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HOUSE BILL NO. 1610

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on February 28, 2018)

(Patron Prior to Substitute—Delegate Knight)

A *BILL to amend and reenact §§ 28.2-400.2 and 28.2-1000.2 of the Code of Virginia, relating to menhaden total landings.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.2-400.2 and 28.2-1000.2 of the Code of Virginia are amended and reenacted as follows:

§ 28.2-400.2. Total allowable landings for menhaden.

A. Except as provided for in subsections B, C, and D, the total allowable landings for menhaden shall be ~~168,937.75~~ 170,797.17 metric tons per year, *consisting of the Virginia quota and other relinquished quota redistributed to Virginia by the Atlantic States Marine Fisheries Commission as of February 1, 2018. However, if the Atlantic States Marine Fisheries Commission further increases the state's total allowable catch before December 31, 2018, the Governor shall implement the revised quota by proclamation.*

B. If the total allowable landings specified in subsection A are exceeded in any year, the total allowable landings for the subsequent year ~~will~~ shall be reduced by the amount of the overage. Such overage shall be deducted from the sector of the menhaden fishery that exceeded the allocation specified in § 28.2-400.3.

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

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

§ 28.2-1000.2. Annual closure of the Chesapeake Bay purse seine fishery for Atlantic menhaden.

A. For the purpose of this section:

"Chesapeake Bay" means the territorial waters of the Commonwealth lying west of the Chesapeake Bay Bridge-Tunnel.

"Purse seine fishery for Atlantic menhaden" means those vessels licensed pursuant to § 28.2-402 that harvest menhaden for the purpose of manufacturing them into fertilizer, fish meal, or oil.

B. Upon a determination that the purse seine fishery for Atlantic menhaden meets the annual menhaden harvest cap in the Chesapeake Bay, the Commissioner shall promptly publish a notice in the Virginia Register announcing the date of closure. The Commissioner shall also notify the operators of the purse seine fishery for Atlantic menhaden by the most convenient and expeditious means available. The date of closure shall be based on mandatory daily landings reports required to be submitted under § 28.2-400.5 by the purse seine fishery for Atlantic menhaden.

C. The annual menhaden harvest cap for the purse seine fishery for Atlantic menhaden shall be ~~87,216 set by the Commissioner but shall not be less than 51,000~~ metric tons, subject to annual adjustment for ~~underages or~~ overages as specified in subsection D. ~~In no event, however, shall the harvest of this fishery exceed 98,192 metric tons in any one year, following an appeal of the cap level by the Commissioner and any subsequent management action taken by the Interstate Fisheries Management Program Policy Board.~~

D. If the harvest of the purse seine fishery for Atlantic menhaden does not exceed 87,216 metric tons in any year to which the harvest cap applies, then the difference between the actual harvest and the harvest cap shall be applied as a credit applicable to the allowable harvest for the purse seine fishery for Atlantic menhaden for the following year. The credit may be used only for the subsequent annual harvest and shall not be spread over multiple years. Any annual harvest in excess of the harvest cap shall be deducted from the harvest cap, as modified pursuant to this subsection and subsection C for the subsequent annual harvest year. ~~If the Interstate Fisheries Management Program Policy Board takes action to allow some or all of the difference between the actual harvest and the harvest cap to be applied as a credit applicable to the allowable harvest for the purse seine fishery for Atlantic menhaden for the following year, the Commissioner shall implement such credit.~~

60 E. No person shall take Atlantic menhaden by purse seine for reduction purposes from the
61 Chesapeake Bay after the later of the date of closure implemented pursuant to subsection B or the date
62 that actual notice is provided of such closure pursuant to subsection B. Any person violating this
63 provision shall be guilty of a Class 1 misdemeanor.

64 **2. That the Commissioner of Marine Resources, on behalf of the Commonwealth, shall request**
65 **that the Chair of the Atlantic States Marine Fisheries Commission forward to the Interstate**
66 **Fisheries Management Program Policy Board for appeal consideration the Chesapeake Bay**
67 **Reduction Fishery Cap and the rollover of unused quota. The Commissioner shall report on the**
68 **outcome of such appeal to the Secretary of Natural Resources and the Chairmen of the Senate**
69 **Committee on Agriculture, Conservation and Natural Resources and the House Committee on**
70 **Agriculture, Chesapeake and Natural Resources.**

71 **3. That the provisions of this act shall expire on December 31, 2019.**