Chapter 4. Use of Purse Nets for Taking Menhaden.

Article 1. Licenses.

§ 28.2-400. Application for license for resident or nonresident to catch menhaden.
A. Any nonresident owning or holding by lease or charter a purse net, seine, or vessel of any description used in the waters of this Commonwealth, or waters within the jurisdiction of this Commonwealth, to catch menhaden shall apply to the Commissioner for a license. A resident shall apply for a license to the Commissioner through the officer assigned to the district in which the fish processing factory is located, or in which the applicant resides or has its principal office.

B. If the applicant for a license is a corporation, the application shall be made by an officer or one of the directors of the corporation; if the applicant is a partnership, the application shall be made by a general partner; if the applicant is a joint venture or other firm, by a member thereof; and if the applicant is an individual, by such individual.

C. The application shall be in writing and sworn to by the applicant before a notary public or other person authorized to administer oaths and shall disclose:

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

2. The name of each vessel for which such a license is desired.

3. The location of the factory which is to process the menhaden so taken and caught.

4. That, during the period of this license, the applicant will not violate any of the laws of the Commonwealth in regard to the taking and catching of fish.


§ 28.2-400.1. Criteria for qualifying for a limited entry purse seine menhaden bait license.
A. The Commission shall establish and administer a limited entry purse seine menhaden bait license that meets the requirements of this section.

B. In order to qualify for a limited entry purse seine menhaden bait license, an applicant shall have held a purse seine license, as established in § 28.2-402, in 2011 and shall have landed menhaden in the Commonwealth in each of the years 2009, 2010, and 2011. Such person shall also have used purse seine gear to harvest menhaden in at least one of those three years. Proof of landings and gear usage shall be in the form of receipts, landing reports, or other verifiable documents as designated by the Commission.

2013, cc. 59, 760.

§ 28.2-400.2. Total allowable landings for menhaden.
A. Except as provided for in subsections B, C, and D, the total allowable landings for menhaden shall be 168,937.75 metric tons per year.
B. If the total allowable landings specified in subsection A are exceeded in any year, the total allowable landings for the subsequent year will be reduced by the amount of the overage. Such overage shall be deducted from the sector of the menhaden fishery that exceeded the allocation specified in § 28.2-400.3.

C. The Commissioner may request a transfer of menhaden landings from any other state that is a member of the Atlantic States Marine Fisheries Commission. If the Commonwealth receives a transfer of menhaden in any year from another state, the total allowable landings for only that year shall increase by the amount of transferred landings. The Commissioner may transfer menhaden to another state only if there are unused landings after December 15.

D. Any portion of the one percent of the coast-wide total allowable catch set aside by the Atlantic States Marine Fisheries Commission for episodic events that is unused as of September 1 of any year shall be returned to Virginia and other states according to allocation guidelines established by the Atlantic States Marine Fisheries Commission. Any such return of this portion of the coast-wide total allowable catch to Virginia shall increase the total allowable landings for that year.

2013, cc. 59, 760;2015, c. 493;2016, c. 65;2017, c. 72.

§ 28.2-400.3. Allocation of the total allowable landings for menhaden.
A. The total allowable landings for menhaden specified in § 28.2-400.2 shall be allocated among the purse seine menhaden reduction sector, purse seine menhaden bait sector, and non-purse seine menhaden bait sector in proportion to each sector’s share of average landings in 2002 through 2011, and in proportion to each gear type landings within the non-purse seine bait sector during that period.

B. The Commission shall establish an Individual Transferable Quota System for any purse seine menhaden bait licensee that meets the requirements of § 28.2-400.1. The Commission shall not consider a limited entry purse seine menhaden bait licensee’s landings of menhaden for reduction purposes for any purposes under the Individual Transferable Quota System required by this subsection.

C. Any landings of menhaden by a limited entry purse seine menhaden bait licensee at a qualified menhaden processing factory, as indicated on the mandatory daily landings reports required to be submitted under § 28.2-400.5, shall be attributed to the menhaden reduction sector for all purposes under this chapter. A qualified menhaden processing factory is one located in the Commonwealth and which has processed at least 100,000 metric tons of menhaden in each of the years 2009, 2010, and 2011.

2013, cc. 59, 760.

