

Routine Program Changes to Commonwealth of Virginia Coastal Management Program Administration of Game, Inland Fisheries and Boating

**Prepared by
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for the**

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INTRODUCTION

This is a request by the Commonwealth of Virginia for the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management (OCRM) to concur with a Routine Program Change to the Commonwealth of Virginia's Coastal Management Program (CMP).

The Commonwealth of Virginia has revised the Commonwealth's enforceable policies in Code of Virginia Title 29.1 (formerly Title 29), Chapters 1, 3, 4, and 5 known as Game, Inland Fisheries and Boating. Title 29.1 addresses the authority of the Board of Game and Inland Fisheries ("Board") to promulgate rules and regulations for the protection of Virginia's inland fisheries and the administrative role of the Department of Game and Inland Fisheries ("Department" or "DGIF") in the management and enforcement of all rules and regulations of the Board.

In 2010, the Virginia CMP submitted a Routine Program Change for Title 29.1 to OCRM, but subsequently withdrew the request in order to consider comments made by Virginia agencies concerning the proposed inclusion of state threatened and endangered species provisions in that submittal. After a series of meetings and discussion, the Virginia CMP is now submitting this Routine Program Change, which updates the Game and Inland Fisheries provisions but which *does not seek to include Virginia threatened and endangered species provisions*.

ANALYSIS

The Commonwealth submits changes to Code of Virginia Title 29.1, Chapters 1, 3, 4, and 5 as a Routine Program Change. The sections governing the administration of Game and Inland Fisheries were previously approved as part of the CMP in 1986. This submission updates the CMP with minor statutory changes in order to reflect current law and policy. The following analysis:

(A) explains why the proffered changes to the CMP are Routine Program Changes and not Amendments as described in 15 C.F.R. §923.80(d); and

(B) identifies the enforceable policies affected, describes the nature of each program change, and examines the impact the changes have on the existing management program.

(A) Routine Program Change

Pursuant to CZMA §306(e) and 15 C.F.R. §923.84, this analysis of the submitted change notifies OCRM of the Routine Program Change, and explains why the program change will not result in an Amendment. Under 15 C.F.R. §923.80(d), amendments are defined as substantial changes in one or more of the five listed coastal management program areas:

- (1) uses subject to management;
- (2) special management areas;
- (3) boundaries;
- (4) authorities and organization; and
- (5) coordination, public involvement and the national interest.

OCRM’s 1996 Program Change guidance states that a substantial change is a high threshold requiring case-by-case determination. Such determination is made by reviewing indicators of substantial change, such as whether new or revised enforceable policies address coastal uses or resources not previously managed, or make major changes in the way a state CMP manages coastal uses or resources.

The provisions being submitted are primarily recodifications giving new section numbers to the statutory provisions already approved by NOAA as part of the original CMP.

In 1987, the Virginia General Assembly recodified Va. Code Title 29 - Game, Inland Fisheries and Dogs to Title 29.1 - Game, Inland Fisheries and Boating, reorganizing the prior sections for easier use, greater precision, and clarity. The following chart illustrates the pertinent Chapter locations in former Title 29 as recodified in Title 29.1.

Title 29	Title 29.1
1986	2013
<u>Chapter 1</u> In General <u>Chapter 2</u> Commission of Game and Inland Fisheries	<u>Chapter 1</u> Administration of Game and Inland Fisheries
<u>Chapter 5</u> Licenses	<u>Chapter 3</u> Licenses
<u>Chapter 6</u> Permits Required	<u>Chapter 4</u> Permits Required
<u>Chapter 8</u> General Game and Fish Laws	<u>Chapter 5</u> Wildlife and Fish Laws

At the time of recodification, the Commission of Game and Inland Fisheries (Commission) was renamed the Board of Game and Inland Fisheries (Board) and the Department of Game and Inland Fisheries (Department) was created. Concurrently, the Commission’s power and duties, as evidenced under particular sections of Title 29.1, Chapters 1-5, were transferred to the Board and the Department.

The legislature vested the Commission’s authority to promulgate rules and regulations for the protection of Virginia’s inland fisheries in the Board, while the Commission’s powers and duties to administer and enforce the laws and regulations were assigned to the Department.

The selected sections being submitted as a routine program change represent those sections that specifically address the vested authority of the Department and Board to regulate inland fisheries, promulgate regulations and enforce the laws and regulations under the approved CMP.

The approved CMP described as a 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 Commission carried out these policies in certain areas of the coastal zone by virtue of its jurisdiction over fish “located within tidal brackish and freshwater creeks” (FEIS III-2, III-4). The core goal to conserve and enhance is supported by enforceable policies and statutory sections that deal with the living ecosystems on which finfish and shellfish rely. In support of its fisheries core program, in 1986 Virginia submitted Va. Code §29-125, which conferred authority on the Commission (now the Board) of Game and Inland Fisheries to “determine when, to what extent, if at all, and by what means it is desirable to restrict, extend or prohibit in any degree the provisions of law obtaining in the State or any part thereof for the hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage or export of any wild bird, wild animal, or fish from inland waters and may...propose regulations for such purpose.” The recodification of this provision in §29.1-501.A provides that “The Board may promulgate regulations pertaining to the hunting, taking, capture, killing, possession, sale, purchase and transportation of any wild bird, wild animal, or inland water fish.” Former Va. Code §29-11 provided in pertinent part for the authority of the then-Commission to “have and to exercise such other powers and to do such other things as it may deem advisable for the conservation, protection, replenishment, propagation of and increasing the supply of game birds, game animals and fish and other wildlife of the State.” These powers are now exercised by the Board under §29.1-103.

The provisions being submitted do not substantially affect the uses subject to management under the CMP, special management areas, boundaries, authorities and organization, or coordination, public involvement and national interest.

(B) Effects of Changes on Program

Statutory changes are identified in the attached table, which identifies each statutory change submitted for approval as part of the CMP. The table relates each change to the authority in the CMP as approved in 1986. Copies of the current statutes are attached; because of the complete recodification that occurred in 1987 and numerous amendments since that date, an underline/strikethrough has not been prepared, as it is not possible to do so.

The following narrative briefly summarizes the changes presented in the table.

CHAPTER 1- ADMINISTRATION OF GAME AND INLAND FISHERIES

In 1987, Title 29 was recodified as Title 29.1 and former Chapters 1 and 2 addressing the administration of the Commission were moved to Chapter 1. The Commission was renamed the Board of Game and Inland Fisheries: “The Commission of Game and Inland Fisheries is continued and shall hereafter be known as the Board of Game and Inland Fisheries”) (§29.1-102). And the Department of Game and Inland Fisheries was created: “The Department of Game and Inland Fisheries shall...serve as the agency responsible for the administration and enforcement of all rules and regulations of the Board.” (§29.1-109).

