§ 28.2-500. Residency and certain oyster licenses.
No residence restriction shall prohibit any person from obtaining any required license for buying fish or shellfish or for shucking oysters. In dredging or scraping private planting grounds on permission of the Commissioner, the residence restriction shall not apply to the crew, captain, or owner of any boat engaged by the leaseholder to dredge or scrape private planting grounds for oysters only.


§ 28.2-501. Application for license to take or catch oysters or clams.
A. Any resident of this Commonwealth who desires to take or catch oysters or clams by any device other than a scrape or dredge shall apply to the Commissioner for a license.

B. Any resident desiring to dredge or scrape for oysters shall apply in writing to the officer assigned to the district in which he resides. The application shall be sworn to and shall state the name of his vessel, the owner or owners, the captain or person in charge, and the length of vessel or gross tonnage at which it is rated. The application shall further state the district in which the owner resides; that the applicant is a resident qualified under the requirements of this section; that no nonresident owns the vessel, in whole or in part; and that it is not held with any intention, or under any agreement, to return it at any subsequent time to a nonresident.


§ 28.2-502. License fees for taking oysters or clams in tidal waters.
Every resident who applies for a license to take or catch oysters and clams shall pay as follows or as subsequently revised by the Commission pursuant to § 28.2-201:

1. For each person taking or catching oysters by hand or with ordinary tongs, $10;

2. For each single-rigged patent tong boat taking oysters, $35;

3. For each double-rigged patent tong boat taking oysters, $70;

4. For each person taking or catching clams by hand or with ordinary tongs, $15;

5. For each single-rigged patent tong boat taking clams, $35;

6. For each double-rigged patent tong boat taking clams, $70; and

7. For each dredge used for taking or catching clams, $50.


§ 28.2-503. License for taking clams with tongs.
The license for taking clams, by ordinary or patent tongs, shall entitle the holder to take only
clams from the public bottoms in the waters of the Commonwealth but not from the public oyster rocks, beds, and shoals or from leased oyster grounds. Such a license does not permit the taking of oysters. The Commission may authorize the taking of clams from the public oyster rocks, beds, and shoals of (i) the lower York River below the patent tong line and (ii) that area in the Poquoson River contained within Public Ground Tract No. 1 and Public Ground Tract No. 9, west of a line connecting York Point and Hunt’s Point and northeast of a line connecting Hunt’s Point and survey Station “Spit” when it determines that commercial quantities of oysters are not present and are not likely to return due to the presence of oyster diseases. However, the Commission shall annually review the conditions in the area designated under clause (ii) to determine whether to authorize the taking of clams.


§ 28.2-504. License fee graduated; penalty.
A. Every person engaged in the business of shucking or packing oysters in Virginia shall pay a license fee based on the amount of oysters shucked or packed by him during the previous year.

B. The license fees to engage in the business of shucking or packing oysters are the following or as such fees may be subsequently revised by the Commission pursuant to § 28.2-201:

1. For under 1,000 gallons, $7.50;
2. For 1,000 gallons up to 10,000, $20;
3. For 10,000 gallons up to 25,000, $45;
4. For 25,000 gallons up to 50,000, $75;
5. For 50,000 gallons up to 100,000, $125;
6. For 100,000 gallons up to 200,000, $175; and
7. For 200,000 gallons or more, $275.

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

C. The required license fee shall be collected in the same manner as other license fees collected under Virginia oyster laws.


§ 28.2-505. Sale of shells to Commission.
A. Each shucker or packer of oysters shall sell to the Commission at the prevailing market price up to twenty percent of the shells, unless the shells are planted in Virginia waters.

B. On or before December 1 of each year, the Commission shall notify each shucker or packer whether it will purchase by the following June 1 the shells so set aside. If notice is not given, the shucker or packer may dispose of such shells as he sees fit.

Article 2. Fishing for Oysters and Clams; Device Restrictions.

§ 28.2-506. Season for taking oysters from public rocks; penalty.

A. The season for taking oysters by shaft tongs or by hand from the public oyster beds, rocks, or shoals shall be as follows:

1. James River seed area, from October 1 until July 1. The Commission may set an alternate date, no earlier than June 1, for the completion of this season in any year in which such an action can be expected to improve the quality of seed oysters.

2. All other areas, from October 1 until June 1.

B. The season for taking oysters by patent tongs from the public oyster beds, rocks, or shoals shall be from October 1 to March 1. The Commission may set an alternate opening date, no later than November 1, for any area in the Commonwealth where the use of patent tongs is permitted, when in its opinion the condition of the oysters warrants.

C. It shall be unlawful for any person to take or catch oysters from the public rocks or shoals of this Commonwealth at any time other than that provided in subsections A and B of this section except as set forth in Chapter 8 of this subtitle and except as provided in § 28.2-507.

D. The possession of patent tongs and oysters in a boat at any time other than the season for patent tongs as specified in subsections A and B of this section is prima facie evidence of a violation of this section.

E. Taking oysters or having patent tongs or any other device for taking or catching oysters on public rocks, beds, or shoals, except during the seasons specified in subsections A and B of this section, is prima facie evidence of a violation of this section.

F. The possession of oysters while taking or catching clams during the prohibited season to take or catch oysters from the public rocks, beds, or shoals, is prima facie evidence of a violation of this section.

A violation of this section is a Class 1 misdemeanor.


§ 28.2-507. Opening and closing public rocks.