§ 28.2-400.4. Administration of the menhaden management program.
A. Closure of the menhaden fishery shall occur when the Commissioner projects and announces that 100 percent of the total allowable landings have been taken. The Commissioner shall monitor the mandatory daily landings reports required to be submitted under § 28.2-400.5 by the:

1. Purse seine menhaden reduction sector and promptly announce the date of closure when the portion of the total allowable landings allocated to the purse seine menhaden reduction sector under § 28.2-400.3 are projected to be taken. The Commissioner shall also notify the operators of
any qualified menhaden processing factory of the date of closure by the most convenient and expeditious means available;

2. Purse seine menhaden bait sector and promptly announce the date of closure when the portion of total allowable landings allocated to the purse seine fishery for bait under § 28.2-400.3 is projected to be taken. The Commissioner shall also notify the purse seine menhaden bait sector of the date of closure by the most convenient and expeditious means available; and

3. Non-purse seine menhaden bait sector and promptly announce the date of closure when the portion of total allowable landings allocated to the non-purse seine fishery for bait under § 28.2-400.3 is projected to be taken. The Commissioner shall also notify the operators of the non-purse seine menhaden bait sector of the date of closure by the most convenient and expeditious means available. Once this closure is announced, any person licensed in the non-purse seine menhaden bait sector may possess and land up to 6,000 pounds of menhaden per day, provided that such person is fishing in accordance with all laws and regulations.

B. The Commissioner may reopen a fishery sector closed pursuant to this section if, after all reports have been received, the portion of the total allowable landings has not been harvested by that sector. The Commission may establish any regulations it deems necessary and advisable, including trip limits or a time-limited reopening, to ensure that the allowable landings for a reopened sector is not exceeded. Any such reopening and subsequent closure shall be done by direct notice to the relevant sector of the fishery.

C. The Commission shall maintain on its website a periodically updated tally of the menhaden harvest for each sector receiving an allocation under this section.

D. Except as provided in subdivision A 3, no person shall harvest menhaden for bait or reduction purposes after the portion of the total allowable landings for the sector in which that person holds a license has been closed. Any person violating this provision is guilty of a Class 1 misdemeanor.

2013, cc. 59, 760.

§ 28.2-400.5. Reporting requirements.
A. Any person licensed for the purse seine menhaden reduction sector or purse seine menhaden bait sector shall submit landings reports to the Commissioner each non-weekend or non-holiday day that the applicable sector of the menhaden fishery is open for harvest utilizing the Captain’s Daily Fishing Report produced by the National Marine Fisheries Service.

B. Persons licensed for the non-purse seine menhaden bait sector shall submit a report on a form and on a schedule established by the Commission. The reporting period established by the Commission shall be longer than one week.

C. The reporting form required to be developed by the Commission shall require the following information:

1. Trip start date;
2. Vessel identification number;
3. Individual fisherman identifier;
4. Identification of dealer purchasing landings;
5. Trip number;
6. Species harvested;
7. Quantity of fish landed and discarded in pounds or metric tons;
8. Disposition of the landings;
9. County or port landed;
10. Gear type used;
11. Quantity of gear used;
12. Number of sets made during each trip;
13. Time fishing gear is in the water;
14. Days or hours at sea;
15. Number of crewmembers;
16. Area fished; and
17. Date of unloading.

2013, cc. 59, 760.

§ 28.2-400.6. Biological sampling program and adult abundance index.
A. The Commission shall:
   1. Establish a biological sampling program to collect one 10-fish sample per 200 landed metric tons for length and weight-at-age data from the commercial menhaden harvest; and
   2. Initiate a program to add Atlantic menhaden to the Virginia Marine Resources Commission’s finfish biological sampling program in order to develop an adult menhaden survey index from Virginia pound nets.

B. By no later than December 1, 2013, the Commission shall submit a report to the General Assembly and the Governor that (i) describes progress in establishing the biological sampling program and development of the adult menhaden survey index called for by this section, (ii) discusses any difficulties in implementing the requirements of this section, including a lack of resources to properly implement the program, and (iii) provides a list of resources the Commission believes are necessary to properly implement the sampling program and index, with detailed justification, including an estimate of the cost of each item requested.

2013, cc. 59, 760.

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

Whenever lawful process against, or notice to, any such individual is served, the Secretary of the Commonwealth shall immediately mail a copy of such process or notice to such individual. The Secretary of the Commonwealth shall collect the fee prescribed in § 2.2-409 for the service of process or notice, which shall be paid by the plaintiff at the time of such service. The costs shall be recoverable by the plaintiff as a part of the taxable costs if he prevails in the suit or action.

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

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


§ 28.2-402. License fee to take menhaden with purse nets.

