

York River Use Conflict Committee Report and Recommendations

September 17

2008

The York River Use Conflict Committee was established to explore the public policy question facing many rural coastal local governments: "to what extent will future development of coastal communities rely on the opportunities presented by a coastal environment and what public policies will govern such opportunities?"

A dialog on
public
policy
alternatives
for
managing
use conflict



Virginia Coastal Zone
MANAGEMENT PROGRAM



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Executive Summary

Background

As the Middle Peninsula continues to transition from a less rural to a more suburban community, public policies that currently serve as management tools for near-shore land, public water bodies, and water use rights and privileges must adapt. Conflicts are becoming increasingly common between waterfront property owners, watermen, boaters, recreational fishermen, sportsmen, aquaculture industries, and others seeking to use the Commonwealth's water resources. The historical balance between working waterfronts and residential development is shifting to predominantly residential waterfront. Infrastructure to support working waterfronts and the economic opportunities they provide is disappearing.

In response to this transition, the Middle Peninsula Planning District Commission ("MPPDC") and its member localities, in partnership with Virginia Sea Grants' Coastal Community Development Program and Virginia Department of Environmental Quality's Coastal Zone Management Program, undertook a study to enable local governments to identify and determine the issues and conflicts that are affecting the waterfront.

Guiding Principles and Recommendations

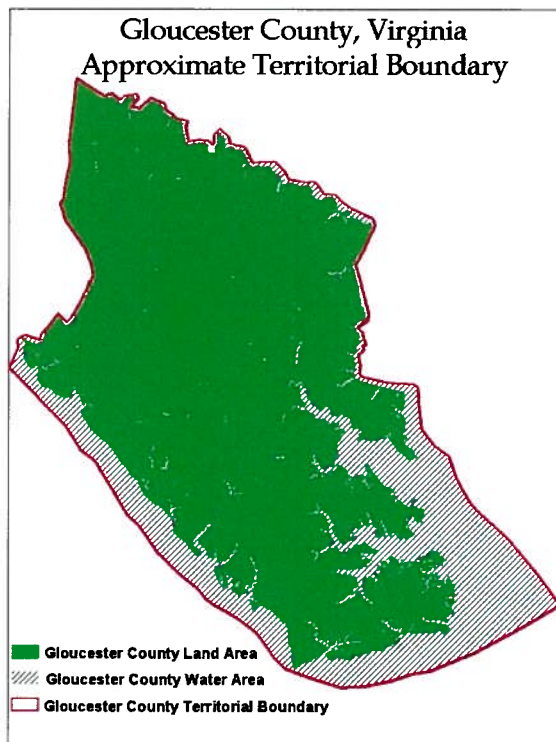
For the purposes of this study, use conflict can be loosely defined as:

Conflict generated when two or more people desire to do different activities in the same area at the same time.

One of the most important aspects to managing use conflict is acknowledging jurisdictional boundaries. It is well documented, but not well articulated, that Gloucester County's jurisdiction covers all terrestrial (land area and features), aquatic (water area and features) and air (atmospheric area and features) within its boundaries.

Together these areas form the sum total of the locality's jurisdiction (territorial boundary), in which Gloucester County has the rights and powers delegated to it by the Commonwealth of Virginia.

Recommendation 1 – *Gloucester County Board of Supervisors should develop a Coastal Living Policy. Much of use conflict is due to an overall lack of understanding about living in a coastal community. The intention of this policy is to educate residents about coastal living in Gloucester from an economic, cultural, social, environmental, and regulatory perspective.*



Recommendation 2 – *Gloucester County Board of Supervisors should map and identify the County's Land, Air and Water Territorial boundaries in the County's Comprehensive Plan and supporting maps. Identifying the County's authority to manage uses within its territorial boundary will frame the basis for managing conflict by establishing spatial areas for management consideration.*

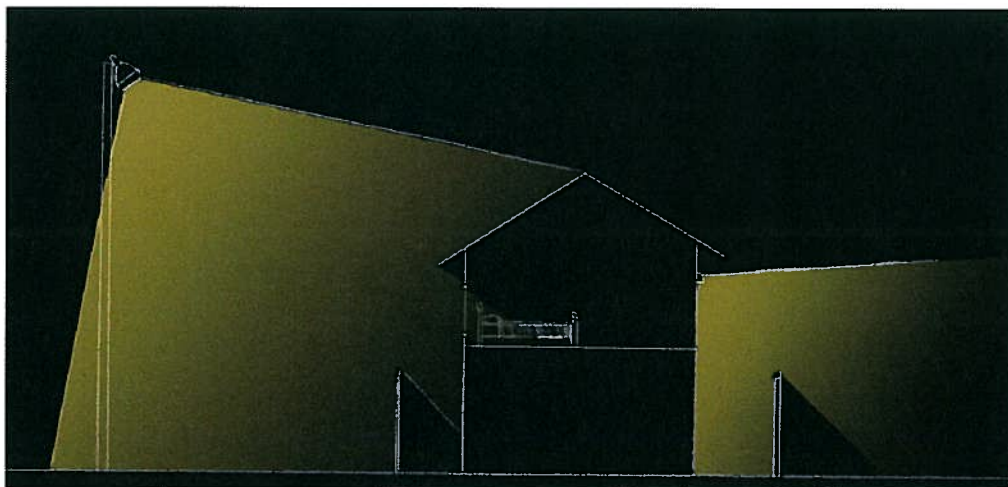
LAND AREA + AIR AREA + WATER AREA = LOCAL JURISDICTION

Recommendation 3 – Gloucester County Board of Supervisors should take no action at this time to manage or regulate the aquaculture industry within its jurisdiction. The Virginia Marine Resources Commission recently promulgated regulations regarding aquaculture and time is needed to determine whether the regulations resolve use conflicts regarding this relatively new industry.



Recommendation 4 - Gloucester County Board of Supervisors should develop a policy for the protection of working waterfront infrastructure. Public waterfront access points, together with recreational and commercial fishing industries and related support facilities, should be sustained at various points throughout Gloucester County.

Recommendation 5 - Gloucester County Board of Supervisors should develop a **Waterfront Outdoor Lighting Ordinance**. Light pollution, caused by overly bright and poorly designed lighting, is causing nighttime light trespass problems for waterfront users. Many Virginia localities have enacted lighting ordinances to solve this growing and serious problem.





Recommendation 6 - *Gloucester County Board of Supervisors should adopt an ordinance restricting floating homes. It is simply a matter of time before these vessels arrive in the County and the County should be proactive in protecting its residents and waters.*

Recommendation 7 - *Gloucester County Board of Supervisors should develop a master plan for public access infrastructure to ensure equal water access for all user groups to the waterways within Gloucester County.*

Acknowledgments

The Middle Peninsula Planning District Commission would like to acknowledge the individuals and organizations that participated in the process of developing this report. These include:

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Without the participation of these individuals, this Report would not be possible. Their assistance is greatly appreciated.

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Virginia Coastal Zone
MANAGEMENT PROGRAM



Section 1: Introduction

Project Purpose

The 2006 Board of Commissioners of the Middle Peninsula Planning District Commission developed a consensus of the area's highest legislative and policy priorities.¹ Through its Legislative Program Development Process, water use conflict was identified as the top priority for 2007. The Commission is concerned about how the rights and privileges of all Virginians to access, utilize, and view Public Trust Doctrine common areas are considered fairly and equitably within public policy. The recommendations of the York River Use Conflict Committee will serve as a reference for the development of future public policy in Gloucester County, future legislative and policy positions to be advocated by the Commission, and to inform others, particularly state officials, of the Commission's positions.

Objectives and Methodology

The establishment of the York River Use Conflict Committee (Committee) was driven by the increase in water and land use conflicts across the Middle Peninsula. The selection of the project locality and project study area was formalized after consultation with the Chief Administrative Officers of the nine Middle Peninsula local governments. Gloucester County was extended the opportunity to address use conflict issues. The Gloucester County Board of Supervisors took action on February 6, 2007 by formalizing the existence of the Use Conflict Committee. Staff to the Middle Peninsula Planning District Commission and the Gloucester County Board of Supervisors appointed Committee members representing various use

¹ The Commission has nine member localities, including the counties of Gloucester, Mathews, Middlesex, King William, King & Queen, and Essex, and the towns of Tappahannock, West Point and Urbanna. The Commission website can be found at <http://www.mppdc.com>.

conflict perspectives. The Committee was established to gain an understanding of the land and water assets and associated user conflicts between various user groups. The approach would allow for a representative study of the Middle Peninsula and to make recommendations for possible new public policy to help local government address use conflict. The north shore of the York River, from the George P. Coleman Bridge to the Guinea Marshes, formed the Committee's study area ("Study Area").

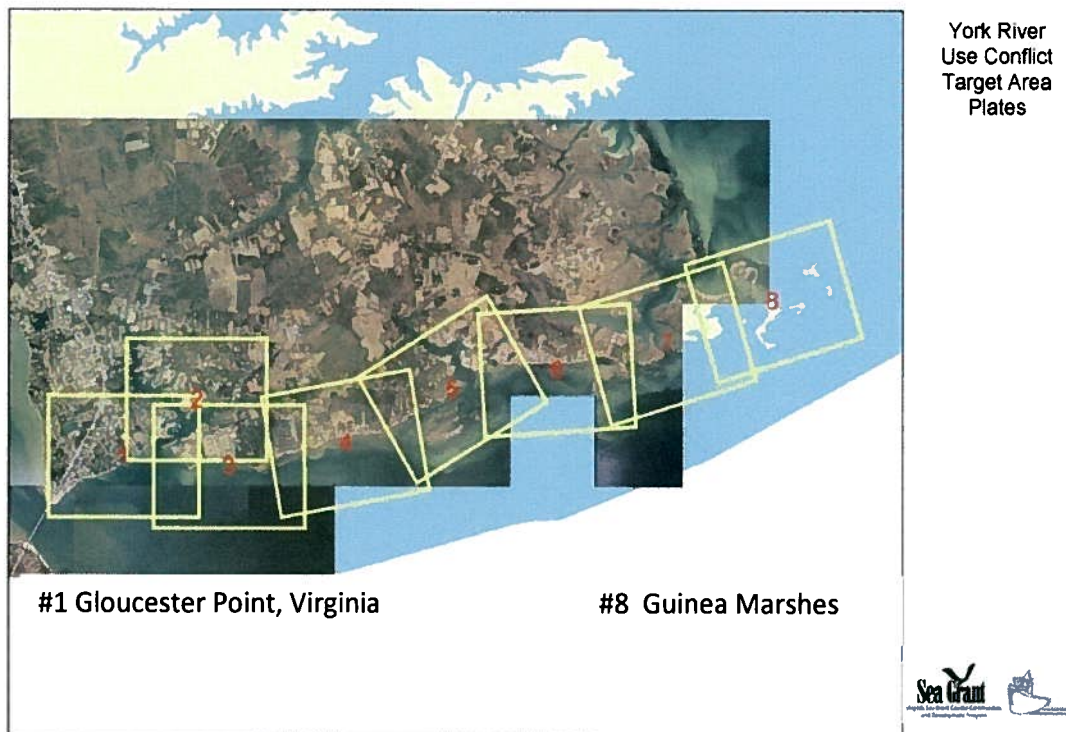
Specifically, the Committee was asked to:

1. Determine the features and uses as they currently exist and historically existed.
2. Identify what conflicts exist or could exist for the study area.
3. Determine what is or could be causing the conflicts.
4. Discuss how conflicts could be mitigated.
5. Recommend public policy that could manage the conflict.

Section 2: York River Use Conflict Committee Approach

Approach for Analysis

Numerous waterfront communities within the Middle Peninsula are transitioning from less rural to more suburban settings. This results in landside and waterside use conflicts between watermen, boaters, recreational and commercial fishermen, sportsmen, aquaculture industries, waterfront property owners, and others. Telltale signs of these conflicts are present in Gloucester County. The active, but diminishing, commercial fishing industry faces competition for space and revenue with entrepreneurs, dramatic increases in waterfront property values, and on-going development and privatization of the waterfront. In order to gain a better understanding of existing uses and conflicts along the York River, the Study Area was chosen to serve as a representative area of the increasing landside-waterside use conflicts in the Middle Peninsula as a whole.



The MPPDC and NOAA's Virginia Sea Grant Coastal Communities and Development Program (VA Sea Grant) funded and co-sponsored a Use Conflict Public Forum held in January 2006 at Achilles Elementary School in Gloucester County. The Forum offered the general public an opportunity to discuss elements and locations of use conflict that are important to the county and its residents. Information collected at the public forum was used as a foundation to support the work of the Use Conflict Committee.

Additionally, Virginia Sea Grant funded the development of a Geographic Information System (GIS) analysis of the Study Area in Gloucester County.² The north shore of the York River, from the George P. Coleman Bridge to the Guinea Marshes formed the study boundary. Spatial data collected related to a number of topics, including water-dependent uses, current regulations regarding use standards and zoning of waterways, existing infrastructure and proposed public improvements adjacent to and within conflict zones, and sensitive and significant habitats, such as wetlands and shellfish areas, that could be impacted by transitioning uses.

² GIS map products are available by contacting the Middle Peninsula Planning District Commission.

Section 3: York River Use Conflict Committee Work

As with most committees, the Use Conflict Committee members have different educational backgrounds and life experiences, and they bring to the table a mixture of cultural, social and economic values. They understand issues differently depending on their personal experiences and perspectives. For meaningful communication to occur, members must agree on and understand the meanings of the words that are important to discussions.

By its very nature, the knowledge gap among the membership of the Committee was wide, and the self interests of members initially seemed at odds with one another. All members of the Committee, however, acknowledged the need to gain a common understanding of the uses of the York River and the existing policies and regulations that influence them. This education process occurred over the summer of 2007 and centered on the resource text "Boss of the Waterfront." The text was jointly developed with funding from the Virginia Sea Grant Community Development Program and Virginia Coastal Zone Management Program. It includes a comprehensive compilation of existing state and local codes and agency regulations, as well as jurisdictional illustrations of the York River Study Area. The GIS analysis consists of comprehensive maps of the existing uses, demographics, and designations of the York River Study Area.

During facilitated meetings, comprehensive homework assignments, and a field trip to a commercial aquaculture operation, the Committee gained significant understanding of the contents of the "Boss of the Waterfront," as well as each other's perspectives and interests and the Study Area itself. Facilitated meetings ensured that all participants were able to express their views and that all use conflicts were discussed. Issues not relevant to the work of the Committee were recognized but set aside. Homework assignments were developed to

allow Committee members to report on the use conflicts most familiar to them and then move into research of areas less familiar.

Ultimately, the members taught each other and learned together as the summer progressed. A site visit to an existing commercial harvesting operation allowed Committee members unfamiliar with this “use” to experience it firsthand.

Throughout the education process, the Committee identified questions and terminology issues that were researched and answered by staff. This established a use of terminology common to the entire group (Appendix A). Additionally, the Committee learned about use conflict situations and varying policy responses from examples across the nation.

The Committee worked in small groups to analyze the Study Area GIS plates. Each group used a regulatory self help worksheet to analyze the information and better understand each part of the Study Area.

York River Use Conflict	
Learning the Regulations through Case Studies	
Name of Regulation §15 2-3105 Boundaries to embrace wharves, piers, decks, and certain other structures.....	
Real World Experience/Scenario Where Regulation Applies	
What Works Well?	Where Are Challenges?
Other Regulations Involved	
Applicable Technical Terms	

Through research and discussions, the group identified use conflict situations for every code and regulation in the “Boss of the Waterfront” text. This brought legal language of the codes and regulations into real life situations and case studies. After identifying case studies, the group discussed the different perspectives of the use from the land side to the water side and how they intersect and potentially conflict.

The Committee's education phase culminated with a discussion of three questions: "Who should manage use conflict?" "What is the appropriate use?" and "Who should determine the appropriate use?"

Photographs of different recreational, commercial, and residential uses were illustrated for this discussion and use conflict regulations from other states were discussed. In the end, the Committee created a matrix of the use conflicts it identified in preparation for the next project phase of framing the public policy question "Who should manage use conflict?"

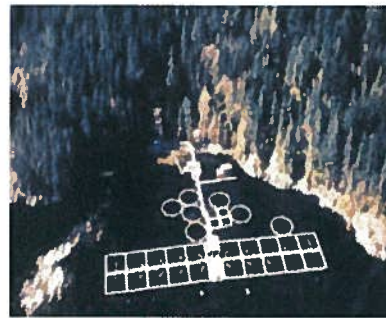
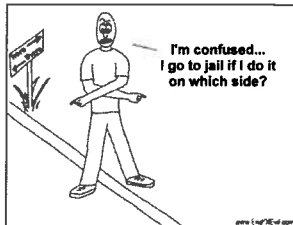


Illustration
of various
recreational,
commercial,
and residential
uses



Section 4: Who Should or May Manage Use Conflict?



Recognizing and understanding jurisdiction is a fundamental question facing local governments struggling with managing use conflict. Within the coastal landscape, especially within the area commonly referred to as the “riparian zone” (interface area between the land and the water),

multi-jurisdictional regulatory overlap exists. It was, therefore, important for the Committee to understand the legal framework which allows federal, state and local governments and agencies to manage water related uses.

The Committee learned that Virginia is a Dillon Rule State, whereby the General Assembly grants certain rights to a locality. The locality has no authority beyond those rights, which exist until such time as the General Assembly rescinds the enabling legislation.

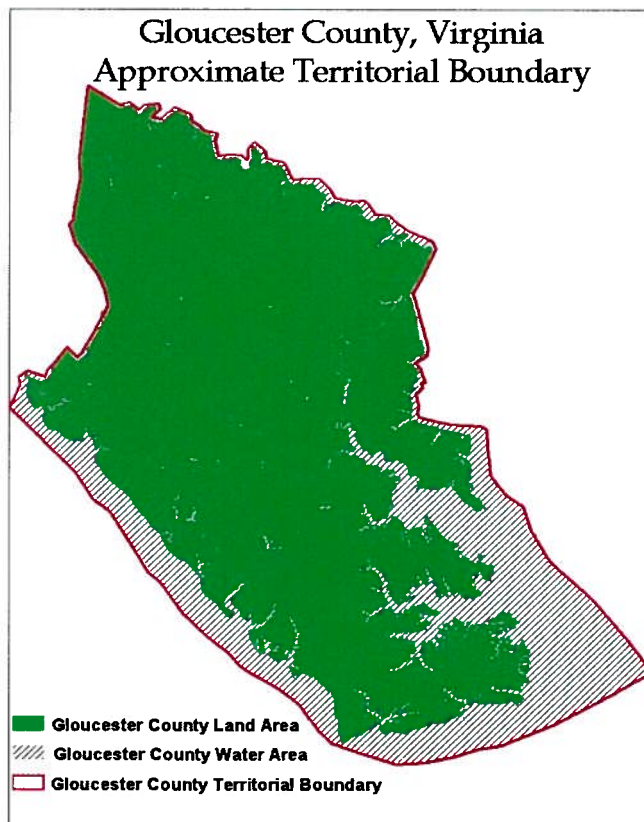
Underlying state and local laws and regulations regarding the Commonwealth’s waterways is the Public Trust Doctrine. It holds that certain resources are preserved for public use, and that the government is required to maintain them for the public’s reasonable use. Virginia Code section 28.2-1205, for example, states that Virginia Marine Resource Commission (VMRC) must consider, among other things, the “public trust doctrine” and the Virginia Constitution when making decisions regarding the Commonwealth’s bottom or sub-aqueous lands. VMRC must balance the various public uses, which can and often do conflict with one another.

#1 Basic line drawing of jurisdictions

**right of a locality to assert a regulatory framework
for managing this use within its jurisdiction.**

Another example is that in order to build a pier over state waters, a landowner consults with VMRC and applies for a wetlands permit from the local wetlands board. Moreover, local governments require building, electrical and plumbing permits for uses on a pier. Local government can tax “off-shore” improvements, such as riprap and other shoreline structural control infrastructure. Local governments also tax personal property related to the use of the pier, such as boats.

The Committee came to recognize the importance of advancing the notion of jurisdiction within public policy documents. It studied public policy documents, including the Virginia Administrative Code and the Gloucester County Code, and identified many examples of enabled rights to manage “use” within the territorial boundary of a jurisdiction, including over water. The Committee concluded that



Gloucester County has jurisdiction over both “internal” waterways as well as areas extending out to the middle of rivers shared with other localities and into the Chesapeake Bay. The County’s combined (air, land, and water) territory is depicted on the map titled “Gloucester County, Virginia Approximate Territorial Boundary.”

The Committee identified several existing state laws and local ordinances which support the position that a county's territory includes the waters surrounding its land. More specifics related to jurisdiction and managing use from the Virginia Code (*statutory law*) and the Virginia Administrative Code (*state agency rules*) can be found in Appendix B³.

Example 1: Virginia Code § 15.2-2280 - Zoning ordinances generally

Virginia Code section 15.2-2280 allows a locality, by ordinance, to classify its territory into zoning districts. Within such districts, it may regulate, restrict, permit, prohibit, and determine the following:

1. The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses;
2. The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;
3. *The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts,*

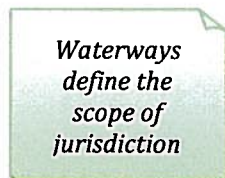
³ By making this recommendation, the Committee is not taking any position regarding what powers and rights the locality may have within its territory. As discussed in this Report, a locality's powers and rights are limited to those delegated to it by the state legislature under the Dillon Rule. In addition, certain uses within the water may be subject to the sole jurisdiction of state and federal government or regulatory agencies. While the Committee's recommendation will make it easy to determine whether a use conflict on the water is within the locality's territory, whether the locality has the authority to manage the conflict is a separate issue which must be decided on a case-by-case basis and with the advice of legal counsel.

yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used; or

4. The excavation or mining of soil or other natural resources.

(emphasis added) Thus, Section 15.2-2280 is an example of enabling legislation from the Commonwealth that provides a locality with authority over water.

Example 2: Gloucester County Code Chapter 21 - Watercraft and Water Safety



This ordinance was adopted by the Gloucester County Board of Supervisors on June 7, 1983 (Appendix C). Under the ordinance, the County regulates vessels operating in waters within the County's jurisdiction.

Section 21-1 titled "Definitions" articulates the concept of the spatial relations of the ordinance:

Channel shall mean the path of deeper water in a waterway that is normally followed by larger and deeper draft vessels. Channels may be dredged or determined by generally accepted practice.

Operate shall mean to navigate, cause to be propelled or otherwise use a vessel.

Person shall not mean or be interpreted to include any law-enforcement officer while acting in the lawful discharge of his duties to the extent that his actions might or would otherwise constitute a violation of section 21-2 or section 21-3 hereinafter.

Vessel shall mean every description of watercraft, other than seaplanes, used or capable of being used as a means of transportation on water.

Wake shall mean the swells, wave wash or displacement waves created by moving vessels.

Waterways shall mean *all bodies of water* within the territorial limits of Gloucester County upon which a vessel may operate.

Wharf shall mean an artificial structure into a body of water from the shore, to be used for the reception of boats and watercraft.

(emphasis added). Spatial relations are an important concept because they set a precedent for a jurisdiction-territorial boundary within a local government management framework. The ordinance defines the reach of local government by articulating the who, what, when, how and where of its coverage. Chapter 21 recognizes the enabled right to manage use within its jurisdiction which includes the waterways.

Sections 21-2 through 21-12, of the ordinance articulate the principles of use management and define “acceptable behavior.” Chapter 21 manages use by defining:

- How fast one can go
- What actions one can cause
- How one must conduct one self
- What one may do
- Where one might do something
- What one can and cannot do
- What public facilities are available
- What the locality will do
- To what extent the locality will protect citizens
- How enforcement will be handled
- What are the civil penalties

Example 3: Gloucester County Code Article II. Regulations Governing Public Parks and Recreation Facilities

Gloucester County code Section 13.5-24 Bathing and Swimming and Section 13.5-25 Boating were adopted by the Gloucester County Board of Supervisors on March 5, 2002 (Appendix C). Under the ordinance, the County regulates among other activities the ability of citizens to swim and wade and operate, tie or moor a boat in waters within the County's jurisdiction.

Section 13.5-24. Bathing and swimming.

Swimming or wading of any type, kind, or description is prohibited in Beaverdam Reservoir and Park. At Gloucester Point Beach no person shall swim, bathe, or wade in any waters or waterways in or adjacent to any public area, except in such places as are designated therefore and in compliance with such regulations as are herein set forth or hereafter adopted. No person shall go in or on any waters or place customarily designated for the purpose of swimming or bathing, or congregate there, when such activity is prohibited by the appropriate county employee. No person shall erect, maintain, use or occupy on or in any beach or bathing area any tent, shelter or structure of any kind. (Ord. of 3-5-2002)

Section 13.5-25. Boating.

No person shall bring into or operate any watercraft upon any waters designated as a public swimming or bathing area, unless during a sailing regatta or other activity sponsored or authorized in writing by the director. No person shall tie or secure any watercraft to a marker or piling used to designate a protected swimming or bathing areas. Water-skiing or using personal watercraft, as such term is defined in Section 29.1-700, Code of Virginia, 1950, as amended, within fifty (50) feet

of boat launching areas, piers, cofferdams, docks, mooring areas, or within one hundred (100) feet of designated swimming areas is prohibited. Operation at Beaverdam Reservoir and Park of any internal combustion engine of any description whatever, especially of a gasoline-powered engine for propulsion of any boat, regardless of size is prohibited. Operation of any wind-propelled vessel, including, but not limited to, a sailboat or windsurfer is prohibited. Operation of any electric motor vessel that has not been licensed by the Commonwealth of Virginia, or, operation of any vessel without a U.S. Coast Guard approved flotation device for each and every person on board is prohibited.
(Ord. of 3-5-2002)

Example 4: Virginia Code § 29.1-744.4 - "Pass-through" zones; local ordinances; penalties.

Virginia Code section 29.1-744.4 allows a locality, after providing notice to the Department Game and Inland Fisheries, to pass an ordinance to:

establish "pass-through" zones in any portion of a waterway within its territorial limits where congestion of watercraft traffic routinely poses a significant safety risk to persons in such designated area. The ordinance shall provide that while in a pass-through zone, operators of watercraft shall maintain a reasonable and safe speed and shall be prohibited from stopping, anchoring, loitering, or otherwise engaging in recreational activity. The locality shall clearly identify pass-through zones by buoys or other markers that conform to the general requirements as established by the Board for similar buoys or markers. The locality may provide for enforcement and penalties, not to exceed a Class 4 misdemeanor, for the violation of the ordinance.

Example 5: Virginia Code § 15.2-909 - Authority to require removal, repair, etc., of wharves, piers, pilings, bulkheads, vessels or abandoned, obstructing or hazardous property.

Virginia Code section 15.2-909 allows a locality to pass an ordinance requiring a landowner to:

remove, repair or secure any vessel which has been abandoned or any wharf, pier, piling, bulkhead or *any other structure or vessel* which might endanger the public health or safety of other persons, or which *might constitute an obstruction or hazard to the lawful use of the waters within or adjoining such locality.* (emphasis added)

Prioritization Process

As the Committee settled in agreement that local government has a right to manage certain uses within its jurisdiction, which includes the locality's waters, the focus turned towards identifying and prioritizing different use conflicts within the Study Area. The Committee utilized two processes for prioritizing conflicts. The first process involved analyzing the relationships between ten units of local, state and federal jurisdiction⁴ and various combinations of use categories: Commercial

⁴ Gloucester County, Virginia, Virginia Department of Conservation and Recreation's Chesapeake Bay Local Assistance Division, Federal Emergency Management Agency United States Army Corp of Engineers, Virginia Department of Environmental Quality, Virginia Department of Game and Inland Fisheries, Virginia Department of Health's Division of On-Site Sewer and Water Services, Virginia Department of Health's Division of Shellfish Sanitation, Virginia Marine Resources Commission, and Gloucester County Wetlands Board.

and Residential Uses; Recreational and Residential Uses; and Commercial and Recreational Uses. The Committee struggled with determining a consensus of who could manage various use conflicts under the scenarios presented. This process helped the Committee understand the issues but did not lead the Committee to prioritize or address them.

A second process utilized a matrix to identify the use conflict “issue area” and then presented two perspectives: one in favor of the use and the other in opposition of the use. Committee members were then asked “What should local government do about the conflict?” An example of the matrix follows:

Example Matrix

Issue Area	Perspective 1	Perspective 2	What should local government do?	High Priority	Med Priority	Low Priority
Residential Property Owners -v- Commercial Pier Use	Homeowner concerns of sight, smell, noise, time of use etc	Commercial pier supports an important part of the economy	<p>**Incorporate areas for commercial piers and working waterfront in long range Comp Plan as both a land use and as preservation of the rural character of the area, economic generator and part of the cultural fabric of the community that needs to be preserved.</p> <p>***appropriate zoning for commercial piers and other water based activities so that the land uses can be separated and buffered. By creating a zone which identifies specific permitted uses, including commercial piers and aquaculture activities the public and adjoining land owners are aware of the potential uses permitted on the site.</p> <p>*****Regulate pier use with ordinances: regulate it in terms of the hours of operations, excessive noise levels, pollutants, trash and waste product disposal/accumulation, etc</p> <p>If the pier was in existence prior to</p>	10	2	3

Each Committee member was asked to prioritize the importance of the conflict and what was the priority for addressing the conflict. The matrix results provide an overview of the Committee's full assessment of use conflict and management (Appendix D). The results also served as the foundation for understanding how local government might handle conflict and identified prioritization of conflict issues.