The Commission, in order to protect or promote the growth of oysters, may (i) close and open any area or restrict the manner or method of taking oysters in any area of the public rocks, grounds, or shoals, (ii) establish seed beds and plant shells and other culch, or (iii) take any other restorative measures. Before closing any such area, an officer shall post notice of the closing for at least 30 days in two or more public places in the district in which the area is located. Such notice requirement shall not apply to those public rocks closed by the Virginia Department of Health or state replenishment programs. In addition, when the Commissioner finds it necessary, the area may be marked by a uniform system of buoys or signs indicating that such area is closed and that oystering by any means is prohibited. Any area which has been closed and reopened at a later time may be closed by the Commission or Commissioner at any time without notice.

§ 28.2-508. Prohibited area for patent tongs; penalty.
It is unlawful for any person to use or employ patent tongs to take or catch oysters from the public rocks, beds, or shoals in the following areas:

1. In the Piankatank River and its tributaries above a line beginning at the extreme westernmost point on a wooden jetty (point "A") on the south property line of lot 9-A owned by E. B. Bottom and lot 8-A of Gwynn's Island Estate subdivision, Mathews County (Deed Book 55; page No. 279), said point located north 57° 07', west 176.00 feet from the east side of said lot 8-A and 9-A. Said point is located on the extreme northwest section of Gwynn's Island known as Cherry Point, Mathews County; thence 71° 00' west approximately 10,140 feet, to a survey point known as the Stove R, located on the extreme south end of Stove Point, Middlesex County; thence north 38° 00' east approximately 14,960 feet to point "X," or the east gable of hotel, located on the extreme easternmost point of Stingray Point, Middlesex County. This area is to include all of Piankatank River and its tributaries from Cherry Point of Gwynn's Island to Stove Point in Middlesex County, and all of the area of Jackson Creek and its tributaries from Stove Point to Stingray Point;

2. In the Rappahannock River and its tributaries, above a line drawn from the southernmost point of Belle Island, which line begins at latitude 37° 46' 37" north, longitude 76° 35' 40" west; thence south 27° 47' 25.82" west 14,292.65 feet to the easternmost point of Punchbowl Point, which is located at latitude 37° 44' 32" and longitude 76° 37' 03" west;

3. Beginning on the south shore of the James River at Pig Point, located at the east mouth of Nansemond River opposite the westernmost tank of two tanks on Pig Point; thence in a northerly direction to a light at the extreme north end of abandoned Pig Point pier; thence in a northerly direction to a fish trap buoy designated as N "H11" located on the northeast side of the Fish Trap Reservation; thence in a northwest direction along the northeast boundary of the Fish Trap Reservation along a line of buoys designated as C "1" and C "H15"; buoy C "H15" being located on the east side of an area set aside in subdivision 5 of this section prohibiting the use of patent tongs in James River; thence following in a southwest direction along the area described in subdivision 5 of this section to Cooper's Creek, located on the south side of James River in Isle of Wight County. In addition to this described area, the use of patent tongs shall be prohibited in Batten Bay and its tributaries, Chuckatuck Creek and its tributaries, and Nansemond River and its tributaries;

4. In the Mobjack Bay and its tributaries above a line beginning at Bush Point on the south side of the mouth of the Severn River, Gloucester County; thence in a northeasterly direction across the mouth of the Severn River to Seven Cedar Point; thence in a southeasterly direction to buoy S "1"; thence in an east southeasterly direction to a point of land on the northwest side of the mouth of Pepper Creek in Mathews County;

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

6. In the Corrotoman River above a line beginning at point on Corrotoman Point, which line begins at latitude 37° 39' 56" north, longitude 76° 28' 21" west; thence north 70° 02' 46.79"; thence west 4,338.37 feet to a point on Millenbeck Point which is located at latitude 37° 40' 10"
north and longitude 76° 29' 12" west. This line, as described, is to include all of the Corrotoman River and its tributaries from Corrotoman Point to Millenbeck Point.

A violation of this section is a Class 1 misdemeanor.


§ 28.2-509. Maximum weight for patent tongs; teeth length; penalty.
It is unlawful for any person to use patent tongs exceeding 100 pounds in gross weight, including any attachments other than rope, for the taking or catching of oysters. The teeth of the patent tongs shall not exceed four inches in length. The possession of patent tongs exceeding this weight or teeth length while oysters are in the boat shall constitute prima facie evidence of a violation of this section.

A violation of this section is a Class 3 misdemeanor.


§ 28.2-510. Buying, selling, or possessing unculled oysters; penalty.
It is unlawful for any person to buy, sell, or possess oysters under the prescribed size and over the shell allowance taken from the public rocks, beds, and shoals. If upon trial for this offense the accused person asserts the claim or defense that the unculled oysters were taken from private planting grounds, the burden of proving such a defense or fact shall be upon the accused.

A violation of any provision of this section is a Class 3 misdemeanor.


§ 28.2-511. Culling oysters; penalty.
A. 1. In addition to any other penalty prescribed by law, any person charged with violating any regulation governing the culling of oysters shall be required, by the officer making the charge, to scatter the entire cargo of oysters on the public rocks under the supervision of the officer and at the expense of the person charged with the violation. No portion of the cargo of oysters shall be scattered anywhere other than on the public rocks.