The Commission’s powers and duties found in former Sections 29-6 and 29-11 are now in Section 29.1-103 governing the Board. These remain largely the same as in 1986. Minor additions have taken place. These include the establishment of use fees, a provision requiring the Board to administer and manage the Virginia Fish Passage Grant and revolving Loan Fund, and a requirement to cooperate with local governments when introducing new species to Virginia waters. These changes are largely derived from the explicit duties and power previously held by the Commission to promulgate rules and regulations that conserve and promote Virginia’s inland fisheries.

The Commission and the Director’s powers and duties, formerly found in Sections 29-2, 29-8, 29-13, 29-14, 29-15, 29-16, 29-1.1 have been consolidated into Section 29.1-109. This is a minor change to the CMP as the Commission was previously vested with the authority to enforce or cause to be enforced all laws and regulations for the protection of fish in the inland waters of Virginia. Further minor changes include a provision subjecting the Director to confirmation and reconfirmation every four years. This is considered a minor change to the CMP as Section 29.1-109 (former Section 29-8) previously required the Commission (now the Board) to appoint an Executive Director to be the principal administrative officer of the Commission. Overall, the structural changes in the administrative authority over the CMP derive from the Commission’s former authority and serve to improve the administration’s effectiveness and consistency in carrying out the CMP.

There has been one other minor update to this part of the program. In 1989, Section 29.1-101.9 was enacted to include the ability to require fishways on obstructions beyond those obstructions declared nuisances under Section 29.1-532 (formerly Section 29-151). Section 29.1-101.9 requires that the owners of any dam or other artificial impediment to the migration of anadromous fish in any tributary of the Chesapeake Bay, after being offered funding, construct and provide fishways for anadromous fish. The purpose of the fishway is for anadromous fish to have free passage up and down streams. This change maintains consistency with the CMP, which from its inception required the Commission to focus its efforts on “opening Virginia’s tidal rivers to the free passage of anadromous fish to their ancestral spawning grounds in the upper reaches of [Virginia’s] rivers.”¹ The

¹ See Virginia Coastal Resources Management Program, Final Environmental Impact Statement p. III-5. 1985.

Department may seek an injunction from the appropriate circuit court if the owner of a dam or other artificial impediment fails to provide for or maintain a fishway.

CHAPTER 3 - LICENSES

In 1987, Title 29 was recodified as Title 29.1 and former Chapter 5 addressing Licenses was moved to Chapter 3. There have been minor updates to the program addressing fishing licenses. The submitted changes update the penalties available to the State for violations of the State fishing license law and authorize courts to impose Class 3 misdemeanors for such violations. In 1987, clarifying language was added to ensure that persons who attempt to purchase a license after arrest or notice of summons could not escape penalties provided for in the section. These changes maintain consistency with former Title 29, Section 29-51 *et seq.* which from its inception included penalties in the statute. Also, the submitted changes expand the scope of licenses to include “any temporary license issued by a clerk or agent to a buyer and authorized to be used in a manner prescribed by the Director.” This is a minor change to the existing CMP as it originally established a protocol to issue licenses for inland fishing. Finally, there has been one minor stylistic change where the legislature identifies Virginia as “Commonwealth” rather than “State.”

CHAPTER 4 - PERMITS

In 1987, Title 29 was recodified as Title 29.1 and former Chapter 6 addressing Permits was moved to Chapter 4. There have been minor updates to the program addressing fishing permits and their corresponding fees. Section 29.1-412 (former §§ 20-103, 29-116) requires permits for netting and certain other activities and specifies penalties. Section 29.1-416 (former §29-110) has been amended to require a fee increase to net selected fish in the inland waters of Virginia, and Section 29.1-416.1 was added to establish permit fees for eel pots in certain waters. These changes maintain consistency with former Section 29-110 which from its inception required the payment of fees to net selected fish. These changes fall within the existing duties and jurisdiction of the Commission which have now been transferred to the Department and Board.

CHAPTER 5 - WILDLIFE AND FISH LAWS

In 1987, Title 29 was recodified as Title 29.1 and former Chapter 8, addressing General Game and Fish Laws, was transferred to Chapter 5.

The Commission’s authority under former § 29-125 to promulgate regulations pertaining to the taking, capture, killing, possession, sale, purchase and transportation of inland water fish was transferred to the Board. This authority is delineated under current Section § 29.1-501 A.

Minor amendments to the penalties section were made in Chapter 5. Section 29.1-505 (former Section 29-129), was amended to impose a Class 3 misdemeanor for violating any of the regulations pursuant to Title 29.1. This is a minor addition to the

existing penalty requirement under the CMP as monetary fines and imprisonment were formerly prescribed in Section 29-129. Also, Section 29.1-505.1, enacted in 1989, makes it unlawful to conspire to commit any offense defined in Title 29.1.

Section 29.1-531 (former §29-148) makes it unlawful to take, possess, sell, or transport fish unlawfully. Prohibitions formerly imposed on trout and bass have been expressly expanded to include all game fish. The Board was required to create and implement a trout identification system. Under the existing CMP policy, fishery biologists are required to evaluate fish stocks to assure healthy fish populations.² These amendments reflect such evaluations and policy. In addition, enumerated fish may not be sold for commercial purposes.

Section 29.1-532 (former §29-151) continues to make obstructions to navigation or the passage of anadromous or migratory fish a nuisance, with limited exceptions. The list of locations and fine were simplified in 1987 with the recodification, and the fine based on one percent of fishway construction cost.

Chronology of Changes

1987 Changes: Title 29 was replaced with Title 29.1. At the time of approval of Virginia's CMP, former Va. Code § 29-1 *et seq.* and § 29-3 *et seq.* set out the duties of the Commission and its Executive Director. The Virginia General Assembly recodified these to Va. Code 29.1-100 *et seq.*, assigning the administration of Game and Inland Fisheries to the Board and the Department. The Board is required to appoint a Director, who carries out the duties previously assigned to the Executive Director of the Commission. The Commission's authority to promulgate rules and regulations was assigned to the Board. The Virginia General Assembly recodified the Licenses chapter in Va. Code § 29-51 *et seq.* to Title 29.1-300 *et seq.* and substituted the term "Commonwealth" for the term "State." Legislation clarified the fact that persons buying fishing licenses subsequent to arrest or notice of summons could not escape penalties. The Virginia General Assembly recodified former Va. Code § 29-93 *et seq.* to Va. Code 29.1-400 *et seq.* The Commission's authority to promulgate rules and regulations in former Va. Code § 29-126 *et seq.*, was recodified for the Board at §29.1-501 *et seq.* The legislature amended the publications requirement for new, proposed regulations, the penalties imposed for violating the statute, and prohibitions on the purchase or sale of specified game fish.