As part of the prioritization discussion, the Committee explored how other local, state and federal governments have handled similar conflicts. Some examples include (Appendix G):

- Alachua County, Florida Water Management Strategies
- Monroe County, Florida Plan to preserve and protect working waterfronts
- Regulation of Floating Houses in Seattle, Washington
- Jet-ski ordinances in San Juan, Washington, San Francisco County, California, and localities in New York
- No Net Loss Policy for Commercial Waterfront Lands in Martin County, Florida
- Marine Zoning in the Florida Keys National Marine Sanctuary

Section 5: Conflict Recommendations

Committee Statement, Recommendations and Action Steps

Committee recommendations reflect compromise and coalition building. The recommendations were unanimously agreed upon, although some consensus building was needed. Gloucester County, as with much of the Middle Peninsula, is experiencing the loss and redevelopment of waterfront marine facilities and their associated businesses and employment. A limited supply of waterfront land and an increasing demand by different uses is the driving force behind the apparent change and conflict.

The largest challenge facing local government is recognizing and balancing the needs and expectations of upland property owners against the loss of a coastal maritime identity and the working waterfront infrastructure. Such infrastructure includes commercial marinas, boatyards, wet and dry storage, fish houses, commercial fishing vessel dockage, and marine-related industries such as boat dealers, boat repair and maintenance services, commercial fishing, and tourism. The current trend is towards non-water-dependent uses (e.g., residential development and condominiums) and exclusive use (e.g., private marinas).

The Committee unanimously agreed that Gloucester County is losing its rural coastal character and that future growth should be slow and smart. The County must preserve the coastal cultural identity that makes Gloucester County a special waterfront community.

To help address these issues, the York River Use Conflict Committee recommends the following:

RECOMMENDATION 1 - Develop and Adopt a Coastal Living Policy.

A consistent theme during the Committee's work was the need for education and awareness among the various users of the riparian zone regarding the competing uses and their affect on one another. Committee members agreed that conflict is often a product of uncertainty and misunderstanding. Conflict can be lessened, if not avoided entirely, when individuals are made aware of the multiple uses of the waterfront as early as possible.

For example, a purchaser of waterfront property should be made aware before buying the property that Gloucester County has a rich heritage with commercial and recreational fisheries. Such activities are promoted and protected by the County and the Commonwealth. Early morning crab boats, pound nets, and now aquaculture activities, are and will be part of the mixed use of the riparian zone (near shore). Likewise, commercial users of the water should be aware that the rights of landowners to view, access and enjoy the water, including aesthetic values, are also promoted and protected.

While this may seem obvious, it is not. The Committee members engaged in a learning process about the multiple uses of the water which led them to understand and better accept uses that they initially viewed with skepticism and concern. Other localities have prepared and distributed such educational materials. For example, two communities in Maine have produced "working waterfronts" brochures in conjunction with NOAA and the Sea Grant program. Dorchester County, Maryland has developed a real-estate disclosure statement to help preserve coastal culture. *See* (Appendix E).

The Committee strongly believes that Gloucester County should adopt measures to ensure that its current, new and potential residents are aware of the multiple uses of the riparian zone and their impacts on

the natural environment. To that end, the Committee recommends that the County adopt a Coastal Living Policy.

ACTION STEPS

The Gloucester Board of Supervisors should direct the county attorney and planning staff to develop a Coastal Living Policy similar to the Maine and Maryland examples (appendix E) for adoption consideration. The policy should include, but not be limited to, the following concepts:

1. Develop a coastal living information document to be included in the property tax assessments mailed to County residents. The Committee recognizes the need to work with the Commissioner of Revenue.
2. Develop a coastal living brochure to be distributed at various community gatherings.
3. Develop a coastal living section in the Comprehensive Plan.

Such materials may include:

- Discussion of the coastal value system of living in Gloucester County
- Discussion of the importance of a vibrant coastal economy
- Discussion about natural resource based industries: farming, fishing, and silviculture
 - Sights
 - Sounds
 - Smells
 - Hours of operation
- Discussion about public services and public infrastructure in a coastal locality
- Discussion about what riparian rights are and are not
- Responsible use of coastal resources

- Discussion about the Public Trust Doctrine
- Discussion about water based recreation uses, such as
 - Duck hunting
 - Speckled trout fishing
 - Crabbing
 - Clamming
 - Swimming
 - Gill netting
 - Boating
 - Sailing
 - Jet skiing

RECOMMENDATION 2 – Denote Gloucester County’s Land, Air and Water Territorial Boundary in the County’s Comprehensive Plan and supporting maps.

As stated above, a critical step in handling use conflicts is to illustrate the local government’s territorial boundaries. This is necessary for several reasons. First, the local government cannot identify and implement solutions to use conflicts if it is uncertain whether the uses are within its jurisdiction. Second, residents need to know who to turn to when conflicts arise. Third, water and land uses are often subject to the overlapping jurisdictions of federal, state and local governments and regulatory entities or agencies, all of which need to know what each other is doing.

Existing state statutes and County regulations, along with historical documents and practices, make clear that the County’s territory encompasses land, air, and water (horizontally and vertically). The territory should be expressly identified and mapped.

ACTION STEPS

The Board of Supervisors during the 2008 Comprehensive Plan Process should include an element in the Comprehensive Plan that all

appropriate comprehensive plan, land use and zoning maps shall denote land, air and water areas within the territorial boundaries of the County.

RECOMMENDATION 3 – Gloucester County should take no action regarding aquaculture but instead monitor and evaluate how the VMRC’s new regulations address the use conflicts associated with this relatively new industry.

The primary use conflict discussed by the Committee was aquaculture, particularly the growing of oysters in metal cages placed in the riparian zone. Aquaculture has recently been a hot topic in Gloucester County and in the Chesapeake Bay area, and many of the Committee members are either involved with aquaculture or are property owners concerned about it. The discussions about aquaculture involved almost all of the conflict issues addressed by the Committee and served as a focal point for the Committee’s work on identifying conflict issues and possible solutions. A more detailed statement regarding the Committee’s discussions regarding aquaculture is attached as Appendix F.

The Committee decided to take no position on aquaculture for at least two reasons. First, in 2007, VMRC promulgated regulations governing temporary protective enclosures for shellfish. *See* 4 VAC 20-1130-10 *et seq.*⁵ These regulations were the result of a VMRC *ad hoc* committee established to review, revise and discuss the proposed regulations. Many of the conflict issues on this topic were discussed by the VMRC *ad hoc* committee and are reflected in the regulations. The Use Conflict Committee believes that there needs to be time to allow the regulations to be applied before it can be determined whether or not the regulations adequately address the issues.

⁵ A copy of the regulations can be found at <http://www.mrc.virginia.gov/regulations/fr1130.shtm>.

Second, the growing of oysters in cages (on a commercial scale) is a relatively new industry in the Chesapeake Bay area. It should be noted that the West Point based Chesapeake Corporation during the 1930's and 1940's developed and experimented with techniques for off-bottom oysters growing. Chesapeake Corporation had 11,000 tar dipped baskets which rested on creosoted sills that stretched over three miles at the mouth of Queens Creek on the York. Restaurants paid as high as \$12 a bushel for these cage grown oysters. The Queens Creek farm was called "Sea-Rac Farm" and had a registered trade name of "Sea Rac" oysters and were marketed as "fancy half shells. In 1943 the farm was moved to the Weeks Creek on the Rappahannock River and grew off bottom Oysters in racks on the Rappahannock.



13. Men at work thinning out Sea-Rac oysters while they are exposed at low tide in Queen Creek near Williamsburg. This is the "farm" at which The Chesapeake Corporation grew prime oysters for gourmet tables.

However, today's growers, landowners and other water users are still learning about the process and how it may or may not affect them. The industry is currently small. The conflicts have been relatively few. Time is needed to determine the nature and scope of any conflicts based on actual experience.

The Committee, therefore, recommends that for now Gloucester County take no action regarding aquaculture. If and when the need arises, it can do so.

ACTION STEPS

The County should continue to evaluate and monitor the aquaculture industry regarding actual conflicts with other water users and take action in the future as necessary.

RECOMMENDATION 4 - Develop and adopt a policy to protect and preserve working waterfronts.

The Committee strongly believes that working waterfronts should be protected and preserved, particularly those related to traditional uses such as fishing, crabbing and oystering. With property values significantly increasing for waterfront property, working waterfronts that are lost will be difficult to replace. Commercial water uses are an important part of the mix in the community, and they require land based activities to survive.

Many of the owners of key pieces of working waterfront infrastructure are nearing retirement or are of retirement age and will eventually consider alternative management strategies. The committee is concerned that should key institutions close or be re-developed, the loss of coastal cultural identity would be a significant loss to the community.

ACTION STEPS

The Board of Supervisors should develop and adopt a “No Net Loss” policy to protect both public access and water related industries. This means that at the very least the County should seek to maintain the same level of working waterfronts as currently exist. The policy should include at least the following:

- (a) Inventory existing working waterfronts, including commercial marinas, boatyards, wet and dry storage, fish houses, commercial fishing vessel dockage, and marine-related industries such as boat dealers, boat repair and maintenance services, commercial fishing, public and semi-public access sites (sites that are privately owned where by the owner allows public access). Consult with local watermen to assist with site identification;
- (b) Examine the feasibility of using transfer and/or purchase of development rights to address the “No Net Loss” goal (for example, the County could buy development rights on privately owned marinas to keep them from being redeveloped into condominiums);
- (c) Focus on the commercial nodes of water-dependent marine-related uses throughout the County to purchase outright with potential lease-back to fishing cooperatives or other industry partnerships;
- (d) Develop viable partnerships with the private sector to help preserve the working waterfront;
- (e) Explore a countywide bond issue as a source of funding to improve existing public boat ramps to enhance boating access; and
- (f) Continue to utilize the Middle Peninsula Chesapeake Bay Public Access Authority as a tool for local government to address working waterfront infrastructure conversion issues.

RECOMMENDATION 5 - Develop a Waterfront Outdoor Lighting Ordinance.

During its work, the Committee learned about the growing problem of light pollution, not only on the waterfront but across the country. Excessive lighting threatens the ability of future generations to see the beautiful night sky. The projection of light towards the sky by overly bright and poorly designed outdoor lighting fixtures has already degraded the night sky and leads to the more localized problems of glare and light trespass.

Nationally, the loss of America's dark areas where night sky views are unhindered by artificial light has accelerated since the end of World War II. Recent articles on night sky visibility state that already two-thirds of Americans cannot see the Milky Way from their backyards. If that is not alarming enough, computer models project that remaining "dark areas" in the American West will be lost completely in approximately twenty years. There are three forms of light pollution along the waterfront of concern; the brightening of the night sky along the waterfront, the uncomfortable brightness of waterside light source when viewed against a dark background, and the spilling of dock light beyond the boundary of the property into a neighbor's yard.

Many of the Committee members had experienced problems with overlit piers and buildings on the water. The Committee agrees that correcting light problems is relatively simple and inexpensive. It involves the replacement over time of existing light fixtures with fixtures designed to reduce wasted light. The most common shoreland lights are attached to piers, homes, garages, and other structures on waterfront residential property.

Light pollution ordinances have been adopted by numerous localities across the country, including at least seven localities in Virginia.⁶ An

⁶ See Virginia Outdoor Lighting Task Force (VOLT) website at <http://www.volt.org>.

outdoor lighting control ordinance restricts lighting types, when they can be used, and other factors relating to qualities of lighting used. A waterfront ordinance minimizes the three serious problems along our shorelands:

Glare: When we see a distant point of light across the water, we are seeing light from the fixture itself rather than what the fixture is meant to illuminate. Poorly-designed or poorly installed lighting causes glare that can severely hamper the vision of boaters and landowners.

Light Trespass: Light trespass is a light fixture on one property that illuminates an adjacent or nearby property. Light trespass is not a legal concept, but rather a description of the nuisance effect of improperly aimed lights on someone else's property. Because the waterfront is unobstructed, water reflects glare from shoreland lights over the water to trespass on distant properties.

Sky Glow: Much of our exterior lighting shines directly upward, causing the sky above our cities to glow and washing out our view of the dark night sky. Artificial light placed at the shoreland is free to carry across the water for long distances.

ACTION STEPS

The Board of Supervisors should direct the County Attorney, Director of Planning and the Director of Codes Compliance to develop and present for adoption a waterfront outdoor lighting ordinance. The ordinance will be intended to reduce the problems created by improperly designed and installed outdoor lighting along the riparian area of the waterfront. It is intended to eliminate problems of glare, minimize light trespass, and help reduce the energy and financial costs of outdoor lighting by establishing regulations which limit the area that certain kinds of outdoor-lighting fixtures can illuminate and by limiting the total allowable illumination along the waterfront. Appropriately regulated and properly installed outdoor lighting will

contribute to the safety and welfare of waterfront residents, boaters and watermen.

RECOMMENDATION 6 - Gloucester County should adopt a policy restricting the use of floating homes.

There has been a noticeable increase in some areas of people living on “boats” that are more like floating homes than traditional boats. The floating homes can cause serious problems for adjacent landowners, other water users, and the local government. The vessel residents sometimes use County services without paying County taxes. There are serious issues with waste disposal. Adequate vessel putout facilities do not exist across the waterways of the County. The vessels obstruct water views and water uses and can be a serious eyesore affecting property values and the viewshed of upland property owners. The Committee recognizes the economic importance of appropriate vessels moored in appropriate places.

The Committee recommends that the Gloucester County Board of Supervisors proactively address this issue before it inevitably arrives.

ACTION STEPS

The Board of Supervisors should direct staff of the Planning Department and the County Attorney to form a study committee (membership should include, but not limited to a marina owner, water front property owner, commissioner of revenue, public works, and codes compliance) to consider the following and draft a proposed ordinance restricting floating homes in the County:

- What is a floating home
- When should local government become concerned about management issues
- What public services should or could be required
- How might these homes be taxed
- Definition of transience

- Discussion of visual appealing versus visually appalling
- Use of zoning as a tool to manage areas of moorage
- Recommendations for a policy to restrict floating homes in Gloucester County

The ordinance should be finalized and adopted by the Gloucester County Board of Supervisors.

RECOMMENDATION 7 - Gloucester County should develop a master plan for public access infrastructure to ensure safe and equal access for all user groups to the waterways within Gloucester County.

One of the most important assets of the County is the waterfront. The Committee believes that County residents should have access to the water. As shoreland development continues, public access points can get squeezed out, and the opportunities for increasing public access decrease.

ACTION STEPS

Develop a county wide master plan for public access infrastructure. The County should continue to work with the Middle Peninsula Chesapeake Bay Public Access Authority to develop a master plan. The plan should consider the following, but not be limited to:

- a. Inventory, preserve, protect, and enhance all existing public access opportunities, sites, and facilities along the shoreline.
- b. Consider linking access points or nodes throughout the waterfront of Gloucester using a variety of economic and commercial activities (e.g., shoreline restaurants and attractions, boat tours, ecotours) and transportation modes (e.g., bus, water taxis, bicycles, boats). People should be made aware of access points via improvements in signage and information about public transportation to these destinations, which may offer a mix of uses.

- c. Transform parcels of the shoreline currently planned for more intense development into space for activities that are water-dependent or water-related with green space that enhances habitat and public access.
- d. Encourage the use of waterfront property for habitat restoration, public access, or where appropriate, job-producing, water-dependent commercial activity that is compatible with environmental protection.
- e. Plan for future opportunities for new public recreational and educational experiences on public lands, causeways, and public parks abutting the shoreline. Public lands include local, state, and federal access points. Responsible use of the waterfront is subject to carrying capacity. In addition, infrastructure in these areas should accommodate existing and future public needs.
- f. Work with the Department of Conservation and Recreation, Virginia Marine Resource Commission and the Department of Game and Inland fisheries to ensure project coordination and implementation.

Conclusion

Use conflict management will become more complex as Gloucester County transitions from a rural to a more suburban community. Using political will, courage, and consistency Gloucester County can successfully manage this transition.

By implementing these action steps, Gloucester County will establish policies and procedures for managing use conflict, maintain the working marine industry and its various components, continue its commitment to the history and culture that makes Gloucester unique, and maintain a valuable resource that is essential to Gloucester's quality of life. The York River Use Conflict Committee recommends that the Gloucester Board of Supervisors demonstrate leadership and enact these recommendations from this report.

York River Use Conflict Committee Report and Recommendations

September 17

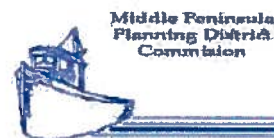
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APPENDIX A-G

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Virginia Coastal Zone
MANAGEMENT PROGRAM



Appendix A Use Conflict Terminology

Use Conflict Dictionary of Terminology from “Boss of the Waterfront” and terms and concepts suggested by committee members.

1894 Baylor Survey of Public Oyster Beds

The Constitution of Virginia, Article XI, guarantees that the natural oyster beds, rocks and shoals be reserved for public use.

A massive two-year survey was conducted throughout State tidal waters to locate and map the naturally productive oyster beds, rocks, and shoals. Known as the "Baylor Survey", these areas were reserved for public shellfish harvesting and cannot be leased or used for other purposes.

The Baylor Survey is still in use, and is shown on current oyster planting ground maps.

Fall Line

28.2-101. Jurisdiction of Commission (VMRC).

The jurisdiction of the Commission shall include the Commonwealth's territorial sea and extend to the fall line of all tidal rivers and streams except in the case of state-owned bottomlands where jurisdiction extends throughout the Commonwealth. The Commission shall have jurisdiction over all commercial fishing and all marine fish, marine shellfish, marine organisms, and habitat in such areas. The Commission's jurisdiction shall also include the power to exercise regulatory authority over all structures and improvements built or proposed by riparian property owners in the Potomac River appurtenant to the shore of the Commonwealth. The Commission shall exercise such regulatory authority in the Potomac River consistent with the provisions of Subtitle III (♦ 28.2-1200 et seq.), and all regulations, guidance, and policies adopted thereunder.

9VAC25-260-5. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Chesapeake Bay and its tidal tributaries" means all tidally influenced waters of the Chesapeake Bay; western and eastern coastal embayments and tributaries; James, York, Rappahannock and Potomac Rivers and all their tidal tributaries to the end of tidal waters in each tributary (in larger rivers this is the fall line); and includes subdivisions 1, 2, 3, 4, 5, and 6 of 9VAC25-260-390, subdivisions 1, 1b, 1d, 1f and 1o of 9VAC25-260-410, subdivisions 5 and 5a of 9VAC25-260-415, subdivisions 1 and 1a of 9VAC25-260-440,

subdivisions 2, 3, 3a, 3b and 3e of 9VAC25-260-520, and subdivision 1 of 9VAC25-260-530. This definition does not include free flowing sections of these waters.

WHARF & PIER

Colloquially speaking, it's the infrastructure on pilings needed for vessel tie up, loading and off loading.

- **Pier-** Generally are perpendicular to shore
- **Wharf-** Parallel to shore, either at the head of a pier and/or along the waterfront.

RIPARIAN RIGHTS

- VMRC Riparian-(non commercial riparian shellfish growing)
- VMRC Subaqueous Guidelines (title to the riparian land)
- DGIF-Waterfowl Blind Licenses

➤ NONCOMMERCIAL RIPARIAN SHELLFISH GROWING

VIRGINIA MARINE RESOURCES COMMISSION (VMRC)

GENERAL PERMIT #3

VMRC GENERAL PERMIT FOR NONCOMMERCIAL RIPARIAN SHELLFISH GROWING (I. E. "GARDENING") ACTIVITIES WHICH CONFORM TO CERTAIN CRITERIA AND ARE UNDERTAKEN OVER OR ON STATE-OWNED SUBAQUEOUS LANDS IN TIDAL WATERS OF THE COMMONWEALTH.

4 VAC 20-336-10 AUTHORITY - EFFECTIVE DATE.

(a) This General Permit is promulgated pursuant to the authority contained in § 28.2-103 and Chapter 12 of Title 28.2 of the Code of Virginia.

(b) This General Permit conforms with current Commission policy in its establishment of general permits for projects which meet certain restrictive criteria.

(c) The effective date of this General Permit is January 1, 1998.

4 VAC 20-336-20 DEFINITIONS.

For the purposes of this general permit, riparian shellfish gardening is defined as the grow-out of native shellfish species in protective structures such as floats, bags, cages, etc. adjacent to a private, noncommercial pier or otherwise within a waterfront property owner's riparian area, exclusively for private, noncommercial purposes.

➤ VRMC SUBAQUEOUS GUIDLENES

“Forward”

"Tidewater Virginia" as defined in the Code of Virginia encompasses over 5,000 miles of shoreline. There are roughly 2,300 square miles, or approximately 1,472,000 acres, of tidally influenced submerged lands. This is an area larger than the entire State of Delaware and represents an ever-increasing custodial responsibility for State government. Additionally, it is not widely recognized that this responsibility extends to non-tidal streams throughout the Commonwealth.

In a May 3, 1982 opinion, the Attorney General advised the Commission to assume jurisdiction on non-tidal streams that were determined to be "navigable-in-fact" unless the landowner could show clear title to the riparian land acquired by grant prior to July 4, 1776. Where the stream was determined to be "non-navigable-in-fact", the Commission was advised to assume jurisdiction unless the landowner could show a grant prior to 1792 in that part of the State draining to the Atlantic Ocean, or prior to 1802 in that part of the State draining toward the Gulf of Mexico.

The question of navigability is a question of fact as to whether a stream is being, or has been historically used as a highway for trade or travel or whether it is capable of such use in its ordinary and natural condition (i.e. disregarding artificial obstructions such as dams which could be abated). The Commission assumes that all perennial streams with a drainage basin of greater than 5 square miles, or a mean annual flow greater than 5 cubic feet per second, are navigable-in-fact until evidence is presented proving non-navigability.

➤ DGIF-Waterfowl Blind Licenses:

All applications for blind licenses shall be made to the local license agent or clerk of the circuit court of the county or city in which or nearest which the blind site is located. In the case of floating blinds, which may be used at various locations, this is not considered to be applicable. The license plate furnished must be affixed to the blind at a location where it can be easily seen.

When Blind Licenses Sold:

- Stationary blind license for riparian owner: July 1-August 31
- Stationary blind license for nonriparian owner: July 1-September 30
- Floating blind licenses: on or after July 1
- Offshore Blind Stake Site license for nonriparian owner who has not already licensed and erected a stationary blind (see Nonriparian Owner): November 1-10
- Offshore Blind Stake Site license for riparian owner who has already licensed and erected a stationary blind (see Riparian Owner): November 11-15

Spacing of Blinds Generally:

Except for adjacent landowners, blinds may be placed no closer than 500 yards to each other, except they may be placed closer together with the mutual consent of the licensees involved. Except for county exceptions, listed on page 13 and 14, floating blinds may be positioned no closer than 500 yards to any other licensed blind, whether it is occupied or not, without consent of the owner of the neighboring blind. Stationary blinds cannot be located in any water having a depth of more than eight feet at mean high water.

Rights of Riparian Landowner:

The owners of riparian rights or their invitees shall not be required to obtain a stationary blind license when hunting waterfowl from such a blind located on the riparian owner's property. However, a stationary blind license shall be required in order to afford the riparian owners the protections provided by Virginia law. The owner of riparian rights, his lessee or permittee has exclusive privileges of licensing blinds on his shoreline and prior rights of licensing and erecting blinds in the public waters in front of such shoreline. These blinds shall not be located in water deeper than eight feet at mean high tide, nor shall they be further than halfway across the body of water from the riparian owner's shoreline. The exercise of these prior rights is valid when a license has been obtained and displayed on a stake or blind by August 31. No other blind may be located within 500 yards of this stake or blind without consent of the owner, permittee, or lessee. The stake must be replaced by an erected stationary blind as specified by Code by November 1 to be a licensed blind under the law. The owner's rights extend out from his shoreline to the point where the water reaches eight feet in depth at mean high tide. Where the lands of two property owners adjoin, each may place blinds on his property or in the public waters in front of his property without regard to the placement of blinds on his neighbor's property.

Rights of Nonriparian Owner:

Although the law states that a riparian owner who does not license a blind on his shore by August 31 forfeits the privilege for that season, it does not mean a nonriparian owner can erect or license a blind on the property of another without permission. It does mean that a riparian owner cannot erect a blind on his shore after August 31 that would deny someone else from having a blind in the public waters within 500 yards of the shore unless he has previously staked and licensed a blind in that location. If a landowner has not licensed a stake or a blind by August 31, a nonriparian owner may license a location in the public waters in front of such land, providing no other location within 500 yards has been so licensed. Again, such blind cannot be located in water in excess of eight feet in depth at mean high tide. Inasmuch as a nonriparian owner can purchase a license until September 30 and considering that he has 10 days to place the license, this privilege is valid through October 10 of each year. In other words, nonriparian owners have from September 1 until October 10 to claim unclaimed locations. Of course, if a location is secured through agreement with a riparian landowner having control of the near shoreline, the site may be licensed as applies to a permittee or lessee of a landowner. A nonriparian owner, having licensed a blind in a given location, has first option to license such blind each year unless the riparian landowner having claim to that location exercises his right to license it.

Riparian Owner's Rights Renewed Annually:

If a riparian owner fails to exercise his options, he may elect to do so the following year, thus preempting any rights of nonriparian owners who have erected blinds in the public waters in front of his shoreline.

Penalty for Violations

Any person who hunts or shoots migratory waterfowl in the public waters of this Commonwealth from a boat, float, raft or other buoyant craft or device within 500 yards of any legally licensed erected stationary blind of another without the consent of the licensee shall be guilty of a criminal offense that is punishable as a Class 2 misdemeanor. This provision shall not apply to any person when in active pursuit of a visible crippled waterfowl which was legally shot by the person. Additionally, any person who erects a stationary blind within 500 yards of another licensed blind without permission of the licensee is guilty of a trespass, and the owner of the blind so encroached upon may maintain an action for damages. It should be noted that this is a civil action, not a criminal offense. It should also be noted that by November 1 a stationary blind must be erected; therefore, a stake with a stationary license affixed thereto cannot be considered to be a stationary blind after November 1.

CHATTEL & VESTED INTEREST

- "Chattel"- article of movable personal property
- "vested interest"- A **vested interest** is the state or condition of having a special

interest in protecting or supporting something for the purpose of self-interest, gain or benefit, often financially or politically.

§ 28.2-618. Commonwealth guarantees rights of renter subject to right of fishing.

The Commonwealth shall guarantee to any person who has complied with ground assignment requirements the absolute right to continue to use and occupy the ground for the term of the lease, subject to:

1. Section 28.2-613;
2. Riparian rights;
3. The right of fishing in waters above the bottoms, provided (i) that no person exercising the right of fishing shall use any device which is fixed to the bottom, or which, in any way, interferes with the renter's rights or damages the bottoms, or the oysters planted thereon, and (ii) that crab pots and gill nets which are not staked to the bottom shall not be considered devices which are fixed to the bottom unless the crab pots and gill nets are used over planted oyster beds in waters of less than four feet at mean low water on the seaside of Northampton and Accomack Counties; and
4. Established fishing stands, but only if the fishing stand license fee is timely received from the existing licensee of the fishing stand and no new applicant shall have priority over the oyster lease. **However, a fishing stand location assigned prior to the lease of the oyster ground is a vested interest, a chattel real, and an inheritable right which may be transferred or assigned whenever the current licensee complies with all existing law**

Fishing (28.2-100) See Definition

"Fishing", "fisheries" or "to fish" means all operations involved in (i) taking or catching, (ii) using, setting or operating apparatus employed in killing, taking or catching, or (iii) transporting or preparing for market marine fish, shellfish, and marine organisms.

CLASS 4 MISDEMEANORS

COV 18.2-11. Misdemeanors

The authorized punishments for conviction of a misdemeanor are:

1. For Class 1 misdemeanors, confinement in jail for up to twelve months and a fine of up to \$2,500, either or both.
2. For Class 2 misdemeanors, confinement in jail for up to six months and a fine of up to \$1,000, either or both.
3. For Class 3 misdemeanors, maximum fine of \$500.
4. For Class 4 misdemeanors, maximum fine of \$250.

**COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION
2600 WASHINGTON AVE., 3RD FLOOR
NEWPORT NEWS, VA 23607**

APPLICATION FOR OYSTER PLANTING GROUND

Name: _____

Address: _____
Street or P.O. Box City State Zip

Telephone: _____ Work Home SSN(Tax ID): _____

Name of responsible party if more than one applicant or contact person for corporations or companies:

I/We, a resident of The Commonwealth of Virginia, hereby apply for oyster ground pursuant to Virginia law.

Said ground is in the waters of _____, near _____
and estimated to contain _____ acres, and situated in District No. _____ in the City/County
of _____ and described and bounded as follows:

North by: _____

East by: _____

South by: _____

West by: _____

I submit herewith my non-refundable fee of \$25.00. I agree to promptly pay the newspaper, for the required advertising. I also agree to promptly pay all charges for surveying, mapping, assigning, and recording as specified in the Code of Virginia, Title 28.2. I agree to comply with all legal requirements pursuant to oyster ground leasing. I understand that this application will be given priority in the order that it is received by the Virginia Marine Resources Commission, Engineering/Surveying Department.