2. In lieu of throwing the cargo overboard, the person charged with the violation may post a bond by credit card, check, or cash with the officer in an amount approximately equal to the value of the entire load as determined by the officer. If the person charged posts a bond by credit card, the Commission may collect such actual credit card service charges as apply.

3. The refusal to either dump the oysters overboard or post a bond is a distinct and separate offense from any other violation. A person who has posted a bond and is acquitted shall be refunded the bond. If the person is found guilty, the bond shall be forfeited and deposited to the credit of the Oyster Replenishment Fund.

4. Any person charged with a violation of a regulation who posts bond shall properly cull the entire cargo of oysters immediately after the officer has found the oysters to be in violation of such regulation and before they can be sold, planted, or disposed of by him or by any other person.
B. The requirement to scatter the entire cargo of oysters on the public rocks shall only apply to a cargo of oysters taken by any catcher from the public oyster grounds and shall not apply to oysters which have been purchased by and are in the possession of a buyer.

A violation of any provision of this section is a Class 3 misdemeanor.


§ 28.2-512. Interfering with oyster inspections; penalty.
It is unlawful for any person possessing unshucked oysters to (i) resist or interfere with an officer while he examines oysters suspected of being unculled or (ii) refuse to admit an officer to a boat or oyster house for the purpose of such inspection.

A violation of this section is a Class 1 misdemeanor.


§ 28.2-513. Prima facie evidence of culling violation; defense.
It is unlawful for a person to have any oysters or shells on the culling board, deck, washboard, or other receptacle above the hold of the boat or in the deckhouse of the boat when the boat is not at anchor, is off the public rocks, or is approaching a buy boat or a landing. The attempt of any person to escape, to throw oysters or shells into the water other than in the ordinary process of culling, or to place oysters or shells on the culling board or deck from the hold, upon the approach of the officer, shall be prima facie evidence of the violation of the Commission’s culling regulations.


§ 28.2-514. Possession of shucked oysters; penalty.
It is unlawful for any person to possess more than one-half gallon of shucked oysters on board a boat harvesting on the public rocks.

A violation of this section is a Class 3 misdemeanor.


§ 28.2-515. Dredging or scraping on private ground; permit required.
Any resident of the Commonwealth holding under legal assignment an oyster-planting ground of at least three acres in one tract or adjoining tracts and having paid the rent may dredge or scrape his tracts at any time from sunrise until sunset, except on Sunday if the resident has obtained from the Commission a permit for each boat so used. The permit shall show the name of the lessee and the name or number of the boat, date of issue, and date of expiration. The expiration date shall not be more than 12 months from the date of issue and may be renewed for like periods. A special exemption may be granted on such a permit to allow dredging or scraping one hour prior to sunrise from June 15 to September 1, provided that the resident notify the Commission at least 24 hours prior to such activity. The Commission may, after a hearing, refuse to grant or renew a permit to dredge or scrape any oyster-planting ground unless it is proved that the holder has planted seed oysters or shells and is using the planting ground for the cultivation of oysters. The Commission may refuse to grant the permit if it appears at the hearing that the
holder of the ground is a habitual violator of the seafood laws. An applicant for the permit shall have the right of appeal from any decision of the Commission refusing to grant the permit as provided in Article 3 (§ 28.2-216 et seq.) of Chapter 2 of this subtitle.


§ 28.2-516. Oyster dredging or oyster dredging equipment on boat; penalty.
It is unlawful for any person to have on board a boat, a dredge or equipment normally used for dredging oysters, unless he has a license or permit to dredge. The license or permit shall be available for inspection on board the boat.

It is unlawful to carry or transport an oyster dredge or oyster dredging equipment on board a licensee’s, permittee’s, or his employee’s boat, except when the boat is traveling to or from (i) the ground on which dredging is permitted or licensed to take place or (ii) docks for maintenance and repair of the boat or equipment.

Any person who violates this section is guilty of a Class 6 felony.


§ 28.2-517. Marking ground.
A person shall not dredge or scrape his oyster-planting ground unless he has first properly designated and marked the oyster-planting ground as prescribed by the Commission in accordance with § 28.2-607. The initials of the lessee shall be displayed on all lease corners in black letters on a white background not less than five inches in length. If it appears to the inspector that such ground is not properly marked, he may immediately suspend the dredging permit until the ground is properly marked.

Such initials shall also be placed upon each side of the prow of any boat or craft used or employed in dredging or scraping the planting ground.


§ 28.2-518. Dredging for oysters in James River; penalty.
It shall be unlawful for any person to dredge for oysters in the James River during the open season for taking oysters from the public rocks and shoals. However, the Commission may grant a permit to applicants to dredge in specified areas.

A violation of this section is a Class 6 felony.


§ 28.2-519. Use of rakes or scrapes on ocean side of Eastern Shore; penalty.
It shall be unlawful for any person to use dredges, scrapes, rakes other than hand rakes, or other like devices to take or catch crabs, clams, or shells from the public rocks, beds, or shoals on the ocean side of the Counties of Accomack and Northampton.

A violation of this section is a Class 3 misdemeanor.
§ 28.2-520. Use of hydraulic dredges prohibited; exceptions; penalty.
A. It shall be unlawful for any person, unless he has been issued a permit by the Commission pursuant to subsection B, to (i) take or catch clams through the use of a hydraulic dredge or (ii) have on board his boat a hydraulic dredge designed for harvesting seafood.