1988 Changes: For permits for netting fish, the legislature substituted "three dollars and fifty cents" for "two dollars", substituted "seventeen dollars and fifty cents" for "ten dollars" and substituted "forty five dollars" for "twenty five dollars."

1989 Changes: The legislature enacted Section 29.1-101.9 to allow the Commission to require fishways not provided for in Section 29.1-532 (formerly Section 29-151). The legislature specified a Class 3 misdemeanor penalty for hunting, trapping or fishing

² See Virginia Coastal Resources Management Program, Final Environmental Impact Statement, p. III-5, 1985.

without a license. The legislature added an annual \$350 nonresident harvester's permit fee for each boat used to take or catch fish in Back Bay and its tributaries.

1992 Changes: The legislature expanded the Board's duties to include the administration and management of the Virginia Fish Passage Grant and Loan Fund.

1994 Change: The legislature added Subsection E to 29.1-531 that makes it "unlawful to offer for sale, sell, offer for purchase, or purchase at any time or in any manner species of game fish or the carcass or any part thereof, except as specifically permitted by law and only by the mean and within the numbers stated. A violation of the provisions of this subsection shall be punishable as provided in § 29.1-553." This prohibition on sale of game fish was previously in subsection B, which prohibited unlawful takes.

1997 Changes: The legislature omitted fyke net from the list of specified nets required to obtain a permit.

2000 Change: The legislature expanded the term license to include temporary licenses. The legislature allowed hatchery trout to be sold for other reasons besides human consumption. The legislature also required the Board to establish a trout identification system for those trout offered for sale or for other uses directed by the Board.

2003 Change: The legislature authorized the Board to establish an admittance, parking and other use fees at Department owned facilities.

2004 Changes: The legislature authorized the Board to establish an annual hunting stamp. In addition, the legislature authorized the Board to promulgate fishing fees.

2006 Changes: The legislature defined the duties of the Board chairman. The legislature also required the Board to develop a Governance Manual and subjected the Director of the Department to confirmation and reconfirmation by the General Assembly every four years.

2007 Changes: The legislature authorized the Board to increase or decrease license fees for nonresidents by no more than \$50, and no more than every three years.

2011 Changes: The legislature provided for local government concurrence for any introduction of "new species" of fish or wildlife in on lands/waters of Commonwealth.

2013 Changes: The legislature provided for use of eel pots and established permit fees for Back Bay and its tributaries.

ENFORCEABLE POLICIES

The following submitted sections contain enforceable policies:

29.1-101.9 – requirement for fishways

29.1-103 – authority to preserve and propagate fish and other wildlife, exercise powers to increase, replenish and restock the lands and inland waters, and collect user fees

29.1-109 – enforce all laws for protection, propagation and preservation of all fish in the inland waters

29.1-300 – licenses for fishing

29.1-335 – licenses for fishing

29.1-412 – permits for fishing and related activities

29.1-501 – regulations pertaining to taking, etc. of inland water fish and other activities

29.1-506 – prescribe seasons and limits

29.1-508 – prescribe seasons and limits

29.1-531 – restrictions on fishing and taking of fish

29.1-532 – dams and navigation obstructions, requirements for fishways

The proposed program changes do not substantially affect the uses subject to management under the CMP, special management areas, boundaries, authorities and organization, or coordination, public involvement and national interest. Virginia requests concurrence in this Routine Program Change.

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Chapters 1, 3, 4, and 5
Administration of Game and Inland Fisheries
(Table of Changes)**

CHAPTER 1

Statutory Change	Status of Law in 1986	Change to Law Since 1986	Significance of Change
§ 29.1-101.9 Requirement for Fisheries	Enacted 1989, c. 5. [This supplemented former §29-151 (dams and fish ladders) in originally approved CMP]	<ul style="list-style-type: none"> • Expands requirement in former §29-151 for removal of obstructions. Required the owner of every dam or other artificial impediment to the migration of anadromous fish in any tributary of the Chesapeake Bay to provide and construct fishways, after being offered funding, that ensures substantially free passage for anadromous fish. 	<ul style="list-style-type: none"> • Not a substantial change. This section was added to ensure that fishways would be provided for in addition to § 29.1-532 (former §29-151). The existing CMP requires the Commission to ensure Virginia’s tidal rivers are open for the free passage of anadromous fish to their ancestral spawning grounds.
§ 29.1-102 Board of Game and Inland Fisheries; how constituted; meetings	Part of the original CMP approval [§29-4 established the Commission; powers also specified in §§ 29-3, 29-8, 29-17]	<ul style="list-style-type: none"> • Changed the name of the Commission of Game and Inland Fisheries to the Board of Game and Inland Fisheries (1987, c. 488). • Required the Board to develop a Governance Manual for the conduct of the Board’s business and described duties of the chairman of the Board (2006, cc. 69, 915). • Subjected the Director of the Department of Game and Inland Fisheries to confirmation by the General Assembly every four years (2006, cc. 69, 915). 	<ul style="list-style-type: none"> • Not a substantial change. The Board’s power is derived from the explicit duties and power previously held by the Commission to promulgate rules and regulations for the preservation and protection of fish in the inland waters of Virginia. • Not a substantial change. The Commission was previously required to elect an Executive Director under former § 29-8. The change strengthens the accountability of the Director. • Does not substantially change uses or authority subject to management under the CMP, special management areas, authorities and organization,

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			<p>coordination, public involvement and national interest.</p>
<p>§ 29.1-103 Powers and Duties of the Board</p>	<p>Part of the original CMP approval [was §29-11 (general powers of the Commission), also §§29-8, 29-6]</p>	<ul style="list-style-type: none"> • Omitted statement, “to employ speakers and lecturers to disseminate information concerning the wildlife of the State and the protection, replenishment and propagation thereof. Omitted permissive statement allowing “educational television entities to use land under the jurisdiction of the Commission for the site location of towers and other transmission equipment” (1987, c. 488). • Inserted language formerly contained in § 29-6 to read, “Adopt resolutions or regulations conferring upon the Director all such powers, authorities, and duties as the Board possesses and deems necessary or proper to carry out the purposes of this title (1987, c. 488). • Amended Board’s tasks to include the administration and management of the Virginia Fish Passage Grant and revolving Loan Fund (1992, c. 887). 	<ul style="list-style-type: none"> • Not a substantial change. Educational activities formerly found under Va. Code § 29-11 are largely preserved under § 29.1-103. • Not a substantial change. Under the existing CMP, the Commission possessed the power to adopt regulations to carry out the purposes of the title. • Under the existing CMP, the Commission is vested with the authority to conduct operations and activities to preserve and protect inland fisheries. Does not substantially change uses or authority subject to management under the CMP, special management areas, authorities and organization, coordination, public

