

Title 28.2 FISHERIES AND HABITAT OF THE TIDAL WATERS
Statutory changes to enforceable policy: Chapter 2-
General Provisions

Statutory Change	Status of Law in 1986	Change to Law Since 1986	Significance of Change
§ 28.2-103. General powers of Commission; promulgation of regulations.	Part of the original CMP approval [was § 28.1-23].	<ul style="list-style-type: none"> • Recodified regulatory authority to this section, with cross-references to Chapter Two regulations (1992, c. 836). • Cross-references (1997, c. 845). 	<ul style="list-style-type: none"> • Not a substantial change.
§28.2-103 and 28.2-104. Commissioner; general powers and duties	Part of the original CMP approval [was § 28.1-9].	<ul style="list-style-type: none"> • Recodified enforcement duties to this section (1992, c. 836). 	<ul style="list-style-type: none"> • Not a substantial change.
§ 28.2-201 Authority of Commission to make regulations, establish licenses, and prepare fishery management plans; accept federal grants; enforcement; penalty for violations of regulation	Part of the original CMP approval [was § 28.1-23]	<ul style="list-style-type: none"> • Changed wording of “shall have authority” to make regulations...it deems necessary,” to “may promulgate regulations...necessary” (1992, c. 836). • Changed “inspector” to “agency” (1990, c. 445) (1992, c. 836). • Changed Class 1 misdemeanor penalty (1992, c. 836). • Changed requirement that penalties are the same for violation of a regulation and violation of the specific statute under which the regulation has been promulgated (1995, c. 136). • Added permit fees for listed permit types and for their administrative transfer among fishermen (2004, c. 860). • Added fee scheme to increase fees for fisheries licenses and permits every three years. The Commission is required to equitably distribute the amounts generated 	<ul style="list-style-type: none"> • Not a substantial change. Under the existing Fisheries Management Program, the Commission retains same authority to promulgate regulations it deems necessary “to promote the seafood and marine resources of the State.” • Not a substantial change. The change is a minor change effected to deter regulatory violations. • Does not substantially change uses subject to management, special management areas or authorities and organization under the CMP. Under the existing fisheries management program, the addition of permit fees is uniform with the implementation of license fees as provided in former § 28.1-23.

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		<p>from the fee increases to the Marine Fishing Improvement Fund and the Virginia Saltwater Recreational Fishing Development Fund (2004, c. 860).</p> <ul style="list-style-type: none"> Added provision recognizing the Commonwealth's assent to the Federal Aid in Sport Fish Restoration Act. The Commission is given the authority to establish and implement fish restoration and management projects under the Act (2006, c. 5). 	<ul style="list-style-type: none"> Does not substantially change uses subject to management or authorities subject to management under the CMP. The Funds assist the Commission manage and improve marine fisheries. Does not substantially change uses subject to management or authorities and organization under the CMP. Under the existing fisheries management program, fishery management plans "shall have as a goal the preservation of the Commonwealth's exclusive right to manage the fisheries within its territorial jurisdiction." See Final EIS at III-2.
§ 28.2-202 Commissioner; fishery powers	Part of the original CMP approval [was §§ 28.1-9, 28.1-16].	<ul style="list-style-type: none"> No change in this Section which defined the Commissioner's powers under the Fisheries Management Program except minor stylistic changes. Also, the Commissioner's authority, formerly found under § 28.1-9, to enforce all fish and seafood laws, is now found at § 28.2-102 (1992, c. 836). 	<ul style="list-style-type: none"> Does not substantially change uses subject to management or authorities and organization under the CMP. The Commissioner's authority to enforce fish and seafood laws is found under § 28.2-102.
§ 28.2-203 Commission to prepare fishery management plans; standards	Part of the original CMP approval [was § 28.1-23.1].	<ul style="list-style-type: none"> Omitted general fishery management goals and policy (1992, c. 836). Substituted "corporation or other entity" with "person" (1992, c. 836). 	<ul style="list-style-type: none"> Does not substantially change uses subject to management or authorities and organization under the CMP. The 1986 Final EIS for Virginia at III-2

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			stated the goal and policies of fisheries management. Although this provision was omitted in the 1992 recodification, it is implicit throughout Title 28.2.
§ 28.2-203.1 Blue crab fishery management plan	Enacted in 1995, c. 356.	<ul style="list-style-type: none"> • Added general blue crab fishery management plan requirements and required actions to protect and enhance crab habitat and nursery areas such as the protection of water quality conditions and a review of current and proposed regulations relating to blue crab fisheries. • Required Commission to produce annual progress reports to the Governor. • Consistency requirement builds on previous plans, including multi-state Chesapeake Bay Program 	<ul style="list-style-type: none"> • Does not substantially change uses subject to management, special management areas, or authorities and organization under the CMP. The 1986 Final EIS for Virginia at III-3 authorizes the Commission to prepare and develop a blue crab fishery management plan. Also, the plan builds upon the already existing plans adopted by the Chesapeake Bay Program and are consistent with standards set forth in § 28.2-203. • Does not substantially change uses subject to management or authorities and organization under the CMP. The Governor, pursuant to the CMP “has oversight responsibilities... for the Marine Resources Commission.” <i>See</i> Final EIS at III-2.
§ 28.2-204 Authority to collect fisheries statistics	Part of original CMP approval [was § 28.1-23.2].	<ul style="list-style-type: none"> • Changed the Commission’s mandate to collect fisheries statistics from “shall have the authority to collect” to “may collect” (1992, c. 836). 	<ul style="list-style-type: none"> • Does not substantially change uses subject to management or authorities and organization under the CMP. Maintains consistency with former §