Do you presently lease oyster ground in this name? yes____ no____ Billing number is

Signature of Applicant(s)(All applicants must sign)

Date

Note: A use plan is required for all regular oyster ground applications. If the attached Oyster Ground Application Use Plan is not completed and included with this application, processing beyond initial acceptance will cease until a plan is provided.

FOR OFFICE USE ONLY

VMRC App. No: _____ Billing No: _____ Lease No: _____ Map No: _____

Area VMRC Surveyor: _____ Assigned Surveyor: _____

Chief, Engineering/Surveying

Date

Law Enforcement Supervisor

INSTRUCTIONS

Leaseapp. 6-1-2006

Return the completed Application for Oyster Planting Ground with the \$25.00 non-refundable fee to:

Virginia Marine Resources Commission (VMRC)
Attn: Engineering/Surveying Department
2600 Washington Ave., 3rd Floor
Newport News, VA 23607

Money orders or checks are accepted and payable to "Treasurer of Virginia."

THE FOLLOWING CHARGES ARE EFFECTIVE AS OF 6/1/2006

APPLICATION	FEE	(NON-
REFUNDABLE).....	\$25.00	

ADVERTISING COST IN THE NEWSPAPER WILL BE BILLED TO APPLICANT DIRECTLY.....cost varies
 SURVEYING: VMRC SURVEY FOR LEASE
 ASSIGNMENT.....\$510.00
 ADDITIONAL PLAT CHARGE (if
 needed).....\$75.00
 RECORDING FEE FOR EACH ASSIGNMENT & PLAT.....\$12.00
 ASSIGNMENT FEE FOR EACH ASSIGNMENT & PLAT.....\$1.50
 RENTAL AMOUNT (PER ACRE/PER YEAR)(NO ANNUAL CHARGE FOR RIPARIAN
 LEASES).....\$1.50

Pursuant to the Code of Virginia, your application will be advertised in the local newspaper for four consecutive weeks. VMRC will submit the notice to the newspaper and they will bill you directly for the advertisement. **Contact the newspaper for charge amounts.**

If you are applying for a riparian oyster ground lease, the name must be shown exactly as on the highland deed. A plat or deed of your highland property is required to complete the survey.

Additional Information:

Code of Virginia related to Oyster Planting Ground: 28.2-600 ET. SEQ.

Applications: Description can be made from an Oyster Planting Ground composite map in an unassigned or vacant area. (Contact the Engineering/Surveying Dept. for assistance).
 Application must be advertised once a week for four weeks at applicant's expense.
 Application must be posted in vicinity, two or more places for 60 days, (VMRC responsibility).

Survey: After 60 day posting and advertising time VMRC will make the survey and prepare a plat. 30 day waiting period after plat is made is required by Code before ground can be assigned. (You may use any licensed land surveyor, but he must contact this office to insure the survey and plat meet VMRC standards). If the application is protested a public hearing will be scheduled for full Commission consideration.

For a riparian lease, it must adjoin the mean low water and be in the same name as the highland owner. The highland must border a minimum of 205 feet along the MLW, however the riparian lease may be as narrow as 105 feet and cannot contain more than one half acre (except for Northampton and Mathews Counties and the James River and its tributaries above the James River Bridge- contact the Engineering/Surveying Department concerning these areas).

Phone numbers: Chief Engineer: 757-247-2225
 Draftsman/Cartographer: 757-247-2230
 Program Support Technician: 757-247-2226

[previous](#) | [next](#)

§ 10.1-705. Definitions.

As used in this article, unless the context requires a different meaning:

"Agency of this Commonwealth" includes the government of this Commonwealth and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this Commonwealth.

"Board" means the Board of Conservation and Recreation.

"Develop" or "development" means the replenishment and restoration of existing public beaches.

"Erosion" means the process of destruction by the action of wind, water, or ice of the land bordering the tidal waters of the Commonwealth.

"Government" or "governmental" includes the government of this Commonwealth, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

"Locality" means a county, city or town.

"Program" means the provisions of the Public Beach Conservation and Development Act.

"Public beach" means a sandy beach located on a tidal shoreline suitable for bathing in a county, city or town and open to indefinite public use.

"Reach" means a shoreline segment wherein there is mutual interaction of the forces of erosion, sediment transport and accretion.

"United States" or "agencies of the United States" includes the United States of America, the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(1980, c. 428, § 10-217; 1984, c. 750; 1985, c. 448; 1988, c. 891; 2003, cc. 79, 89.)

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§ 10.1-700. Definition.

As used in this article, the term "shore erosion" means the process of destruction by the action of water, wind, or ice of the land bordering any body of water including all rivers and the tidal waters of the Commonwealth.

(1972, c. 855, § 21-11.17; 1988, c. 891.)

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§ 10.1-2101. Definitions.

For the purposes of this chapter, the following words shall have the meanings respectively ascribed to them:

"Board" means Chesapeake Bay Local Assistance Board.

"Chesapeake Bay Preservation Area" means an area delineated by a local government in accordance with criteria established pursuant to § 10.1-2107.

"Criteria" means criteria developed by the Board pursuant to § 10.1-2107 of this chapter for the purpose of determining the ecological and geographic extent of Chesapeake Bay Preservation Areas and for use by local governments in permitting, denying, or modifying requests to rezone, subdivide, or to use and develop land in Chesapeake Bay Preservation Areas.

"Department" means the Department of Conservation and Recreation.

"Director" means the Director of the Department of Conservation and Recreation.

"Person" means any corporation, association, or partnership, one or more individuals, or any unit of government or agency thereof.

"Secretary" means the Secretary of Natural Resources.

"State waters" means all waters, on the surface or under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

"Tidewater Virginia" means the following jurisdictions:

The Counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York, and the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and Williamsburg.

(1988, cc. 608, 891; 2005, c. 41.)

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§ 15.2-102. Definitions.

As used in this title unless such construction would be inconsistent with the context or manifest intent of the statute:

"Board of supervisors" means the governing body of a county.

"City" means any independent incorporated community which became a city as provided by law before noon on the first day of July, nineteen hundred seventy-one, or which has within defined boundaries a population of 5,000 or more and which has become a city as provided by law.

"Constitutional officer" means an officer provided for pursuant to Article VII, § 4 of the Constitution.

"Council" means the governing body of a city or town.

"Councilman" or "member of the council" means a member of the governing body of a city or town.

"County" means any existing county or such unit hereafter created.

"Governing body" means the board of supervisors of a county, council of a city, or council of a town, as the context may require.

"Locality" or "local government" shall be construed to mean a county, city, or town as the context may require.

"Municipality," "incorporated communities," "municipal corporation," and words or terms of similar import shall be construed to relate only to cities and towns.

"Supervisor" means a member of the board of supervisors of a county.

"Town" means any existing town or an incorporated community within one or more counties which became a town before noon, July one, nineteen hundred seventy-one, as provided by law or which has within defined boundaries a population of 1,000 or more and which has become a town as provided by law.

"Voter" means a qualified voter as defined in § 24.2-101.

(Code 1950, § 15-1; 1962, c. 623, § 15.1-6; 1997, c. 587.)

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§ 15.2-2201. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affordable housing" means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percent of gross income.

"Conditional zoning" means, as part of classifying land within a locality into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any property which will be principally devoted to agricultural production.

"Historic area" means an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

"Incentive zoning" means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features or amenities desired by the locality within the development.

"Local planning commission" means a municipal planning commission or a county planning commission.

"Mixed use development" means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

"Official map" means a map of legally established and proposed public streets, waterways, and public areas adopted by a locality in accordance with the provisions of Article 4 (§ 15.2-2233 et seq.) hereof.

"Planned unit development" means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

"Planning district commission" means a regional planning agency chartered under the provisions of Chapter 42 (§ 15.2-4200 et seq.) of this title.

"Plat of subdivision" means the schematic representation of land divided or to be divided.

"Site plan" means the proposal for a development or a subdivision including all covenants, grants or

easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

"Special exception" means a special use, that is a use not permitted in a particular district except by a special use permit granted under the provisions of this chapter and any zoning ordinances adopted herewith.

"Street" means highway, street, avenue, boulevard, road, lane, alley, or any public way.

"Subdivision," unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.2-2258.

"Variance" means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the intended spirit and purpose of the ordinance, and would result in substantial justice being done. It shall not include a change in use which change shall be accomplished by a rezoning or by a conditional zoning.

"Zoning" or "to zone" means the process of classifying land within a locality into areas and districts, such areas and districts being generally referred to as "zones," by legislative action and the prescribing and application in each area and district of regulations concerning building and structure designs, building and structure placement and uses to which land, buildings and structures within such designated areas and districts may be put.

(Code 1950, § 15-961.3; 1962, c. 407, § 15.1-430; 1964, c. 547; 1966, c. 344; 1975, c. 641; 1976, c. 642; 1977, c. 566; 1978, c. 320; 1987, c. 8; 1989, c. 384; 1990, c. 685; 1993, c. 770; 1995, c. 603; 1997, c. 587.)

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§ 28.2-1500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Beach" shall have the same meaning ascribed thereto in subsection A of § 28.2-1400.

"Initial inventory" means a set of maps prepared by, at the direction of, or with the approval of the Commission which have been filed prior to January 1, 1995, with the clerk of the circuit court and the commissioner of revenue in any county in that portion of the Commonwealth separated from the larger portion of the Commonwealth by the Chesapeake Bay and in which the ungranted shores of the sea, marsh and meadowlands mapped therein are located.

"Inventory" means a set of maps prepared by, at the direction of, or with the approval of the Commission, mapping certain ungranted shores of the sea, marsh and meadowlands in any county in that portion of the Commonwealth separated from the larger portion of the Commonwealth by the Chesapeake Bay.

"Marsh" or "meadowland" shall have the same meaning ascribed to vegetated wetlands in § 28.2-1300.

"Shores of the sea" means a beach or any unvegetated lands lying contiguous to mean low water and between mean low water and mean high water.

"Ungranted shores of the sea, marsh or meadowlands" means (i) shores of the sea which were not conveyed by special grant or compact according to law prior to April 1, 1873, and which have not been conveyed by special grant of the General Assembly on or after that date and (ii) marsh or meadowlands which were not appropriated and remained ungranted prior to February 24, 1888, and which have not been conveyed by special grant of the General Assembly on or after that date.

"Virginia Coastal Land Management Advisory Council" or "Council" means the Virginia Coastal Land Management Advisory Council created pursuant to § 28.2-1505.

(1995, c. 850.)

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§ 28.2-1502. Ownership of ungranted shores of the sea, marsh and meadowlands.

All ungranted shores of the sea, marsh and meadowlands shall remain the property of the Commonwealth. Such ungranted marsh and meadowlands which have been used as a commons by the people of the Commonwealth shall continue as a commons for the purpose of fishing, fowling, hunting, and the taking and catching of oysters and other shellfish. All ungranted shores of the sea may be used as a commons for the purpose of fishing, fowling, hunting, and the taking and catching of oysters and other shellfish. The Commission shall manage all ungranted shores of the sea, marsh and meadowlands as provided in Article 2 (§ 28.2-1503 et seq.) of this chapter.

(1995, c. 850.)

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§ 28.2-1300. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Back Bay and its tributaries" means the following, as shown on the United States Geological Survey Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the Virginia-North Carolina state line; Capsies Creek north of the Virginia-North Carolina state line; Deal Creek; Devil Creek; Nawney Creek; Redhead Bay, Sand Bay, Shipps Bay, North Bay, and the waters connecting them; Beggars Bridge Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black Gut; and all coves, ponds and natural waterways adjacent to or connecting with the above-named bodies of water.

"County, city, or town" means the governing body of the county, city, or town.

"Governmental activity" means any of the services provided by the Commonwealth or a county, city, or town to its citizens for the purpose of maintaining public facilities, including but not limited to, such services as constructing, repairing and maintaining roads; providing street lights and sewage facilities; supplying and treating water; and constructing public buildings.

"Nonvegetated wetlands" means unvegetated lands lying contiguous to mean low water and between mean low water and mean high water, including those unvegetated areas of Back Bay and its tributaries and the North Landing River and its tributaries subject to flooding by normal and wind tides but not hurricane or tropical storm tides.

"North Landing River and its tributaries" means the following, as shown on the United States Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River from the Virginia-North Carolina line to Virginia Highway 165 at North Landing Bridge; the Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge; and all named and unnamed streams, creeks and rivers flowing into the North Landing River and the Chesapeake and Albemarle Canal except West Neck Creek north of Indian River Road, Pocaty River west of Blackwater Road, Blackwater River west of its forks located at a point approximately 6400 feet due west of the point where Blackwater Road crosses the Blackwater River at the village of Blackwater, and Millbank Creek west of Blackwater Road.

"Vegetated wetlands" means lands lying between and contiguous to mean low water and an elevation above mean low water equal to the factor one and one-half times the mean tide range at the site of the proposed project in the county, city, or town in question, and upon which is growing any of the following species: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), saltgrass (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* spp.), sea lavender (*Limonium* spp.), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), sea oxeye (*Borrchia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile edentula*), southern wildrice (*Zizaniopsis miliacea*), cattail (*Typha* spp.), three-square (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex* spp.), yellow pond lily (*Nuphar* sp.), marsh fleabane (*Pluchea purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), smartweed (*Polygonum* sp.), arrowhead (*Sagittaria* spp.), sweet flag (*Acorus calamus*), water hemp

(*Amaranthus cannabinus*), reed grass (*Phragmites communis*), or switch grass (*Panicum virgatum*).

"Vegetated wetlands of Back Bay and its tributaries" or "vegetated wetlands of the North Landing River and its tributaries" means all marshes subject to flooding by normal and wind tides, but not hurricane or tropical storm tides, and upon which is growing any of the following species: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), black needlerush (*Juncus roemerianus*), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), cattail (*Typha* spp.), three-square (*Scirpus* spp.), dock (*Rumex* sp.), smartweed (*Polygonum* sp.), yellow pond lily (*Nuphar* sp.), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), arrowhead (*Sagittaria* sp.), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), or switch grass (*Panicum virgatum*).

"Wetlands" means both vegetated and nonvegetated wetlands.

"Wetlands board" or "board" means a board created pursuant to § 28.2-1303.

"Wetlands zoning ordinance" means the ordinance set forth in § 28.2-1302.

(1972, c. 711, § 62.1-13.2; 1973, c. 388; 1974, c. 297; 1975, c. 268; 1979, c. 524; 1982, c. 300; 1992, c. 836.)

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§ 28.2-800. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Crustacea" means all edible species of crab, lobster and shrimp, whether raw or processed.

"Depuration" means the process that uses a controlled aquatic environment to reduce the level of bacteria or viruses in live shellfish.

"Establishment" means any vehicle, vessel, property or premises where crustacea, finfish or shellfish are transported, held, stored, processed, packed, repacked, or pasteurized in preparation for marketing.

"Finfish" means any cold-blooded, strictly aquatic, water-breathing craniate vertebrate with fins, including cyclostomes, elasmobranchs and higher-gilled aquatic vertebrates with cartilaginous or bony skeletons or any parts thereof.

"Relay" means to move shellfish for the purpose of natural purification from water which is not approved to water which is approved or conditionally approved by the State Health Commissioner.

"Shellfish" means all species within the phylum Mollusca including but not limited to oysters, clams, mussels, scallops, conchs and whelks, whether raw or processed.

(1979, c. 714, § 28.1-175.1; 1992, c. 836.)

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§ 28.2-700. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Crab dredge" means a device, which may have teeth on the bar, that is designed and used to catch crabs buried in the bottom.

"Crab pot" means a device made of wire or thread net used to catch crabs.

"Peeler crab", until the Commission promulgates a different definition, means a crab that has a soft shell fully developed under the hard shell, or a crab on which there is a pink or white line or rim on the edge of that part of the back fin next to the outer section of this fin.

"Peeler pot" means a wire mesh pot baited with only live adult male (jimmy) blue crabs.

(Code 1950, §§ 28-170, 28-173; 1954, c. 368; 1956, c. 293; 1960, c. 517; 1962, c. 406, §§ 28.1-165, 28.1-169; 1964, c. 393; 1966, c. 684; 1968, c. 785; 1970, c. 726; 1979, c. 274; 1983, cc. 307, 603, § 28.1-165.1; 1985, c. 180; 1990, c. 154; 1992, c. 836; 1995, c. 129; 1996, c. 229.)

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§ 28.2-200. Definitions.

As used in this subtitle, unless the context requires a different meaning:

"Cultured hard-shell clams" means hard-shell clams (*Mercenaria mercenaria*) that have been spawned in a hatchery or controlled setting for the purpose of producing seed clams (juveniles), and planted on leased grounds, floating structures, or other privately controlled growing areas, and covered with netting or otherwise protected from predators until harvested.

"Haul seine" means a net made of mesh webbing which may include a pocket and a wing net, set vertically in water and pulled by hand or power to capture and confine fish by encirclement.

"James River seed area" means that area 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 the James River to a line in a northeasterly direction across the 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.

"Mouth of the Rappahannock River" means the area beginning at Stingray Point, Middlesex County, at the United States Army Corps of Engineers survey station "Bird," an aluminum disk set in the top of a concrete monument, being located at coordinates 453,785.17 North, 2,638,116.66 East, 1927 North American Datum - Virginia South Zone; thence 12 degrees 52' 35" (grid azimuth) 20,846.73 feet to a point on the Eastern side of Windmill Point, Lancaster County, designated as Virginia Marine Resources Commission survey station "Windmill," a one and one-half inch iron pipe driven flush with the ground, being located at coordinates 474,107.68 North, 2,642,762.29 East, 1927 North American Datum - Virginia South Zone.

"Pound net" means any net having a funnel mouth, round mouth or square mouth with the head exposed above the water.

"Resident" means any person who maintains his principal place of abode in Virginia with the intent to make Virginia his domicile.

"Shoals" means subaqueous elevations covered by water less than four feet deep at mean low water.

(Code 1950, §§ 28-1, 28-46, 28-93, 28-93.1, 28-93.2, 28-112, 28-201.4; 1954, c. 38; 1958, cc. 182, 476; 1960, c. 517; 1962, c. 406, §§ 28.1-1, 28.1-51, 28.1-98, 28.1-148; 1966, c. 684; 1968, cc. 746, 747; 1972, c. 472; 1978, c. 208; 1980, c. 325; 1981, c. 52; 1986, c. 254; 1992, c. 836; 1994, c. 124; 2003, c. 604.)

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§ 28.2-100. Definitions.

As used in this title, unless the context requires a different meaning:

"Commission" means the Marine Resources Commission.

"Commissioner" means the Commissioner of Marine Resources.

"Fish" or "marine fish" means those finfish species which spend a major portion of their lives in marine or estuarine waters. Sunfish, crappies, and carp are not considered to be marine fish.

"Fishing", "fisheries" or "to fish" means all operations involved in (i) taking or catching, (ii) using, setting or operating apparatus employed in killing, taking or catching, or (iii) transporting or preparing for market marine fish, shellfish, and marine organisms.

"Habitat" means those state-owned bottomlands, tidal wetlands and coastal primary sand dunes which are subject to regulation under Subtitle III of this title.

"Marine organisms" means those species other than marine finfish or marine shellfish which inhabit marine or estuarine waters. Terrapin and marine mammals are considered to be marine organisms.

"Marine shellfish" or "shellfish" means such species of mollusca as oysters and clams, and such species of crustacea as crabs.

"Officer" means a member of the Virginia Marine Police.

"Territorial sea" means the waters within the belt, three nautical miles wide, that is adjacent to Virginia's coast and seaward of the mean low-water mark.

"Tidewater Virginia" means the following counties: Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York; and the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and Williamsburg.

(Code 1950, § 28-1; 1962, c. 406, § 28.1-1; 1968, c. 746; 1972, c. 472; 1992, c. 836; 2002, c. 789.)

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§ 28.2-1400. Definitions.

A. As used in this chapter, unless the context requires a different meaning:

"Beach" means the shoreline zone comprised of unconsolidated sandy material upon which there is a mutual interaction of the forces of erosion, sediment transport and deposition that extends from the low water line landward to where there is a marked change in either material composition or physiographic form such as a dune, bluff, or marsh, or where no such change can be identified, to the line of woody vegetation (usually the effective limit of stormwaves), or the nearest impermeable manmade structure, such as a bulkhead, revetment, or paved road.

"Coastal primary sand dune" or "dune" means a mound of unconsolidated sandy soil which is contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from ten percent or greater to less than ten percent, and upon which is growing any of the following species: American beach grass (*Ammophilla breviligulata*); beach heather (*Hudsonia tomentosa*); dune bean (*Strophostylis* spp.); dusty miller (*Artemisia stelleriana*); saltmeadow hay (*Spartina patens*); seabeach sandwort (*Arenaria peploides*); sea oats (*Uniola paniculata*); sea rocket (*Cakile edentula*); seaside goldenrod (*Solidago sempervirens*); and short dune grass (*Panicum ararum*). For purposes of this chapter, "coastal primary sand dune" or "dune" shall not include any mound of sand, sandy soil, or dredge spoil deposited by any person for the purpose of temporary storage, beach replenishment or beach nourishment, nor shall the slopes of any such mound be used to determine the landward or lateral limits of a coastal primary sand dune.

"Coastal primary sand dune zoning ordinance" means the ordinance set forth in § 28.2-1403.

"County, city or town" means the governing body of the county, city or town.

"Governmental activity" means any of the services provided by Commonwealth or a county, city or town to its citizens for the purpose of maintaining public facilities, including but not limited to, such services as constructing, repairing and maintaining roads; providing street lights and sewage facilities; supplying and treating water; and constructing public buildings.

"Wetlands board" or "board" means the board created pursuant to § 28.2-1303.

B. Although separately defined in subsection A of this section, the terms "coastal primary sand dune," "dune," and "beach," when used in this chapter, shall be interchangeable.

(1980, c. 660, §§ 62.1-13.21, 62.1-13.22; 1984, c. 556; 1985, c. 589; 1987, c. 499; 1989, c. 342; 1992, c. 836; 1994, c. 112; 1998, c. 160.)

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§ 28.2-1500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Beach" shall have the same meaning ascribed thereto in subsection A of § 28.2-1400.

"Initial inventory" means a set of maps prepared by, at the direction of, or with the approval of the Commission which have been filed prior to January 1, 1995, with the clerk of the circuit court and the commissioner of revenue in any county in that portion of the Commonwealth separated from the larger portion of the Commonwealth by the Chesapeake Bay and in which the ungranted shores of the sea, marsh and meadowlands mapped therein are located.

"Inventory" means a set of maps prepared by, at the direction of, or with the approval of the Commission, mapping certain ungranted shores of the sea, marsh and meadowlands in any county in that portion of the Commonwealth separated from the larger portion of the Commonwealth by the Chesapeake Bay.

"Marsh" or "meadowland" shall have the same meaning ascribed to vegetated wetlands in § 28.2-1300.

"Shores of the sea" means a beach or any unvegetated lands lying contiguous to mean low water and between mean low water and mean high water.

"Ungranted shores of the sea, marsh or meadowlands" means (i) shores of the sea which were not conveyed by special grant or compact according to law prior to April 1, 1873, and which have not been conveyed by special grant of the General Assembly on or after that date and (ii) marsh or meadowlands which were not appropriated and remained ungranted prior to February 24, 1888, and which have not been conveyed by special grant of the General Assembly on or after that date.

"Virginia Coastal Land Management Advisory Council" or "Council" means the Virginia Coastal Land Management Advisory Council created pursuant to § 28.2-1505.

(1995, c. 850.)

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§ 29.1-700. Definitions.

As used in this chapter, unless the context clearly requires a different meaning:

"Motorboat" means any vessel propelled by machinery whether or not the machinery is the principal source of propulsion.

"No wake" means operation of a motorboat at the slowest possible speed required to maintain steerage and headway.

"Operate" means to navigate or otherwise control the movement of a motorboat or a vessel.

"Owner" means a person, other than a lien holder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment of performance of an obligation, but the term excludes a lessee under a lease not intended as security.

"Personal watercraft" means a motorboat less than sixteen feet in length which uses an inboard motor powering a jet pump, as its primary motive power and which is designed to be operated by a person sitting, standing, or kneeling on, rather than in the conventional manner of sitting or standing inside, the vessel.

"Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

"Waters of the Commonwealth" means any public waters within the territorial limits of the Commonwealth, the adjacent marginal sea and the high seas when navigated as a part of a journey or ride to or from the Virginia shore.

(Code 1960, c. 500, § 62-174.2; 1962, c. 626; 1968, c. 659, § 62.1-167; 1972, c. 412; 1987, c. 488; 1998, cc. 84, 443, 512, 514, 515, 533, 537, 563.)

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Constitution of Virginia

ARTICLE I

Bill of Rights

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A DECLARATION OF RIGHTS made by the good people of Virginia in the exercise of their sovereign powers, which rights do pertain to them and their posterity, as the basis and foundation of government.

Section 1. Equality and rights of men.

That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

Section 2. People the source of power.

That all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them.

Section 3. Government instituted for common benefit.

That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and, whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

Section 4. No exclusive emoluments or privileges; offices not to be hereditary.

That no man, or set of men, is entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which not being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary.

Section 5. Separation of legislative, executive, and judicial departments; periodical elections.

That the legislative, executive, and judicial departments of the Commonwealth should be separate and distinct; and that the members thereof may be restrained from oppression, by feeling and participating the burthens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by regular elections, in which all or any part of the former members shall be again eligible, or ineligible, as the laws may direct.

Section 6. Free elections; consent of governed.

That all elections ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed, or deprived of, or damaged in, their property for public uses, without their own consent, or that of their representatives duly elected, or bound by any law to which they have not, in like manner, assented for the public good.

Section 7. Laws should not be suspended.

That all power of suspending laws, or the execution of laws, by any authority, without

improvement.

Neither the credit of the Commonwealth nor of any county, city, town, or regional government shall be directly or indirectly, under any device or pretense whatsoever, granted to or in aid of any person, association, or corporation; nor shall the Commonwealth or any such unit of government subscribe to or become interested in the stock or obligations of any company, association, or corporation for the purpose of aiding in the construction or maintenance of its work; nor shall the Commonwealth become a party to or become interested in any work of internal improvement, except public roads and public parks, or engage in carrying on any such work; nor shall the Commonwealth assume any indebtedness of any county, city, town, or regional government, nor lend its credit to the same. This section shall not be construed to prohibit the General Assembly from establishing an authority with power to insure and guarantee loans to finance industrial development and industrial expansion and from making appropriations to such authority.

Section 11. Governmental employees retirement system.

The General Assembly shall maintain a retirement system for state employees and employees of participating political subdivisions and school divisions. The funds of the retirement system shall be deemed separate and independent trust funds, shall be segregated from all other funds of the Commonwealth, and shall be invested and administered solely in the interests of the members and beneficiaries thereof. Neither the General Assembly nor any public officer, employee, or agency shall use or authorize the use of such trust funds for any purpose other than as provided in law for benefits, refunds, and administrative expenses, including but not limited to legislative oversight of the retirement system. Such trust funds shall be invested as authorized by law. Retirement system benefits shall be funded using methods which are consistent with generally accepted actuarial principles. The retirement system shall be subject to restrictions, terms, and conditions as may be prescribed by the General Assembly.

The amendment ratified November 5, 1996 and effective January 1, 1997—In the heading of the section, substituted "employees" for "employee" and deleted "fund" after "retirement system".

In the text, substituted "retirement system for state employees and employees of participating political subdivisions and school divisions" for "state employees retirement system to be administered in the best interest of the beneficiaries thereof and subject to such restrictions or conditions as may be prescribed by the General Assembly" and added the remainder of the paragraph.

ARTICLE XI**Conservation****Section 1. Natural resources and historical sites of the Commonwealth.**

To the end that the people have clean air, pure water, and the use and enjoyment for recreation of adequate public lands, waters, and other natural resources, it shall be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings. Further, it shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.

Section 2. Conservation and development of natural resources and historical sites.

In the furtherance of such policy, the General Assembly may undertake the conservation, development, or utilization of lands or natural resources of the Commonwealth, the acquisition and protection of historical sites and buildings, and the protection of its atmosphere, lands, and waters from pollution, impairment, or destruction, by agencies of the Commonwealth or by the creation of public authorities, or by leases or other contracts with agencies of the United States, with other states, with units of government in the Commonwealth, or with private persons or corporations. Notwithstanding the time limitations of the provisions of Article X, Section 7, of this Constitution, the Commonwealth may participate for any period of years in the cost of projects which shall

be the subject of a joint undertaking between the Commonwealth and any agency of the United States or of other states.

Section 3. Natural oyster beds.

The natural oyster beds, rocks, and shoals in the waters of the Commonwealth shall not be leased, rented, or sold but shall be held in trust for the benefit of the people of the Commonwealth, subject to such regulations and restriction as the General Assembly may prescribe, but the General Assembly may, from time to time, define and determine such natural beds, rocks, or shoals by surveys or otherwise.

Section 4. Right of the people to hunt, fish, and harvest game.

The people have a right to hunt, fish, and harvest game, subject to such regulations and restrictions as the General Assembly may prescribe by general law.
The amendment ratified November 7, 2000 and effective January 1, 2001—Added a new section (4).

ARTICLE XII

Future Changes

Section 1. Amendments.

Any amendment or amendments to this Constitution may be proposed in the Senate or House of Delegates, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, the name of each member and how he voted to be recorded, and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates. If at such regular session or any subsequent special session of that General Assembly the proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the voters qualified to vote in elections by the people, in such manner as it shall prescribe and not sooner than ninety days after final passage by the General Assembly. If a majority of those voting vote in favor of any amendment, it shall become part of the Constitution on the date prescribed by the General Assembly in submitting the amendment to the voters.

