

Title 28.2 - FISHERIES AND HABITAT OF THE TIDAL WATERS.
Statutory changes to enforceable policy: Wetlands Program
Chapter 13-Wetlands
(formerly at Va. Code 62.1-13.1 et seq.)

Statutory Change	Status of Law	Change to Law Since CMP Approval	Significance of Change
§28.2-1300. Definitions	Part of original CMP approval [was §62.1-13.2]	<ul style="list-style-type: none"> • Deleted definitions for “Commission,” “Commissioner,” “Person,” and “Tidewater Virginia.” (1992, c. 836). 	<ul style="list-style-type: none"> • Not a substantial change. The first three deleted definitions were duplicated in §62.1-13.5, now found at §28.2-1302. The definition of Tidewater Virginia is unchanged for the CMP and is found in §28.2-100 and the Chesapeake Bay Preservation Act. §10.1-2101.
§28.2-1301. Powers and duties of the Commission.	Part of original CMP approval [was contained in part in §62.1-13.1 and in §62.1-13.7]	<ul style="list-style-type: none"> • Qualified the existing statement that the Virginia Marine Resources Commission shall manage any wetlands it receives so as to maximize their ecological value by adding “as provided in Article 2 (Section 28.2-1503 et seq.) of Chapter 15 of this title.” (1995, c. 850). 	<ul style="list-style-type: none"> • Not a substantial change. §28.2-1503, addressing the Commission’s management of all ungranted shores of the sea, marsh and meadowlands as well as all other lands of the Commonwealth for which management duties have been given to the Commission, reaffirms the Commission’s role as steward for the property interests of the Commonwealth.
§28.2-1302. Adoption of wetlands zoning ordinance; terms of ordinance.	Part of original CMP approval [was §62.1-13.5]	<ul style="list-style-type: none"> • Changes reference date for adoption of wetlands zoning ordinance by county, city or town to October 1, 1992 (1992, c. 836) • Inserted language formerly contained in 	<ul style="list-style-type: none"> • Not a substantial change. Change in the reference date for the Ordinance resulted from the 1992 recodification of the wetlands statute. • No change; language from

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		<p>§62.1-13.1 as a new subsection 9 to Wetlands Zoning Ordinance (1992, c. 836)</p> <ul style="list-style-type: none"> • Added the local wetlands board chairman’s authorized representative as authorized signatory. (1994, c. 274) 	<p>original approved program.</p> <ul style="list-style-type: none"> • A minor administrative change effected to facilitate the workings of local boards.
<p>§28.2-1303. Appointment, terms, compensation, etc., of local wetlands boards; jurisdiction of county wetlands board over wetlands in town.</p>	<p>Part of original CMP approval [was §62.1-13.6]</p>	<ul style="list-style-type: none"> • Expressly authorizes the Town of Dumfries in Prince William County to enact a wetlands zoning ordinance (1992, c. 836) • Added a clause authorizing the governing body to appoint at least one but not more than three alternate members to the board. Requires qualifications, terms and compensation of alternate members to be the same as those of members, and imposes notification requirement upon members who know that they will not be able to attend a board meeting (2004, c. 277). • Allowed board members to also hold office on a board established by a local government to hear cases regarding ordinances adopted pursuant to the Chesapeake Bay Preservation Act and regulations (2005, c.104). 	<ul style="list-style-type: none"> • Not a substantial change. Towns previously had legal authority under §62.1-13.5 to enact a wetlands ordinance and to establish a wetlands board. • The addition of alternate members to the board, and requiring advance notice for anticipated absences are minor administrative changes designed to ensure the continued smooth operations of the board. • The type of board described in the additional exception is similar in kind to the other boards already exempted and allowing dual service improves expertise. The Chesapeake Bay Preservation Act and regulations are already part of