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		<ul style="list-style-type: none"> • Minor stylistic changes. 	28.1-23.2 which authorized the Commission to collect fishery statistics for the same objectives.
§ 28.2-204.1 Limited sale of gear licenses and permits; regulations	Enacted in 1992, c. 836.	<ul style="list-style-type: none"> • Authorized the Commission to limit the number of gear licenses or permits to fish and authorized the Commission to promulgate regulations which limit permit and license number and promulgate regulations to implement the section. • Authorized the Commission to issue gear licenses or permits (notwithstanding such limits) to any person who resided on an island at least three miles from the mainland for at least five years. (1998, c. 114) 	<ul style="list-style-type: none"> • Does not substantially change uses subject to management, special management areas or authorities and organization under the CMP. The CMP vests the Commission with the authority to issue licenses and promulgate regulations to promote and preserve the seafood and marine resources of the State.
§ 28.2-210 Adoption of emergency regulations	Part of the original CMP approval [was § 28.1-25].	<ul style="list-style-type: none"> • Substituted the word “organisms” for “animals.” Minor stylistic changes in sentence structure. • Cross-reference to publication requirement changed to § 28.2-209 (former § 28.1-24) 	<ul style="list-style-type: none"> • Does not substantially change uses subject to management or authorities and organization under the CMP.
§ 28.2-225 Fishing license required; penalty	Part of the original CMP approval [was §§ 28.1-47, 28.1-48, 28.1-59, 28.1-64].	<ul style="list-style-type: none"> • Recodified and consolidated §§ 28.1-47, 28.1-48, 28.1-59, and 28.1-64 to create a unified overarching prohibition to fish tidal waters of the Commonwealth without a license (1988, c. 710; 1990, c. 445; 1992, cc. 493, 503, 836, 895). 	<ul style="list-style-type: none"> • Does not substantially change uses subject to management or authorities and organization under the CMP, but provides simplified license procedures to meet uses that are already part of the CMP.
§ 28.2-226.1 Recreational gear license required	Enacted in 1993, c.219.	<ul style="list-style-type: none"> • Required all recreational fishermen using commercial gear authorized under § 28.2-226.2, or exempted in § 28.2-226, or 	<ul style="list-style-type: none"> • Does not substantially change uses or authorities subject to management under the CMP as the Commission

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		<p>included in § 28.2-302.1 to obtain a commercial gear license for recreational purposes.</p> <ul style="list-style-type: none"> • Defined “recreational purposes” • Required holders of a license to report catch and data to the Commission. 	<p>already possesses the authority to establish licenses with the goal to conserve and enhance finfish and shellfish resources.</p>
<p>§ 28.2-226.2 Commission to establish requirements for commercial gear licenses used for recreational purposes</p>	<p>Enacted in 1993, c. 219.</p>	<ul style="list-style-type: none"> • Authorized the Commission to establish the type and amount of gear which can be used for taking finfish and shellfish for recreational purposes, and set limits on license fees. 	<ul style="list-style-type: none"> • Does not substantially change uses subject to management or authorities and organization under the CMP. The CMP previously authorizes the Commission to establish licenses with the goal to conserve and enhance finfish and shellfish resources.
<p>§ 28.2-227 Special nonresident harvester’s license; fee and oath; revocation; penalty</p>	<p>Part of the original CMP approval [was § 28.1-47.1].</p>	<ul style="list-style-type: none"> • Substituted “officer” for term “inspector” (1991, c. 411). • Modified nonharvesters license fee to range from no less than \$350 to no more than \$1,150 (1993, c. 245). • Earmarked a portion of license fees to go to Virginia Marine Products Fund and Marine Fishing Improvement Fund (1991, c. 411). • Moved time period of license validation to 	<ul style="list-style-type: none"> • Does not substantially change uses subject to management or authorities and organization under the CMP. Term change amounts to technical change. • Does not substantially change uses or authority subject to management under the CMP, but provides updated licensing fee range to reflect changes in economic conditions since 1986 when the CMP was approved. • The allocated money earmarked for the respective Funds will aid in the Commission’s regulation of existing uses under the CMP. • Time period of license validation was