Section 2. Constitutional convention.

The General Assembly may, by a vote of two-thirds of the members elected to each house, call a convention to propose a general revision of, or specific amendments to, this Constitution, as the General Assembly in its call may stipulate.

The General Assembly shall provide by law for the election of delegates to such a convention, and shall also provide for the submission, in such manner as it shall prescribe and not sooner than ninety days after final adjournment of the convention, of the proposals of the convention to the voters qualified to vote in elections by the people. If a majority of those voting vote in favor of any proposal, it shall become effective on the date prescribed by the General Assembly in providing for the submission of the convention proposals to the voters.

SCHEDULE

Section 1. Effective date of revised Constitution.

This revised Constitution shall, except as is otherwise provided herein, go into effect at noon on the first day of July, nineteen hundred and seventy-one.

Section 2. Officers and elections.

Unless otherwise provided herein or by law, nothing in this revised Constitution shall affect the oath, tenure, term, status, or compensation of any person holding any public office, position, or employment in the Commonwealth, nor affect the date of filling any

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§ 10.1-2108. Local government authority.

Counties, cities, and towns are authorized to exercise their police and zoning powers to protect the quality of state waters consistent with the provisions of this chapter.

(1988, cc. 608, 891.)

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§ 15.2-909. Authority to require removal, repair, etc., of wharves, piers, pilings, bulkheads, vessels or abandoned, obstructing or hazardous property.

Any locality may by ordinance provide:

1. The owners of property therein shall at such time or times as the governing body may prescribe, remove, repair or secure any vessel which has been abandoned or any wharf, pier, piling, bulkhead or any other structure or vessel which might endanger the public health or safety of other persons, or which might constitute an obstruction or hazard to the lawful use of the waters within or adjoining such locality. If such property is deemed to be abandoned, the governing body may designate and empower an official to ascertain the lawful owner of such property and to have the owner repair, remove or secure such property;
2. The locality, through its own agents or employees, may remove, repair or secure any vessel which has been abandoned or any wharf, pier, piling, bulkhead, or other structure or vessel which might endanger the public health or safety of other persons or which might constitute a hazard or obstruction to the lawful use of the waters within such locality, if the owner of such property, after reasonable notice and reasonable time to do so, has failed to remove, repair or secure such wharf, pier, piling, bulkhead or other structure or vessel;
3. In the event the locality, through its own agents or employees removes, repairs or secures any wharf, pier, piling, bulkhead or other structure or vessel after complying with the notice provisions of this section, the cost or expenses thereof shall be chargeable to and paid by the owners of such property and to the extent applicable may be collected by the locality as taxes are collected;
4. If the identity or whereabouts of the lawful owner is unknown or not able to be ascertained after a reasonable search and after lawful notice has been made to the last known address of any known owner, the locality, through its own agents or employees, may repair such wharf, pier, piling, bulkhead or other structure or vessel or remove such property after giving notice by publication once each week for two weeks in a newspaper of general circulation in the area where such property is located;
5. Every charge authorized by this section with which the owner of any such property has been assessed and which remains unpaid, to the extent applicable, shall constitute a lien against the owner's real property, and such lien shall be recorded in the judgment lien docket book in the circuit court for such locality. Such lien may also be reduced to a personal judgment against the owner.

(1976, c. 449, § 15.1-11.3; 1997, cc. 548, 587.)

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§ 15.2-1724. Police and other officers may be sent beyond territorial limits.

Whenever the necessity arises (i) for the enforcement of laws designed to control or prohibit the use or sale of controlled drugs as defined in § 54.1-3401 or laws contained in Article 3 (§ 18.2-344 et seq.) of Chapter 8 of Title 18.2, (ii) in response to any law-enforcement emergency involving any immediate threat to life or public safety, (iii) during the execution of the provisions of Article 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2 relating to orders for temporary detention or emergency custody for mental health evaluation or (iv) during any emergency resulting from the existence of a state of war, internal disorder, or fire, flood, epidemic or other public disaster, the police officers and other officers, agents and employees of any locality and the police of any state-supported institution of higher learning appointed pursuant to § 23-233 may, together with all necessary equipment, lawfully go or be sent beyond the territorial limits of such locality or such state-supported institution of higher learning to any point within or without the Commonwealth to assist in meeting such emergency or need, or while enroute to a part of the jurisdiction which is only accessible by roads outside the jurisdiction. However, the police of any state-supported institution of higher learning may be sent only to a locality within the Commonwealth, or locality outside the Commonwealth, whose boundaries are contiguous with the locality in which such institution is located. No member of a police force of any state-supported institution of higher learning shall be sent beyond the territorial limits of the locality in which such institution is located unless such member has met the requirements established by the Department of Criminal Justice Services as provided in subdivision 2 (i) of § 9.1-102.

In such event the acts performed for such purpose by such police officers or other officers, agents or employees and the expenditures made for such purpose by such locality or a state-supported institution of higher learning shall be deemed conclusively to be for a public and governmental purpose, and all of the immunities from liability enjoyed by a locality or a state-supported institution of higher learning when acting through its police officers or other officers, agents or employees for a public or governmental purpose within its territorial limits shall be enjoyed by it to the same extent when such locality or a state-supported institution of higher learning within the Commonwealth is so acting, under this section or under other lawful authority, beyond its territorial limits.

The police officers and other officers, agents and employees of any locality or a state-supported institution of higher learning when acting hereunder or under other lawful authority beyond the territorial limits of such locality or such state-supported institution of higher learning shall have all of the immunities from liability and exemptions from laws, ordinances and regulations and shall have all of the pension, relief, disability, workers' compensation and other benefits enjoyed by them while performing their respective duties within the territorial limits of such locality or such state-supported institution of higher learning.

(Code 1950, § 15-552; 1962, c. 623, § 15.1-131; 1968, c. 800; 1971, Ex. Sess., c. 238; 1976, c. 457; 1977, c. 79; 1979, c. 503; 1984, c. 779; 1992, c. 566; 1993, c. 860; 1995, c. 844; 1997, c. 587.)

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§ 15.2-1725. Extending police power of localities over lands lying beyond boundaries thereof; jurisdiction of courts.

Any locality owning and operating an airport, public hospital, sanitarium, nursing home, public water supply or watershed, public park, recreational area, sewage disposal plant or system, public landing, dock, wharf or canal, public school, public utility, public buildings and other public property located beyond the limits of the locality shall have and may exercise full police power over the property, and over persons using the property, and may, by ordinance, prescribe rules for the operation and use of the property and for the conduct of all persons using the property and may, further, provide penalties for the violation of such rules contained in an ordinance; such penalties, however, shall not exceed those provided by general law for misdemeanors. However, no ordinances in conflict with an ordinance of the jurisdiction wherein the property is located shall be enacted.

Any locality which maintains or operates in whole or in part any property enumerated in this section may lawfully send its law-enforcement officers to the property owned beyond the limits of the locality for the purpose of protecting the property, keeping order therein, or otherwise enforcing the laws of the Commonwealth and ordinances of the locality owning the property as such laws and ordinances may relate to the operation and use thereof. The law-enforcement officer shall have power to make an arrest for a violation of any law or ordinance relating to the operation and use of the property. The district court in the city or town where the offense occurs shall have jurisdiction of all cases arising therein, and the district court of the county where the offense occurs shall have jurisdiction of all cases arising therein.

It shall be the duty of the attorney for the Commonwealth for the locality wherein the offense occurs to prosecute all violators of the ordinances of the locality that pertain to the operation and use of the property enumerated in this section.

(Code 1950, § 15-560.1; 1952, c. 382; 1962, c. 623, § 15.1-142; 1979, c. 333; 1997, c. 587.)

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§ 15.2-1744. Jurisdiction and authority of special police officers; evidence of their office.

The jurisdiction and authority of special police shall extend no further than the limits of the locality in which they are appointed, and a copy of the order of appointment made by the court, attested by the clerk of such court, shall in all cases be received as evidence of their official character. But the authority of special police shall extend throughout the Commonwealth when actually in pursuit of persons accused of crime and when acting under authority of a duly executed warrant for the arrest of persons accused of committing crime.

The jurisdiction and authority of special police upon order entered of record by the circuit court for the locality may be limited to a specific place or places in a locality; may limit or prohibit the carrying of weapons by special police; and shall prescribe the type of uniform, badge, insignia or identification to be worn or carried by special police to the extent that the uniform, badge, insignia or identification shall not resemble or be in facsimile of the uniform, badge, insignia or identification of the State Police or that of any sheriff, or member of a police department in the locality or an adjoining locality. Any special police officer initially appointed on or after July 1, 1996, whose order of appointment does not prohibit the carrying of weapons while within the scope of his employment as such may be required by the court to meet the minimum entry training requirements established by the Department of Criminal Justice Services under § 9.1-102 for law-enforcement officers within twelve months of his appointment. Such order may provide that special police shall, within the limits of their jurisdiction, have the same authority and responsibility as deputy sheriffs with regard to the service of civil and criminal process.

However, the jurisdiction and authority of special police, upon an order entered of record by the circuit court for an adjoining locality, may be extended into such adjoining locality or into such part thereof as the order may designate, provided that the special circumstances necessitating such extension of jurisdiction and authority are set forth in the order.

(Code 1950, § 15-570; 1954, c. 400; 1962, c. 623, § 15.1-152; 1964, c. 138; 1972, c. 218; 1976, c. 403; 1996, c. 850; 1997, c. 587.)

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§ 15.2-2233. Maps to be prepared in localities; what map shall show.

In localities where no official map exists, or where an existing official map is incomplete, the local planning commission may make, or cause to be made, a map showing the location of any:

1. Legally established public street, alley, walkway, waterway, and public area of the locality; and
2. Future or proposed public street, alley, walkway, waterway and public area.

No future or proposed street or street line, waterway, nor public area, shall be shown on an official map unless and until the centerline of the street, the course of the waterway, or the metes and bounds of the public area, have been fixed or determined in relation to known, fixed and permanent monuments by a physical survey or aerial photographic survey thereof. In addition to the centerline of each street, the map shall indicate the width of the right-of-way thereof. Local planning commissions are hereby empowered to make or cause to be made the surveys required herein.

After adoption by the governing body of an official map, the local governing body may acquire in any way permitted by law property which is or may be needed for the construction of any street, alley, walkway, waterway or public area shown on the map. When an application for a building permit is made to a locality for an area shown on the official map as a future or proposed right-of-way, the locality shall have sixty days to either grant or deny the building permit. If the permit is denied for the sole purpose of acquiring the property, the locality has 120 days from the date of denial to acquire the property, either through negotiation or by filing condemnation proceedings. If the locality has not acted within the 120 day period, the building permit shall be issued to the applicant provided all other requirements of law have been met.

(Code 1950, § 15-965; 1962, c. 407, § 15.1-458; 1976, c. 619; 1988, c. 436; 1995, c. 264; 1997, c. 587.)

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§ 15.2-2280. Zoning ordinances generally.

Any locality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape and size as it may deem best suited to carry out the purposes of this article, and in each district it may regulate, restrict, permit, prohibit, and determine the following:

1. The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses;
2. The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;
3. The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used; or
4. The excavation or mining of soil or other natural resources.

(Code 1950, §§ 15-819, 15-844, 15-968; 1962, c. 407, § 15.1-486; 1966, c. 344; 1969, Ex. Sess., c. 1; 1972, c. 789; 1975, c. 641; 1997, c. 587.)

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§ 15.2-2280. Zoning ordinances generally.

Any locality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape and size as it may deem best suited to carry out the purposes of this article, and in each district it may regulate, restrict, permit, prohibit, and determine the following:

1. The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses;
2. The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;
3. The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used; or
4. The excavation or mining of soil or other natural resources.

(Code 1950, §§ 15-819, 15-844, 15-968; 1962, c. 407, § 15.1-486; 1966, c. 344; 1969, Ex. Sess., c. 1; 1972, c. 789; 1975, c. 641; 1997, c. 587.)

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§ 15.2-2281. Jurisdiction of localities.

For the purpose of zoning, the governing body of a county shall have jurisdiction over all the unincorporated territory in the county, and the governing body of a municipality shall have jurisdiction over the incorporated area of the municipality.

(Code 1950, §§ 15-819, 15-844, 15-968; 1962, c. 407, § 15.1-486; 1966, c. 344; 1969, Ex. Sess., c. 1; 1972, c. 789; 1975, c. 641; 1997, c. 587.)

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§ 15.2-2283. Purpose of zoning ordinances.

Zoning ordinances shall be for the general purpose of promoting the health, safety or general welfare of the public and of further accomplishing the objectives of § 15.2-2200. To these ends, such ordinances shall be designed to give reasonable consideration to each of the following purposes, where applicable: (i) to provide for adequate light, air, convenience of access, and safety from fire, flood, crime and other dangers; (ii) to reduce or prevent congestion in the public streets; (iii) to facilitate the creation of a convenient, attractive and harmonious community; (iv) to facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements; (v) to protect against destruction of or encroachment upon historic areas; (vi) to protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, panic or other dangers; (vii) to encourage economic development activities that provide desirable employment and enlarge the tax base; (viii) to provide for the preservation of agricultural and forestal lands and other lands of significance for the protection of the natural environment; (ix) to protect approach slopes and other safety areas of licensed airports, including United States government and military air facilities; (x) to promote the creation and preservation of affordable housing suitable for meeting the current and future needs of the locality as well as a reasonable proportion of the current and future needs of the planning district within which the locality is situated; and (xi) to provide reasonable protection against encroachment upon military bases, military installations, and military airports and their adjacent safety areas, excluding armories operated by the Virginia National Guard. Such ordinance may also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and ground water as defined in § 62.1-255.

(Code 1950, §§ 15-821, 15-968.3; 1962, c. 407, § 15.1-489; 1966, c. 344; 1968, c. 407; 1975, c. 641; 1976, c. 642; 1980, c. 321; 1983, c. 439; 1988, c. 439; 1989, cc. 447, 449; 1990, cc. 19, 169, 384; 1992, c. 812; 1993, cc. 758, 884; 1997, c. 587; 2004, c. 799.)

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§ 15.2-2233. Maps to be prepared in localities; what map shall show.

In localities where no official map exists, or where an existing official map is incomplete, the local planning commission may make, or cause to be made, a map showing the location of any:

1. Legally established public street, alley, walkway, waterway, and public area of the locality; and
2. Future or proposed public street, alley, walkway, waterway and public area.

No future or proposed street or street line, waterway, nor public area, shall be shown on an official map unless and until the centerline of the street, the course of the waterway, or the metes and bounds of the public area, have been fixed or determined in relation to known, fixed and permanent monuments by a physical survey or aerial photographic survey thereof. In addition to the centerline of each street, the map shall indicate the width of the right-of-way thereof. Local planning commissions are hereby empowered to make or cause to be made the surveys required herein.

After adoption by the governing body of an official map, the local governing body may acquire in any way permitted by law property which is or may be needed for the construction of any street, alley, walkway, waterway or public area shown on the map. When an application for a building permit is made to a locality for an area shown on the official map as a future or proposed right-of-way, the locality shall have sixty days to either grant or deny the building permit. If the permit is denied for the sole purpose of acquiring the property, the locality has 120 days from the date of denial to acquire the property, either through negotiation or by filing condemnation proceedings. If the locality has not acted within the 120 day period, the building permit shall be issued to the applicant provided all other requirements of law have been met.

(Code 1950, § 15-965; 1962, c. 407, § 15.1-458; 1976, c. 619; 1988, c. 436; 1995, c. 264; 1997, c. 587.)

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§ 15.2-2293. Airspace subject to zoning ordinances.

- A. A zoning ordinance shall be applicable to the superjacent airspace of any nonpublic-owned land area.
- B. Airspace superjacent or subjacent to any public highway, street, lane, alley or other way in this Commonwealth not required for the purpose of travel, or other public use, by the Commonwealth or other political jurisdiction owning it, shall be subject to the zoning ordinance of the locality in which the airspace is located.
- C. Airspace not provided for in subsection B herein that is superjacent to any land owned by the Commonwealth or other political jurisdiction and occupied by a nonpolitical entity or person shall be subject to the zoning ordinance that would be applicable if the land were owned by a private person.

(1979, c. 431, § 15.1-491.01; 1997, c. 587.)

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§ 15.2-3100. Commissioners to settle disputed boundary lines.

Whenever a doubt exists or dispute arises over the true boundary line between any two localities, the circuit courts for the respective localities may each appoint not fewer than three nor more than five commissioners, who shall be resident landowners of their respective localities, a majority of those appointed for each locality being necessary to act, who shall meet and proceed to ascertain and establish the true line.

(Code 1950, § 15-38; 1954, c. 536; 1962, c. 623, § 15.1-1026; 1979, c. 456; 1997, c. 587.)

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§ 15.2-3101. Survey and plats.

Commissioners appointed pursuant to § 15.2-3100, before proceeding to ascertain a boundary, shall employ a competent surveyor to run the boundary. The commissioners shall, with the best evidence which they can procure, direct the surveyor where to run the line and shall have him mark the boundary. After the boundary line has been run and marked, the commissioners shall require the surveyor to make two plats of the courses and distances of the line and to note thereon particularly such well-known places or prominent objects through or by which it passes as, in the opinion of the commissioners, will best designate the line.

(Code 1950, § 15-39; 1962, c. 623, § 15.1-1027; 1997, c. 587.)

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§ 15.2-3102. Report of commissioners.

The commissioners shall return such plats to the respective courts by which they were appointed, together with their report of the performance of their duties in ascertaining and establishing the line, which report shall fully describe the line. If the report meets the requirements of this article and is unanimous, the courts shall approve the report. The courts shall direct that the approved report, together with the plat, be recorded in the deed books of their respective clerks' offices and indexed in the name of each locality. The courts shall certify a copy of the report to the Secretary of the Commonwealth. In all controversies thereafter concerning the location of the line, the reports and plats shall be taken as conclusive evidence of its location.

(Code 1950, § 15-40; 1954, c. 536; 1962, c. 623, § 15.1-1028; 1970, c. 751; 1978, c. 642; 1997, c. 587.)

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§ 15.2-3104. Procedure when commissioners fail to agree.

If the commissioners fail to agree upon the location of the line, they shall so report to the circuit courts for their respective localities, stating in their reports the points and grounds of disagreement and describing fully the conflicting lines. Either locality may file a petition in the circuit court for either locality to have a court, constituted as hereinafter provided, ascertain and establish the true boundary line in doubt or dispute. Such petition shall describe, with reasonable certainty, the location contended for and shall state the grounds of such contention. A plat, showing the location contended for, filed with the petition, may serve the purposes of such description. The petitioner shall make the other locality the party defendant, and the case shall be commenced by serving a copy of the petition upon the county attorney, if any, or the attorney for the Commonwealth of such county, the city attorney of such city or the town attorney of such town. No formal plea or answer to the petition shall be necessary, but the defendant shall state its grounds of defense in writing, describing, with the same degree of certainty required of the petitioner, the line as contended for by the defendant, and the locality shall be deemed to be at issue. The issue shall be the true location of the boundary line so in doubt or dispute.

The case shall be heard and decided by a court without a jury presided over by three judges as follows: the judge of the circuit court for the petitioning locality, the judge of the circuit court for the defendant locality, and a judge of some circuit court in this Commonwealth remote from the localities, to be designated by the Chief Justice. When the localities are within the same circuit, the Chief Justice shall designate a third judge from an adjoining circuit. The court shall hear the case upon the evidence introduced in the manner in which evidence is introduced in common-law cases and shall ascertain and establish the true boundary line by a majority decision, and shall give judgment accordingly. Costs shall be awarded as the court shall determine. The judgment of the court shall be recorded in the common-law order book and in the current deed book of the court and indexed in the names of the localities, and, unless reversed, shall forever settle, determine, designate and establish the true boundary line. A copy of any final judgment shall be certified to the Secretary of the Commonwealth. An appeal may be granted by the Supreme Court, or any justice thereof, to either party from the judgment of the court, and the cost of such appeal shall be awarded to the party substantially prevailing.

(Code 1950, § 15-42; 1954, c. 536; 1962, c. 623, § 15.1-1030; 1970, c. 751; 1973, c. 544; 1978, c. 642; 1979, c. 456; 1997, c. 587.)

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§ 15.2-3105. Boundaries to embrace wharves, piers, docks and certain other structures.

The boundary of every locality bordering on the Chesapeake Bay, including its tidal tributaries (the Elizabeth River, among others), or the Atlantic Ocean shall embrace all wharves, piers, docks and other structures, except bridges and tunnels that have been or may hereafter be erected along the waterfront of such locality, and extending into the Chesapeake Bay, including its tidal tributaries (the Elizabeth River, among others), or the Atlantic Ocean. However, only the wharves, piers, docks, or other structures which lie within the territorial jurisdiction of this Commonwealth shall be embraced within the boundary of such locality.

(Code 1950, § 15-42.1; 1958, c. 280; 1962, c. 623, § 15.1-1031; 1976, c. 646; 1997, c. 587.)

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§ 15.2-3106. Establishment by agreement.

Whenever any two or more localities wish to relocate or change the boundary line between them, the governing bodies of such localities may, by agreement, establish, relocate or change such boundary line between them.

(1977, c. 277, § 15.1-1031.1; 1983, c. 594; 1993, c. 392; 1997, c. 587.)

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§ 15.2-3107. Publication of agreed boundary line.

Before adopting an agreement pursuant to § 15.2-3106, each governing body shall advertise its intention to approve such an agreement at least once a week for two successive weeks in a newspaper having general circulation in its locality, and such notice shall include a descriptive summary of the proposed agreement. The summary shall describe the new boundary, but need not include a metes and bounds description. The publication shall include a statement that a copy of the agreement is on file in the office of the clerk of the governing body which is considering the proposed agreement. A joint publication of the proposed agreement by the localities which otherwise meets the requirements of this section shall satisfy this requirement. If joint publication is used, the publication costs shall be apportioned between the participating localities in the manner agreed upon by them. After providing the notice required by this section, each locality shall hold at least one public hearing on the agreement prior to its adoption.

(1977, c. 277, § 15.1-1031.2; 1983, c. 594; 1993, c. 392; 1997, c. 587.)

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§ 15.2-3108. Petition and hearing; recordation of order; costs.

Within a reasonable time after a voluntary boundary agreement is adopted by the affected localities, each affected locality shall petition the circuit court for one of the affected localities to approve the boundary agreement. The petition shall set forth the facts pertaining to the desire to relocate or change the boundary line between the localities, and the petition shall include or have attached to it a plat depicting the change in the boundaries of the localities as agreed or a metes and bounds description of the new boundary line as agreed upon by the two localities. If the court finds that the procedures required by § 15.2-3107 have been complied with and that the petition is otherwise in proper order, the court shall enter an appropriate order establishing the new boundary. The order shall include a plat depicting the change in the boundaries of the locality or a metes and bounds description of the new boundary line of the locality, and that order shall be entered in the land records of the court and indexed in the names of the localities which were involved. Costs shall be awarded as the court may determine. Whenever such an order is entered, a certified copy of the order shall be sent to the Secretary of the Commonwealth by the clerk of the court.

(1977, c. 277, § 15.1-1031.3; 1983, c. 594; 1993, c. 392; 1997, c. 587.)

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§ 15.2-3109. Court-ordered adjustment of boundary lines.

A. Whenever any two localities have agreed that a change should be made to their common boundary line so that public services in an area may be provided more effectively and more efficiently, but are unable to agree as to the proper location for the new boundary line, their governing bodies may petition jointly either of the circuit courts for their respective localities for an order establishing the new boundary line within the terms of the petition. The court shall refer the petition to the Commission on Local Government, and shall also certify the filing of the petition to the Supreme Court with a request that a three-judge court be convened pursuant to § 15.2-3000 to decide the matter. The Commission shall conduct a hearing to receive evidence concerning the location of the new boundary line. Any interested persons may present evidence. The Commission shall publish notice of its hearing at least once a week for two successive weeks in newspapers of general circulation in each locality. Based upon the evidence and the report of its staff, the Commission shall determine a new boundary line that best promotes the more effective and efficient provision of public services. The Commission shall transmit its findings to the court in writing, where they shall be received in evidence. The court shall hear evidence with respect to relocating the boundary line and shall enter an order establishing the new boundary line so as to promote, to the extent possible, the more effective and more efficient provision of public services. Such order shall set forth the terms for the transfer of territory and shall be recorded in the common-law order book and in the current deed book for both localities' courts and indexed in the name of the localities as the case may be. A certified copy of the order shall be sent to the Secretary of the Commonwealth by the clerk of the circuit court.

B. Notice of any application as provided in subsection A hereof shall be served upon the property owners, if any, of the area affected by the agreement, and if such property owners object to the change, they shall be permitted to intervene in the proceedings and show cause why the boundary line should not be changed.

(1979, c. 85, § 15.1-1031.4; 1997, c. 587.)

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§ 28.2-101. Jurisdiction of Commission.

The jurisdiction of the Commission shall include the Commonwealth's territorial sea and extend to the fall line of all tidal rivers and streams except in the case of state-owned bottomlands where jurisdiction extends throughout the Commonwealth. The Commission shall have jurisdiction over all commercial fishing and all marine fish, marine shellfish, marine organisms, and habitat in such areas. The Commission's jurisdiction shall also include the power to exercise regulatory authority over all structures and improvements built or proposed by riparian property owners in the Potomac River appurtenant to the shore of the Commonwealth. The Commission shall exercise such regulatory authority in the Potomac River consistent with the provisions of Subtitle III (§ 28.2-1200 et seq.), and all regulations, guidance, and policies adopted thereunder.

(Code 1950, § 28-3; 1950, p. 979; 1962, c. 406, § 28.1-3; 1968, c. 746; 1992, c. 836; 2005, c. 191.)

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§ 28.2-106. Virginia Marine Police; law-enforcement responsibilities; qualifications; oath.

A. The law-enforcement division of the Commission shall be designated as the Virginia Marine Police. It shall exercise such powers and duties as the General Assembly may confer upon it by law and as provided in regulations adopted pursuant to law, including but not limited to:

1. Patrolling the tidal waters and shoreline of the Chesapeake Bay, its tidal tributaries, and territorial sea;
2. Enforcing marine fishery and habitat conservation laws and regulations;
3. Enforcing health laws pertaining to the harvesting of seafood from condemned areas;
4. Enforcing or assisting other agencies in enforcing laws pertaining to the removal of obstructions and abandoned vessels from the water, to boating operation and navigation, and to larceny on the water;
5. Providing for water-borne safety;
6. Conducting search and rescue activities; and
7. Protecting from terrorist attack federal and state water-related installations and other water-related locations within the tidal waters of the Commonwealth as may be designated by federal or state officials as important to national security.

B. Officers of the Virginia Marine Police shall have the same powers as (i) sheriffs and other law-enforcement officers to enforce all of the criminal laws of the Commonwealth, and (ii) regular game wardens appointed pursuant to Chapter 2 (§ 29.1-200 et seq.) of Title 29.1.

C. A person shall be (i) at least twenty-one years old and (ii) a high school graduate or equivalent to qualify for appointment as an officer.

D. Each officer shall qualify before the clerk of the circuit court of the county or city in which he resides, or in which his district may be, by taking the oaths prescribed by law.

(Code 1950, § 28-36; 1962, c. 406, §§ 28.1-41, 28.1-42; 1964, c. 115; 1972, c. 824; 1973, c. 19; 1990, c. 521, § 28.1-45.1; 1991, c. 338, § 28.1-45.2; 1992, c. 836; 2001, c. 232; 2002, c. 789.)

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§ 28.2-237. Removal of abandoned pole or stake; revocation of licenses for failure to remove stakes.

A. Any person fishing a pound net or any other type of fishing device requiring the use of fixed poles or stakes shall remove all such abandoned poles or stakes; however, one pole or stake may be left standing at least four feet above mean high water at old stands as an identification marker.

Abandoned poles or stakes are considered to be poles or stakes which are not used for fishing.

B. The Commission may revoke any fishing licenses issued to such person, as set forth in § 28.2-232, if abandoned poles or stakes are not promptly removed. Failure to remove such poles or stakes is a Class 1 misdemeanor. The most recent licensee for the fishing device is responsible for removing the poles or stakes.

(1962, c. 406, § 28.1-79; 1964, c. 393; 1992, c. 836.)

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§ 28.2-309. Distance nets may extend across body of water or channel; prohibition; regulations; penalty.

A. It is unlawful to set or fish any net or nets across any river, bay, estuary, creek, or inlet which are longer than one-fourth the width of the body of water from mean low water to mean low water at the point where the net or nets are set or fished.

B. It is unlawful to set or fish any net, other than a menhaden net, in any portion of a marked channel of a river, bay, estuary, creek, or inlet which has navigation aids installed or approved by any agency of government. However, the prohibitions and restrictions on setting nets contained in this subsection shall not apply to any net set on the eastern or ocean side of the Counties of Accomack and Northampton. The Commission shall have the authority to promulgate regulations governing the setting of any net on the eastern or ocean side of the Counties of Accomack and Northampton.

C. It shall be unlawful to set or fish any net which is a hazard to navigation.

D. Any person who violates the provisions of this section is guilty of a Class 3 misdemeanor.

(Code 1950, § 28-47; 1950, p. 981; 1962, c. 406, § 28.1-53; 1968, c. 748; 1990, c. 212; 1991, c. 683; 1992, c. 836.)

