or wetlands board notice, order, rule, regulation , or permit condition authorized by this chapter shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$25,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred for the purpose of abating environmental damage to ; or the restoration of wetlands restoring dunes or

beaches therein, in such a manner as the court may, by order, direct, except that where the violator is the county, city, or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

B. Without limiting the remedies which may be obtained ~~in~~ *under* his chapter, and with the consent of any person who has violated any provision of this chapter or who has violated or failed, neglected, refused to obey any Commission or wetlands board order, rule, regulation, or permit condition authorized by this chapter, the Commission or wetlands board may provide, in an order issued by the Commission or wetlands board against such person, for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Civil charges shall be in lieu of any appropriate civil penalty which could be imposed under subsection A of this section. Civil charges may be in addition to the cost of any restoration ordered by the Commission or a wetlands board.

Drafting Note: The civil penalties assessable under existing § 62.1-13.27:1 are for improper conduct relating to the use of dunes or beaches (as opposed to wetlands). Yet, when a court in its discretion orders that these penalties be paid to the county, city, or town in which the violation occurred, the moneys may only be used to abate environmental damage to or restore "wetlands" in the jurisdiction. So that the actual damage caused by the violation can be addressed through the use of these penalties, it is proposed that the term "wetlands" be stricken and replaced with "dunes or beaches."

COMPARATIVE TABLES

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"Repealed" means that the section was repealed prior to this title revision. "Deleted" means that the section is being eliminated by this title revision and there is no corresponding section in the new title.

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