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		<ul style="list-style-type: none"> • Allowed the Board to establish admittance, parking, or other use fees at Department owned facilities (2003, c. 562). • Authorized the Board to establish an annual hunting stamp (2004, c. 280). • Authorized the Board, subject to explicit restrictions, to revise hunting, fishing, and trapping fees through the promulgation of regulations. The fees cannot be changed more than once every three years (2004, c. 1027; 2007, c. 35). • Authorized Virginia to become a party to the Interstate Wildlife Violator Compact (2009, c. 648) • Provided for local government authorization and cooperation for any Board introduction of “new species” of fish/wildlife in state waters or lands (2011, c. 805, 841) 	<p>involvement and national interest. .</p> <ul style="list-style-type: none"> • Under the existing CMP, the Commission is required to establish fees. Revision of these explicit fees ensures that the Board is up to date with markets. Does not substantially change uses or authority subject to management under the CMP. • Does not substantially change uses or authority subject to management under the CMP. • Does not substantially change uses or authority subject to management under the CMP; Commission had authority to introduce species.
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<p>§ 29.1-109 Department of Game and Inland Fisheries; Director</p>	<p>Part of the original CMP approval [was §§ 29-8; 29-15, 29-16; 29-1.1; 29-14; 29-2; 29-13]</p>	<ul style="list-style-type: none"> • Defined the role and duties of the Department of Game and Inland Fisheries (1987, c. 488; 1999, c. 215). • Amended the Director’s duties to include: enforcement power of all laws for the protection, propagation of all fish in the inland waters; initiate prosecution against those who violate the law and who seize wild animals and fish that they have illegally killed, caught, transported or shipped; make and enter into all contracts and agreements necessary for the performance of the Director’s duties; and to consult with and keep abreast of the activities of wildlife and boating organizations (1987, c. 488; 1999, c. 215; 2000, c. 10; 2006, cc. 69, 915). • Clarifies that the Virginia Marine Resources Commission rather than DGIF manages blue crab harvests in the Albemarle and Currituck watersheds (2012, c. 595) 	<ul style="list-style-type: none"> • Not a substantial change. The Department’s power is derived from the explicit duties and power previously held by the Commission to enforce all laws that protect and preserve all fish in the inland waters of Virginia pursuant to the CMP. • The duties of the Director are generally consolidated into one section and are uniform with former §§ 29-8; 29-16; 29-1.1; 29-15; 29-14; 29-2; 29-13. The added duties clarify the role of the Department and the Director under the existing CMP. • Clarifies management responsibilities over a species managed by the VMRC.
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CHAPTER 3

Statutory Change	Status of Law in 1986	Change to Law Since 1986	Significance of Change
§ 29.1-300 Unlawful to hunt, trap or fish without a license	Part of the original CMP approval [was § 29.51]	<ul style="list-style-type: none"> • Substituted “Commonwealth” for “State” (1987, c. 488). 	<ul style="list-style-type: none"> • Not a substantial change.
§ 29.1-335 Hunting, trapping, or fishing without a license	Part of the original CMP approval [was § 29-75]	<ul style="list-style-type: none"> • Specified that the purchase of a license subsequent to arrest or notice of summons does not relieve a person from penalty of the section (1987, c. 488). • Included provision that mandates a violator of the section to be guilty of a Class 3 misdemeanor (1989, c. 421). • Amendment expanded the term license to include “any temporary license issued by a clerk or agent to a buyer and authorized to be used in a manner prescribed by the Director” (2000, c. 132). 	<ul style="list-style-type: none"> • Does not substantially change uses or authority subject to management under the CMP. General penalties for violators were previously authorized under § 29-75. • <i>See above</i> • Not a substantial change. Former § 29-75 previously required a license to fish in Virginia’s inland waters. The inclusion of a temporary license in the list of required licenses does not substantially change uses or authority subject to management under the CMP.

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CHAPTER 4

Statutory Change	Status of Law in 1986	Change to Law Since 1986	Significance of Change
§ 29.1-412 Permits Required	Part of original CMP approval [was § 29-103, 29-116]	<ul style="list-style-type: none"> • Deleted redundant references to wild birds and animals in permit section. • Substituted “Class 4 misdemeanor” for the prescribed fine. (1987, c. 488) 	<ul style="list-style-type: none"> • Not a substantial change. Simplified language requiring permit; and replaced \$100 fine with reference to Virginia’s schedule of offenses.
§ 29.1-416 Netting fish and § 29.1-416.1 Eel pots	Part of original CMP approval [was § 29-110]	<ul style="list-style-type: none"> • Substituted “three dollars and fifty cents” for “two dollars”, substituted “seventeen dollars and fifty cents” for “ten dollars” and substituted “forty five dollars” for “twenty five dollars” (1988, c. 250). • Added annual \$350 nonresident harvester’s permit fee for each boat used to take or catch fish in Back Bay and its tributaries. (1989, c. 692). • Omitted fyke net from the list of specified nets requiring a permit (1997, c. 57). • Provided for eel pots and permit fees for Back Bay and tributaries (2013 Sess., HB 1629). 	<ul style="list-style-type: none"> • Not a substantial change. The Commission was required under former § 29-110 to establish permit fees. The amendments do not substantially change the uses subject to management, the special management areas, and the authorities and organizations under the CMP. • Not a substantial change. The amendment does not substantially change the uses subject to management, the special management areas, and the authorities and organizations under the CMP.

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CHAPTER 5

Statutory Change	Status of Law in 1986	Change to Law Since 1986	Significance of Change
<p>§ 29.1-501 Promulgation of Regulations; publication of proposed regulations or change therein; validation; evidentiary nature of publication</p>	<p>Part of the original CMP approval [was § 29-125]</p>	<ul style="list-style-type: none"> • “The Board may promulgate regulations pertaining to the hunting, taking, capture, killing, possession, sale, purchase, and transportation of any wild bird, wild animal, or inland water fish” (1987, c. 488). • Amended the publication requirements for proposed regulations (1987, c. 488). • Changed the place of filing proposed regulations to the Virginia Register of Regulations and omitted filing deadlines (1987, c. 488). • Omitted “Executive” and “Commission” (1987, c. 488). 	<ul style="list-style-type: none"> • Not a substantial change. The Commission’s previous authority under the CMP required it to promulgate rules and regulations relating to the hunting, taking, capture, killing, possession sale, purchase, shipment, transportation, carriage or export of any fish from the inland waters as found under former § 29-125. • Not a substantial change. The Commission was required under former § 29-126 to publish and file proposed regulations. The filing and publications amendments do not substantially change the uses subject to management, the special management areas, and the authorities and organizations under the CMP.
<p>§ 29.1-502 Adoption of regulations</p>	<p>Part of the original CMP approval [was § 29-127]</p>	<ul style="list-style-type: none"> • Substituted “Board” for “Commission” and amended Board’s procedural guidelines to adopt regulations and amendments to regulations (1987, c. 488). 	<ul style="list-style-type: none"> • Procedural change; does not substantially change the uses subject to management, the special management areas, and the authorities and organizations under the CMP.