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§ 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.

(Code 1950, § 28-117; 1962, c. 406, § 28.1-100; 1964, c. 624; 1992, c. 836.)

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§ 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.

(Code 1950, § 28-117; 1962, c. 406, § 28.1-100; 1964, c. 624; 1992, c. 836.)

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§ 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.

(Code 1950, § 28-118; 1962, c. 406, § 28.1-101; 1964, c. 393; 1992, c. 836.)

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§ 28.2-600. Riparian planting ground assignments; eligibility; fee.

Any owner of land bordering on a body of water in the oyster-growing area of this Commonwealth whose shore front measures at least 205 feet at the low-water mark, who has not had as much as one-half acre of ground already assigned him on the front, or whose lease has terminated and is not to be renewed, may apply for planting grounds to the Commissioner. The Commissioner shall assign to him such ground wherever the owner may designate within his riparian waters, provided the ground does not encroach into an existing oyster-planting ground lease assigned under Article 2 (§ 28.2-603 et seq.) of this chapter. The fee for such assignment shall be \$1.50. Such ground shall not exceed one-half acre, and shall not be less than 105 feet wide along the shore, beginning at low-water mark, extending out not more than 210 feet, or to the middle of the channel or body of water, whichever is the shorter distance. The grounds shall be surveyed, plotted, marked, assigned, and recorded as provided for assignments to persons in Article 2 (§ 28.2-603 et seq.) of this chapter. Any riparian assignment that was duly recorded in the clerk's office of the county or city where the grounds are located, or at the Commission office prior to July 1, 1986, shall continue in effect.

(Code 1950, §§ 28-39, 28-123; 1950, p. 987; 1952, c. 649; 1956, c. 586; 1958, c. 184; 1960, c. 517; 1962, c. 406, §§ 28.1-44, 28.1-108; 1964, c. 393; 1968, c. 747; 1972, c. 644; 1976, c. 256; 1978, c. 548; 1984, cc. 100, 244, 259; 1986, cc. 168, 184; 1992, c. 836.)

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§ 28.2-601. Riparian assignments; entitlements; obligations.

The riparian leaseholder shall have the exclusive right to the use of such ground for planting or gathering oysters and clams.

The assignment made pursuant to § 28.2-600 shall pass with the transfer of the adjacent highland to the subsequent owner of highland and cannot be held separated from the highland. A transfer of highland ownership shall require a transfer of the riparian assignment within eighteen months after the transfer of the highland ownership under the following conditions:

1. The application for transfer shall be in the form prescribed by the Commission and shall be filed with the Commissioner.
2. The Commissioner shall require a new survey if there is not a survey of the exact parcel or parcels of grounds to be transferred.
3. The cost of any new surveys required under this section shall be borne by the person making the transfer, and the cost and fees shall be the same as for surveys of general oyster-planting ground.
4. The application shall be accompanied by a transfer fee of five dollars.
5. The Commissioner shall return the approved application for transfer and plat with any correction to the applicant. A copy of the transfer and plat shall be recorded at the Commissioner's office.
6. If no application for transfer is received by the Commissioner within eighteen months after the transfer of the highland ownership, the riparian assignment shall become vacant and open to assignment.

(Code 1950, § 28-123; 1950, p. 987; 1956, c. 586; 1958, c. 184; 1960, c. 517; 1962, c. 406, § 28.1-108; 1964, c. 393; 1968, c. 747; 1972, c. 644; 1976, c. 256; 1978, c. 548; 1984, cc. 100, 244, 259; 1986, c. 168; 1992, c. 836.)

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§ 28.2-602. Riparian assignments; special terms and conditions.

The provisions of this article apply to all Virginia counties and cities bordering on bodies of water in oyster-growing areas, except they shall not apply to riparian lands located above the James River bridge in the James River or its tributaries. In any Virginia county or city where more than one-half acre of ground per waterfront tract has been assigned to a riparian owner, the ground in excess of one-half acre shall be ground held under a regular lease and assignment, and not a riparian assignment.

For Northampton County, however, § 6 of Chapter 254 of the 1883-1884 Acts of Assembly, not this article, shall govern the quantity of land to be assigned to and held by riparian owners. Nothing in this article authorizes a rental of a lesser amount per acre than that provided by law for riparian owners in Northampton County of the land assigned them as such riparian owners. Nothing in the section which restores to riparian owners in Northampton County one-fourth of their waterfronts suitable for planting oysters, permits the owners of waterfronts to compel occupants of the fronts to remove their oysters from any fourth of the shores, if the residue of the shore is already in the landowner's possession or is unoccupied.

Riparian landowners may erect wharves, landings, or other structures as otherwise permitted by law.

(Code 1950, § 28-123; 1950, p. 987; 1956, c. 586; 1958, c. 184; 1960, c. 517; 1962, c. 406, § 28.1-108; 1964, c. 393; 1968, c. 747; 1972, c. 644; 1976, c. 256; 1978, c. 548; 1984, cc. 100, 244, 259; 1986, c. 168; 1992, c. 836.)

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§ 28.2-610. Restriction on acreage owned or operated.

No person shall own or operate more than 3,000 acres of general oyster-planting grounds in the waters of this Commonwealth other than in the Chesapeake Bay. If ground in excess of 3,000 acres is acquired, the person has a right to lawfully hold the ground for one year and shall have a legal right to assign it. If no assignment is made within one year, the ground in excess of 3,000 acres shall revert to the Commonwealth and may be applied for by any person having a legal right to do so.

(Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(9); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836.)

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§ 28.2-613. Duration of lease.

Each assignment of general oyster-planting ground shall continue in force for ten years from the date of assignment, unless the assignment is terminated; however, assignments issued between July 1, 1976, and July 1, 1980, shall continue in force for twenty years from the date of assignment. The interest in such ground is chattel real.

Upon the death of the renter, testate as to the lease, it shall vest in the named beneficiary subject to the rights of creditors, if he is a resident of this Commonwealth, provided that he files an application for transfer with the Commission within eighteen months after the date of death. If the named beneficiary is not a resident he shall have eighteen months after the date of death to transfer the lease to a qualified holder.

Upon the death of the renter, intestate as to the lease, the lease shall vest in the personal representative, who shall transfer the lease to a qualified holder within eighteen months.

If there is no qualification on the renter's estate within one year of his death, the Commission may within six months thereafter transfer the lease to a qualified holder upon receipt of a transfer duly executed by all of the lawful heirs of the renter.

If there is no transfer under any of the above, the ground shall become vacant and open to assignment.

Upon expiration of the initial or any subsequent term of the assignment, the Commission shall, on application of the holder, renew the assignment for an additional ten-year term. The Commission shall not renew or extend an assignment where there has been no significant production of oysters or clams, no reasonable plantings of oysters, clams or cultch or no significant oyster or clam aquaculture operation, during any portion of the ten-year period immediately prior to the application for renewal, unless the Commission finds that there was good cause for the failure to produce or plant oysters, clams or cultch or finds that the assignment is directly related to and beneficial to the production of oyster-planting grounds immediately adjacent to the assignment. In determining whether there was good cause for the failure to produce or plant oysters, clams, or cultch, in addition to other factors, the Commission shall consider the prevalence of the diseases MSX and Dermo, and whether the oyster-planting ground has traditionally produced commercial quantities of oysters or clams.

(Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(12); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836; 1996, c. 985; 1997, c. 259.)

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§ 28.2-617. Recordation of plat.

The plat and assignment, as soon as practicable after completion, and after the ground has been assigned to the applicant, shall be filed for record in the office of the Commission.

(Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(14); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836.)

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§ 28.2-618. Commonwealth guarantees rights of renter subject to right of fishing.

The Commonwealth shall guarantee to any person who has complied with ground assignment requirements the absolute right to continue to use and occupy the ground for the term of the lease, subject to:

1. Section 28.2-613;

2. Riparian rights;

3. The right of fishing in waters above the bottoms, provided (i) that no person exercising the right of fishing shall use any device which is fixed to the bottom, or which, in any way, interferes with the renter's rights or damages the bottoms, or the oysters planted thereon, and (ii) that crab pots and gill nets which are not staked to the bottom shall not be considered devices which are fixed to the bottom unless the crab pots and gill nets are used over planted oyster beds in waters of less than four feet at mean low water on the seaside of Northampton and Accomack Counties; and

4. Established fishing stands, but only if the fishing stand license fee is timely received from the existing licensee of the fishing stand and no new applicant shall have priority over the oyster lease. However, a fishing stand location assigned prior to the lease of the oyster ground is a vested interest, a chattel real, and an inheritable right which may be transferred or assigned whenever the current licensee complies with all existing laws.

(Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(15); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836.)

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§ 28.2-619. When leases become vacant.

When the Commission finds that a lessee is dead or unknown, and no one claims such property as an heir or assignee, the ground shall become vacant and open to assignment.

(Code 1950, § 28-124; 1954, c. 352; 1958, c. 183; 1960, c. 517; 1962, c. 406, § 28.1-109(16); 1964, c. 393; 1966, c. 684; 1970, c. 726; 1972, c. 644; 1973, c. 14; 1978, cc. 546, 548; 1980, cc. 34, 609; 1984, c. 259; 1992, c. 836.)

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§ 28.2-629. Rights of owner to waters within lawful survey.

If any creek, cove, or inlet within the jurisdiction of this Commonwealth flows into or runs through the lands of any person, is less than 100 yards in width at mean low water, and is comprised within the limits of his lawful survey, as defined in § 28.2-1202, such person or other lawful occupant shall have the exclusive right to use the creek, cove, or inlet for sowing or planting oysters or other shellfish. However, in the County of Mathews the owners or lawful occupants of land on both sides of any creek, cove, or inlet, except Horn Harbor, Winter Harbor, and Milford Haven, suitable for the planting of oysters, above the point where such creek, cove, or inlet is 100 yards in width, shall have the exclusive right to use such creek, cove, or inlet for planting oysters. The right of the owners or occupants of land on the opposite sides of such creek, cove, or inlet extends to the middle of the channel.

(Code 1950, § 28-132; 1962, c. 406, § 28.1-116; 1964, c. 393; 1966, c. 656; 1968, cc. 659, 747; 1972, c. 539; 1992, c. 836.)

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§ 28.2-630. Rights of riparian owners to build bulkhead or wharf.

All assignments or leases of oyster or clam grounds under this chapter shall be subject to the rights vested in riparian claimants under Article 1 (§ 28.2-600 et seq.) of this chapter and also to the following condition: That any landowner who desires to erect a bulkhead or wharf in front of his property or to open a channel, and who is not a lessee or riparian holder of suitable bottoms for that purpose, shall give the lessee or other holder of oyster or clam grounds in front of his property twelve months' notice of such intention; and upon the expiration of that time, the rights of the lessee or holder of so much of the oyster or clam grounds as are reasonably needed for building the bulkhead, wharf, or channel shall cease. This twelve-month notice and waiting period shall not apply if, at the time the landowner provides notice to the lessee or other holder of the oyster or clam grounds in front of his property, the landowner provides the Commissioner sufficient information describing the dimensions and location of the bulkhead, wharf or channel and the Commissioner subsequently finds, in writing, that the proposed bulkhead, wharf or channel will not adversely impact commercially productive oyster or clam grounds. For purposes of this section "commercially productive oyster or clam grounds" are those areas which can be demonstrated to have (i) suitable substrate for oyster or clam production and (ii) evidence of commercial oyster or clam production within the past three years. If the bulkhead, wharf, or channel has not commenced as specified in the notice within three months after the oyster or clam grounds were vacated, the former lessee or holder shall have the right to resume possession of the oyster or clam grounds he has vacated in favor of such landowners, subject to the provisions of this chapter. Any person constructing a channel under this section shall compensate the lessee of any oyster or clam grounds for all losses or damages including the value of the ground taken for the construction of the channel. The lessee shall have recourse under action of the law in the court of the proper jurisdiction of the Commonwealth of Virginia to recover damages.

(Code 1950, § 28-134; 1962, c. 406, § 28.1-118; 1992, c. 836; 2000, c. 167.)

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§ 28.2-633. Bathing grounds; assignment; rental.

Any person desiring to obtain a location for bathing grounds shall apply to the Commissioner to have the location designated, surveyed, and assigned. An annual rental fee of \$7.50 per acre shall be charged for obtaining such a location. The cost for the assignment of bathing grounds shall be three dollars. Any such application, surveying, assigning, and marking shall conform to the law pertaining to oyster-planting grounds. Such licenses shall be for public or commercial bathing grounds only.

If any lessee of bathing ground has his ground or any portion thereof resurveyed or if he reassigns any or all of the ground, the resurvey or reassignment shall not be considered a twenty-year renewal of his lease, or as a new assignment of the ground, but shall be a continuation of the original assignment, subject to all the limitations and conditions under which the ground was originally assigned.

The lessee of any bathing ground, the rent of which is to be paid to the following September of any year, may abandon his holdings at any time without being liable for the payment of the rent for the following year, provided he notifies an officer or the Commissioner in writing of his intention to do so before September 1. This notice, when received by the officer, shall be immediately forwarded by him to the office of the Commissioner.

(Code 1950, §§ 28-39, 28-187; 1952, c. 649; 1960, c. 517; 1962, c. 406, §§ 28.1-44, 28.1-118.1; 1984, c. 100; 1986, c. 184; 1992, c. 836.)

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§ 28.2-710. Unlawful to place crab, eel, or fish pots in certain channels; penalty.

It is unlawful to place or maintain any crab, eel, or fish pot in a navigable channel which has navigation aids installed or approved by any agency of the United States government or in any portion of a government marked channel of a river, bay, estuary, creek or inlet. The owner or user of any crab, eel, or fish pot who has located such pot in accordance with this section shall be relieved of civil liability for any damages resulting from the location of such pot.

A violation of this section is a Class 3 misdemeanor.

(1968, c. 785, § 28.1-173.1; 1981, c. 23; 1990, c. 493; 1992, c. 836.)

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§ 28.2-903.1. Impeding lawful fishing in tidal waters; penalty.

A. It is unlawful for any person to willfully and intentionally impede the lawful fishing of any species of fish or shellfish. "Fishing" means those activities defined in § 28.2-100 as "fishing," "fisheries" or "to fish."

B. Notwithstanding any other provision of law, any person convicted of a violation of this section shall be guilty of a Class 3 misdemeanor.

(1997, c. 703.)

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§ 28.2-907. Jurisdiction of courts.

Any proceeding under any section of this subtitle shall be before a court of competent jurisdiction in the county or city (i) in which the offense was committed or (ii) adjacent to the waters in which the offense was committed.

(Code 1950, § 28-218; 1962, c. 406, § 28.1-193; 1992, c. 836.)

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§ 28.2-1200. Ungranted beds of bays, rivers, creeks and shores of the sea to remain in common.

All the beds of the bays, rivers, creeks and the shores of the sea within the jurisdiction of the Commonwealth, not conveyed by special grant or compact according to law, shall remain the property of the Commonwealth and may be used as a common by all the people of the Commonwealth for the purpose of fishing, fowling, hunting, and taking and catching oysters and other shellfish. No grant shall be issued by the Librarian of Virginia to pass any estate or interest of the Commonwealth in any natural oyster bed, rock, or shoal, whether or not it ebbs bare.

(Code 1950, § 62-1; 1960, c. 533; 1968, c. 659, § 62.1-1; 1992, c. 836; 1995, c. 850; 1998, c. 427.)

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§ 28.2-1201. Ungranted islands which rise from lands which are property of the Commonwealth.

A. Except as otherwise provided in subsections B and C hereof, all ungranted islands which rise by natural or artificial causes from the beds of bays, rivers and creeks that are ungranted under § 28.2-1200 shall remain the property of the Commonwealth and shall be managed by the Commission as provided in Article 2 (§ 28.2-1503 et seq.) of Chapter 15 of this title. In case of any conflict between the provisions of this subsection and the common law of accretion, reliction and avulsion, such common law shall control.

B. Any island or land that is owned by the Commonwealth, whether currently in existence or subsequently created, that now or hereafter abuts a barrier island of the Eastern Shore shall remain the property of the Commonwealth and shall be managed by the Commission as provided in Article 2 (§ 28.2-1503 et seq.) of Chapter 15 of this title.

C. This section shall not apply to accretions to privately owned lands or islands, whether or not they are used as commons.

(1991, c. 378, § 41.1-4.1; 1992, c. 836; 1995, c. 850.)

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§ 28.2-1202. Rights of owners to extend to mean low-water mark.

A. Subject to the provisions of § 28.2-1200, the limits or bounds of the tracts of land lying on the bays, rivers, creeks and shores within the jurisdiction of the Commonwealth, and the rights and privileges of the owners of such lands, shall extend to the mean low-water mark but no farther, except where a creek or river, or some part thereof, is comprised within the limits of a lawful survey.

B. For purposes of this section, "lawful survey" means the boundaries of any land, including submerged lands, held under a special grant or compact as required by § 28.2-1200, such boundaries having been determined by generally accepted surveying methods and evidenced by a plat or map thereof recorded in the circuit court clerk's office of the county or city in which the land lies.

(Code 1950, § 62-2; 1968, c. 659, § 62.1-2; 1972, c. 865; 1992, c. 836.)

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§ 28.2-1205. Permits for the use of state-owned bottomlands.

A. When determining whether to grant or deny any permit for the use of state-owned bottomlands, the Commission shall be guided in its deliberations by the provisions of Article XI, Section I of the Constitution of Virginia. In addition to other factors, the Commission shall also consider the public and private benefits of the proposed project and shall exercise its authority under this section consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to § 1-200 in order to protect and safeguard the public right to the use and enjoyment of the subaqueous lands of the Commonwealth held in trust by it for the benefit of the people as conferred by the public trust doctrine and the Constitution of Virginia. The Commission shall also consider the project's effect on the following:

1. Other reasonable and permissible uses of state waters and state-owned bottomlands;
2. Marine and fisheries resources of the Commonwealth;
3. Tidal wetlands, except when this has or will be determined under the provisions of Chapter 13 of this title;
4. Adjacent or nearby properties;
5. Water quality; and
6. Submerged aquatic vegetation (SAV).

B. The Commission shall consult with other state agencies, including the Virginia Institute of Marine Science, the State Water Control Board, the Virginia Department of Transportation, and the State Corporation Commission, whenever the Commission's decision on a permit application relates to or affects the particular concerns or activities of those agencies.

C. No permit for a marina or boatyard for commercial use shall be granted until the owner or other applicant presents to the Commission a plan for sewage treatment or disposal facilities that has been approved by the State Department of Health.

D. A permit is required and shall be issued by the Commission for placement of any private pier measuring 100 or more feet in length from the mean low-water mark, which is used for noncommercial purposes by an owner of the riparian land in the waters opposite the land, and that traverses commercially productive leased oyster or clam grounds, as defined in § 28.2-630, provided that the pier does not extend beyond the navigation line established by the Commission or the United States Army Corps of Engineers. The permit may reasonably prescribe the design and location of the pier for the sole purpose of minimizing the adverse impact on such oyster or clam grounds or the harvesting or propagation of oysters or clams therefrom. The permit shall contain no other conditions or requirements. Unless information or circumstances materially alter the conditions under which the permit would be issued, the Commission shall act within 90 days of receipt of a complete joint permit application to approve or deny the application. If the Commission fails to act within that time, the application shall be deemed approved and the applicant shall be notified of the deemed approval.

E. All permits issued by the Commission for the use of state-owned bottomlands pursuant to § 28.2-1204,

or to recover underwater historic property shall be in writing and specify the conditions and terms that the Commission determines are appropriate, and royalties unless prohibited under other provisions of this chapter.

F. Any person aggrieved by a decision of the Commission under this section is entitled to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). However, any decision made by the Commission hereunder consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to § 1-200 shall not be deemed to have been made pursuant to the police power. No person shall reapply for the same or substantially similar use of the bottomlands within 12 months of the denial of a permit by the Commission. Nothing in this subsection shall be construed to deprive a riparian landowner of such rights as he may have under common law.

(Code 1950, § 62-2.1; 1960, c. 600; 1962, c. 637; 1966, c. 641; 1968, c. 659, § 62.1-3; 1970, c. 621; 1972, c. 866; 1973, cc. 23, 361; 1974, cc. 92, 385; 1975, c. 431; 1976, c. 579; 1980, c. 253; 1982, c. 102; 1988, c. 868; 1992, c. 836; 1996, c. 228; 1999, c. 741; 2000, c. 167; 2001, c. 72; 2004, cc. 405, 899, 1018; 2005, c. 839.)

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§ 28.2-1210. Removal of obstructions or hazardous property from state waters; penalty.

A. Whenever any wharf, pier, piling, bulkhead, structure, or vessel is found in or upon the bays, oceans, rivers, streams or creeks of the Commonwealth in a state of abandonment, in danger of sinking, or in such disrepair as to constitute a hazard or obstruction to the use of such waterway, the Commission may ascertain the owner of the property and require him to repair or remove the property from the waters of the Commonwealth. If the identity or location of the owner remains unknown and unascertainable after a diligent search and the posting of proper notice at the last known address of the owner, if known, the Commission may have the property removed from the waterways of the Commonwealth after giving notice by publication once in a newspaper of general circulation in the area where such property is located.

B. It is unlawful for any person who owns a vessel to allow such vessel, for more than one week after delivery of notification by the Commission or a law-enforcement official in person or by United States Postal Service certified mail, return receipt requested, to be in a state of abandonment and in danger of sinking, or in such disrepair as to constitute a hazard or obstruction to the use of a waterway. Upon the occurrence of a natural disaster or other act of God, the Commission or law-enforcement official shall not issue a notification until sixty days following such occurrence. Any person who violates this subsection is guilty of a Class 3 misdemeanor.

(1974, c. 602, § 62.1-194.1:1; 1992, c. 836; 1997, c. 258; 1999, c. 544.)

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§ 28.2-1302. Adoption of wetlands zoning ordinance; terms of ordinance.

Any county, city or town may adopt the following ordinance, which, after October 1, 1992, shall serve as the only wetlands zoning ordinance under which any wetlands board is authorized to operate. Any county, city, or town which has adopted the ordinance prior to October 1, 1992, shall amend the ordinance to conform it to the ordinance contained herein by October 1, 1992.

Wetlands Zoning Ordinance

§ 1. The governing body of, acting pursuant to Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, adopts this ordinance regulating the use and development of wetlands.

§ 2. As used in this ordinance, unless the context requires a different meaning:

"Back Bay and its tributaries" means the following, as shown on the United States Geological Survey Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the Virginia-North Carolina state line; Capsies Creek north of the Virginia-North Carolina state line; Deal Creek; Devil Creek; Nawney Creek; Redhead Bay, Sand Bay, Shipps Bay, North Bay, and the waters connecting them; Beggars Bridge Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black Gut; and all coves, ponds and natural waterways adjacent to or connecting with the above-named bodies of water.

"Commission" means the Virginia Marine Resources Commission.

"Commissioner" means the Commissioner of Marine Resources.

"Governmental activity" means any of the services provided by this (county, city, or town) to its citizens for the purpose of maintaining this (county, city, or town), including but not limited to such services as constructing, repairing and maintaining roads; providing sewage facilities and street lights; supplying and treating water; and constructing public buildings.

"Nonvegetated wetlands" means unvegetated lands lying contiguous to mean low water and between mean low water and mean high water, including those unvegetated areas of Back Bay and its tributaries and the North Landing River and its tributaries subject to flooding by normal and wind tides but not hurricane or tropical storm tides.

"North Landing River and its tributaries" means the following, as shown on the United States Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River from the Virginia-North Carolina line to Virginia Highway 165 at North Landing Bridge; the Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge; and all named and unnamed streams, creeks and rivers flowing into the North Landing River and the Chesapeake and Albemarle Canal except West Neck Creek north of Indian River Road, Pocaty River west of Blackwater Road, Blackwater River west of its forks located at a point approximately 6400 feet due west of the point where Blackwater Road crosses the Blackwater River at the village of Blackwater, and Millbank Creek west of Blackwater Road.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

"Vegetated wetlands" means lands lying between and contiguous to mean low water and an elevation above mean low water equal to the factor one and one-half times the mean tide range at the site of the proposed project in the county, city, or town in question, and upon which is growing any of the following species: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), saltgrass (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* spp.), sea lavender (*Limonium* spp.), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), sea oxeye (*Borrchia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile edentula*), southern wildrice (*Zizaniopsis miliacea*), cattail (*Typha* spp.), three-square (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex* spp.), yellow pond lily (*Nuphar* sp.), marsh fleabane (*Pluchea purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), smartweed (*Polygonum* sp.), arrowhead (*Sagittaria* spp.), sweet flag (*Acorus calamus*), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), or switch grass (*Panicum virgatum*).

"Vegetated wetlands of Back Bay and its tributaries" or "vegetated wetlands of the North Landing River and its tributaries" means all marshes subject to flooding by normal and wind tides but not hurricane or tropical storm tides, and upon which is growing any of the following species: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), black needlerush (*Juncus roemerianus*), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), cattail (*Typha* spp.), three-square (*Scirpus* spp.), dock (*Rumex* sp.), smartweed (*Polygonum* sp.), yellow pond lily (*Nuphar* sp.), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), arrowhead (*Sagittaria* sp.), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), or switch grass (*Panicum virgatum*).

"Wetlands" means both vegetated and nonvegetated wetlands.

"Wetlands board" or "board" means a board created pursuant to § 28.2-1303 of the Code of Virginia.

§ 3. The following uses of and activities in wetlands are authorized if otherwise permitted by law:

1. The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duckblinds, wildlife management shelters, footbridges, observation decks and shelters and other similar structures, provided that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the wetlands;
2. The cultivation and harvesting of shellfish, and worms for bait;
3. Noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shellfishing, horseback riding, swimming, skeet and trap shooting, and shooting on shooting preserves, provided that no structure shall be constructed except as permitted in subdivision 1 of this section;
4. Other outdoor recreational activities, provided they do not impair the natural functions or alter the natural contour of the wetlands;
5. Grazing, haying, and cultivating and harvesting agricultural, forestry or horticultural products;
6. Conservation, repletion and research activities of the Commission, the Virginia Institute of Marine

Science, the Department of Game and Inland Fisheries and other conservation-related agencies;

7. The construction or maintenance of aids to navigation which are authorized by governmental authority;

8. Emergency measures decreed by any duly appointed health officer of a governmental subdivision acting to protect the public health;

9. The normal maintenance and repair of, or addition to, presently existing roads, highways, railroad beds, or facilities abutting on or crossing wetlands, provided that no waterway is altered and no additional wetlands are covered;

10. Governmental activity in wetlands owned or leased by the Commonwealth or a political subdivision thereof; and

11. The normal maintenance of manmade drainage ditches, provided that no additional wetlands are covered. This subdivision does not authorize the construction of any drainage ditch.

§ 4. A. Any person who desires to use or develop any wetland within this (county, city, or town), other than for the purpose of conducting the activities specified in § 3 of this ordinance, shall first file an application for a permit directly with the wetlands board or with the Commission.

B. The permit application shall include the following: the name and address of the applicant; a detailed description of the proposed activities; a map, drawn to an appropriate and uniform scale, showing the area of wetlands directly affected, the location of the proposed work thereon, the area of existing and proposed fill and excavation, the location, width, depth and length of any proposed channel and disposal area, and the location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands; a description of the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland of whom the applicant has notice; an estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure; and such additional materials and documentation as the wetlands board may require.

C. A nonrefundable processing fee shall accompany each permit application. The fee shall be set by the applicable governing body with due regard for the services to be rendered, including the time, skill, and administrator's expense involved.

§ 5. All applications, maps, and documents submitted shall be open for public inspection at the office designated by the applicable governing body and specified in the advertisement for public hearing required under § 6 of this ordinance.

§ 6. Not later than sixty days after receipt of a complete application, the wetlands board shall hold a public hearing on the application. The applicant, local governing body, Commissioner, owner of record of any land adjacent to the wetlands in question, known claimants of water rights in or adjacent to the wetlands in question, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the Water Control Board, the Department of Transportation, and any governmental agency expressing an interest in the application shall be notified of the hearing. The board shall mail these notices not less than twenty days prior to the date set for the hearing. The wetlands board shall also cause notice of the hearing to be published at least once a week for two weeks prior to such hearing in a newspaper of

general circulation in this (county, city, or town). The published notice shall specify the place or places within this (county, city, or town) where copies of the application may be examined. The costs of publication shall be paid by the applicant.

§ 7. A. Approval of a permit application shall require the affirmative vote of three members of a five-member board or four members of a seven-member board.

B. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may testify at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for the decision.

C. The board shall make its determination within thirty days of the hearing. If the board fails to act within that time, the application shall be deemed approved. Within forty-eight hours of its determination, the board shall notify the applicant and the Commissioner of its determination. If the board fails to make a determination within the thirty-day period, it shall promptly notify the applicant and the Commission that the application is deemed approved. For purposes of this section, "act" means taking a vote on the application. If the application receives less than four affirmative votes from a seven-member board or less than three affirmative votes from a five-member board, the permit shall be denied.

D. If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing to the Commissioner. Upon a final determination by the Commission, the record shall be returned to the board. The record shall be open for public inspection at the same office as was designated under § 5 of this ordinance.

§ 8. The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it, securing to the Commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after a hearing held pursuant to this ordinance, suspend or revoke a permit if the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work described in the application. The board may, after a hearing, suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

§ 9. In fulfilling its responsibilities under this ordinance, the board shall preserve and prevent the despoliation and destruction of wetlands within its jurisdiction while accommodating necessary economic development in a manner consistent with wetlands preservation.