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			the approved Virginia CMP.
§28.2-1304. Officers, meetings, rules, etc., of wetlands boards; records and reports.	Part of original CMP approval [was §62.1-13.7]	<ul style="list-style-type: none"> Remained unchanged from §62.1-13.7 except for minor stylistic alterations. 	<ul style="list-style-type: none"> Not a substantial change.
§28.2-1305. Local governing body to supply meeting space and services for wetlands board.	Part of original CMP approval [was §62.1-13.8]	<ul style="list-style-type: none"> Removed language regarding removal of a board member and placed it in §28.2-1303.B. (1992, c. 836) 	<ul style="list-style-type: none"> Not a substantial change.
§ 28.2-1306. Permits required for certain activities; issuance of permits by Commission.	Part of original CMP approval [was §62.1-13.9]	<ul style="list-style-type: none"> Added the Commissioner's authorized representative as authorized signatory. (1994, c. 125). 	<ul style="list-style-type: none"> Not a substantial change Signature authority is a minor administrative change effected to facilitate the workings of the Commission.
§ 28.2-1307. Expedited permits; administrative procedures.	Enacted in 1982, but not part of original CMP approval [was §62.1-13.5:2]	<ul style="list-style-type: none"> Empowers the Commission, in conjunction with local wetlands boards and other affected state and federal agencies, to develop administrative procedures to expedite the processing of applications for permits. (1982, c.300, recodified 1992, c.836). Added clause which empowers the Commission, in conjunction with local wetlands boards, to develop an expedited process for issuing general wetlands permits to be used by applicants during emergency situations where there is a threat 	<ul style="list-style-type: none"> Not a substantial change. The original provision was not submitted as an enforceable policy because it was procedural, but is submitted now for administrative completeness. Note that §62.1-13.9, part of the original CMP approval, now at 28.2-1306 provided for the review and issuance of such permits. Not a substantial change. The stipulation of procedures for issuing expedited general permits is a practical adjustment to help address exigencies that will require the Commission, local

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		to public or private property or to public health and safety. (1997, c. 868).	wetland boards and state and federal agencies to respond quickly in their oversight roles.
§ 28.2-1308. Standards for use and development of wetlands; utilization of guidelines.	Part of original CMP approval [was §62.1-13.3]	<ul style="list-style-type: none"> • Added clause C, which allows permit applicants to satisfy all or part of compensatory mitigation requirements by the purchase of credits from any wetlands mitigation bank that has been approved and is operating in accordance with applicable federal guidance for the establishment, use and operation of such banks in accordance with stipulated conditions (1996, c. 736) • Adds “use” of credits from wetlands mitigation banks to the permissible means by which permit applicants may satisfy all or part of compensatory mitigation requirements. Adds any banks owned by the permit applicant to the class of wetlands mitigation banks that may be used. Adds “state” guidance and also adds “laws or regulations” to the applicable federal and state legal prescriptions for the establishment, use and operation of mitigation banks. Adds clause which describes the exceptional circumstances which must be demonstrated by permit applicant when the mitigation bank is not located in the same cataloging unit or adjacent cataloging unit within the same 	<ul style="list-style-type: none"> • Does not substantially change uses, special management areas, boundaries, authorities or coordination, public involvement or national interest. The use of mitigation banking was established to assist permittees meet their obligation to mitigate the impact of their activities in wetlands, in line with the Commonwealth’s mandate to preserve wetlands and to prevent their despoliation and destruction, and to accommodate necessary economic development in a manner consistent with wetlands preservation.

