

Chapter 2. General Provisions.

Article 1. Powers and Duties.

§ 28.2-200. Definitions.

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

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

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

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

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

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

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

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

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

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

The Commission may:

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

conservation and reasonable use of surf clams.

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

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

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

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

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

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

8. The Commonwealth hereby assents to the provisions of the Federal Aid in Sport Fish Restoration Act of August 9, 1950 (16 U.S.C. §§ 777-777k), as amended. The Commission is authorized to perform all such acts as may be necessary for the establishment and implementation of cooperative fish restoration and management projects as defined by these federal statutes and the implementing regulations promulgated thereunder.

Code 1950, § 28-43; 1960, c. 517; 1962, c. 406, §§ 28.1-23, 28.1-48; 1966, c. 684; 1968, cc. 748, 749; 1972, c. 833; 1973, cc. 21, 411, § 28.1-120.1; 1976, c. 392; 1979, c. 274; 1981, c. 61; 1983, cc.

307, 318; 1984, c. 463; 1990, c. 445; 1992, c. 836; 1995, c. 136; 2004, c. 860; 2006, c. 5; 2009, c. 371.

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

For purposes of this section:

"Fund" means the Oyster Growing Activities Fund.

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

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

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

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

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

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

F. Grants shall be awarded in the order in which grant applications are filed with the Commissioner. The Commissioner may not award any grant unless there are sufficient funds in the Fund from which such grant shall be paid. Any individual growing and transferring oysters as required under this section, but not receiving a grant for such transfer because of insufficient

funds in the Fund, shall have no priority or right to any future moneys that may be appropriated or deposited into the Fund based on such prior transfer of oysters.

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

2001, c. 819.

§ 28.2-202. Commissioner; fishery powers.

The Commissioner may:

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

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

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

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

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

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

purpose;

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

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

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

§ 28.2-203.1. Blue crab fishery management plan.

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

1. Measures to protect and enhance crab habitat and nursery areas.
2. Suggested measures to assure water quality conditions necessary for blue crab survival and reproduction, including identification of areas where water quality is such that onshore mechanisms for water quality protection are needed to protect and restore crab populations and habitat areas.
3. A review of current and proposed regulations and restrictions relating to: (i) winter dredging; (ii) commercial licensing; (iii) spawning stock; (iv) nursing sanctuaries; (v) submerged aquatic vegetation; (vi) peeler and soft shell crabs; (vii) size limits; (viii) the use of cull rings and the use of crab pots; and (ix) time of day restrictions and closed seasons.
4. Recommended legislative changes if necessary to implement the plan.

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

1995, c. 356.

§ 28.2-204. Authority to collect fisheries statistics.

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

1. Statistics for catch and fishing efforts by species from commercial and recreational fishermen;
2. Statistics from fish processors and dealers;
3. Types of gear and equipment used;

4. Areas in which fishing has been conducted;

5. Landing places; and

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

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

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

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

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

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

B. The Commission is authorized to promulgate regulations to carry out the provisions of this section. In determining whether to limit the sale of gear licenses or permits to fish, and determining who receives licenses, the Commission shall consider all factors relevant to the Commonwealth's fishery management policy, including but not limited to:

1. Economic and social consequences;
2. Food production;
3. Dependence on the fishery by licensees;
4. Efficiency of gear used in the fishery;
5. Impact on species and fisheries; and
6. Abundance of the resource.

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

§ 28.2-205. Scientific collection permits; penalty.

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

A violation of this subsection is a Class 3 misdemeanor.

B. Application for a permit shall be made in writing to the Commissioner. There shall be no charge for a permit, and the permit shall not be transferable. The issuance of the permit shall be

governed by applicable Commission regulations and shall be subject to any reasonable terms and conditions imposed by the Commissioner. The Commissioner may, with the approval of the Commission, require an applicant for such permit to submit to the Commissioner any data or results acquired through the use of the permit.

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

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

§ 28.2-206. Virginia Saltwater Sport Fishing Tournament.

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

1. Publicize and document the quantity, quality, and variety of the Commonwealth's saltwater angling resources; and
2. Establish a system for securing and maintaining records of the largest of each marine game fish commonly taken in the Commonwealth's marine waters by anglers. When possible, fish caught or taken in the tournament shall be released alive.

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

§ 28.2-207. Tournament Advisory Committee continued.

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

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

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

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

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

§ 28.2-208. Marine Fishing Improvement Fund continued.

There is hereby continued a special, nonreverting fund in the state treasury to be known as the Marine Fishing Improvement Fund, hereinafter referred to as the Fund. The Fund shall consist of (i) that portion of the nonresident harvester's license fees which have not been allocated to the Virginia Marine Products Fund as provided for in § 28.2-227, (ii) fees collected from the registration of commercial fishermen under § 28.2-241, and (iii) fees collected from the sale of seafood landing licenses under § 28.2-228.1. The Fund shall be administered by the Commission and used solely for (i) managing and improving marine fisheries, (ii) seafood product promotion

and development services, (iii) mandatory reporting and stock assessment, (iv) education of commercial fishermen, (v) conservation and management strategies identified by the General Assembly and the Commission, (vi) public information pamphlets and summaries of rules issued with gear licenses, and (vii) retaining commercial fishermen to engage in replenishment, research, and stock assessment activities.