§ 10. A. In deciding whether to grant, grant in modified form or deny a permit, the board shall consider the following:

1. The testimony of any person in support of or in opposition to the permit application;
2. The impact of the proposed development on the public health, safety, and welfare; and
3. The proposed development's conformance with standards prescribed in § 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia.

B. The board shall grant the permit if all of the following criteria are met:

1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public and

private detriment.

2. The proposed development conforms with the standards prescribed in § 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia.

3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia.

C. If the board finds that any of the criteria listed in subsection B of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.

§ 11. The permit shall be in writing, signed by the chairman of the board or his authorized representative, and notarized. A copy of the permit shall be transmitted to the Commissioner.

§ 12. No permit shall be granted without an expiration date established by the board. Upon proper application, the board may extend the permit expiration date.

§ 13. No permit granted by a wetlands board shall in any way affect the applicable zoning and land use ordinances of this (county, city, or town) or the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity.

(1972, c. 711, §§ 62.1-13.1, 62.1-13.5; 1973, cc. 382, 388; 1975, c. 268; 1979, c. 418; 1982, c. 300; 1985, c. 541; 1988, c. 587; 1989, c. 360; 1992, c. 836; 1994, c. 274.)

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§ 29.1-205. Power to make arrests.

All game wardens are vested with the authority, upon displaying a badge or other credential of office, to issue a summons or to arrest any person found in the act of violating any of the provisions of the hunting, trapping, inland fish and boating laws.

Regular game wardens are vested with the same authority as sheriffs and other law-enforcement officers to enforce all of the criminal laws of the Commonwealth.

Any special game warden shall have general police power while performing his duty on properties owned or controlled by the Board.

Any commissioned, warrant or petty officers of the United States Coast Guard and of the United States Coast Guard Reserve while engaged on active duty, in the conduct of their official duties in uniform, and any officers of the customs as defined by 19 U.S.C. § 1709 (b), in the conduct of their official duties in uniform, shall have the same power to make arrests under Chapter 7 (§ 29.1-700 et seq.) of Title 29.1 as game wardens.

(Code 1950, § 29-32; 1960, c. 540; 1979, c. 264; 1982, c. 64; 1987, c. 488; 1988, c. 605.)

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§ 29.1-344. Stationary blinds on shore and in the public waters for owners of riparian rights.

Each year, the owners of riparian rights, their lessees or permittees shall have the exclusive privilege of licensing and erecting stationary blinds on their shoreline, and the prior right of licensing and erecting stationary blinds in the public waters in front of their shoreline, to shoot waterfowl over the public waters. Such blinds shall not be located in water having a depth greater than eight feet at mean high tide, nor shall they be located further than halfway across the body of water from the riparian owner's shoreline. When such a license has been obtained and a stake or a stationary blind has been erected on the site with the license for that season properly affixed, no other stationary or floating blind shall be located in the public waters within 500 yards of the licensed site without the consent of the riparian owner, lessee or permittee. Riparian owners, their lessees or permittees may obtain licenses on and after July 1 and on or before August 31 of each year. A stake or a stationary blind shall be erected on the site, and a license plate supplied with the license for that season shall be affixed thereto by August 31. If a stake has been erected on the site of a stationary blind, such stake must be replaced by a blind by November 1 pursuant to the provisions of § 29.1-341. Such stationary blinds shall conform to the standards prescribed in § 29.1-341.

(Code 1950, § 29-85; 1987, c. 488; 1989, c. 217; 2004, c. 422.)

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§ 29.1-344.1. Stationary duck blind license; riparian landowners exempted.

Notwithstanding the provisions of § 29.1-340, the owners of riparian rights or their invitees shall not be required to obtain a stationary blind license when hunting waterfowl from such a blind located on the riparian owner's property. However, a stationary blind license shall be required in order to afford the riparian owners the protections provided by §§ 29.1-344, 29.1-345, and 29.1-349.

(1992, c. 237; 1993, c. 209.)

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§ 29.1-345. Stationary blinds in the public waters for nonriparian owners.

Unless a license has been obtained pursuant to § 29.1-344, and a stake or a blind has been erected and marked within the time stated as specified in that section, in any year, the owners of riparian rights, their lessees or permittees shall forfeit the privilege of licensing blinds on their shores and also lose priority for licensing stationary blinds in the public waters adjoining such shores. Any locations remaining in the public waters shall belong to whoever first obtains a license and erects a stake or a blind. The blind cannot be located in water having a greater depth than eight feet at mean high tide on the site selected. In addition, the blind must be at least 500 yards from any other stationary blind, and the license for that season must be properly affixed to the structure. The nonriparian license for a stationary blind in the public waters may be obtained on and after July 1 and on or before September 30. A stake or blind shall be erected on the site, and a license plate supplied with the license for that season must be affixed thereto by October 10.

(Code 1950, § 29-86; 1987, c. 488.)

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§ 29.1-346. When license for floating blinds issued; distance from stationary blinds.

Licenses for floating blinds permitted by law, in the public waters, may be obtained on and after July 1. Floating blinds shall have a license plate supplied with the license for that season affixed to the blind. Floating blinds, including any accompanying boat or tender, shall anchor or tie out at least 500 yards from any licensed stationary blind for shooting, whether on the shore or in the water, unless agreed otherwise between the parties.

(Code 1950, § 29-87; 1970, c. 579; 1987, cc. 94, 488.)

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§ 29.1-347. Renewing licenses.

The holders of licenses first issued under this article may renew the same privileges each succeeding year by licensing within the time required and placing the license tag on the stake or blind as required by this article. The exclusive privileges prescribed with respect to owners and their lessees and permittees in § 29.1-344 shall be recurrent each year even if the privileges were forfeited to some other person or persons in the preceding year. If any blind is destroyed in any manner beyond the control of the owner, it may be replaced within thirty days without losing the position which it formerly occupied. Those licensing stationary blinds in the public waters shall remove the blinds when the licenses expire or when they no longer intend to use them.

(Code 1950, § 29-88; 1987, c. 488.)

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§ 29.1-348. Obtaining licenses.

All applications for blind licenses under this article shall be made to the local license agent or clerk of the circuit court of the county or city in which or nearest which the blind site is located. The clerk or local license agent shall be paid similar fees as for issuing hunting licenses. With each license the clerk or local license agent shall deliver a license plate bearing the number of the license, which shall be affixed to the blind where it may be easily observed. The Department shall furnish the licenses and license plates provided for in this article. The money arising from the sale of blind licenses shall be paid into the game protection fund.

(Code 1950, § 29-89; 1987, c. 488.)

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§ 29.1-349. Hunting, erecting blind within 500 yards of licensed blind.

A. No person shall hunt or shoot migratory waterfowl in the public waters of this Commonwealth from a boat, float, raft or other buoyant craft or device within 500 yards of any legally licensed erected stationary blind of another without the consent of the licensee, except when in active pursuit of a visible crippled waterfowl which was legally shot by the person.

B. No person shall erect a stationary blind in the public waters within 500 yards of any other licensed blind without the consent of the licensee. Any person who violates this subsection shall be guilty of a trespass, and the affected blind licensee may maintain an action for damages. Furthermore, the trial court shall immediately revoke the blind owner's license for the stationary blind where the offense was committed. The blind owner may be eligible for a license in the following open season upon the same conditions that would apply to a new applicant. When a license for a stationary blind has been revoked, the blind shall be destroyed by the former licensee or by the game warden.

(Code 1950, § 29-90; 1954, c. 305; 1956, c. 318; 1987, c. 488; 2004, c. 422.)

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§ 29.1-350. Exemption from application of article.

The provisions of this article shall not apply to the shores and public waters and marshes of Accomack and Northampton Counties. However, in those localities no person shall hunt migratory waterfowl, whether from a blind or otherwise, without having obtained a season license to hunt.

(Code 1950, § 29-91; 1970, c. 644; 1987, c. 488; 1993, c. 209.)

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§ 29.1-351. Regulations to be issued; present regulations continued in force.

The Board shall have the power to amend or alter the provisions of this article by regulation prescribing a distance less than 500 yards between blinds whenever and wherever such action seems practicable and desirable. The Board may adopt other regulations concerning the use of such blinds as may appear advisable to meet changing conditions as to hunting migratory game birds. The regulations of the Board now applying to such hunting are hereby continued in force until amended or repealed by the Board; however, the Board shall not have the power to alter in any respect the privileges prescribed for owners and their lessees and permittees in §§ 29.1-344 and 29.1-347.

(Code 1950, § 29-92; 1987, c. 488.)

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§ 29.1-734. Authorization for and placing of markers in waters of the Commonwealth used for public swimming areas; no motorboating, waterskiing in marked area.

A. Any owner of real estate which touches any of the waters of this Commonwealth or the agent of the owner may petition the Board to authorize the placing of markers approved by the Board around a public swimming or bathing area.

B. The Department, upon receiving the petition and sufficient proof that the water adjacent to the real estate is used in whole or in part as a public swimming or bathing area, may authorize the placement of the markers to designate the area as a swimming or bathing area.

C. The cost of the purchase and placement of the markers shall be borne by the party requesting the placement of the markers.

D. No person shall operate a motorboat or manipulate skis within the area of the waters of the Commonwealth marked under this section. Persons violating this subsection shall be guilty of a Class 4 misdemeanor.

(1964, c. 654, § 62-174.5:1; 1968, c. 659, § 62.1-171; 1983, c. 475; 1987, c. 488.)

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§ 29.1-744. Local regulation; application for placement or removal of "no wake" buoys, etc.

A. Any political subdivision of this Commonwealth may, at any time, but only after public notice, formally apply to the Board for special rules and regulations with reference to the safe and reasonable operation of vessels on any water within its territorial limits and shall specify in the application the reasons which make the special rules or regulations necessary or appropriate.

B. The Board is authorized upon application by a political subdivision or its own motion to make special or general rules and regulations with reference to the safe and reasonable operation of vessels on any waters within the territorial limits of any political subdivision of this Commonwealth. Without limiting the generality of the grant of such power, a system of regulatory or navigational markers may be adopted by the Board. Nothing in this section shall be construed to affect the application of any general law concerning the tidal waters of this Commonwealth.

C. Any county, city or town of this Commonwealth may enact ordinances which parallel general law regulating the operation of vessels on any waters within its territorial limits, including the marginal adjacent ocean, and the conduct and activity of any person using such waters. The locality may also provide for enforcement and penalties for the violation of the ordinances, provided the penalties do not exceed the penalties provided in this chapter for similar offenses.

D. After notice to the Department, any county, city or town may, by ordinance, establish "no wake" zones along the waterways within the locality in order to protect public safety and prevent erosion damage to adjacent property. However, any county that is adjacent to an inland lake (i) more than 500 feet above sea level and (ii) of 20,000 acres or more and wholly located within the Commonwealth may, by ordinance, establish "no wake" zones along such lake within the locality in order to protect public safety or prevent erosion damage to adjacent property. The markers and buoys designating a no wake zone shall conform to the requirements established by the Board. Any marker or buoy which is not placed in conformance with the regulations of the Board or which is not properly maintained shall be removed by the locality. The locality may provide for enforcement and penalties for the violation of the ordinance.

E. Any person who desires to place or remove "no wake" buoys or other markers relating to the safe and efficient operation of vessels pursuant to any local ordinance shall apply to the local governing body. The local governing body shall approve, disapprove or approve with modifications the application and forward it to the Director, who shall approve, disapprove or approve with modifications within thirty days the placement and type of marker to be used or the removal of "no wake" buoys or other markers. The cost of the purchase and placement or the removal of the buoys or markers shall be borne by the person requesting the placement or removal of the buoys or markers. Any marker or buoy which is not placed in conformance with the regulations of the Board or which is not properly maintained may be removed by the Department. "No wake" buoys or other markers placed prior to July 1, 2001, shall only be removed when no longer required for the safe and efficient operation of vessels pursuant to any local ordinance.

(1960, c. 500, § 62-174.15; 1964, cc. 346, 654; 1968, c. 659, § 62.1-182; 1978, c. 598; 1982, c. 232; 1987, c. 488; 1997, c. 522; 1999, c. 489; 2001, c. 649.)

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§ 29.1-744.3. Slacken speed and control wakes near structures.

It shall be unlawful to operate any motorboat, except personal watercraft, at a speed greater than the slowest possible speed required to maintain steerage and headway when within fifty feet or less of docks, piers, boathouses, boat ramps, and people in the water. Nothing in this section shall prohibit a motorboat from towing a person with a rope less than fifty feet in length.

(1998, c. 857.)

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§ 29.1-744.4. "Pass-through" zones; local ordinances; penalties.

After providing notice to the Department, any locality may, by ordinance, establish "pass-through" zones in any portion of a waterway within its territorial limits where congestion of watercraft traffic routinely poses a significant safety risk to persons in such designated area. The ordinance shall provide that while in a pass-through zone, operators of watercraft shall maintain a reasonable and safe speed and shall be prohibited from stopping, anchoring, loitering, or otherwise engaging in recreational activity. The locality shall clearly identify pass-through zones by buoys or other markers that conform to the general requirements as established by the Board for similar buoys or markers. The locality may provide for enforcement and penalties, not to exceed a Class 4 misdemeanor, for the violation of the ordinance.

(2003, c. 780.)

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§ 41.1-1. Librarian of Virginia in charge of Land Office.

The Librarian of Virginia shall be in charge of and keep and preserve all records of the Land Office.

(Code 1950, § 41-1; 1952, c. 185; 1970, c. 291; 1998, c. 427.)

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§ 41.1-3. Grants of certain lands, etc., to be void; such lands, etc., under control of Governor.

No grant shall be valid or effectual in law to pass any estate or interest in (i) any lands unappropriated or belonging to the Commonwealth, which embrace the old magazine at Westham, or any stone quarry now worked by the Commonwealth, or any lands which are within a mile of such magazine, or any such quarry; (ii) any ungranted beds of bays, rivers, creeks and the shores of the sea under § 28.2-1200; (iii) any natural oyster bed, rock, or shoal, whether such bed, rock, or shoal shall ebb bare or not; (iv) any islands created in the navigable waters of the Commonwealth through the instrumentality of dredging or filling operations; (v) any islands which rise from any lands which are property of the Commonwealth under § 28.2-1201; or (vi) any ungranted shores of the sea, marsh or meadowlands as defined in § 28.2-1500. Every such grant for any such lands, islands, bed, rock, or shoal shall be absolutely void; however, this section shall not be construed to affect the title to grants issued prior to March 15, 1932. Such magazine and every such stone quarry and the lands of the Commonwealth adjacent to or in their neighborhood, shall be under the control of the Governor, who may make such regulations concerning the same as he may deem best for the interests of the Commonwealth.

(Code 1950, § 41-8; 1970, c. 291; 1991, c. 378; 1995, c. 850.)

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§ 62.1-6. Clearing watercourses between counties of obstructions.

The circuit court of any county which is divided by a watercourse from another county or through any part of which a watercourse passes may, by itself or in conjunction with the circuit court or circuit courts of any other county or counties, contract with any person or order laborers to be hired to clear such watercourse of obstructions in such manner and to such extent as may seem to it proper, and there shall be charged on any county whatever sum the court thereof may agree to pay for such purpose.

(Code 1950, § 62-4; 1968, c. 659.)

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§ 62.1-11. Waters declared natural resource; state regulation and conservation; limitations upon right to use.

- A. Such waters are a natural resource which should be regulated by the Commonwealth.
- B. The regulation, control, development and use of waters for all purposes beneficial to the public are within the jurisdiction of the Commonwealth which in the exercise of its police powers may establish measures to effectuate the proper and comprehensive utilization and protection of such waters.
- C. The changing wants and needs of the people of the Commonwealth may require the water resources of the Commonwealth to be put to uses beneficial to the public to the extent of which they are reasonably capable; the waste or unreasonable use or unreasonable method of use of water should be prevented; and the conservation of such water is to be exercised with a view to the welfare of the people of the Commonwealth and their interest in the reasonable and beneficial use thereof.
- D. The public welfare and interest of the people of the Commonwealth require the proper development, wise use, conservation and protection of water resources together with protection of land resources, as affected thereby.
- E. The right to the use of water or to the flow of water in or from any natural stream, lake or other watercourse in this Commonwealth is and shall be limited to such water as may reasonably be required for the beneficial use of the public to be served; such right shall not extend to the waste or unreasonable use or unreasonable method of use of such water.
- F. The quality of state waters is affected by the quantity of water and it is the intent of the Commonwealth, to the extent practicable, to maintain flow conditions to protect instream beneficial uses and public water supplies for human consumption.

(Code 1950, § 62-9.2; 1954, c. 330; 1968, c. 659; 1989, c. 410.)

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§ 62.1-13. Construction with reference to rights, etc., of counties, cities and towns.

Nothing in this chapter contained shall be construed as a declaration of policy of the Commonwealth to divest any county, city or town of its title or right to any water or of its powers conferred by law with respect to the disposition thereof; nor shall anything in this chapter be construed to authorize the impairment of any contract to which such county, city or town is a party, or to obligate any county, city or town to appropriate or expend any funds. The purpose of this chapter is to recognize the public use to which such water is devoted.

(Code 1950, § 62-9.4; 1954, c. 330; 1968, c. 659.)

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§ 62.1-164. Erection and abatement of private wharves, piers and landings.

Any person owning land upon a watercourse may erect a private wharf on the same, or private pier or landing, in such watercourse opposite his land; provided, such wharf, pier or land is for noncommercial purposes and navigation be not obstructed, nor the private rights of any person be otherwise injured thereby. The circuit court of the county in which such wharf, pier or landing is, after causing ten days' notice to be given to the owner thereof, of its intention to consider the subject, if it be satisfied that such wharf, pier or landing obstructs the navigation of the watercourse, or so encroaches on any private landing as to prevent the free use thereof, may abate the same.

(Code 1950, § 62-139; 1968, c. 659; 1972, c. 415.)

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§ 62.1-165. Erection of wharves at county landings.

Any person desiring the privilege of erecting a wharf at or on any county landing may, after giving notice of his intention by advertising such notice at some public place near the landing, and also at the front door of the courthouse of such county, on the first day of a term of the circuit court of the county, present to the court at its next term a petition for such privilege. The court may determine the same, and may, in its discretion, grant such privilege and fix such rates and charges upon such conditions and limitations as to it may seem fit. The court, at any subsequent term, may, if it think proper, revoke such privilege, or alter such conditions or limitations, or regulate the rates and charges. This section shall not be construed to authorize a circuit court of the county to grant the privilege of erecting a wharf within a city.

(Code 1950, § 62-140; 1968, c. 659.)

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Appendix C Gloucester County Code

CODE
County of
GLOUCESTER, VIRGINIA

Codified through
Ordinance of October 2, 2007.
(Supplement No. 42)
<http://www.municode.com/>

Chapter 21 WATERCRAFT AND WATER SAFETY*

***Editor's note:** An ordinance adopted June 7, 1983, repealed Ch. 21, entitled "Wharves, Harbors and Channels," which consisted of Art. I, §§ 21-1--21-5 and 21-30, concerning general matters and Art. II, §§ 21-31--21-35, concerning Aberdeen Creek. The repealed provisions derived from ordinances adopted March 22, 1962; Aug. 28, 1964; Dec. 28, 1972; Oct. 25, 1973; and Sept. 16, 1980. Additionally an ordinance amending Ch. 21, which had not yet been codified, concerning watercraft speed on Sarah's Creek, was enacted Nov. 16, 1982. The ordinance of June 7, 1983, enacted a new Ch. 21, to read as herein set out.

Cross references: Smoking near wharves, piers, etc., § 8-5(b).

State law references: Waters, ports and harbors, Code of Va., title 62.1; motorboats and water safety, Code of Va., § 52.1-166 et seq.

§ 21-1. Definitions.

§ 21-2. Speed.

§ 21-3. Wake.

§ 21-4. Recklessness.

§ 21-5. Alcohol and drugs.

§ 21-6. Channels.

§ 21-7. Trash, spoils and floating objects.

§ 21-8. Wharves.

§ 21-9. Signs.

§ 21-10. Enforcement.

§ 21-11. Penalties.

§ 21-12. Disposition of fines.

Sec. 21-1. Definitions.

For the purpose of this chapter, the following words shall have the meanings ascribed to them, respectively, by this section.

Channel shall mean the path of deeper water in a waterway that is normally followed by larger and deeper draft vessels. Channels may be dredged or determined by generally accepted practice.

Operate shall mean to navigate, cause to be propelled or otherwise use a vessel.

Person shall not mean or be interpreted to include any law-enforcement officer while acting in the lawful discharge of his duties to the extent that his actions might or would otherwise constitute a violation of section 21-2 or section 21-3 hereinafter.

Vessel shall mean every description of watercraft, other than seaplanes, used or capable of being used as a means of transportation on water.

Wake shall mean the swells, wave wash or displacement waves created by moving vessels.

Waterways shall mean all bodies of water within the territorial limits of Gloucester County upon which a vessel may operate.

Wharf shall mean an artificial structure into a body of water from the shore, to be used for the reception of boats and watercraft.

(Ord. of 6-7-83)

Sec. 21-2. Speed.

No person shall operate a boat or any vessel on the waterways of Gloucester County at a speed in excess of ten (10) miles per hour within one hundred (100) yards of marked swimming or underwater diving areas. Observing this speed limit does not relieve the operator of the requirement to create no wake as noted in section 21-3 below.

(Ord. of 6-7-83; Ord. of 8-16-88; Ord. of 9-5-95; Ord. of 11-8-95)

Sec. 21-3. Wake.

No person shall operate a vessel on the waterways of Gloucester County in any manner that creates a wake of such magnitude as to cause damage to other vessels or wharfs or to cause soil to be moved or to cause other damage to the adjacent shoreline.

(Ord. of 6-7-83)

Sec. 21-4. Recklessness.

No person shall operate a vessel on the waterways of Gloucester County in such manner as to endanger the life or limb of any person or to endanger, damage or destroy the property, whether real or personal, of any person.

(Ord. of 6-7-83)

State law references: Similar state law, Code of Va., § 62.1-176(a).

Sec. 21-5. Alcohol and drugs.

No person shall operate a vessel on the waterways of Gloucester County while under the influence of alcohol or under the influence of any other self-administered intoxicant or drug, of whatsoever nature.

(Ord. of 6-7-83)

State law references: Similar state law, Code of Va., § 62.1-176(b).

Sec. 21-6. Channels.

(a) No person shall moor, anchor, tie up, or stop any vessel in any channel of the waterways of Gloucester County in such a manner as to prevent or obstruct the approach, passage or berthing of any other vessel.

(b) No person shall voluntarily or carelessly sink, or permit or cause to be sunk, any vessel in channels of the waterways of Gloucester County. Whenever any vessel is wrecked or sunk in a channel it shall be the duty of the owner thereof to immediately mark such vessel with a buoy, and a lighted lantern at night, and maintain such markers until the vessel is removed, which removal shall be accomplished by the owner, promptly and diligently.

(Ord. of 6-7-83)

Sec. 21-7. Trash, spoils and floating objects.

(a) No person shall deposit or cause to be deposited, in any channel or along the shores of the waterways of Gloucester County or in any of the streams or ditches emptying therein, or on any of the land adjacent to such waterways, any refuse, offal, waste matter or other substance, whether earth, oil, animal, fish or vegetable matter, or any other matter that may injuriously affect the sanitary, clean, safe condition of said waterways, or diminish the depth thereof.

(b) No person shall voluntarily or negligently permit lumber, logs or other objects, which may endanger the operation of vessels, to float on the waterways of Gloucester County.

(Ord. of 6-7-83)

State law references: Throwing trash into or obstructing river, creek, etc., Code of Va., § 62.1-194.2.

Sec. 21-8. Wharves.

(a) Public wharves in Gloucester County are for the use of the general public and shall be open to all vessels both recreational and commercial.

(b) The board of supervisors may, from time to time, designate certain portions of any wharf or pier owned or controlled by the County of Gloucester for commercial use only, for recreational use only, for loading or unloading, for overnight mooring, or for any other purpose deemed appropriate by the board.

(c) Any cargo, vessel, or equipment, of whatsoever kind, placed upon or moored to the wharf or pier shall remain there solely at the risk of the owner, and the wharf shall be available for the use of the general public on equal terms with the owner of such property while such property remains on the wharf.

(Ord. of 6-7-83; Ord. of 12-19-89)

Sec. 21-9. Signs.

The county administrator is hereby authorized to post or cause to be posted such signs or buoys as he shall deem appropriate to assist in the administration of this chapter, providing the placement thereof is approved by the board of game and inland fisheries pursuant to section 29.1-744(D) of the Code of Virginia. The posting of such signs or buoys shall be considered as informative only, and whether posted or not, may in no way be considered as limiting the applicability of this chapter.

(Ord. of 6-7-83; Ord. of 9-5-95)

Sec. 21-9.1. Unsafe swimming or wading areas.

(a) The county administrator or his designee is authorized to prohibit swimming, wading or entering of the water at such times and in such area or places as may be determined to be unsafe. Such areas shall be designated with appropriate signs or markers and no person shall swim, wade or enter the water in any area so designated and marked except in connection with the legitimate launching or landing of watercraft.

(b) Any person who violates this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than one hundred dollars (\$100.00).

(Ord. of 7-18-89; Ord. of 9-5-95)

Sec. 21-10. Enforcement.

Except as may be elsewhere provided, every game warden, marine resources commission inspector and every other law enforcement officer of this state and its subdivisions and of the United States Government shall have the authority to enforce the provisions of this chapter and in exercise thereof shall have the authority to stop any vessel subject to this chapter and, after identifying himself in his official capacity, shall have the authority to issue summons to appear in district court of this county or to make an arrest.
(Ord. of 6-7-83)

Sec. 21-11. Penalties.

Any person who violates any provision of this chapter, unless otherwise specified, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than two hundred fifty dollars (\$250.00).
(Ord. of 6-7-83; Ord. of 9-5-95)

Sec. 21-12. Disposition of fines.

The proceeds accruing to the county from all fines collected shall be deposited in the general revenue fund of Gloucester County.
(Ord. of 6-7-83)

Chapter 13.5 PUBLIC PARKS AND RECREATION FACILITIES*

ARTICLE II. REGULATIONS GOVERNING PUBLIC PARKS AND RECREATION FACILITIES

Sec. 13.5-2. Alcoholic beverages and controlled substances prohibited.

(a) No person shall consume or possess an open or previously opened container containing any alcoholic beverage, or be under the influence of an alcoholic beverage while in public parks and recreational facilities.

(b) No person shall consume, possess or be under the influence of any controlled substance, as defined by the Code of Virginia, while in public parks and recreational facilities.

(Ord. of 3-5-2002)

Sec. 13.5-3. Operating or parking vehicles in recreational facilities generally.

No person shall operate or park any vehicle in public parks and recreational facilities except on the roadways and parking areas provided and/or designated for this purpose. Nor shall any vehicles be parked in a manner as to impede or obstruct the normal, safe flow of traffic.

(Ord. of 3-5-2002)

Sec. 13.5-4. Games of chance prohibited.

No person shall engage in games of chance in public parks and recreational facilities.

(Ord. of 3-5-2002)

Sec. 13.5-5. Concealed weapons prohibited.

Unauthorized persons shall not carry concealed weapons, nor shall they have on or about their person dangerous or deadly weapons other than firearms, in public park and recreational facilities.

(Ord. of 3-5-2002)

Sec. 13.5-6. Discharge of firearms or shooting of bows.

It shall be unlawful to discharge any firearm to include any weapon which propels a projectile by pneumatic means, or shoot any bow in any public park or recreational facility. Provided however, that the director may grant permission to discharge firearms or shoot arrows as part of an approved event or program.

(Ord. of 3-5-2002)

Sec. 13.5-7. Open fires.

No person shall make a fire in public park and recreational facilities other than in grills, fireplaces or other areas as designated and approved for such use by the director. All fires shall be closely monitored and completely extinguished by persons starting and using them before those persons leave the immediate vicinity.

(Ord. of 3-5-2002)

Sec. 13.5-8. Use of public park and recreational facilities by children.

No parent or guardian shall permit a child under the age of thirteen (13) years, or such other age as is specifically posted by the director, to make use of public park and recreational facilities without providing for direct supervision of the child. Provided, however, that no person under the age of sixteen (16) years shall be permitted on the property know as Cedar Bush Creek Public Landing unless such person is accompanied by and under the continuous direct supervision of an adult.

(Ord. of 3-5-2002)

Sec. 13.5-9. Skateboards, skates and rollerblades.

No person shall ride or use a skateboard, skates or rollerblades in public parks and recreational facilities except in areas so designated for such use.

(Ord. of 3-5-2002)

Sec. 13.5-10. Toilets; cleanliness and use.

No person shall fail to cooperate in maintaining restrooms in a neat and sanitary condition. No person over the age of six (6) years shall enter restrooms designated for the opposite sex. There shall be no loitering in the restrooms.

(Ord. of 3-5-2002)

Sec. 13.5-11. Preservation of natural resources and public buildings and property.

The possession, destruction, injury, defacement, removal or disturbance in any manner of any building, sign, equipment, monument, statue, marker, or other structure, or of any animal or plant matter and direct or indirect products thereof, including, but not limited to, wood, bulb, or annual flowers, egg, nest or nesting site, or of any soil, rock, fossil, mineral formation, phenomenon of crystallization, artifact, relic, historic or prehistoric feature, or of any other public property of any kind, is prohibited, except as otherwise provided in this section or by special permit. A person shall not dig in or otherwise disturb grassy areas, or in any other way injure or impair the natural beauty or usefulness of any area.