B. The Commission may issue a permit authorizing the possession and use of a (i) hydraulic dredge for the purpose of (a) transiting state waters or (b) conducting legitimate aquaculture research and (ii) handheld hydraulically operated device for harvesting cultured clams from leased grounds.

C. Notwithstanding the provisions of clause (ii) of subsection A, a person may have on board his boat a hydraulic dredge designed for harvesting seafood when traveling to or from docks for maintenance or repair of the boat or equipment, or when off-loading catches made in federal waters.

D. The Commission and the Virginia Institute of Marine Science may possess and use hydraulic dredges to take and catch shellfish on an experimental basis.

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


§ 28.2-521. Revocation of license or permit to dredge.
The Commission, on testimony of an officer at a hearing that he has personally observed a person having dredging cable or dredging equipment overboard or in any way engaged in dredging in any area other than where a person holds a lawful permit or license to dredge, may revoke all permits and licenses held by the person to dredge on public or private grounds and may refuse to issue any licenses or permits for such purposes for a period of one year. Before the Commission holds a hearing pursuant to this section, it shall provide at least five days’ written notice to the permittee or licensee. Notice shall be served either by a Commission officer or by certified mail addressed to the permit or license holder at the address given on the permit or license. Any subsequent, identical notice that is sent by the Commission may be sent by regular mail.


§ 28.2-522. Prima facie evidence of violation.
In any prosecution for the violation of any sections of this article against the captain or crew of a vessel or any person on board, proof that the vessel was equipped with a crank, dredge, or scrape shall be prima facie evidence of the violation of such section.


§ 28.2-523. Penalty.
Any person who takes or catches oysters with a dredge, scrape, or instrument other than ordinary or patent oyster tongs or by hand, in any of the waters of the Commonwealth except as provided by law, or regulations of the Commission, is guilty of a Class 6 felony.

§ 28.2-524. Taking oysters or clams in certain areas; limitations.
The Commission, in order to protect and promote the oyster or clam fishery, may open and close the following areas, or any parts thereof, for the taking of oysters or clams or prescribe the manner, method, size, and season of oyster or clam catch:

1. That portion of Pocomoke Sound and Tangier Sound contained within the boundaries of a line commencing at buoy "A" on the Commonwealth of Virginia and State of Maryland line, thence 114° true 2.17 miles to Long Point, thence 137° true 3.40 miles to beacon number "2" off Ebb Point, thence 208° true 2.15 miles to beacon number "2" off Halfmoon Point, thence 216° true 1.78 miles to beacon number "11" off Deep Creek, thence 285° true 2.67 miles to beacon number "1" off Camp Island, thence 238° true 1.77 miles to beacon number "6" off Beach Island, thence 155° true 2.75 miles to beacon number "2" off Chesconesse Creek, thence 225° true 2.49 miles to beacon number "1" off Ware Point, thence 275° true 3.13 miles to bell buoy number R "2," thence 276° true 7.08 miles to can buoy number C "34," thence 049° true 3.09 miles to can buoy number C "1," thence 049° true 1.73 miles to Tangier Island Light House, thence 011° true 2.70 miles to beacon number "3" off Tangier Island, thence 319° true 0.62 miles to beacon number "1" off Tangier Island, thence 332° true 3.15 miles to mean low-water mark on North East point on Fishbone Island, thence 005° true 2.68 miles to mean low-water mark on south end of Horse Hammock, thence following mean low water northerly to the State of Maryland and the Commonwealth of Virginia line, thence, following the Maryland and Virginia state boundary line back to the point of beginning.

The Commission shall also have authority over the area as contained within the boundaries of a line commencing at buoy "A" on the Commonwealth of Virginia and State of Maryland line; thence, in a northeasterly direction approximately 1.74 miles along the said Virginia-Maryland line to a point which is approximately 260 feet northeast of buoy "C" on said line; thence, in a southwesterly and southern direction along the eastern boundary line of Public Ground No. 12 and Public Ground No. 13 approximately 1.73 miles to the northern line of the Fisheries Management Area running from buoy "A" to Long Point; thence, in a northwesterly direction approximately 1.07 miles to buoy "A" and point of beginning.

2. That portion of Chesapeake Bay between Smith Point and Windmill Point contained within the boundaries of a line commencing at Smith Point Lighthouse, thence southerly through a line of nun buoys numbered "C79," "C77," "C73," "C71," "C69," "C67," "C65," to a beacon designated BR "R," all as they are now positioned or as they may be subsequently repositioned by the United States Coast Guard, thence northwesterly to Windmill Point Lighthouse, thence continuing northwesterly along a sector line to the mean low-water line on Windmill Point, thence northerly along the mean low-water line around Fleets Island to a point which is south of a beacon numbered 5M, thence north to the beacon numbered 5M, thence northeasterly to a beacon numbered 6M"B," thence northerly to corner 4 of Public Ground No. 28, thence along the western and northern line of Public Ground No. 28 through corners 3, 2 and 1 to corner 8 thereof, thence northeasterly to corner 1 of Public Ground No. 29, thence along the western and northern line of Public Ground No. 29 through corner 4 thereof to an intersection point of Public Ground No. 29 and Public Ground No. 117, thence northerly to the mean low-water line on Bull Neck, thence northerly along the mean low-water line to Smith Point, thence southeasterly to Smith Point Lighthouse, the point of beginning.