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

§ 28.2-208.1. Commercial Fishing Advisory Board established.

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

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

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

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

1993, c. 10.

Article 2. Fishery Regulations.

§ 28.2-209. Publication of proposed regulations.

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

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

§ 28.2-210. Adoption of emergency regulations.

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

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

§ 28.2-211. Hearing on proposed regulations.

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

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

§ 28.2-212. Adoption of regulations.

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

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

§ 28.2-213. Distribution of new regulations.

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

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

§ 28.2-214. Right of petition to Commission.

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

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

§ 28.2-215. Judicial review of validity of regulations.

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

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

Article 3. Proceedings and Actions.

§ 28.2-216. Hearings before Commission.

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

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

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

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

§ 28.2-217. Procedure of hearing.

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

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

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

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

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

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

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

§ 28.2-219. Judicial review in contested cases.

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

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

§ 28.2-220. Appeals to Court of Appeals.

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

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

§ 28.2-221. Proof of posting of notices.

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

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

Article 4. Officers, Agents, and Districts.

§ 28.2-222. Districts.

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

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

§ 28.2-223. Appointment of officers.

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

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

§ 28.2-224. Collection of license fees.

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

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

Article 5. Licensing Generally.

§ 28.2-225. Fishing license required; penalty.

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

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

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

§ 28.2-226. Exemptions from licensing requirements.

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

1. Except as otherwise provided by regulation, taking by dip net, hand line, or two crab pots, as much as one bushel of hard crabs and two dozen peeler crabs in any one day for personal use only.
2. Taking a maximum of one bushel of oysters in any one day for personal use, when taken by hand or with ordinary tongs during the legally prescribed oyster season on public oyster grounds open for harvest or unleased bottom open for harvest.
3. Taking a maximum of 250 clams in any one day for personal use, when taken by hand or with ordinary tongs.
4. Using one tank or float no greater than four feet in width and eight feet in length for shedding crabs for personal use.

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

§ 28.2-226.1. Recreational gear license required.

A. Any person desiring to take or catch finfish or shellfish for recreational purposes in the tidal waters of the Commonwealth using commercial gear authorized under § [28.2-226.2](#) shall first obtain the appropriate commercial gear license for recreational purposes. A license to use such gear for recreational purposes shall be issued to an individual for his exclusive use and shall not

be transferable.

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

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

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

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

F. Any person who engages in an activity for which an exemption is provided in § [28.2-226](#), holds a saltwater recreational fishing license and uses a gear type listed in § [28.2-302.1](#), or is exempt from the requirements of obtaining a saltwater recreational license pursuant to subdivision A 11 of § [28.2-302.5](#) shall be exempt from the requirement of obtaining a commercial gear license for recreational purposes.

1993, c. 219; 2005, c. [124](#); 2015, c. [468](#); 2018, c. [118](#).

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

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

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

1. One gill net up to 300 feet in length, \$7.50;
2. Up to 10 crab pots with turtle excluder devices, \$36; up to 10 crab pots without turtle excluder devices, \$46;
3. One crab trap or crab pound, \$5;
4. One crab scrape, \$16; or
5. Two eel pots, \$10.

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

D. The Commission may subsequently revise the cost of licenses pursuant to § [28.2-201](#).

1993, c. 219; 2001, c. [28](#); 2009, c. [9](#); 2016, c. [136](#).

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

A. Any nonresident desiring to take or catch marine fish, crabs or any other seafood, except oysters, clams or other mollusks, from the tidal waters of the Commonwealth for which a license is required shall pay to any officer or agent a fee for a nonresident harvester's license. The fee, to

be established by the Commission, shall be no less than \$350 or more than \$1,150 or as subsequently revised by the Commission pursuant to § 28.2-201. Three hundred fifty dollars of each fee shall be credited to the Virginia Marine Products Fund as provided under § 3.2-2705. The remainder of the fee shall be credited to the Marine Fishing Improvement Fund, as established pursuant to § 28.2-208.

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

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

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

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

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

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

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

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

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

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

§ 28.2-228.1. Seafood landing licenses.

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

deposited to the Marine Fishing Improvement Fund established in § 28.2-208.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 28.2-232. Revocation of licenses.

A. The Commission may revoke the fishing privileges within the Commonwealth's tidal waters and revoke or prohibit the issuance, reissuance, or renewal of any licenses if, after a hearing held after 10 days' notice to the applicant or licensee, it finds that the person has violated any provision of this subtitle. The Commission shall not revoke any license other than the license for the fishery in which the violation occurred. The Commission may revoke licenses other than the applicable license upon a second or subsequent violation within five years.

