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HOUSE BILL NO. 847

Offered January 8, 2014

Prefiled January 8, 2014

A *BILL to amend and reenact §§ 28.2-241 and 28.2-1204.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 28.2-408.1, relating to release, disposal, or dumping of menhaden; penalty.*

Patron—Lewis

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.2-241 and 28.2-1204.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 28.2-408.1 as follows:

§ 28.2-241. Registration of commercial fishermen required; exemption; penalty.

A. On and after January 1, 1993, holders of gear licenses, except those issued pursuant to § 28.2-402, issued January 1, 1992, through December 31, 1992, shall register as commercial fishermen as provided for in regulation.

B. [Repealed.]

C. On and after January 1, 1993, fishermen not registered as commercial fishermen but who desire to sell their catch shall apply to the Commission for registration as commercial fishermen. The effective date of status as a commercial fisherman shall be two years from the date the application is approved by the Commission. A person whose registration as a commercial fisherman is not effective shall not sell, trade or barter his catch or give his catch to another in order that it may be sold, traded or bartered.

D. For purposes of this section and §§ 28.2-242, 28.2-243 and , 28.2-244 and 28.2-408.1, "commercial fisherman" means any person who fishes in tidal waters using any gear and who sells, trades or barter his catch or gives his catch to another in order that it may be sold, traded or bartered. The Commission shall provide, by regulation, for exemptions from the definition of "commercial fisherman" those persons who independently sell, trade or barter minnows and who are not part of, hired by, or engaged in a continuing business enterprise as may be defined by the Commission. Such regulation may include, but is not limited to, limits on the quantity of minnows that may be sold, traded or bartered by a person that may be exempted from the definition of commercial fisherman.

E. The cost of registration as a commercial fisherman shall be \$150 annually, due no later than the effective date of registration; however, the cost of registration for a person seventy years of age or older shall be seventy-five dollars. All fees collected from the registration of commercial fishermen shall be deposited in the state treasury and credited to the Marine Fishing Improvement Fund as established in § 28.2-208. The Commission may subsequently revise the cost of licenses in this section pursuant to § 28.2-201.

F. Registrations of commercial fishermen shall not be transferable.

G. Whenever a court finds that a defendant has violated any of the provisions of this section, the court shall assess a civil penalty of \$500. All civil penalties assessed pursuant to this section shall be paid into the Marine Fishing Improvement Fund as established in § 28.2-208.

H. Only commercial fishermen with valid registrations may purchase licenses pursuant to §§ 28.2-301, 28.2-501 and 28.2-702.

I. Persons who have obtained a recreational gear license pursuant to § 28.2-226.1 or § 28.2-302.1 are exempt from the provisions of this section.

§ 28.2-408.1. Reporting the release, disposal, or dumping of harvested menhaden; penalty.

A. A commercial fisherman, as defined in 28.2-241, who has released, disposed of, or dumped, or caused such release, disposal, or dumping, of more than 2,000 harvested menhaden into the waters of the Commonwealth shall immediately report the release, disposal, or dumping to the Commissioner.

B. The commercial fisherman releasing, disposing of, or dumping, or causing such release, disposal, or dumping, shall clean up the menhaden found on the shoreline abutting the harvesting activity described in subsection A. It shall be presumed that the menhaden found on the abutting shoreline are the result of the actions of the commercial fisherman; however, such presumption shall be rebuttable by competent evidence.

C. Whenever a court finds that a defendant has violated any of the provisions of this section, the court shall assess a civil penalty of \$1,000 for each violation. Each day of violation shall constitute a separate offense. All civil penalties assessed pursuant to this section shall be paid into the Marine Habitat and Waterways Improvement Fund created pursuant to § 28.2-1204.2.

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59 § 28.2-1204.2. Marine Habitat and Waterways Improvement Fund established.

60 There is hereby created in the state treasury a special nonreverting fund to be known as the Marine
61 Habitat and Waterways Improvement Fund, hereafter referred to as "the Fund." The Fund shall be
62 established on the books of the Comptroller. In addition to the receipt of moneys as may be specifically
63 provided by law, the Commissioner is authorized to accept gifts and grants for the Fund; *and civil*
64 *penalties assessed pursuant to § 28.2-408.1*, as well as proceeds that may be received from time to time
65 on the sale of state-owned marine lands. Interest earned on moneys in the Fund shall remain in the Fund
66 and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each
67 fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall
68 be used solely for the purposes of improving marine habitat and waterways, including the removal of
69 obstructions or hazardous property from state waters as authorized in §§ 15.2-909 and 28.2-1210.
70 Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued
71 by the Comptroller upon written request signed by the Commissioner.