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		river watershed as the impacted site (1999, c. 8).	
§28.2-1310. Commissioner to review all decisions of wetlands boards.	Part of original CMP approval [was §62.1-13.10]	<ul style="list-style-type: none"> • Almost unchanged, but added language based on §62.1-13.11 to provide that the Commissioner request the Commission to review a local board decision only when he believes the board “failed to fulfill its responsibilities under the wetlands zoning ordinance.” Previously the Commissioner was authorized to notify the commission of any decision “which in his opinion should be reviewed by the Commission,” while the standards were set out in §62.1-13.11 (1992, c. 836) 	<ul style="list-style-type: none"> • Not a substantial change. The change in language is a more precise statement of the standard of review.
§28.2-1311. When Commission to review decision of wetlands board.	Part of original CMP approval [was §62.1-13.11]	<ul style="list-style-type: none"> • No changes except deleted language that specified grounds for Commissioner to request review of decision, which are now in §28.2-1310. (1992, c. 836) 	<ul style="list-style-type: none"> • Not a substantial change. The grounds for the Commissioner’s request for review are in §28.2-1310.
§28.2-1312. Procedure for review; notice of decision.	Part of original CMP approval [was §62.1-13.12]	<ul style="list-style-type: none"> • Added the requirement for the Commission to notify the parties of its decision within 48 hours of the appeal or review hearing. (1992, c. 836) 	<ul style="list-style-type: none"> • Not a substantial change. The requirement is an administrative change designed to promote efficiency in the decision-making process.
§28.2-1313. When Commission to modify, remand, or reverse decision of wetlands board.	Part of original CMP approval [was §62.1-13.13]	<ul style="list-style-type: none"> • Specified as grounds for when the Commission shall modify, remand or reverse the decision of a wetlands board, if the local board “failed to fulfill its responsibilities under the wetlands zoning 	<ul style="list-style-type: none"> • Not a substantial change. The previous version of the statute referenced the statute and the guidelines promulgated by the Commission. The wetlands

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		ordinance” in place of reference to the “policies and standards” and guidelines which must be in the ordinance. (1992, c. 836)	zoning ordinance, which references the guidelines promulgated by the Commission, is contained within the recodified statute, and thus the change is simply a more direct reference to a specific section of the statute.
§28.2-1314. Time for issuance of permit.	Part of original CMP approval [was §62.1-13.14:1]	• Remained unchanged from §62.1-13.14:1 except for minor stylistic changes. (1992, c. 836)	• Not a substantial change.
§28.2-1315. Judicial review.	Part of original CMP approval [was §62.1-13.15]	• Deleted language which required an appeal to be made within 30 days to the circuit court having jurisdiction. Modified the clause describing judicial review in accordance with the provisions of the Administrative Process Act by deleting a proviso that the court shall modify or reverse the decision of the Commission or remand the case for further proceedings if specific conditions arise (1986, c. 615)	• Not a substantial change. The Administrative Process Act itself specifies timing of these appeals and the court’s powers on modification and remand. The change deals with an issue of process as governed by the administrative code.
§28.2-1316. Investigations and prosecutions.	Part of original CMP approval. [was §62.1-13.16]	Remained unchanged from §62.1-13.16 except for minor stylistic changes. (1992, c. 836)	• Not a substantial change.
§28.2-1317. Monitoring, inspections, compliance, and restoration.	Approved as part of the CMP through Routine Program Change RPI 93-1 in 1993. [Enacted as §62.1-13.16:1 in 1987. Amended in 1990, c. 811].	Remained unchanged from §62.1-13.16:1 except for minor stylistic changes. (1992, c. 836)	• Not a substantial change

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§28.2-1318. Violations; penalty.	Part of original CMP approval [was §62.1-13.18]	Remained unchanged from §62.1-13.18 except for minor stylistic changes. (1992, c. 836)	• Not a substantial change.
§28.2-1319. Injunctions.	Part of original CMP approval [was §62.1-13.18:1]	Remained unchanged from §62.1-13.18:1 except for minor stylistic changes. (1992, c. 836)	• Not a substantial change.
§28.2-1320. Penalties.	Approved as part of the CMP through Routine Program Change RPI 93-1 in 1993. [Enacted as §62.1 -13.18:2 in 1990, c.811.]	Remained unchanged from §62.1 -13.18:2 except for minor stylistic changes.	• Not a substantial change.