3. That portion of Piankatank River contained within the boundaries of a line commencing at the southern-most point of Stove Point; thence, in a southeasterly direction to the extreme
northwestern-most point of Gwynn Island known as Cherry Point; thence, in a southwesterly direction along the shoreline of Gwynn Island to the No. 3 light at the mouth of Narrows Point; thence, in a northwesterly direction to No. 10 light at Stove Point; thence, in a northeasterly direction to Stove Point and the point of beginning.


§ 28.2-525. Fishing in Chesapeake Bay immediately west of Tangier Island.
The Commission, in order to protect and promote the fishery in that area of the Chesapeake Bay described herein, may open and close such area or any part thereof, or prescribe the manner, method, size and season of catch. Such area is contained within the boundaries of a point beginning at the southeastern point of Tangier Island, thence, in a southeastern direction to Tangier Sound Light; thence, in a southwesterly direction to can buoy C “1”; thence continuing in a southwesterly direction to nun buoy N C “34”; thence, in a northwesterly direction to nun buoy N “2”; thence, continuing the same direction to the 36-foot deep contour; thence, along the 36-foot deep contour to the Virginia-Maryland Boundary Line; thence, in a northeastern direction to Smith Island, Hog Neck; thence, in a southeasterly direction along the western side of Smith Island, Cheesman Island, Shank Island, Goose Island and Tangier Island to the point of beginning.


§ 28.2-526. Oyster measures; standards; penalty.
A. Except as provided in subsection B, C, or D, it is unlawful for any person to buy or sell oysters in the shell by any measure other than:

1. One-half bushel or one bushel metallic measures. Such containers shall be metallic circular tubs with straight sides and straight bottoms and may have holes for draining one inch in diameter. A half-bushel tub shall have the following dimensions, all measured from inside to inside: 15 inches across the top, 13 inches across the bottom, and 17 inches diagonally from the inside chine to the top; and a bushel tub shall measure 18 1/2 inches across the top, 17 inches across the bottom, and 21 1/2 inches diagonally from the inside chine to the top. Oysters harvested from the public rocks in the Potomac River or its tributaries may be bought or sold in one bushel metallic measures which shall measure 18 inches across the top, 16 1/2 inches across the bottom, and 21 inches diagonally from the inside chine to the top. Such containers shall be level full across the entire top of the container to be considered a full measure; or

2. A container of not less than 2,500 cubic inches and not more than 3,000 cubic inches, the make and model of which has been approved by the Commission.

Any seller of oysters or oyster shells who fails to furnish at the point of landing a full measure as defined in this section, or a buyer of any seed oysters or oyster shells who accepts less than a full measure as defined in this section, is guilty of a Class 1 misdemeanor.

B. Oysters may be sold in containers of a size greater than 18 1/2 inches across the top, 17 inches across the bottom, and 21 1/2 inches diagonally from the inside chine to the top if such container has been approved by the Commissioner and its use to measure oysters has been approved by both the buyer and seller.

C. On the eastern or ocean side of the Eastern Shore, oysters may be sold without being measured
if both the buyer and the seller agree to the number of bushels of oysters in the transaction.

D. Cultured oysters in the shell may be sold in any measure or container agreeable to the buyer and seller.


§ 28.2-527. Theft of oysters, clams, shells, etc.; penalty.
Any person who steals, or takes or carries away without permission of the owner, (i) bedded, naturally occurring, or planted oysters or clams, (ii) oysters deposited by any person making up a cargo for market, or (iii) shells or seed planted for formation of oyster or clam beds by the Commonwealth or any person, is guilty of larceny.


§ 28.2-528. Revocation of licenses for theft of oysters.
The Commission, without notice and hearing required by § 28.2-232, shall revoke all licenses and the fishing privileges within the Commonwealth’s tidal waters to take or catch fish, shellfish, or marine organisms, issued to any person convicted of unlawfully taking oysters or other mollusca from the public grounds, any riparian oyster planting grounds assigned pursuant to Article 1 (§ 28.2-600 et seq.) of Chapter 6 of this title, or any general oyster planting ground leased pursuant to Article 2 (§ 28.2-603 et seq.) of Chapter 6 of this title. No new licenses shall be issued to such person for a minimum of six months or a maximum of five years after such conviction in the discretion of the Commission.


§ 28.2-529. Converting shells into lime; penalty.
It shall be unlawful for any person to take or catch oysters or shells for conversion into lime, unless the person has obtained permission from the Commission.

A violation of this section is a Class 3 misdemeanor.


§ 28.2-530. Taking oysters or loading on vessel on Sunday or at night; penalty.
A. It shall be unlawful for any person to take oysters, from either public or private grounds, on Sunday or between sunset and sunrise; nor shall any person load any vessel or boat for such purpose with any oysters from any of the waters of the Commonwealth on Sunday or between sunset and sunrise.

B. Shucking oysters taken from the public grounds other than from designated seed areas may be unloaded on shore at packinghouses or loaded on trucks or motor vehicles one-half hour after sunset and one-half hour before sunrise. Those oysters which have been inspected by an officer and purchased by the packer or planter, and the oysters owned by the packer or planter, may be unloaded at any time except Sunday within the discretion of the packer.