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		<p>§ 28.2-229.</p> <ul style="list-style-type: none"> • Omitted fee restriction requiring nonresidents to pay no less than the price Virginia residents would pay for a license to engage in like fishing activities (1994, c. 155). 	<p>previously included in § 28.1-47, incorporated in CMP in 1986.</p> <ul style="list-style-type: none"> • Does not substantially change uses or authorities subject to management under the CMP.
<p>§ 28.2-228. License for purchase of fish, shellfish, or marine organisms from the catcher; fee</p>	<p>Part of the original CMP approval [was § 28.1-119.1].</p>	<ul style="list-style-type: none"> • License and fee for direct purchasers. Amendment added “eels or other seafood” (1988, c. 27). • Recodification added subsections, and left “or other seafood” in place of “eels or” and dropped cross-reference to reporting requirement for oyster purchases contained in another section (1992, c. 836) 	<ul style="list-style-type: none"> • Does not substantially change uses subject to management, or authorities under the CMP. Applies to same activities as original CMP.
<p>§ 28.2-228.1 Seafood landing licenses</p>	<p>Enacted 1996, c. 214.</p>	<ul style="list-style-type: none"> • Authorized the Commission to promulgate regulations establishing licenses and exceptions to the license for the landing of seafood in Virginia. • Specified actions constituting Class 3 misdemeanors. 	<ul style="list-style-type: none"> • Does not substantially change uses subject to management, special management areas or authorities and organization under the CMP. The Commission possesses authority under the CMP to promulgate regulations and establish licenses to promote the seafood resources of Virginia. <i>See</i> Final EIS at III-2.
<p>§ 28.2-229 When licenses terminate; proration and refund not permitted</p>	<p>Part of the original CMP approval [was §§ 28.1-21, 28.1-70].</p>	<ul style="list-style-type: none"> • Inserted language formerly contained in § 28.1-21 and included specific dates of validation and expiration (1992, c. 836). • Inserted language formerly contained in § 28.1-70 concerning refunds during closed 	<ul style="list-style-type: none"> • Not a substantial change. The amendments clarify overly broad language contained in Title 28.1, §§ 28.1-21 and 28.1-70 and qualify when refunds are prohibited.

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		seasons and added refund prohibitions when fishing effort is reduced or when the season is closed to promote conservation of fisheries or due to natural conditions. Refunds are prohibited, as well, when a license is suspended or revoked (1992, c. 836).	
§ 28.2-230 Penalty for false statements or altering a fishing license; penalty	Part of the original CMP approval [was § 28.1-64].	<ul style="list-style-type: none"> • Inserted language formerly contained in § 28.1-64 and added the words “Class 1” before the word “misdemeanor in defining the penalty for making false statements or altering a license (1992, c. 836). • Narrowed type of violations included in the Section, because other license violations now covered at § 28.2-225 (1992, c. 836). 	<ul style="list-style-type: none"> • Does not substantially change uses subject to management or authorities and organization under the CMP. This provision is uniform with language supplanted from § 28.1-64 governing the same issues. • Does not substantially change uses or authority subject to management under the CMP.
§ 28.2-232 Revocation of licenses	Part of the original CMP approval [was § 28.1-36].	<ul style="list-style-type: none"> • Amended language to clarify that a hearing must be held <i>before</i> the Commission decides to prevent the issuance, reissuance or renewal or any licenses (1989, c. 2). • Clarified the duration and terms of license revocation (1989, c. 2). 	<ul style="list-style-type: none"> • Not a substantial change. Maintains consistency with the hearing and notice requirements found under former § 28.1-36. • Not a substantial change. The amended language places a two year limit on license revocation and provides detailed indicators for the Commission to review in its hearing. This maintains consistency with the hearing requirement in former § 28.1-36 and does not substantially change uses or

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			authority subject to management under the CMP, special management areas, authorities and organization, coordination, public involvement and national interest. .
§ 28.2-241 Registration of commercial fisherman required; exemption; penalty	Enacted 1992, cc. 493, 503.	<ul style="list-style-type: none"> • Added registration requirements for commercial fishermen, and defined “commercial fisherman.” Restricted licenses to commercial fisherman with valid registration. • Listed fees and due dates for the registration of commercial fishermen. • Restricted registration transfer. • Authorized \$500 civil penalty for violation of the section. 	<ul style="list-style-type: none"> • Does not substantially change uses subject to management, special management areas or authorities and organization under the CMP. The CMP already addressed the Commission’s regulatory authority over commercial fishing. Registration of commercial fishermen and clarification of what a commercial fisherman is assists the Commission to preserve and promote the seafood and marine resources of the State.
§ 28.2-243 Commission to promulgate regulations	Enacted 1992, cc. 493, 503.	<ul style="list-style-type: none"> • Authorized the Commission to promulgate regulations governing the registration of commercial fisherman. 	<ul style="list-style-type: none"> • Does not substantially change uses subject to management, special management areas or authorities and organization under the CMP. The CMP vests the Commission with the authority to promulgate regulations that to preserve and promote both commercial and recreational fisheries.