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§ 29.1-505 Penalty for violation of regulations	Part of the original CMP approval [was § 29-129]	<ul style="list-style-type: none"> Replaced penalty for violating a regulation from “not less than \$10 nor more than \$100” and/or “30 days in jail” with “a Class 3 misdemeanor unless another penalty is specified” (1987, c. 488; 1988, c. 19). 	<ul style="list-style-type: none"> Not a substantial change. Former § 29-129 previously established penalties (misdemeanor) for the violation of a regulation. The amendments do not substantially change the uses subject to management, the special management areas, and the authorities and organizations under the CMP.
§ 29.1-505.1- Conspiracy; penalty	Enacted in 1989, c. 362.	<ul style="list-style-type: none"> Added penalty for conspiring to commit any offense defined in Title 29.1 or any of the regulations of the Board of Game and Inland Fisheries. 	<ul style="list-style-type: none"> Not a substantial change. Conspiracy is punishable as a common law offense.
§ 29.1-506 Prescribing seasons, bag limits and methods of taking and killing fish and game on lands and waters owned or controlled by the Board	Part of the original CMP approval [was § 29-129.1]	<ul style="list-style-type: none"> Language of the section modified by omitting the phrase “Notwithstanding any other provisions hereafter enacted or ordained of local or special law, or any local ordinance” (1987, c. 488). 	<ul style="list-style-type: none"> Not a substantial change.
§ 29.1-507 Closing or shortening open season	Part of the original CMP approval [was § 29-130]	<ul style="list-style-type: none"> Substituted “Board” for “Commission” and minor stylistic changes (1987, c. 488). 	<ul style="list-style-type: none"> Not a substantial change.
§ 29.1-508 Board to prescribe seasons, bag limits and methods of taking and killing fish and game on lands and waters owned or controlled by the Board.	Part of the original CMP approval [was § 29-130.1]	<ul style="list-style-type: none"> Substituted “Board” for “Commission” and minor stylistic changes (1987, c. 488). 	<ul style="list-style-type: none"> Not a substantial change.

Title 29.1 Game, Inland Fisheries, and Boating
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<p>§ 29.1-531 Unlawful to take or attempt to take, possess, sell or transport fish except as permitted</p>	<p>Part of the original CMP approval [was § 29-148]</p>	<ul style="list-style-type: none"> • Substituted “Board” for “Commission” and omitted public hearing requirement (1987, c. 488). • Expanded prohibitions from species of trout and bass to any species of game fish and narrowed the prohibited methods of catch, transport and delivery of game fish (1987, c. 488). • Stipulated the prohibition that specified fish in the listed areas cannot be sold for “commercial purposes” (1987, c. 488). • Amended prohibition on catching bass, trout and perch and included all “game fish” (1987, c. 488). • Changed penalty from “misdemeanor” to “Class 2 misdemeanor” (1987, c. 488). • Substituted “by this article” with “law and only by the means and within the numbers slated” (1994, c. 413). • Excluded “offer for sale, sell, offer to purchase, purchase” from the list of prohibited ways to take any species of game fish or the carcass, or any part thereof from subsection B and moved it to subsection E (1994, c. 848). • Added subsection E that makes it “unlawful to offer for sale, sell, offer for purchase, or purchase at any time or in any manner 	<ul style="list-style-type: none"> • Not a substantial change. • Not a substantial change. Former § 29-148 placed fishing restrictions on certain species of fish within the inland waters of Virginia. • Not a substantial change. The Commission was vested with the authority under former § 29-148 to adopt rules and regulations to control fishing. • Not a substantial change. Former § 29-148 previously established penalties (misdemeanor) for the violation of this section or regulation. • Not a substantial change. Technical change. • Not a substantial change. Former § 29-148 previously included a broad provision prohibiting the catch, capture,
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Title 29.1 Game, Inland Fisheries, and Boating
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		<p>species of game fish or the carcass or any part thereof, except as specifically permitted by law and only by the mean and within the numbers stated. A violation of the provisions of this subsection shall be punishable as provided in § 29.1-553” (1994, c. 848).</p> <ul style="list-style-type: none"> • Amended the clause addressing the legality of selling trout lawfully acquired by omitting “for human consumption” (2000, c. 403). • Expanded Board’s mandate to establish a system of trout identification offered for sale for table “or other uses as directed by the Board” (2000, c. 403). 	<p>kill, take possess, deliver, or transport any species of game fish except as provided by law. The inclusion of selling or purchasing such game fish simply provides for explicitly that which was implicit in former § 29-148.</p> <ul style="list-style-type: none"> • Not a substantial change. Former § 29-148 previously included allowances for the lawful sale and purchase of trout. • Not a substantial change. The amendment does not substantially change the uses subject to management, the special management areas, and the authorities and organizations under the CMP. The Board is required under the CMP to protect and preserve all inland fish.
<p>§ 29.1- 532 Dams and fishways</p>	<p>Part of original CMP approval [was §29-151 (dams and fish ladders)]</p>	<ul style="list-style-type: none"> • Amended to change “State” to “Commonwealth,” remove list of river segments, and to eliminate exemption for dams 20 or more feet in height, and to change fines from \$1/day to 1 percent of construction or destruction cost of fishway/obstacle. (1987, c. 488). 	<ul style="list-style-type: none"> • Not a substantial change. The amendment does not substantially change the uses subject to management, the special management areas, and the authorities and organizations under the CMP. The Board is required under the CMP to protect and preserve all inland fish.

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§ 29.1-101.9. Requirement for fishways.

Notwithstanding any provision of § [29.1-532](#), including the existence or lack thereof of an exemption pursuant to § [29.1-532](#), the owner of every dam or other artificial impediment to the migration of anadromous fish in any tributary of the Chesapeake Bay, including that portion of the James River downstream from the City of Lynchburg, shall be responsible to provide appropriate fishways for anadromous fish as soon as reasonably possible after being offered financing from the Fund for the estimated construction cost of the fishways as provided in this article. Any owner of such a dam or other artificial impediment who fails to provide or to maintain fishways providing substantially free passage for anadromous fish may be compelled to provide such fishways by injunction in an action initiated by the Department in an appropriate circuit court. Nothing in this section shall relieve the owner of any dam or other object in a watercourse, which obstructs navigation or the passage of anadromous and other migratory fish, of any obligations or responsibilities under § [29.1-532](#).

(1989, c. 5, § 10.1-1221; 1992, cc. 464, 887.)

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§ 29.1-102. Board of Game and Inland Fisheries; how constituted; meetings.