C. The provisions of subsection A shall not apply to (i) the taking or catching by hand during the prescribed hours of daylight on Sunday during the legally prescribed public oyster harvest season
on public oyster grounds open for harvest or unleased bottom open for harvest, of not more than
one bushel of oysters for personal use or (ii) the taking or catching of cultured oysters during the
prescribed hours of daylight on Sunday. The presence on board a boat or other vehicle being used
during any Sunday harvesting, except as part of an oyster aquaculture operation, of any gear
normally associated with the harvesting of oysters other than by hand is prima facie evidence of a
violation of the provisions of this section.

A violation of this section is a Class 3 misdemeanor.


§ 28.2-531. Taking clams on Sunday or at night; exception; penalty.
It shall be unlawful for any person to take clams from either public or private grounds, on Sunday
or between sunset and sunrise. This section shall not apply to (i) the taking of clams on Sunday
by hand or hand rake between sunrise and sunset if the clams are for personal use only and not
for planting or commercial use, or (ii) the taking of cultured hard-shell clams on Sunday.

A violation of this section is a Class 3 misdemeanor.


§ 28.2-532. Protection of oysters and clams of Virginia; labeling; penalty.
It shall be unlawful for any person to offer for sale, sell or distribute for direct consumption
oysters or clams as Virginia oysters or clams unless such oysters and clams have been in the
waters of the Commonwealth or the Potomac River for a period of at least six months.

Any oysters or clams imported into Virginia, either shucked or unshucked, when sold or
distributed, shall not be designated or labeled in any manner indicating they came from Virginia
waters or that they are Virginia oysters or clams.

The name, address and Department of Health certificate number on the package or container of
the packer or distributor shall not be considered illegal designation or labeling.

A violation of this section is a Class 3 misdemeanor.


§ 28.2-533. Oysters on crab dredging boat; penalty.
It shall be unlawful for any person licensed to catch crabs with a dredge to possess aboard a boat
more than one bushel of oysters. Any person violating this section shall be guilty of a Class 1
misdemeanor.


§ 28.2-534. Possession of oysters while taking clams; penalty.
The possession of oysters while taking or catching clams during the season in which it is
unlawful to take or catch oysters from the public rocks, beds, or shoals, is prima facie evidence of
a violation of the law against taking or catching oysters during the prohibited season. A violation
of this section is a Class 1 misdemeanor.

§ 28.2-535. Permit to buy or carry seed oysters from certain grounds; penalty.
A. It is unlawful for any person to buy or carry oysters from the eastern side of the Counties of Accomack and Northampton or from the James River seed area, whose shells measure less than three inches in length without first obtaining a permit. A permit shall be required for each boat, vessel, or motor vehicle used to carry such cargo. The applicant shall obtain the permit from the officer assigned to the district where the cargo is loaded. The permit shall state the name and tonnage of the boat, vessel, motor vehicle, or other conveyance; the name of the owner and captain; the destination of the oysters; and the identity of the permit applicant. The cargo may be loaded under the supervision of the officer, in the order of the presentation of the permit to the officer in the district in which the boat, vessel, motor vehicle, or other conveyance is to obtain its cargo.

B. Any such permittee who takes seed oysters to a place not specified in his permit and does not notify the Commissioner within twenty-four hours of the change in planting location is guilty of a Class 1 misdemeanor. The owner or captain of any boat, vessel, motor vehicle, or other conveyance found buying or carrying seed oysters from these public grounds without a permit is guilty of a Class 1 misdemeanor.


§ 28.2-536. Taking clams in certain areas; penalty.
It is unlawful to take or catch clams in Pocomoke Sound above a line drawn from Drum Bay Point, in the County of Accomack, and running a north-northwest course to the line between the States of Maryland and Virginia, except upon such grounds in those waters as may be set aside by the Commission for public claming.

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


§ 28.2-537. Restriction on size of clams; penalty.
It is unlawful for any person to harvest or ship clams smaller in size than the legal size established by the Commission.

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


Article 3. Oyster Records and Resource User Fees.

§ 28.2-538. Record of oysters handled; penalty.
All licensed oyster harvesters, buyers, shucking houses, and aquaculture operations shall record all fisheries data and information required by the Commission as provided in § 28.2-204. Such records shall be open for inspection by the Commissioner and a copy available to him or any employee designated by him to inspect or receive the same. A failure to keep such a record is a Class 1 misdemeanor.

§ 28.2-539. Repealed.
Repealed by Acts 2013, c. 38, cl. 2.

§ 28.2-541. Oyster resource user fees.
A. There are imposed upon all oysters taken from the public rocks, beds, or shoals the following oyster resource user fees, per year: (i) on any licensed commercial fisherman harvesting oysters by hand, a fee of $50; (ii) on the use of any type of gear to harvest oysters, a fee of $300; (iii) on any business shucking or packing (a) no more than 1,000 gallons of oysters, a fee of $500; (b) more than 1,000 but no more than 10,000 gallons of oysters, a fee of $1,000; (c) more than 10,000 but no more than 25,000 gallons of oysters, a fee of $2,000; and (d) more than 25,000 gallons of oysters, a fee of $4,000; and (iv) on any oyster buyer using (1) a single truck or location, a fee of $100 and (2) multiple trucks or locations, a fee of $300.

B. Any commercial aquaculture operation taking oysters pursuant to § 28.2-603 from a riparian assignment or general oyster planting ground shall pay an oyster resource user fee of $50.

C. Any harvester shall pay only one oyster resource user fee per year for oyster gear used under clause (ii) of subsection A.