B. The duration of the license revocation and prohibition shall be fixed by the Commission up to a maximum of five years, taking into account (i) evidence of repeated violations of the conservation, health, or safety laws and regulations; (ii) abusive conduct and behavior toward officers; and (iii) the damage that has occurred, or might have occurred, to the natural resources, the public health, or the seafood industry.

In determining whether to revoke a person's tidal fishing privileges for up to a maximum of five years, the Commission shall take into account (i) evidence of habitual disregard for the conservation, health, or safety laws and regulations; (ii) whether the violation of this subtitle was committed while the person's licenses or privileges were revoked or while the person was under a Commission-ordered probation period; and (iii) evidence that significant harm occurred, or might have occurred, to the natural resources, the public health, or the seafood industry.

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

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

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

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

1962, c. 406, § 28.1-36; 1970, c. 610; 1989, c. 2; 1992, c. 836; 2013, c. 50; 2015, c. 468; 2017, c. 630.

Article 6. Marking of Boats, Nets and Other Devices.

§ 28.2-233. License tags or identification generally.

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

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

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

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

1. License tags for fixed fishery devices, including pound nets, fyke nets, crab traps, and staked gill nets, shall be fastened to one of the offshore stakes.
2. License tags for anchored gill nets and drift gill nets shall be fastened to a flagstaff or a buoy that is visible from the surface.
3. License tags for vessels using haul seines, purse nets, trawl nets, crab pots, trotlines, and crab scrapes shall be fastened at a conspicuous place on the starboard side or the mast of the vessel.
4. License tags issued for businesses purchasing seafood shall be affixed in a conspicuous place on the business establishment, boat or motor vehicle.
5. Identification numbers when issued for particular devices shall be applied by the license holder and shall be in place at all times when the gear is deployed.

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

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

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

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

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

§ 28.2-236. Seizure of unmarked devices.

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

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

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

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

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

B. The Commission may revoke any fishing licenses issued to such person, as set forth in § 28.2-232, if abandoned poles or stakes are not promptly removed. Failure to remove such poles or stakes is a Class 1 misdemeanor. The most recent licensee for the fishing device is responsible for removing the poles or stakes.

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

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

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

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

§ 28.2-239. Exemptions from article.

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

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

Article 7. Registration of Commercial Fishermen.

§ 28.2-240. Repealed.

Repealed by Acts 1993, c. 219.

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

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

B. [Repealed.]

C. On and after January 1, 1993, fishermen not registered as commercial fishermen but who desire to sell their catch shall apply to the Commission for registration as commercial fishermen. The effective date of status as a commercial fisherman shall be two years from the date the application is approved by the Commission. A person whose registration as a commercial fisherman is not effective shall not sell, trade, or barter his catch or give his catch to another in order that it may be sold, traded, or bartered. The Commission shall grant a preference, on a one-in, one-out basis, for an exemption from the two-year waiting period for an immediate family member or documented employee of a commercial fisherman who is retiring from the commercial fishery.

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

E. The cost of registration as a commercial fisherman shall be \$150 annually, due no later than the effective date of registration; however, the cost of registration for a person 70 years of age or older shall be \$75. All fees collected from the registration of commercial fishermen shall be deposited in the state treasury and credited to the Marine Fishing Improvement Fund as established in § 28.2-208. The Commission may subsequently revise the cost of licenses in this section pursuant to § 28.2-201.

F. Registrations of commercial fishermen shall not be transferable.

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

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

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

1992, cc. 493, 503; 1993, c. 219; 1994, c. 121; 1996, c. 277; 2009, c. 9; 2017, c. 339.

§ 28.2-242. Report of harvest required.

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

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

§ 28.2-243. Commission to promulgate regulations.

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

1992, cc. 493, 503.

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

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

1992, cc. 493, 503.

Article 8. Fishery Resource Grant Program.

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

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

Comptroller upon written request of the Chairman of the Graduate Marine Science Consortium at the University of Virginia.

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

1. New fisheries equipment or gear;
2. Environmental pilot studies on issues including water quality and fisheries habitat;
3. Aquaculture or mariculture of marine-dependent species; and
4. Seafood technology.

C. The Consortium shall advertise the availability of grant funds and shall solicit, receive, and review grant applications. Grants shall be awarded by the Consortium after consideration of the recommendations of the Fishery Resource Grant Advisory Board. The decisions regarding who receives the grant awards shall be the responsibility of the Consortium. In awarding grants for the aquaculture or mariculture of marine dependent species the Consortium shall consider the amount of private investment that has been made for the aquaculture or mariculture of a species, and shall not award grants for the aquaculture or mariculture of a species in which significant private investment has been made, unless such grant is for new technology.

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

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

1999, c. 719.

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

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

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

1999, c. 719.

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

At the end of each grant cycle, the Graduate Marine Science Consortium shall submit a report to the House Committee on Chesapeake and Its Tributaries; the House Committee on Appropriations; the Senate Committee on Agriculture, Conservation and Natural Resources; the

Senate Committee on Finance; the Marine Resources Commission; and the Virginia Department of Agriculture and Consumer Services describing the projects funded and moneys expended.

1999, c. [719](#).