Any person desiring to take or catch menhaden with purse nets shall pay to the officer or agent a license fee as follows or as subsequently revised by the Commission pursuant to § 28.2-201:

1. On each boat or vessel under 70 gross tons fishing for the purse seine menhaden reduction sector, $249.

2. On each vessel 70 gross tons or over fishing for the purse seine menhaden reduction sector, $996.

3. On each boat or vessel under 70 gross tons fishing for the purse seine menhaden bait sector, $249.

4. On each vessel 70 gross tons or over fishing for the purse seine menhaden bait sector, $996.

Any person purchasing more than one of these licenses for the same vessel shall pay a fee equal to that for a single license.


§ 28.2-403. Action of Commissioner on such application; transfer of license of disabled vessel; delegation of authority; appeals.

A. If the Commissioner is satisfied that the disclosures required by § 28.2-400 have been made and that the application conforms in other respects to the provisions of that section or to § 28.2-400.1, and upon payment of the license fee specified in § 28.2-402, the Commissioner, or the officer through whom or in whose district the application was made, shall issue to the applicant a license for each of the purse seines, vessels, or other watercraft specified in the application. The license shall state the name of the licensee and the name of the vessel or other watercraft licensed.
If any vessel or other watercraft so licensed becomes disabled during the period of such license, the licensee may, with the consent of the Commissioner, hire or charter a vessel or other craft belonging to a nonresident to replace the disabled one for the unexpired period of such license. In such a case, the officer shall transfer the license issued for the disabled vessel or other craft to the one so hired or chartered without requiring any additional license.

B. The Commissioner may delegate to the officers his authority under this section. However, any person aggrieved by any action of an officer exercising such delegated authority shall have the right to appeal to the Commissioner for a review and correction of the actions of the officer. The appeal may be made by mailing a statement of the officer’s action, together with the appellant’s objections and the grounds for his objections, to the Commissioner. Upon receipt of such appeal, the Commissioner shall immediately notify the officer involved, who shall, within three days, deliver to the Commissioner all papers in his possession concerning the subject matter of the appeal, together with a written statement of and reasons for his actions. The Commissioner shall issue his ruling granting, transferring, refusing, or refusing to transfer the license within ten days after receipt by him of the appeal.


§ 28.2-404. Appeals from actions of Commissioner.
Any person aggrieved by any action of the Commissioner taken under the provisions of § 28.2-403 shall have the right to petition the circuit court of the county or city in which the factory where the fish were to be processed is located, or in which the applicant resides or has his principal office, for a review and correction of the ruling of the Commissioner as provided in Article 3 (§ 28.2-216 et seq.) of Chapter 2 of this subtitle.


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

A violation of this section is a Class 1 misdemeanor.


§ 28.2-406. Reserved.
Reserved.

Any net, pot, or other fishing device or gear used in violation of any of the provisions of this article shall be seized and forfeited to the Commonwealth. The forfeiture shall be enforced as provided in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2. The officer or other person seizing the property shall immediately give notice to the attorney for the Commonwealth.


Article 2. Area and Seasonal Restrictions.

§ 28.2-408. Food fish not to be taken, bought, or sold; percentage allowable; penalty.
A. It is unlawful to take, catch or round up with purse net, for any purpose, food fish in an amount greater than one percent of the whole catch. If food fish represent more than one percent
of the whole catch, the net shall be opened immediately and the food fish released while alive.

B. It is unlawful for any vessel licensed for the purpose of menhaden fishing to catch any food fish for the purpose of marketing; for any person to have in his possession food fish in an amount greater than one percent of the bulk for the purpose of manufacturing them into fertilizer, fish meal, or oil; or for any person to use in any manner any food fish, in an amount greater than one percent of the bulk for the purpose of fertilizing or improving the soil.

C. Any person violating any provision of this section is guilty of a Class 1 misdemeanor, and the license on such person’s boat or net shall be revoked by court order for the remainder of the season.


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

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

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

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

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

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

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

§ 28.2-410. Closed season for menhaden fishing; forbidden nets; penalty.
Except as provided in § 28.2-409, it is unlawful for any person to take or catch with a purse net in the waters of this Commonwealth, or waters within its jurisdiction, menhaden between the Saturday following the third Friday in November and the Sunday preceding the first Monday in May. However, in the waters east of the Chesapeake Bay Bridge Tunnel within the three-mile limit of the Virginia shoreline such prohibition shall be between the Friday before Christmas and the Sunday preceding the first Monday in May. It is also unlawful for any person to use any purse net or other net having a stretched mesh of less than 1 3/4 inches. Any person violating any of the provisions of this section is guilty of a Class 1 misdemeanor.

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

A violation of this section is a Class 1 misdemeanor.