The Commission of Game and Inland Fisheries is continued and shall hereafter be known as the Board of Game and Inland Fisheries.

A. The Board shall consist of not more than one member from each congressional district. Each member of the Board shall be appointed by the Governor, subject to confirmation by the General Assembly. Members shall be appointed for terms of one to four years; however, appointments shall be made in a manner whereby no more than three members shall have terms which expire in the same year. An appointment to fill a vacancy shall be made in the same manner, but only for the unexpired term. No person shall be eligible to serve more than two consecutive four-year terms. Members may be removed from office during their respective terms by the Governor.

B. The Board shall adopt rules and procedures for the conduct of its business that shall be set forth in a Governance Manual. The Board may establish committees to assist it with its duties and responsibilities. All decisions by a committee shall be reviewed by the Board, and shall only take effect if approved by the Board.

C. The Board shall elect one of its members as its chairman whose duties shall be limited to (i) presiding at all regular and called meetings of the Board; (ii) serving as the Board liaison to the Director, other Board members, and the Secretary of Natural Resources; and (iii) the other duties set forth in the Governance Manual as approved by a majority of the Board. The Board shall also elect a vice-chairman to preside in the absence of the chairman. Any additional duties of the vice-chairman shall be set forth in the Governance Manual. The Board shall annually elect one of its members as chairman and one of its members as vice-chairman. At such annual election, the chairman and vice-chairman shall not be eligible to be re-elected to their respective positions and no person shall serve more than one year as chairman and one year as vice-chairman during a four-year term.

D. The Board shall meet at least once every quarter of the calendar year for the transaction of business, and other meetings may be called if necessary by the chairman or at the request of any three members. The majority of the members shall constitute a quorum. Meetings shall be held in Richmond or at such other places within the Commonwealth as may be necessary.

(Code 1950, §§ 29-3, 29-4, 29-8, 29-17; 1952, c. 608; 1956, c. 447; 1975, c. 152; 1987, c. 488; 2006, cc. [69](#), [915](#).)

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§ 29.1-103. Powers and duties of the Board.

The Board is responsible for carrying out the purposes and provisions of this title and is authorized to:

1. Appoint the Director of the Department.
2. Acquire by purchase, lease, exchange, gift or otherwise, lands and waters in the Commonwealth and to establish buildings, structures, dams, lakes and ponds on such lands and waters. However, it is the policy of the Commonwealth that there shall be no net loss of those public lands managed by the Department that are available for hunting in Virginia.
3. Conduct operations for the preservation and propagation of game birds, game animals, fish and other wildlife in order to increase, replenish and restock the lands and inland waters of the Commonwealth.
4. Purchase, lease, or otherwise acquire lands and waters for game and fish refuges, preserves or public shooting and fishing, and establish such lands and waters under appropriate regulations.
5. Acquire by purchase, lease, or otherwise, lands and structures for use as public landings, wharves, or docks; to improve such lands and structures; and to control the use of all such public landings, wharves, or docks by regulation.
6. Acquire and introduce any new species of game birds, game animals, or fish on the lands and within the waters of the Commonwealth, with the authorization and cooperation of the local government for the locality where the introduction occurs.
7. Restock, replenish and increase any depleted native species of game birds, game animals, or fish.
8. Have educational matter pertaining to wildlife published and distributed.
9. Hold exhibits throughout the Commonwealth for the purpose of educating school children, agriculturists and other persons in the preservation and propagation of wildlife in the Commonwealth.
10. Control land owned by and under control of the Commonwealth in Back Bay, its tributaries and the North Landing River from the North Carolina line to North Landing Bridge. The Board shall regulate or prohibit by regulation any drilling, dredging or other operation designed to recover or obtain shells, minerals, or other substances in order to prevent practices and operations which would harm the area for fish and wildlife.
11. Exercise powers it may deem advisable for conserving, protecting, replenishing, propagating and increasing the supply of game birds, game animals, fish and other wildlife of the Commonwealth.
12. Adopt resolutions or regulations conferring upon the Director all such powers, authorities and duties as the Board possesses and deems necessary or proper to carry out the purposes of this title.
13. Administer and manage the Virginia Fish Passage Grant and Revolving Loan Fund pursuant to Article 1.1 (§ [29.1-101.2](#) et seq.) of Chapter 1.
14. Establish and collect admittance, parking, or other use fees at certain Department-owned facilities as determined by the Board. Any daily fee established by the Board shall not exceed \$3. Any annual fee established by the Board shall not exceed the cost of an annual state resident fishing license pursuant to subdivision A 2 of § [29.1-310](#), or an annual state resident hunting license pursuant to subdivision 2 of § [29.1-303](#).
15. Establish and collect a use fee through the issuance of an annual hunting stamp required to be obtained to hunt on private lands managed by the Department through a lease agreement or other similar memorandum of agreement. The annual hunting stamp shall be in addition to the required licenses to hunt, and the cost of such stamp shall be the same as the cost of the annual state resident hunting license in § [29.1-303](#).

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§ 29.1-109. Department of Game and Inland Fisheries; Director.

A. The Department of Game and Inland Fisheries shall exist to provide public, informational and educational services related to this title, and to serve as the agency responsible for the administration and enforcement of all rules and regulations of the Board, the statutory provisions of this title, and related legislative acts. The Department shall employ scientific principles and procedures, as developed, researched, recognized and accepted within the bounds of comprehensive professional wildlife resource management, in the management of the Commonwealth's wildlife and natural resources.

B. The Board shall appoint a Director, subject to confirmation and reconfirmation every four years by the General Assembly, to head the Department and to act as principal administrative officer. In addition to the powers designated elsewhere in this title, the Director shall have the power to:

1. Enforce or cause to be enforced all laws for the protection, propagation and preservation of game birds and game animals of the Commonwealth and all fish in the inland waters thereof. Inland waters shall include all waters above tidewater and the brackish and freshwater streams, creeks, bays, including Back Bay, inlets, and ponds in the tidewater counties and cities. In waters of the Albemarle and Currituck watersheds, the management of the recreational and commercial harvest of blue crabs shall rest with the Marine Resources Commission.
2. Initiate prosecution of all persons who violate such laws, and seize and confiscate wild birds, wild animals and fish that have been illegally killed, caught, transported or shipped.
3. Employ persons necessary for the administrative requirements of the Board and to designate the official position and duties of each. The salaries of all such employees shall be as provided in accordance with law.
4. Perform such acts as may be necessary to the conduct and establishment of cooperative fish and wildlife projects with the federal government as prescribed by acts of Congress and in compliance with rules and regulations promulgated by the Secretary of the Interior.
5. Make and enter into all contracts and agreements necessary or incidental to the performance of his duties and the execution of his powers, including, but not limited to, contracts with the United States, other state agencies and governmental subdivisions of the Commonwealth.
6. When practicable, consult with, and keep informed, wildlife and boating constituent organizations so as to benefit Virginia's wildlife and natural resources and accomplish the Department's mission.