D. The Commission may revoke the permit or license of any person who fails to comply with this section.


§ 28.2-542. Oyster Replenishment Fund.
All oyster resource user fees collected by the Commission shall be deposited in the state treasury and credited to the Oyster Replenishment Fund, to be used only for administration of the program and for replenishment, planting, and replanting the public oyster rocks, beds, and shoals of the Commonwealth, with seed oysters, oyster shells, or other material that will catch, support, and grow oysters. These funds shall be withdrawn and expended for such purposes on the order of the Commission. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrant of the Comptroller issued on vouchers signed by persons designated by the Commission.


§ 28.2-543. Repealed.
Repealed by Acts 2013, c. 38, cl. 2.

§ 28.2-545. Reserved.
Reserved.

§ 28.2-546. Permit to carry oysters out of state.
A. It shall be unlawful for any person to carry, attempt to carry, or buy for the purpose of carrying out of the Commonwealth any seed oysters taken from the public rocks, beds, or shoals until he has first obtained for each cargo a permit to do so from the Commission.

B. The permit shall state the name of the boat or license number of the motor vehicle and the
name and address of the owner or captain of the boat or owner or operator of the motor vehicle. The permit shall state the name and address of the person to whom the cargo of oysters is to be delivered. The permit shall specify the number of bushels to be carried out of the Commonwealth.


§ 28.2-547. Authority to inspect oysters when loaded on conveyance.
Any officer is authorized to inspect as to the quality, size and measure of any of the oysters taken or purchased, loaded on any boat, vessel, motor vehicle, or other conveyance, or sold to any person.


§ 28.2-548. Duty to inspect.
It shall be the duty of the officer in whose district a cargo of oysters is to be loaded to inspect the oysters as they are loaded and to ensure that all measurements are a full measure of oysters as defined in § 28.2-526 and that the oysters are properly culled.


§ 28.2-549. Violations; recovery of oyster resource user fees; penalties.
Any person who violates any provision of this article is guilty of a Class 1 misdemeanor. Any person willfully failing to pay oyster resource user fees to the Commission in the manner required by this article is guilty of a Class 1 misdemeanor. The Commission may maintain an action at law against any person required to pay oyster resource user fees to the Commission for the amount of oyster resource user fees due, plus interest, and a penalty to be added to the oyster resource user fees in the amount of six percent if the failure is for not more than one month, with an additional six percent for each additional month, or fraction thereof, during which the failure continues, not to exceed 30 percent in the aggregate.


§ 28.2-550. Authority of Commissioner to make certain contracts; funds received to be paid into Oyster Replenishment Fund.
A. The Commissioner, with the approval of the Commission, may contract with any person to take or dredge submerged oyster shells or any other subaqueous materials from the tidal waters of the Commonwealth, and shall have the authority to plant, use, or sell such shells or other materials in whatever manner the Commission deems to be in the best interest of the Commonwealth.

B. The Commissioner, with the approval of the Commission, may contract with any commercial fisherman to engage in replenishment, research, and stock assessment activities in the Commonwealth. The Commission may promulgate regulations establishing criteria for awarding such contracts, including a preference for commercial fishermen actively engaged in the taking or catching of fish or shellfish who have suffered an adverse economic impact resulting from the implementation of regulations of the Commission regulating the seafood and marine resources of the Commonwealth. In determining whether a person is a commercial fisherman actively
engaged in the taking or catching of fish or shellfish, the Commission shall consider, among other relevant evidence, (i) his possession of a license issued pursuant to Article 1 (§ 28.2-500 et seq.) or (ii) his voluntary reporting of shellfish catches to the Commission.

C. The Commission, when it makes a determination in writing that competitive bidding or competitive negotiation is not feasible or fiscally advantageous to the Commonwealth, may authorize other methods of purchasing and contracting for seed oysters, house shells, reef shells, shell bed turning, or other goods and services for oyster ground replenishment, including contracts with commercial fishermen for replenishment, research, and stock assessment activities as provided in subsection B, which are in the best interest of the Commonwealth and which are fair and impartial to suppliers. It may establish pricing for its awards and purchases; use selection methods by lot; and open, close, and revise its purchases according to changing conditions of the natural resources, markets, and sources of supply.


Article 4. Surveys and Resurveys.

§ 28.2-551. Surveys and reports as conclusive evidence.
The surveys of the natural oyster beds, rocks, and shoals of the Commonwealth, made pursuant to Chapter 511 of the 1892 Acts of Assembly, shall continue to be the surveys defining and determining the natural oyster beds, rocks, and shoals of the Commonwealth. The surveys and reports filed in accordance with this Act of Assembly are conclusive evidence of the boundaries and limits of all the natural oyster beds, rocks, and shoals and that there are no other public oyster beds, rocks, or shoals. The surveys of the public oyster beds, rocks, or shoals of the Commonwealth referred to in this section shall not extend inshore of the mean low-water mark of such body of water, notwithstanding any surveys, plats, markers, or lines to the contrary.


§ 28.2-551.1. Continuing or reestablishing historic Baylor Survey lines.
When private leaseholds granted by the Commission or its predecessors appear within the Baylor Survey continuing pursuant to § 28.2-551 or as reestablished pursuant to § 28.2-553, if it shall be established to the satisfaction of the Commission, by petition duly filed prior to January 1, 2015, that the present or former leaseholders or their predecessors in title were granted the leaseholds within the area shown on "Atlantic Coast Chart No. 25" of the "Public Oyster Grounds, State of Virginia, 1895" in good faith more than five years previously and have made substantial improvements in such leasehold bottoms since that time, the Commission shall reestablish the lines of the Baylor Survey along the survey lines between the private leaseholds previously approved. Any notice to vacate such leaseholds shall be of no effect.