Unless specifically permitted by special regulations, the collection of plants, rocks, minerals, animal life or other natural objects is permitted only in accordance with written permits obtained in advance from a park ranger. No permits will be issued to individuals or associations to collect specimens for personal use, but only to persons officially representing reputable scientific or educational institutions in procuring specimens for research, group study or museum display.
(Ord. of 3-5-2002)

Sec. 13.5-12. Control of litter.

No person shall throw, deposit or leave any litter, refuse or rubbish of any kind in public parks and recreational facilities except in public receptacles and in such manner that the litter, refuse or rubbish will be prevented from being carried by the elements. Where public receptacles are not provided all such litter, refuse or rubbish shall be carried away from the area by the person responsible for its presence and properly disposed of elsewhere.
(Ord. of 3-5-2002)

Sec. 13.5-13. Control of animals.

No person shall permit his animal to run at large. In the case of a dog, the owner or his agent shall secure the animal by a collar with a chain, cord or leash not exceeding eight feet in length, and have the animal under complete and immediate control.
(Ord. of 3-5-2002)

Sec. 13.5-14. Instruction.

No person other than those authorized by the director shall offer instruction in public park and recreational facilities.
(Ord. of 3-5-2002)

Sec. 13.5-15. Hours of operation.

The director shall establish hours of operation for public parks and recreational facilities; the hours may prohibit use of certain facilities at certain times. Hours for public parks and recreational facilities will be posted. Provided, however, that Cedar Bush Creek Public Landing shall be closed to the public beginning at 10:00 p.m. each day, and shall remain closed to the public until 5:00 a.m. on the following day, except that persons over the age of sixteen (16) years engaged in boat launching and boat retrieval may use the facilities for those purposes only. Provided further, that the hours of operation for Abingdon Park shall be sunrise to sunset when Abingdon Elementary School is not in session or when expressly permitted by the Gloucester County School Board.
(Ord. of 3-5-2002)

Sec. 13.5-16. Permits for use of public park and recreational facilities.

Permits for the use of public park and recreational facilities may be required by the director. Where permits are required, no person shall engage in or make use of any park and recreational facility without first paying for same and adhering to the rules and regulations governing use of said facility.
(Ord. of 3-5-2002)

Sec. 13.5-17. Leasing of park facilities; charges for use of such facilities and admission to recreation activities.

When authorized by the board of supervisors and upon such terms and conditions as it may provide, the public parks and recreation facilities may be leased. The director shall fix and collect charges for the use of the facilities and services, fix and collect charges for admission to concerts, entertainments and other recreational activities sponsored by it.
(Ord. of 3-5-2002)

Sec. 13.5-18. Posting advertisements; sale of goods generally.

(a) No person shall post, distribute, circulate or display any notice, banner, advertisement or printed material in any park or recreational facility without written permission of the director.

(b) No person shall offer for sale or rent any goods, articles, privileges, commodities or services whatsoever or solicit for any purpose in any recreational facility without obtaining written permission from the director, and for such time and at such places as the director may determine. This section shall not be construed to apply to the sale of food, soft drinks and other like goods pursuant to section 13.5-19.

(Ord. of 3-5-2002)

Sec. 13.5-19. Sale of food and soft drinks; canteen concessions.

The sale of foods, soft drinks or other like goods is prohibited in any park or recreational facility, except from canteens or concessions operated by concessionaires authorized by the director.
(Ord. of 3-5-2002)

Sec. 13.5-20. Washing, repairing or servicing vehicles.

No person shall use any park or recreational facility for washing, repairing or servicing, other than replacing a flat tire, of any vehicle designed for self-propulsion. Abandonment of such vehicles is prohibited. If mechanical disablement occurs, immediate steps must be taken for removal.

(Ord. of 3-5-2002)

Sec. 13.5-21. Use of nature trails, pedestrian paths, etc.

No persons other than those authorized by the director shall operate a motorized vehicle upon nature trails, pedestrian paths, and bikeways specifically designated and established for such use.
(Ord. of 3-5-2002)

Sec. 13.5-22. Operation of nonlicensed motorized vehicles.

No person shall operate a nonlicensed motorized vehicle in any park or recreational facility unless in an area specifically designated for such use by the director.
(Ord. of 3-5-2002)

Sec. 13.5-23. Use of electronic metal-detecting devices.

No person shall utilize any type of electronic metal-detecting device prohibited in any recreational facility.
(Ord. of 3-5-2002)

Sec. 13.5-24. Bathing and swimming.

Swimming or wading of any type, kind, or description is prohibited in Beaverdam Reservoir and Park.

At Gloucester Point Beach no person shall swim, bathe, or wade in any waters or waterways in or adjacent to any public area, except in such places as are designated therefore and in compliance with such regulations as are herein set forth or hereafter adopted.

No person shall go in or on any waters or place customarily designated for the purpose of swimming or bathing, or congregate there, when such activity is prohibited by the appropriate county employee.

No person shall erect, maintain, use or occupy on or in any beach or bathing area any tent, shelter or structure of any kind.

(Ord. of 3-5-2002)

Sec. 13.5-25. Boating.

No person shall bring into or operate any watercraft upon any waters designated as a public swimming or bathing area, unless during a sailing regatta or other activity sponsored or authorized in writing by the director.

No person shall tie or secure any watercraft to a marker or piling used to designate a protected swimming or bathing areas.

Water-skiing or using personal watercraft, as such term is defined in Section 29.1-700, Code of Virginia, 1950, as amended, within fifty (50) feet of boat launching areas, piers, cofferdams, docks, mooring areas, or within one hundred (100) feet of designated swimming areas is prohibited.

Operation at Beaverdam Reservoir and Park of any internal combustion engine of any description whatever, especially of a gasoline-powered engine for propulsion of any boat, regardless of size is prohibited. Operation of any wind-propelled vessel, including, but not limited to, a sailboat or windsurfer is prohibited. Operation of any electric motor vessel that has not been licensed by the Commonwealth of Virginia, or, operation of any vessel without a U.S. Coast Guard approved flotation device for each and every person on board is prohibited.

(Ord. of 3-5-2002)

Sec. 13.5-26. Hunting, trapping and fishing.

No hunting or trapping of any type, kind or description is allowed.

It shall be unlawful to fish within twenty-five (25) feet of boat landing areas or designated swimming areas.

(Ord. of 3-5-2002)

Sec. 13.5-27. Sledding and ice skating.

No ice skating or sledding shall be permitted unless authorized in writing by the director.

(Ord. of 3-5-2002)

Sec. 13.5-28. Rules and regulations.

The director shall have the right to promulgate rules and regulations for the operation of public parks and recreation facilities and the activities therein. Such rules and regulations shall be

posted at such park and recreation facility and available for review in the office of the county administrator.
(Ord. of 3-5-2002)

Sec. 13.5-29. Penalties for violations of chapter.

Any person violating any provision of this chapter or any rule or regulation duly adopted hereunder shall be guilty of a Class 2 misdemeanor, unless otherwise specifically provided. In addition, such person may be ejected from the park, building or other facility wherein the violation occurred, or permanently banned from county parks and recreational facilities.
(Ord. of 3-5-2002)

Appendix D Committee Assessment Matrix

D

DRAFT- Management Concepts- DRAFT

Issue Area	Perspective 1	Perspective 2	What should local government do?	High Priority	Med Priority	Low Priority
Residential Property Owners -v- Commercial Pier Use	Homeowner concerns of sight, smell, noise, time of use etc	Commercial pier supports an important part of the economy	<p>**Incorporate areas for commercial piers and working waterfront in long range Comp Plan as both a land use and as preservation of the rural character of the area, economic generator and part of the cultural fabric of the community that needs to be preserved.</p> <p>**appropriate zoning for commercial piers and other water based activities so that the land uses can be separated and buffered. By creating a zone which identifies specific permitted uses, including commercial piers and aquaculture activities the public and adjoining land owners are aware of the potential uses permitted on the site.</p> <p>****Regulate pier use with ordinances; regulate it in terms of the hours of operations, excessive noise levels, pollutants, trash and waste product disposal/accumulation, etc</p> <p>If the pier was in existence prior to</p>	10	2	3

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Issue Area	Perspective 1	Perspective 2	What should local government do?	High Priority	Med Priority	Low Priority
Residential Property Owners -v- Commercial Pier Use continued	Homeowner concerns of sight, smell, noise, time of use etc	Commercial pier supports an important part of the economy-	<p>zoning and the homeowner purchased the home with the pier already there, then they knew what they were getting into. There is not likely to be a proliferation of commercial pier operations since the seafood industry is in decline, so the system for permitting as it exists is adequate</p> <p>**partnering with state agencies to provide a public commercial pier appropriately located relative to other uses</p> <p>**Lobby state and federal agencies to support commercial piers as a cultural and economic benefit</p> <p>**Similar marketing/ education strategies discussed above to create better understanding and acceptance (tolerance) between uses and users</p> <p>Local government should be focusing on obtaining county owned sites for the commercial waterman to land and tie up their boats</p> <p>We need to maintain what piers we have. Receive recommendations from the homeowners and find some</p>			

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Issue Area	Perspective 1	Perspective 2	What should local government do?	High Priority	Med Priority	Low Priority
3 DRAFT			compromise that each can live with.			
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Issue Area	Perspective 1	Perspective 2	What should local government do?	High Priority	Med Priority	Low Priority
Floating Homes -v Residential Property Owner	I bought this floating house and I can motor it any place I can float it.	Homeowner concerns of wake/erosion, noise, sight, time of use, view shed encroachment, property value loss	Local government should be working to draft an ordinance to prohibit this from being allowed within the county's jurisdiction	9	4	1
			**Establish no discharge zones to discourage discharge from these and other boats.			
			**Address and evaluate this issue in the Comprehensive Plan relative to the impacts associated with such uses (environmental, traffic, services needed) and determine how and where this use should be permitted if at all and what are the requirements for such uses by local and other agencies.			
			****Enact and enforce zoning that could regulate this use if it is a residential use that will result in impacts to the County that are not addressed by regulating the residence as a "boat".			
			**Lobby the state and federal agencies to also address this issue from their regulatory framework (navigation, clean water act, etc.)			
			Create water zoning to protect			

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Issue Area	Perspective 1	Perspective 2	What should local government do?	High Priority	Med Priority	Low Priority
Private pier lights -v- Adjoining Residential Property Owner	It's my pier and I can have a light on the end and it can be a bright as I want	The light from my neighbors pier is lighting up the inside of my house all night long	<p>*****Local government should regulate bright pier lights at night and/or establish dark sky ordinances</p> <p>**Incorporate these issues in the Comprehensive Plan</p> <p>**Lobby the state and federal agencies to support the County in limiting lighting due to the regional and global impacts of excessive lighting on the natural environment.</p> <p>**Local government should stay out of this topic!</p> <p>The county should be involved but must balance the issue of security and vandalism against lighting concerns. Not sure how to do this, but a blanket regulation is not the answer.</p>	6	2	3

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Issue Area	Perspective 1	Perspective 2	What should local government do?	High Priority	Med Priority	Low Priority
Working Waterfront Infrastructure -v- Residential development	We need more places to land our commercial boats and catch	I want that stinky fish house closed down or someone should build condos there.	*****Local government should be proactive in establishing sites and maintaining (and protecting) working waterfronts to preserve the historical/traditional character of the region. Incorporate areas for commercial piers and working waterfront in long range Comp Plan Provide appropriate zoning for existing and future commercial piers and other water based activities Consider partnering with state agencies to provide a public commercial pier appropriately located relative to other uses Lobby state and federal agencies to support commercial piers as a cultural and economic benefit Determine the economic viability of commercial seafood business based their location. If viable, partner with other agencies to provide incentives (like conservation easement or land use taxation, PDR, TDR)	5	3	0

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Issue Area	Perspective 1	Perspective 2	What should local government do?	High Priority	Med Priority	Low Priority
8 DRAFT			<p>Decide what's going to benefit the county more.</p> <p>A reality in some counties but county budgets are pretty strapped to be buying waterfront property</p>			DRAFT

Issue Area	Perspective 1	Perspective 2	What should local government do?	High Priority	Med Priority	Low Priority
Need for more public access -v- Waterfront property owners	I don't have access to the water.	I am all for access, but not on my street. Put it someplace else. I don't want added safety problems	<p>***Hearings should be held and environmental impact studies (and/or impact on surrounding residents should be conducted).</p> <p>The wetlands board should also be involved.</p> <p>**The locality should plan (Comp Plan, CIP, recreational planning, transportation planning) for public access</p> <p>***The locality should support public access to the water and provide public access for a variety of uses appropriate to the location</p> <p>Local Government can take active role in assuring homeowners of the positive side of more access</p> <p>Apply proper zoning for water access and residential areas</p> <p>Establish a fund to purchase adjoining property as buffer between private and public uses</p>	4	2	1

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Issue Area	Perspective 1	Perspective 2	What should local government do?	High Priority	Med Priority	Low Priority
Commercial Waterman -v- Residential Property Owner	Commercial waterman: commercial fishing is part of the economy, we were here before the homeowner, and we have the right to fish and make a living	Homeowner concerns of navigation, safety, time of use, sight, noise, smell, increased commercial fishing activity and property values	<p>**Local government should get involved in "near shoreline" issues where riparian rights are not clearly defined or are in dispute... County government needs to study this further and establish an ongoing committee to monitor and assess</p> <p>wetlands boards need to be involved</p> <p>**** "social" marketing program to educate both sides</p> <p>***use of zoning to create established buffers and separation of uses</p> <p>local govt could allow a home occupation with certain guidelines for new operations</p> <p>**Local government should stay out of this topic!</p> <p>this is a vmrc issue</p>	4	3	3

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Issue Area	Perspective 1	Perspective 2	What should local government do?	High Priority	Med Priority	Low Priority
Recreational Fisherman and waterfowler -v- Residential development	The development is going to ruin my speckle trout fishing area or my duck hunting location	I can build homes anywhere I can get a permit to build one	<p>**The wetlands board and the county should conduct environmental impact studies to determine if such issues exist before they authorize permits</p> <p>3</p> <p>Fully evaluate permit and impact on recreation before allowing homes to be built</p> <p>****The locality needs to plan for development so that it is properly located and the impacts to water quality are minimized and continue to enforce the performance standards already in place to protect water quality; (have zoning for building permits)</p> <p>Local government should zone areas to allow for “green space” – undeveloped lands</p> <p>***The county can look to use certain tools to limit new development without taking away all property rights (con easements, PDRs, TDRs, etc)</p> <p>**Establish a fund to purchase sensitive areas</p>			1

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Issue Area	Perspective 1	Perspective 2	What should local government do?	High Priority	Med Priority	Low Priority
Public Trust Uses and Resources -v- Residential property owner	Public has right to enjoy public resource in all public water areas	Private property: I paid a lot of money for my property and view. I want to control who and when people use public water areas.	<p>**Local government should regulate all activities on shore and anything connected to the land such as boat ramps and public piers. There should be reasonable hours of operation and prohibitions against excessive noise, disorderly conduct, loitering, etc.</p> <p>Neither view is correct. There is no general action that can be taken. Instead, the balance must be struck based on the specific conflict.</p> <p>**Local government should stay out of this topic!</p> <p>Educate the public that they bought waterfront property, but they didn't buy the water. Waterfront Homeowners Guide and/or a Waterfront Users Guide.</p> <p>Create water zoning to protect residential waterfront property owners and public interests. Realize that aquaculture limits public access to public water areas as well</p> <p>Insure all public water areas are clean and they should be monitored for any misuse, neglect, loitering, etc.</p>	2	2	1

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Issue Area	Perspective 1	Perspective 2	What should local government do?	High Priority	Med Priority	Low Priority
Motorized and non motorized boater (jet ski, water skiing Canoeer/ Kayaker) -v- Residential property owner	I have a right to take my watercraft on public waters anytime and anyplace I chose	Homeowner concerns of wake/erosion, safety,	<p>**Motorized watercraft present a far greater hazard than kayaks and canoes and should be regulated by the county or the wetlands board where there is an erosion issue. Accidents should be dealt with in local courts. Documented and ongoing safety issues should be dealt with by local government with restrictions on areas in which they can operate.</p> <p>***Establish no wake (or other, ie no jetski) zones</p> <p>**Educate all users about conflicts and "rules of the road" for watercrafts</p> <p>***Safety on the water is a coast guard/marine police issue. Erosion is a VMRC/local wetlands board issue.</p> <p>Local government should stay out of this and let state and federal laws govern</p>	2	5	1

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Issue Area	Perspective 1	Perspective 2	What should local government do?	High Priority	Med Priority	Low Priority
Public Fishing Pier -v- Adjoining residential property owner	I don't have waterfront access. This pier is all I have	Homeowner concerns of safety, time of use, sight, noise, smell, increased loitering	<p>****Local government should regulate it in terms of hours of operation and enforcement of county laws pertaining to disorderly conduct, public drunkenness, loitering, excessive noise and cleanliness.</p> <p>The locality should identify current and future locations for public piers in its comprehensive plan to allow purchasers of property to know exactly what they are buying. The County should establish a fund for the purchase of adjacent property to serve as a buffer between the public and private uses. The fishing pier at Gloucester Point is a good example</p> <p>**Local government should be supporting public fishing piers when and where appropriate</p> <p>education of adjoining property owners and the users these rules will go a long way in avoiding conflict.</p> <p>**Local government should control this with zoning</p> <p>**Should be a joint VMRC/local permitting issu</p>	2	2	1

Issue Area	Perspective 1	Perspective 2	What should local government do?	High Priority	Med Priority	Low Priority
Commercial Fishing Equipment -v- Recreational use	I have just as much right to crab or fish here as you have to boat here	I can't safely boat or swimmers around crabpots, cages and nets etc	<p>**This is probably the domain of the VMRC but the local courts should get involved if there is destruction of property, vandalism or threats/assaults.</p> <p>*****Local government should stay out of this topic (and/or let VMRC handle/take lead)</p> <p>Education again is an important component for protecting the safety of those boating or swimming near commercial fishing equipment.</p> <p>**Create water zoning to protect recreational uses.</p>	2	2	1

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Issue Area	Perspective 1	Perspective 2	What should local government do?	High Priority	Med Priority	Low Priority
Waterfowling -v- Residential property owner	I have a right to waterfowl and build blinds where I can legally build one	Homeowner concerns of sight of duck blinds, guns, dogs, time of gunning	<p>*****Local government should not be involved (and/or other agency/regulation handling)</p> <p>I am not sure this is a problem</p> <p>educate the public about this use and the rights of the public to use the water for hunting</p> <p>Ensure safety of homeowner. Create ordinances that limit the size and duration of duck blinds in public water</p> <p>The county has the rights to regulate arms used to hunt. As long as they are not trespassing it should be a game warden issue.</p>	1	2	3
18 DRAFT	DRAFT	DRAFT	DRAFT	DRAFT	DRAFT	DRAFT

Issue Area	Perspective 1	Perspective 2	What should local government do?	High Priority	Med Priority	Low Priority
Commercial Fishing Equipment -v- Recreational use	Commercial waterman's concerns of damage to cages or nets. Who is going to pay me for my lost or damaged equipment	Get that stuff out of here. I boat and swim here.	<p>***Local courts will settle such disputes if damages to equipment are involved.</p> <p>**Not traditionally a problem (but now too many crabpots)</p> <p>**The locality should work with the state to identify areas of the Bay where aquaculture can be located, preferably areas that are good for aquaculture with minimal impacts to property owners and navigation.</p> <p>Local land use planning could then be used to protect those areas (the zoning proposal on the Eastern Shore is a good example).</p> <p>**If necessary, locality should seek to zone waters within its jurisdiction to identify and enforce these aquaculture zones. (w/VMRC)</p> <p>**Local government can work with VMRC to manage/enforce</p> <p>The state and localities need to prepare for the possibility that aquaculture "takes off"</p>	1	4	0

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Issue Area	Perspective 1	Perspective 2	What should local government do?	High Priority	Med Priority	Low Priority
20 DRAFT			Local government should stay out of this topic!			
				DRAFT	DRAFT	DRAFT

Issue Area	Perspective 1	Perspective 2	What should local government do?	High Priority	Med Priority	Low Priority
Duck Blinds -v- Commercial fishing	DGIF gave me a permit to build this duck blind and I am building it here	I use that area for aquaculture, you cant duck hunt here	Not a problem *****Local government should stay out of this topic/this is domain of different entities (DGIF, VMRC, individuals, etc)	0	0	4

Appendix E Maine and Maryland Conflict Management

Moosabec:

*the Downeast fishing community
of Beals and Jonesport*



*A Working Waterfront
for over 200 years –
facing the changes
of the next century...*

This is not a promotional brochure.

Skyrocketing real estate prices tell us what we already know: this idyllic part of the coast has been found and change is upon us.

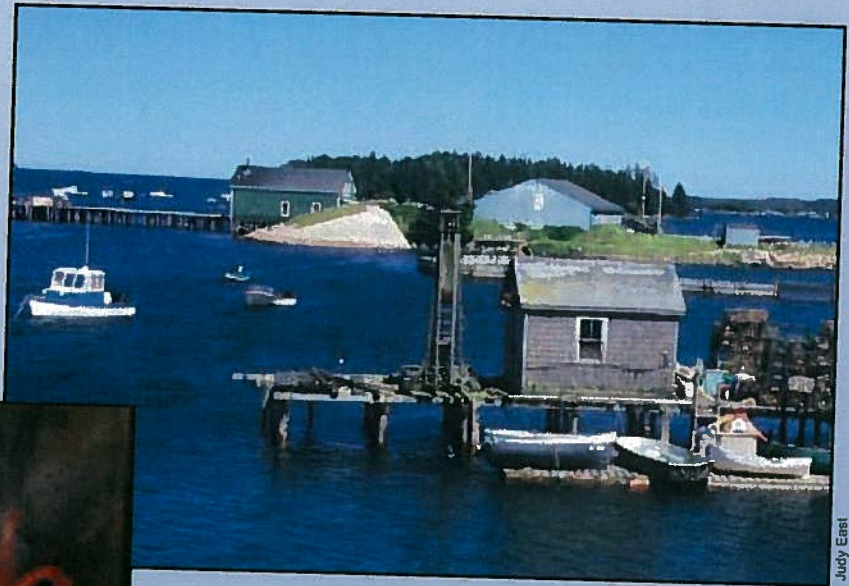
While we have limited ability to influence some changes — federal fishing regulations, escalating property taxes, state tax laws or the pressure of a retiring population drawn to our scenic corner of the world — recent community surveys reveal that the authentic Moosabec fishing community is something valued by long time residents and newcomers alike. Many agree that “preserving the area’s beauty and traditional way of life is top priority.”

As change envelops us, we wish to preserve the things we cherish about our community and need for our livelihoods: access to our shores and a viable working waterfront. This brochure seeks to develop constructive relationships to work out our differences in a direct and respectful way.



What is an authentic
fishing village?

The tourism and real estate
brochures tell one story: the
sight of sparkling water
and the imagined taste of
fresh lobster on the plate.



Judy East



*What does it really mean to live year
round in a working fishing community?*

*A true appreciation calls not just on
sight and taste but on all five senses...*

Sounds

Like songbirds, diesel engines all have their own unique sounds. Can you tell the difference between the high whine of a Detroit or the low rumble of a Caterpillar? Both are used on fishing boats. The International engine of the local school bus will rumble through the neighborhood at about 7 a.m. But your local fishermen will be headed for breakfast in a cold pickup and a cloud of blue smoke, with a *hoa hoa chicka chicka chong* rumble clatter at 4 a.m. And that might start the neighbor's dog barking...and then your dog to respond...

After the rest of us get up, there are the gulls that pull apart your compost pile, steal chicken off the outdoor grill, and generally shriek their disapproval while depositing their "business" on your deck furniture.

What do you like and what would you preserve about this place?



Natalie Springuel

I would preserve ... *"The heritage and rustic beauty of a functional seaport and active (even at 4 a.m.) fishing village."*

Sights

A working waterfront has people in it. The tools of their trade are evident everywhere you look. It is not a place of manicured lawns and carefully landscaped gardens. While many take pride in their homes, there is still a lot of stuff around: traps, drags, boats, engines, blocks, winches, and assorted fishing equipment. Also, in front of costly shorefront property, the clam and worm diggers will be working the flats when the tide is out. Beyond this buzz of activity will be the island-studded coast and a fleet of boats working the water.



Nancy Beal

I like that *"It's an authentic fishing village for people whose living comes from the sea."*

Smells

In addition to the salty summer breezes and the aroma of spruce and fir, there are other odors at the more pungent end of the spectrum. While it may wrinkle your nose, to fishermen the smell of bait is the smell of money. Fish waste, clam shells and salmon pens contribute to the bouquet. And the fumes of diesel exhaust provide a constant reminder that this community is at work getting a product to market and food onto the table.

Touch

At times the night sky is so thick with stars you think you can reach out and touch them. At other times, the air is so thick with fog you can cut it with a knife. This "Downeast air conditioning" arrives pretty regularly in the afternoon or early evening. Sometimes it lasts all day - or all week. Like the typical car commercial, the travel photos are all shot from newly paved roads. After a few wheel alignments, cracked windshields from driving over gravel roads, and ever-higher tax bills to pay for road repairs, you will be well acquainted with the tough decisions of a rural balance sheet: pavement or gravel? full-time or part-time police protection? garbage pick-up or pay-as-you-throw?

Tastes

The tang of the salt air reaches your lips while you comb the beach for shells, but if you do not conserve fresh water, salt water will be pouring from your tap as well. Beals especially, but coastal Jonesport as well, has a very shallow aquifer of freshwater from which we all drink. It will sustain a community's necessities but it will not sustain suburban lawns, daily car washes or other luxury practices. Learn to conserve water (www.waterconserve.info/) and enjoy fresh water into the future.



I like that ... "the economy revolves around fishing."

And that sixth sense -

Intuition...Character...Relationships.

The roads of a small community get us from Point A to Point B, but the rules of the road are different. Parking signs are often ignored. Cars and trucks are often stopped (yes, in the middle of the road) for a quick chat, to discuss the catch, to plan the next morning's departure, and then to move along home. Very large boats may be in transit down the middle of the road. Don't blow your horn. Just slow down, weave around the community obstacle course and give your neighbors a wave.

How do you see this community in the future?



Nancy Beal

I hope that ... "it stays the working village - and not become 'another' coastal village for the 'rich'."



Nancy Beal

I want to preserve ... "the freedom to get to the shoreline and be able to walk it."

Private property rights are important, but getting along with the community in which you live is just as critical. The private landowner can always exert final authority and POST, but think about the neighborly alternatives first.



Sarah Glodu

In towns where families have lived for generations, people looked out for one another. If a boat broke from its mooring, the first reaction was to help secure it and find its owner. Too often now, however, community care has been replaced by liability insurance. Those who might have helped in the past are reluctant to get involved because they might get "blamed" and, increasingly, are posting their wharves.

This kind of tear in the fabric of a community often comes with change. It is associated with lack of trust on both sides.

Building trust takes time and energy, the energy of reaching out and communicating. Newcomers are welcomed to the community, but cautiously. Those who live and work here want to protect what is special about it and what sustains them. Those who have joined the community most successfully are those who learn about it, appreciate it, and participate in it. In the face of change, liability, and litigation we still need informal relationships to perpetuate sharing of community resources and to build bridges and understanding among ourselves.



How do you see this community in the future?

I see ... "A thriving marine-based economy consisting of fishing, fishing-support businesses, aquaculture, and a small tourist population."

All quotes in this brochure
are taken from the
community surveys in
the Comprehensive Plans
of Beals (2002) and
Jonesport (2003).