(Code 1950, §§ 29-8, 29-16; 1952, c. 680, § 29-1.1; 1954, c. 632, § 29-15; 1962, c. 469, § 29-14; 1974, c. 59, § 29-2; 1979, c. 264, § 29-13; 1987, c. 488; 1999, c. 215; 2000, c. 10; 2006, cc. 69, 915; 2012, c. 595.)

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§ 29.1-300. Unlawful to hunt, trap or fish without license.

It shall be unlawful to hunt, trap or fish in or on the lands or inland waters of this Commonwealth without first obtaining a license, subject to the exceptions set out in § [29.1-301](#).

(Code 1950, § 29-51; 1987, c. 488.)

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§ 29.1-335. Hunting, trapping or fishing without a license.

No person shall hunt, trap, or fish without having obtained a license when such a license is required. For the purposes of this article, the term "license" shall include any temporary license issued by a clerk or agent to a buyer and authorized to be used in a manner prescribed by the Director. Any person who violates this section shall be guilty of a Class 3 misdemeanor and shall pay to the clerk a fee equal to the cost of the required license to be paid into the state treasury and credited to the game protection fund.

The purchase of a license subsequent to an arrest or notice of summons to appear in court for hunting, trapping or fishing without a license shall not relieve the person from the penalties specified in this section.

(Code 1950, § 29-75; 1987, c. 488; 1989, c. 421; 1993, c. 839; 2000, c. 132.)

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§ 29.1-412. Permits required.

It shall be unlawful to exercise any privilege of the permits provided in this article without first having obtained the required permit.

Any person who violates any provision of this article shall be guilty of a Class 4 misdemeanor, and the permit shall be revoked.

(Code 1950, §§ 29-103, 29-116; 1962, c. 469; 1968, c. 242; 1987, c. 488.)

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§ 29.1-416. Netting fish.

A. The fee for a permit to net fish in inland waters, for private table use, or for sale where permitted, shall be as follows:

1. County dip net, three dollars and fifty cents each per year;
2. Gill net, eight dollars each per year;
3. Haul seine, seventeen dollars and fifty cents each per year; and
4. Haul seine to catch species designated by the Board for sale, forty-five dollars each per year.

B. The Board may permit a licensee to use dip nets or gill nets to take for sale fish of any designated species in the waters of Back Bay and its tributaries. However, any nonresident desiring to take or catch fish in Back Bay and its tributaries for which a permit is required and where such fishing is not prohibited, shall first pay \$350 per year to the Department for a nonresident harvester's permit. Such a permit shall be required for each boat used to take or catch fish in Back Bay and its tributaries, and shall be in addition to any other permit required for the activity involved.

(Code 1950, § 29-110; 1956, c. 343; 1974, c. 363; 1987, c. 488; 1988, c. 250; 1989, c. 692; 1997, c. 57.)

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[history](#) | [hilite](#) | [pdf](#)**VIRGINIA ACTS OF ASSEMBLY -- CHAPTER**

An Act to amend the Code of Virginia by adding a section numbered 29.1-416.1, relating to the use of eel pots in the waters of Back Bay.

[H 1629]
Approved

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 29.1-416.1 as follows:

§ 29.1-416.1. *Use of eel pots in the waters of Back Bay and its tributaries.*

A. The Board may permit a licensee to use eel pots to take American eels in the waters of Back Bay and North Landing River and their tributaries for sale or private use.

B. The annual fee for a permit to set eel pots in the waters of Back Bay and North Landing River and their tributaries for the purpose of taking American eels for private use or for sale shall be as follows:

- 1. Eel pots to catch eels for sale, \$50; and*
- 2. Eel pots to catch eels for personal use, \$17.50.*

C. Any nonresident desiring to take or catch American eels in the waters of Back Bay and North Landing River and their tributaries using eel pots shall first pay \$350 per year to the Department for a nonresident harvester's permit, unless he has paid a permit fee pursuant to subsection B of § 29.1-416. A separate nonresident harvester's permit shall be required for each boat used to take or harvest American eels in the waters of Back Bay and North Landing River and their tributaries, and shall be in addition to any other permit required for the activity involved.

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§ 29.1-501. Promulgation of regulations; publication of proposed regulations or change therein; validation; evidentiary nature of publication.

A. The Board may promulgate regulations pertaining to the hunting, taking, capture, killing, possession, sale, purchase, and transportation of any wild bird, wild animal, or inland water fish, and the feeding of any game, game animals, or fur-bearing animals as defined in § [29.1-100](#), or the feeding of any wildlife that results in property damage, endangers any person or wildlife, or creates a public health concern.

B. The full text or an informative summary of any proposed regulation or change in the regulations shall be published not less than fifteen nor more than thirty days before it may be acted upon. The publication shall name the time and place that the specified matters will be taken up, at which time any interested citizen shall be heard. If the proposed regulation or change in the regulations is of local application, the publication shall appear in a newspaper published in or within reasonable proximity to the affected locality. However, if the proposed regulation or change in the regulations is of statewide application, the publication shall be made in a sufficient number of newspapers having a general circulation throughout the entire Commonwealth.

C. A copy of proposed regulations or a change in the regulations, of either local application or statewide application, shall be published in the Virginia Register of Regulations pursuant to § [2.2-4031](#).

D. Prima facie evidence of any regulation may be given in all courts and proceedings by the production of a copy of the regulation, which shall be certified by the Director or his deputy.

(Code 1950, § 29-126; 1956, c. 178; 1960, c. 539; 1962, c. 478; 1974, c. 56; 1987, c. 488; 2010, c. [184](#).)

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§ 29.1-502. Adoption of regulations.

The board may adopt regulations and amendments to regulations upon completion of all applicable hearing and notice requirements. The Board shall file the regulations with the Registrar of Regulations pursuant to § [2.2-4103](#).

(Code 1950, § 29-127; 1974, c. 56; 1979, c. 264; 1987, c. 488.)

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§ 29.1-505. Penalty for violation of regulations.

It shall be a misdemeanor to violate any regulation promulgated pursuant to this title. Any person violating such a regulation shall be guilty of a Class 3 misdemeanor unless another penalty is specified.

(Code 1950, § 29-129; 1987, c. 488; 1988, c. 19.)

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§ 29.1-505.1. Conspiracy; penalty.

If any person conspires with another to commit any offense defined in this title or any of the regulations of the Board of Game and Inland Fisheries, and one or more such persons does any act to effect the object of the conspiracy, he shall be guilty of conspiracy to commit the underlying offense and shall be subject to the same punishment prescribed for the offense the commission of which was the object of the conspiracy.