In reestablishing Baylor Survey lines pursuant to this section, the Commission may adjust the boundaries to facilitate ease of protection for the public grounds, provided that such adjustment shall neither reduce nor enlarge the area of public grounds, nor materially reduce or increase the value of the private grounds whose boundaries are being adjusted.

2014, c. 138.

§ 28.2-552. Resurvey on motion of Commission or on application of citizens.
The Commission may select and appoint any surveyor to survey or resurvey any oyster-planting grounds either in his own or any other county, and to reestablish and permanently mark any line
or lines of the Baylor survey of natural oyster rocks which the Commission finds necessary to define.


§ 28.2-553. Reestablishment of lines of Baylor survey; procedure; evidence of reestablished lines. The Commission may reestablish, relocate, and remark all lines of the Baylor survey which cannot be otherwise relocated because of the loss or destruction of previous marks. In reestablishing any such lines, the line surveyed by Fred E. Ruediger shall be followed wherever such line exists or was surveyed. Where no former line can be reestablished the Commission may establish a new line.

When such grounds or lines have been reestablished and relocated, the reestablishment and relocation shall be conclusive evidence in all courts of the Commonwealth that such grounds are public oyster rocks, beds, or shoals and that all grounds lying outside of such boundaries are rental grounds. Plats shall be made under the direction of the Commission showing the reestablishment of such lines, and shall be recorded in the appropriate clerk's office.


§ 28.2-554. Sale of Baylor survey charts and plats. The Commissioner shall have available to sell at five dollars per copy to the public copies of the Baylor survey charts and plats, in such manner as the Commissioner may determine.


§ 28.2-555. Crossings of Baylor survey. The Department of Transportation may maintain, repair, reconstruct, or replace any existing crossings of the Baylor survey. Such authorization is granted for any Baylor survey crossing determined by the Commonwealth Transportation Board to be necessary across the Hampton Roads from Newport News to Portsmouth, across the Elizabeth River at Norfolk, and construction parallel to an existing crossing of the James River from Newport News to Isle of Wight County.


§ 28.2-556. Erosion control devices within the Baylor survey. The public oyster beds, rocks, and shoals shall not include any area needed for an erosion control structure if the Commission, after considering the comments of the Virginia Institute of Marine Science and the Department of Conservation and Recreation, and any other relevant evidence, finds that: (i) shoreline erosion has occurred at the site and is expected to continue; (ii) such erosion is increasing the sediment load to public waters, causing degradation of water quality; (iii) the proposed project is a technically and environmentally acceptable way to control erosion at the site unless such Baylor ground is productive under § 28.2-630 of the Code of Virginia in which case the environmentally preferable erosion control shall be utilized; and (iv) the Commonwealth’s interest in protecting water quality by controlling erosion at the site outweighs the value of the portion of the natural oyster beds, rocks, and shoals affected by the erosion control structure. Whenever the area of the natural oyster beds, rocks, and shoals is so changed, the Commission shall make the changes on its Baylor survey charts.

§ 28.2-557. Unlawful to threaten or hinder surveyor; rights of surveyor; penalty.
It is unlawful for any person to threaten, resist, or in any manner interfere with a surveyor in the performance of duties relating to oyster grounds. The surveyor shall have the right to enter upon any person’s lands in the performance of his duties.

A violation of this section is a Class 3 misdemeanor.


Whenever the Commission makes or directs any surveys of Virginia’s public oyster rocks, prominent and permanent concrete markers shall be placed on the shores fixing the survey stations; and, whenever possible, prominent and permanent range markers shall be placed on the shores or lands. The Commission shall pay the cost of such markers.


§ 28.2-559. Removal of oysters planted by mistake.
When, by any resurvey of oyster-planting ground or survey reestablishing the lines of the Baylor survey made under the direction of the Commission, it appears that any holder, by mistake of any employee of the Commission, has had assigned to him and included in the plat of his assignment any portion of the public oyster beds, rocks, or shoals, the holder shall file a petition with the Commission for permission to remove such oysters or shells from such ground. The Commission may allow the holder a reasonable time, not exceeding three years, within which to remove such oysters, their progeny and their shells.


§ 28.2-560. Larceny of oysters and shells; penalty.
Any person other than the holder of an oyster-planting ground or his agents or employees who goes upon such ground and takes oysters and shells is guilty of larceny.


§ 28.2-561. Removal of markers of planting grounds; penalty.
It is unlawful for any person to intentionally or knowingly injure, remove, or displace any boundary oyster stake, range monument, signal beacon, post or buoy, or any part thereof, erected to designate, locate, survey, or map any shellfish grounds.

A violation of this section is a Class 3 misdemeanor.


§ 28.2-562. Maps to be filed; evidential value.
All maps of the bays, rivers, and creeks of this Commonwealth made by the Commission showing the location of oyster-planting grounds shall be filed in the office of the Commission.

Any such map and the areas of the individual assignments of platted oyster-planting grounds shall be evidence in all the courts of this Commonwealth of all the oyster-planting grounds leased by the Commonwealth to private individuals at the time the survey and map were made.