Written by:
Judy East, Washington County
Council of Governments, and the
Beals-Jonesport Working Waterfront
Brochure Committee

Design and layout by:
Cheryl Daigle, Maine Sea Grant

*Photos by Cheryl Daigle except where
otherwise indicated.*



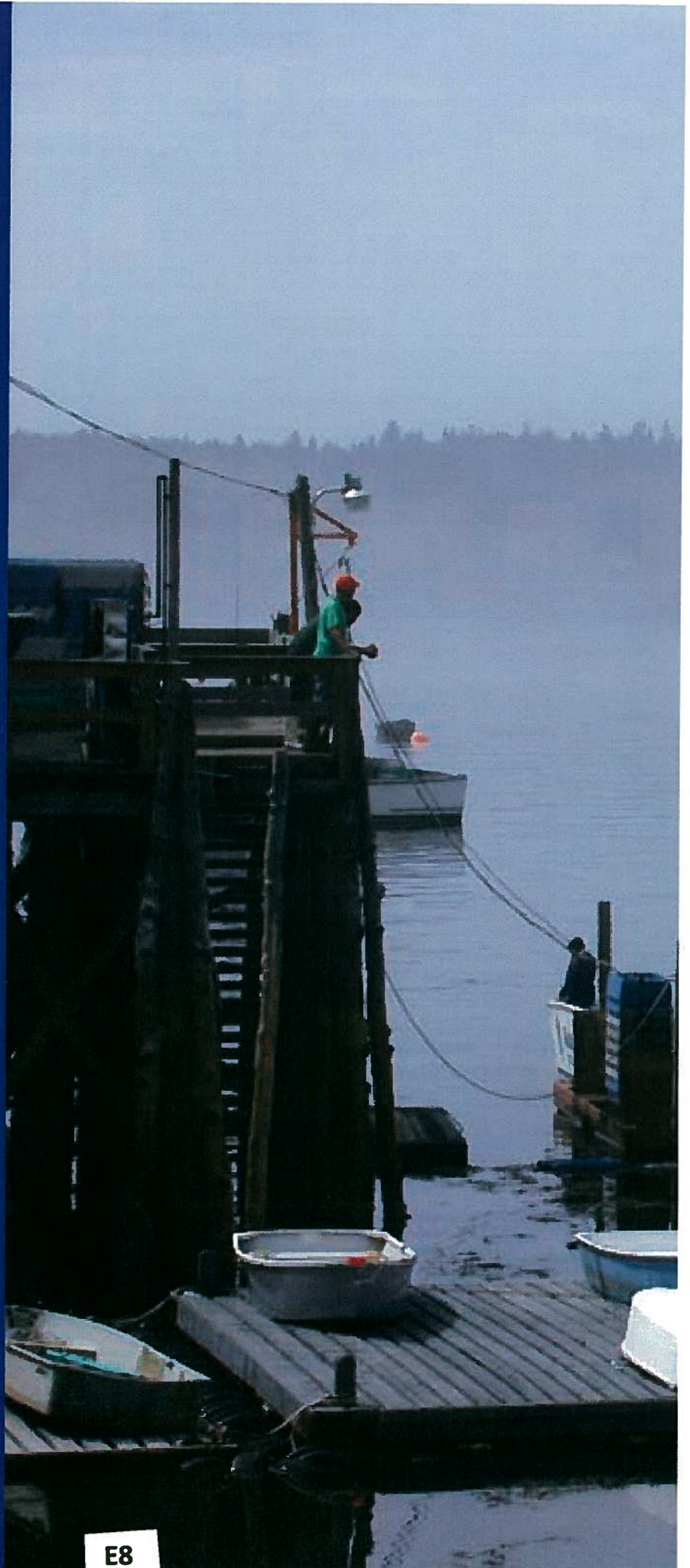
Washington County
Council of Governments



A member of The University of Maine System

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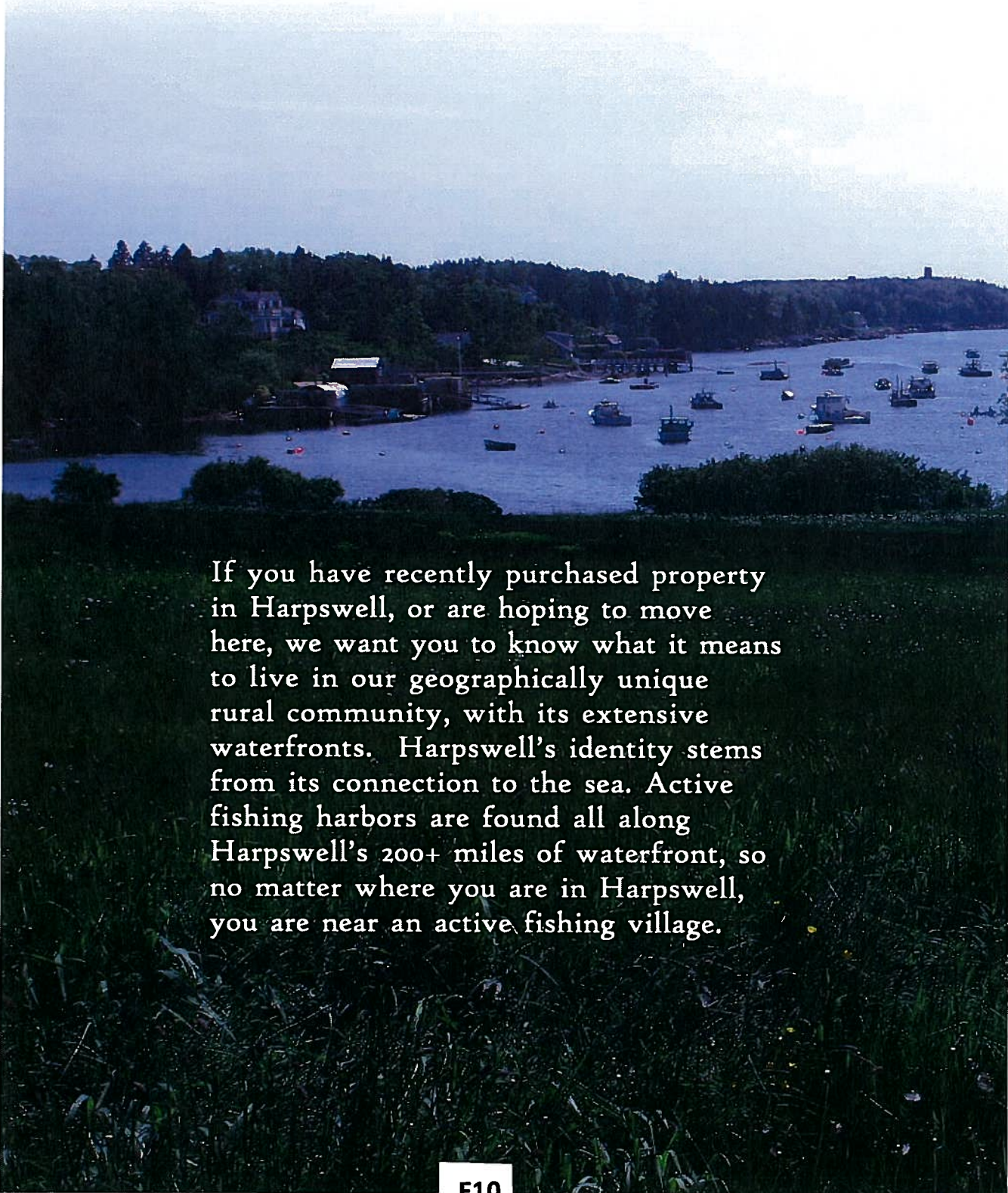
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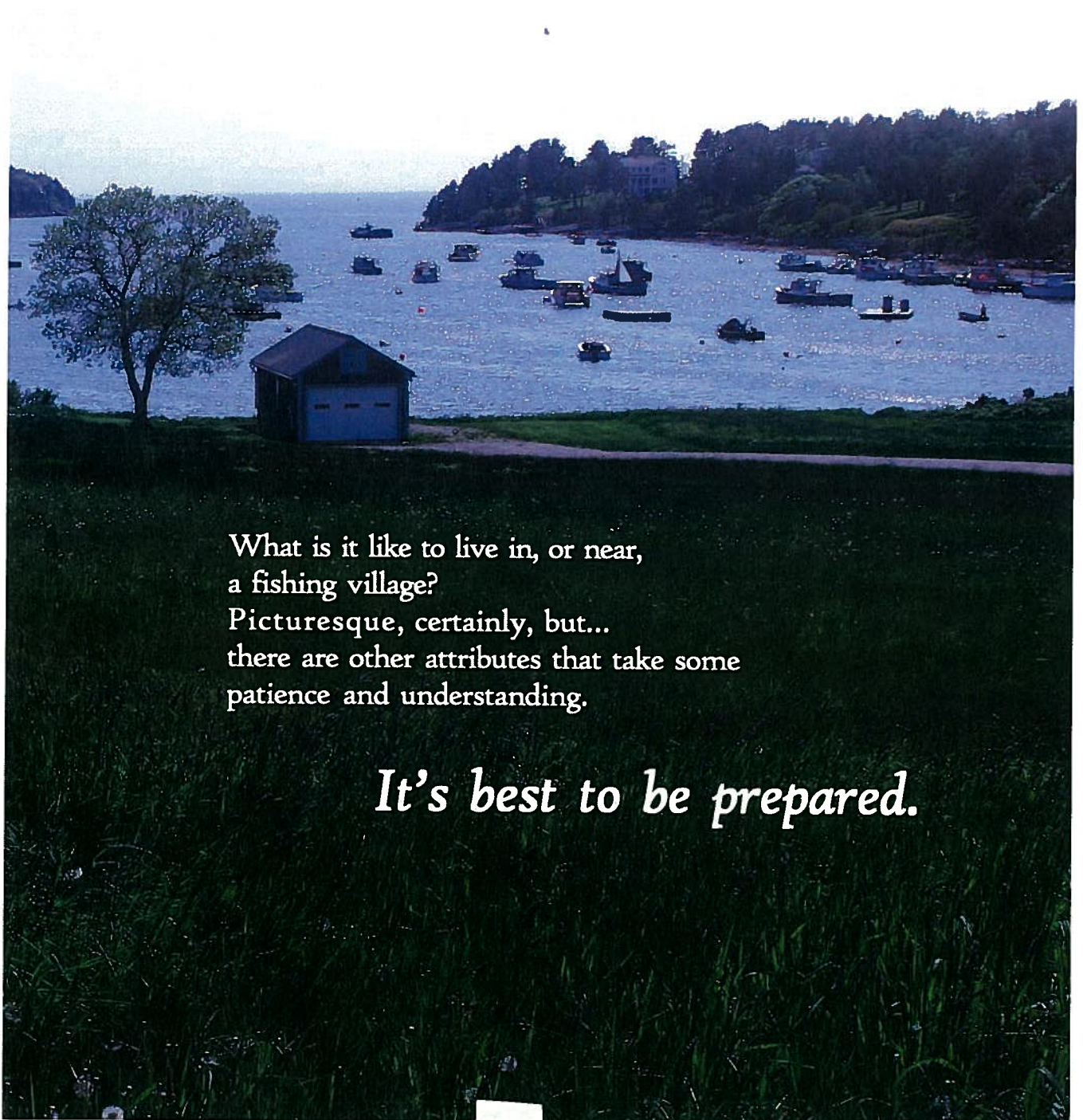
Harpswell's working waterfronts

A realistic look at Harpswell ...



If you have recently purchased property in Harpswell, or are hoping to move here, we want you to know what it means to live in our geographically unique rural community, with its extensive waterfronts. Harpswell's identity stems from its connection to the sea. Active fishing harbors are found all along Harpswell's 200+ miles of waterfront, so no matter where you are in Harpswell, you are near an active fishing village.

a working community
with a fishing flavor.



What is it like to live in, or near,
a fishing village?
Picturesque, certainly, but...
there are other attributes that take some
patience and understanding.

It's best to be prepared.

Sights

In the 1800s, the shores of Harpswell developed with small homes close together in villages. Constant reminders of our past and present maritime orientation are seen throughout town where boats and fishing gear – traps, nets, engines, blocks and tackle – are stored in yards. Often at night, lights are required on boats while generators are running to keep equipment operational for early morning departures. Stored fishing gear and overnight lights are among the aesthetic elements of authentic working waterfronts.



Bernice Kenney

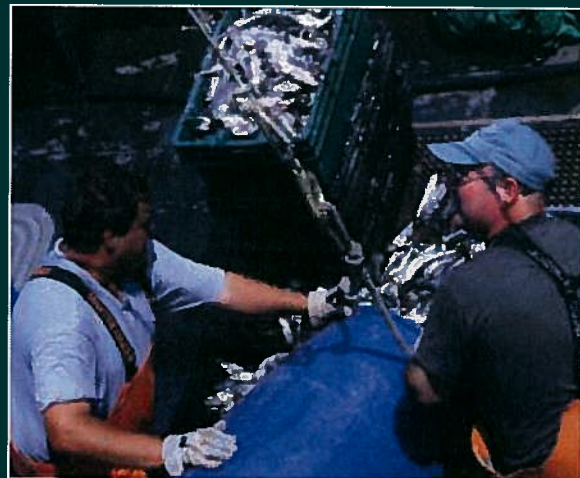


Sounds

The fishing day begins early, really early. At 3 a.m. the trucks and then the boats rumble or roar into life. At all hours trucks loaded with lobsters head for the marketplace, wasting no time on our narrow, winding roads. Competing with the shrieks of gulls and the distinct calls of ospreys, the sounds of diesel engines, outboard motors, and heavy equipment in use on the docks may be heard throughout the day – and night. Recreational boat noise adds to the mix, while the faraway sound of a foghorn may actually be comforting.

Smells

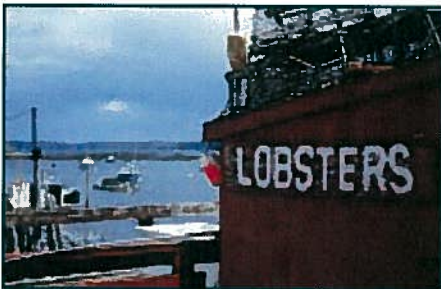
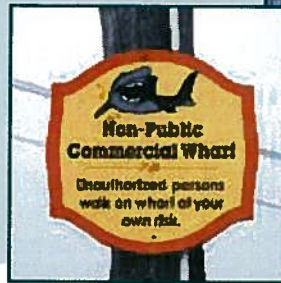
The smell of salt water and mudflats hangs in the air, sometimes overwhelmed by the pungent odor of bait. Lobster traps drying on shore emit the odor of attached decaying marine organisms. Barrels waiting to be filled with salted fish line the docks, a reminder that it takes bait — and work — to catch the lobsters and fish dinners we enjoy. Working waterfronts have their smells, there's no escaping that fact. To the fishermen, it's a sweet smell of money. In Harpswell, 50% to 60% of local jobs are fishing related.



Touch

What comes to mind about the feel of a working waterfront? The rough uneven surfaces of the old docks and wharves, the rolling waves under the floats, and the unpaved, often muddy or dusty approach to the waterfront.

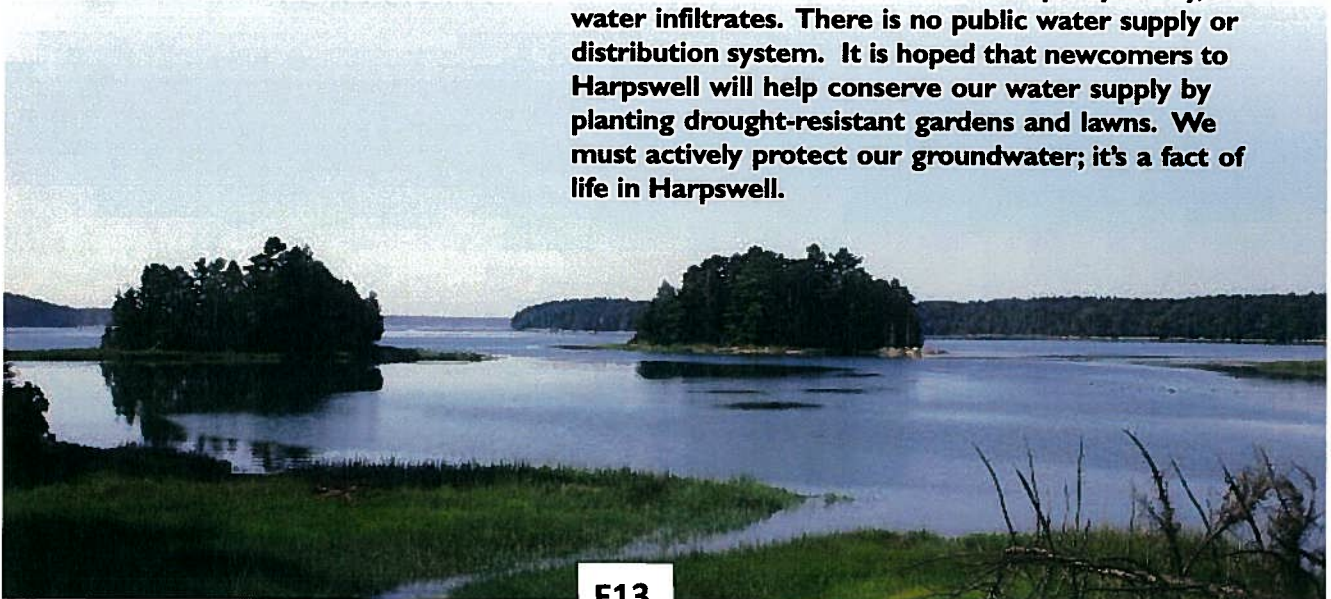
Informal parking areas, if they exist, are likely to have a haphazard arrangement. With limited land available, there is competition for the few parking spaces. Remember that most working wharves are privately owned, so permission to visit is required.



Wolfe Tone

Tastes

In addition to the joys of fresh fish, clams, and lobsters, we appreciate the critical importance of clean water – both salt water and groundwater. This is one of the most important facts to understand: our villages sit atop a fragile water supply. Harpswell's groundwater comes only from rain and snow; there is no deep aquifer or reservoir. When wells are pumped dry, salt water infiltrates. There is no public water supply or distribution system. It is hoped that newcomers to Harpswell will help conserve our water supply by planting drought-resistant gardens and lawns. We must actively protect our groundwater; it's a fact of life in Harpswell.

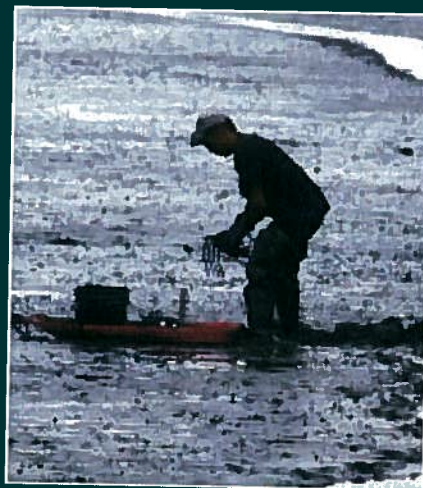




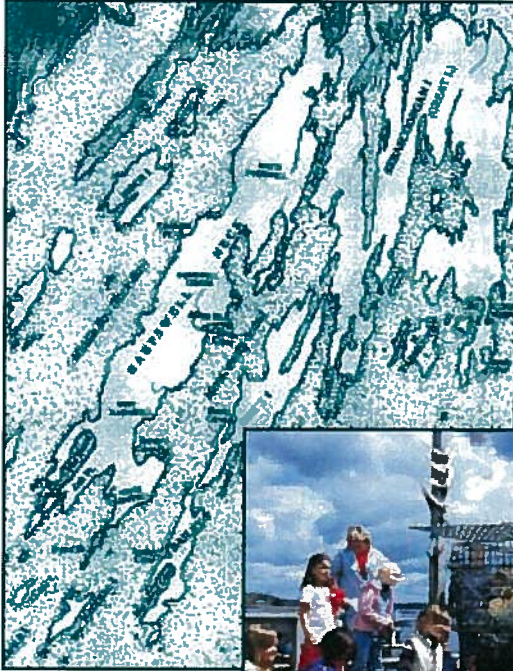
And a sixth sense: Common sense.

Harpswell's heritage and character are defined by a commitment to the fishing industry. We recognize the value of our natural resources. We know we must protect our shores. After all, everything runs downhill and into the ocean; we cannot let fertilizers or oil spills or other contaminants drain into the coastal waters. Harpswell has voted to restrict certain pesticides that are known to impact shellfish.

We also must protect the vitality of our community character. We want to maintain the character of our older waterfront neighborhoods with small-scale waterfront homes. We would like to preserve the traditional access to the waterfront over private lands. Water access is considered to be the most important factor in sustaining the fishing industry. Critical rights of access to the waterfront are often based on custom, not on legal grounds. Too often these traditional access points are closed off without any warning, thus straining the fabric of our community.



While we welcome new residents to Harpswell, ensuring that the fishing industry continues to thrive matters to us. Please take the time to understand the traditional uses of your waterfront property and what it means to the community. We encourage dialogue and exploration with your neighbors about the use of traditional access points.



What else should we tell you? We want you to know what it means to live in our rural community. What does "rural" mean to you? clean living? healthy environment? slower pace of life? independent folks? perhaps old-fashioned ideas or standards? We hope that is why you have been drawn to our community. Rural also means that Harpswell has none of the traditional town or city services; we take care of each other — our wells, septic systems,



Wolfe Tone

recyclables, trash, transportation, and volunteer fire and rescue protection. We vote at town meeting on every penny to be spent, or not spent.

Living in Harpswell means taking responsibility for each other ... it often requires strength of character. The residents of Harpswell wish to keep our rural and peaceful atmosphere, preserve the natural environment, and remain home to young and old, fishing families and business leaders, old-timers — and newcomers. We hope you do, too.



This brochure has been developed at the recommendation of the 2005 Harpswell Comprehensive Plan with the assistance of Maine Sea Grant and the support of University of Maine Cooperative Extension and the Maine Coastal Program at the State Planning Office. We are grateful to Judy East for the brochure's framework around the sensory experiences of a working waterfront, and to Cheryl Daigle for the elegant layout and design.

Photos by Elsa Martz unless otherwise noted.



A member of The University of Maine System

Published and distributed in furtherance of Acts of Congress of May 8 and June 30, 1914, by the University of Maine Cooperative Extension, the Land Grant and Sea Grant University of the state of Maine and the U.S. Department of Agriculture cooperating. Cooperative Extension and other agencies of the U.S.D.A. provide equal opportunities in programs and employment.

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§ 126-5. Right to operate seafood industry and real estate transfer disclosure.

A contract or an addendum to the contract of sale for any real property in Dorchester County shall contain in conspicuous type the following disclosure statement:

RIGHT TO OPERATE SEAFOOD INDUSTRY REAL ESTATE TRANSFER DISCLOSURE

Notice To Buyer

DORCHESTER COUNTY ALLOWS SEAFOOD INDUSTRY OPERATIONS (as defined in the Dorchester County Seafood Industry Right to Work, Chapter 126 of the Dorchester County Code). You may be subject to inconveniences or discomforts arising from such operations, including but not limited to boats leaving and returning at different hours of the day, odors, fumes and noises associated with the maintenance of boats and any and all other equipment, noise, smell and presence of machinery and equipment associated with commercial seafood operating at various hours, including but not limited to workers, boats, generators, refrigeration, ice making, refrigerated trucks, chum trucks, all other trucks, boilers, steam generators, boats, cooking, fork lifts, heating equipment, cooling equipment, soft crab shedding equipment and lighting. Dorchester County has determined that inconveniences or discomforts associated with such seafood industry operations shall not be considered to be an interference with reasonable use and enjoyment of land, if such operations are conducted in accordance with generally accepted seafood industry practices. Dorchester County has established a reconciliation committee to assist in the resolution of disputes which might arise between persons in this County regarding whether seafood industry operations are causing an interference with the reasonable use and enjoyment of land or personal well-being and whether those operations are being conducted in accordance with generally accepted seafood industry practices.

Seller: _____

Date: _____

Seller: _____

Date: _____

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT:

Buyer: _____

Date: _____

Buyer: _____

Date: _____

IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

Appendix F: Shellfish Aquaculture – Conflict of Use Issues

Shellfish Aquaculture – Conflict of Use Issues

Growing oysters in metal cages that rest on the river bottom in shallow water is a relatively new industry to the Chesapeake Bay, with the exception of the pioneering work done by Chesapeake Corporation. Chesapeake Corporation during the 1930's and 1940's developed and experimented with techniques for off-bottom oysters growing. Chesapeake Corporation had 11,000 tar dipped baskets which rested on creosoted sills that stretched over three miles at the mouth of Queens Creek on the York and the Rappahannock Rivers.

Today, as with any new water use, there have been conflicts between the new aquaculture industry and other users of the shoreland or riparian zone. These conflicts were a major, if not primary, factor that motivated several persons to serve on the York River Use Conflict Committee. As a result, aquaculture was a primary focus of the Committee, and a great deal of time and energy was spent discussing it. The Committee ultimately decided to take no position on aquaculture for the reasons discussed below. However, the Committee wanted to preserve its discussions, which were useful and enlightening.

The number of oysters in the Chesapeake Bay is at historic lows. The oystering industry has been decimated. Much effort and money has been spent trying to revive the oyster population but little progress has been made. Oyster aquaculture may be a part of the solution.

The process involves taking seed oysters and placing them in open metal cages, often 4 feet wide, 8 feet long and 1-2 feet high. The cages are placed in shallow water on sandy, but firm bottoms. The cages are usually marked with buoys that float on the water surface. From time to time, the cages are lifted from the water by a hoist on a barge and cleaned. When the oysters grow to market size, they are harvested and sold. It takes about 52 weeks for a seed oyster to grow to market size, whereas an oyster in the wild takes one- three years to reach market size.

The aquaculturist leases the bottom lands from the Commonwealth. Such leases are controlled by the Virginia Marine resource Commission (VMRC) and are governed by Virginia law. The public has an opportunity to comment on proposed leases and neighboring landowners are given notice. A person can lease up to several hundred acres.

Several of the Committee members are waterfront property owners or boaters and acknowledged conflicts between the aquaculturists and other users of the waters and with landowners. While all of them support aquaculture and Bay restoration, they are concerned about the impacts on the waterfront from the oyster operations. The landowners claim that the cages can block their access to the river channel, the buoys are unsightly, the lifting and cleaning operations are noisy and annoying, and their use

of their piers and shoreline is diminished. Recreational boat owners claim that the cages and buoys present a navigational hazard, especially at night, and that the number and scope of cages in an area effectively precludes boating and fishing.

A major concern is that if the industry becomes more successful, large scale operations could be installed with literally thousands of cages. The Committee reviewed information about other aquaculture industries around the world that have expanded in size and impact to become major industrial operations taking place on or in the water. Although difficult for some to imagine based on the small scale of current aquaculture operations in the Bay, the possibility of multiple and large operations across the Bay caused deep concerns for several Committee members.

In response to this new industry, landowners and boaters have opposed permit applications before the VMRC and lobbied their state and local representatives to limit the activity. Prior to the formation of the York River Use Conflict Committee, Gloucester County and MPPDC held several public meetings to discuss and receive comments on the issue. MPPDC wrote a letter to VMRC dated November 1, 2006 requesting that VMRC place a moratorium on the issuance of all water column lease permits of greater than 12 inches until such time as the issue has been thoroughly studied and public policy has been developed to support the issuance of such permits.

The York River Use Conflict Committee includes the leading aquaculturists in Gloucester County, if not the State. Several have been in business for many years. They strongly believe that their operations are good for the environment and represent a critical part of the solution to restore the oyster population in the Bay. They view themselves as continuing the historic use and traditions of the Bay area and Gloucester County by earning a living from the water. Their business is no different from crabbers, fishermen and oystermen who came before them and still operate on the Bay.

Their perspective is that new landowners buy waterfront property unrealistically expecting an idyllic and peaceful setting free of any commerce. Such landowners are unwilling to accept or tolerate any commercial uses. As land prices rise, so do landowners' expectations. As working waterfronts and activities dwindle, they are being squeezed out of the community. They believe that they are already over-regulated, having to get various permits and authorizations to run their business.

The aquaculturists currently believe that the industry is unlikely to grow into the large operations feared by other Committee members. The work is hard. Profits can be slim depending on Mother Nature. Suitable areas on the Bay are limited.

The Committee was offered a tour of one business and a trip out by boat to view a set of other cages. The Committee was visited by Jack Travelstead, Deputy Commissioner & Chief, Fisheries Management at VMRC. He discussed the issue from the regulatory perspective and introduced the Committee to the then proposed regulations of VMRC

governing aquaculture. Committee members had an opportunity to ask questions and to provide their comments to VMRC on the proposed regulations. Final regulations were approved in 2007. *See* 4 VAC 20-1130-10 *et seq.*

All of these issues were discussed in detail. It is fair to say that the end of the discussions, the various parties came to understand the perspectives of each other. A level of trust was established whereby the parties viewed themselves less as adversaries but instead simply co-users of the water that should be able to co-exist as long as all sides are willing to compromise and act reasonably. Education about the various uses and concerns was viewed as a critical part of the process.

In the end, the Committee decided to recommend no action regarding aquaculture. Instead, the Committee recommends that the County continue to monitor and evaluate the situation. This will allow the parties time to determine the affect of VMRC's new regulations based on actual experience. Moreover, the industry is relatively new and still developing. It will surely respond to the regulations, economics, and the concerns of other water uses and government entities and agencies. In the future, the County and its residents will be in a better position to determine what, if any, actions the County should take regarding aquaculture related use conflicts.

Appendix G Use Conflict Case Studies

Attachment 5

Use Conflict Case Studies throughout the Country

1. Example of zoning to manage use conflict within the Florida keys.
<http://floridakeys.noaa.gov/regs/zoning.html>
2. Framework for using zoning and a rationale for why zoning is a tool to manage use conflict <http://www.olemiss.edu/orgs/SGLC/zoning.htm>
3. Public policy developed by a local govt to manage marine area to preserve working waterfront using a variety of local tools.
<http://www.sfrpc.org/data/mcmmmsp/MartinOrdinance.pdf>
4. Example of water surface use zoning
<http://www.dnr.state.mn.us/regulations/boatwater/surfaceusezoning.html>
5. Example of state and local govts using code to address specific use conflicts
<http://www.newrules.org/environment/noiseJetski.html>
6. Establishment of a Water Use Zoning Team by a Florida local government.
<http://www.alachuacounty.us/assets/uploads/images/PW/reports/WUZ.pdf>
7. Example of Seattle establishing a waterward development line to regulate floating home subdivision <http://www.seattle.gov/dclu/codes/dr/DR1999-16.htm>
8. Monroe County Marine Management Strategic Plan
<http://www.sfrpc.com/mcmmmsp.htm>
9. Seattle Zone code regulating floating homes subdivisions
http://www.rha-ps.com/rha_landlord_tenant_act-Seattle.aspx#SMC_7.20.020