(1989, c. 362.)

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§ 29.1-506. Prescribing seasons and bag limits for taking fish and game.

After careful study of each species of wild bird, animal and fish within the jurisdiction of the Board in cities and counties of the Commonwealth, the Board shall have the power to prescribe the seasons and bag limits for hunting, fishing, trapping or otherwise taking such wild birds, animals and fish by regulation adopted as provided in this article.

(Code 1950, § 29-129.1; 1950, p. 411; 1952, c. 619; 1960, c. 537; 1970, c. 239; 1987, c. 488.)

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§ 29.1-507. Closing or shortening open season.

The Board may close or shorten the open season in any county or city (i) whenever extreme weather threatens the welfare of wild birds, wild animals or fish; (ii) whenever such wild birds, wild animals or fish have been seriously affected by adverse weather conditions; (iii) when investigation of the Board shows that there is an unusual scarcity of any species or; (iv) when there is substantial demand from any county or city. The Board shall immediately give notice of any closing or shortening of an open season by publishing the announcement in one or more newspapers having a general circulation in the county or city affected. The notice shall be published at least three days before the action becomes effective.

(Code 1950, § 29-130; 1987, c. 488.)

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§ 29.1-508. Board to prescribe seasons, bag limits and methods of taking and killing fish and game on lands and waters owned or controlled by Board.

The Board is hereby authorized to adopt rules and regulations to prescribe and enforce the seasons, bag limits and methods of taking fish and game on lands and waters owned by the Board and on lands owned by others but controlled by the Board.

(1960, c. 538, § 29-130.1; 1987, c. 488.)

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§ 29.1-531. Unlawful to take or attempt to take, possess, sell or transport fish except as permitted.

A. Unless otherwise provided by a regulation of the Board, it shall be unlawful for any person to take or attempt to take any fish in inland waters other than shad, herring or mullet, except by fishing with a hook and line or rod and reel, held in the hand.

B. It shall be unlawful to catch, trap, take, capture, kill, or attempt to take, capture or kill, possess, deliver for transportation, transport, cause to be transported, receive for transport, export, or import at any time or in any manner any species of game fish, or the carcass or any part thereof, except as specifically permitted by law and only by the means and within the numbers stated.

C. In Mecklenburg, Pittsylvania, Prince Edward, Charlotte, Campbell, Halifax, Amelia (except between Vaughn's Pond and Meadsville Dam), Caroline and King George Counties, in the City of Danville, and in the Meherrin River in Lunenburg County, it shall be lawful to fish with fish traps, fish pots or haul seines in any streams and waters, provided that no person shall catch fish with fish traps or fish pots or haul seines for commercial purposes. However, it shall be unlawful in such localities to remove from the waters thereof any game fish caught with fish pots, fish traps or haul seines, and any person doing so shall immediately return them to the waters. The Board shall have the authority to close any streams or rivers or parts of streams or rivers in such localities when the waters are stocked with fish by the Department.

D. It shall be lawful to sell or offer to sell trout which have been lawfully acquired, provided such trout have been propagated and raised in a hatchery or by other artificial means. The Board shall by appropriate regulation establish a practical system of identification of trout so offered for sale for table or other uses as directed by the Board.

E. It shall be unlawful to offer for sale, sell, offer to purchase, or purchase at any time or in any manner any species of game fish, or the carcass or any part thereof, except as specifically permitted by law and only by the means and within the numbers stated. A violation of the provisions of this subsection shall be punishable as provided in § [29.1-553](#).

F. A violation of the provisions of subsections A through D shall constitute a Class 2 misdemeanor.

(Code 1950, § 29-148; 1956, c. 490; 1958, c. 514; 1960, c. 126; 1962, c. 469; 1966, c. 413; 1987, c. 488; 1994, cc. [413](#), [848](#); 2000, cc. [403](#), [447](#).)

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§ 29.1-532. Dams and fishways.

Any dam or other object in a watercourse, which obstructs navigation or the passage of fish, shall be deemed a nuisance, unless it is used to work a mill, factory or other machine or engine useful to the public, and is allowed by law or order of court. Any person owning or having control of any dam or other obstruction in the streams of the Commonwealth which may interfere with the free passage of anadromous and other migratory fish, shall provide every such dam or other obstruction with a suitable fishway unless the Board considers it unnecessary. The purpose of such a fishway is for anadromous and other migratory fish to have free passage up and down the streams during March, April, May and June, and down the streams throughout the remaining months. "Suitable fishway" means a fishway which passes significant numbers of the target fishes, as determined by the Board.

Owners of such dams or other authorized obstructions shall maintain and keep fishways operational, in good repair, and restore them in case of destruction.

Owners of dams or other obstructions which are not authorized by law must have the obstacles removed at their expense when the Board determines that the obstacles interfere with the free passage of anadromous and other migratory fish within the streams of the Commonwealth.

The circuit court of the county or city in which the dam is situated, after reasonable notice to the parties or party interested and upon satisfactory proof of the failure to comply, may order any necessary construction or destruction to be initiated or put in good repair at the expense of the owner of the dam or other obstruction. All such construction or destruction must be initiated within one year of the court order and completed within three years of the court order.

Any person failing to comply with this section shall pay as a penalty a percentage of the estimated cost of construction or destruction equal to the percentage specified on the judgment rate of interest pursuant to § 6.2-302, and the Board shall provide construction or destruction cost estimates.

Penalties collected pursuant to this section shall be directed to the Department of Game and Inland Fisheries.

This section shall not apply to the Meherrin River within the Counties of Brunswick and Greensville, nor to the Meherrin River within or between the Counties of Lunenburg and Mecklenburg, nor to the Nottoway River between the Counties of Lunenburg and Nottoway, nor to Abram's Creek in Shawnee district, Frederick County, nor to the James River between the City of Lynchburg and the County of Amherst, nor to the James River within the City of Richmond and between the City of Richmond and Henrico County, except that the exemption for those dams west of Virginia Route 161 which are located on the James River within the City of Richmond and between the City of Richmond and Henrico County shall expire on January 1, 1990, nor any streams within the Counties of Augusta, Lunenburg, Mecklenburg, Louisa, Buckingham, Halifax, Montgomery, Pulaski, Franklin, Russell, Tazewell, Giles, Bland, Craig, Wythe, Carroll and Grayson, nor to that part of any stream that forms a part of the boundary of Halifax and Franklin Counties. Furthermore, no fish ladders shall be required on dams twenty feet or more in height. The City of Richmond shall continue to work with the Department of Game and Inland Fisheries toward implementing and funding a plan for breaching dams to provide fishways for the passage of anadromous and other migratory fish.

(Code 1950, § 29-151; 1950, p. 891; 1958, c. 607; 1987, c. 488; 1988, c. 487.)

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