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SENATE BILL NO. 214

Offered January 10, 2018

Prefiled January 3, 2018

A BILL to amend and reenact § 28.2-409 of the Code of Virginia, relating to prohibiting fishing with purse nets in certain waters; civil penalty.

Patrons—Cosgrove and DeSteph

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 28.2-409 of the Code of Virginia is amended and reenacted as follows:

§ 28.2-409. Menhaden fishing prohibited in certain areas; exception; penalty.

A. Except as provided in subsection B of this section, it shall be unlawful to take or catch menhaden with purse nets in the following waters:

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

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

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

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

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

6. In the waters abutting the shoreline of the City of Virginia Beach extending seaward three miles from mean low water from Cape Henry buoy at the mouth of the Chesapeake Bay to the North Carolina line.

B. During the period from the first Monday in May through the third Friday in November, vessels under seventy 70 gross tons which that are licensed in accordance with subdivision 1 of § 28.2-402 are authorized to take or catch menhaden in the following waters: in the Rappahannock River eastward and

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SB214

59 southward from a line extending from Towles Point to Burnham Wharf and from Orchard Point to
60 Towles Point; in Dividing Creek eastward from a line extending from Jarvis Point to Ditchley Pump
61 House; in Indian Creek eastward from a line directly across the creek at Rappahannock Oyster
62 Company; in Dymers Creek eastward from a line directly across the creek at the eastern end of Standard
63 Products dock.

64 *C. It shall be unlawful to take or catch menhaden with purse nets within one mile of the mean low*
65 *water mark in the waters of the Chesapeake Bay and its tributaries.*

66 *D. The Commission may assess a civil penalty of up to \$10,000 against a person if it finds, after a*
67 *hearing held after 10 days' notice, that the person has violated any provision of this section. In setting*
68 *the amount of the civil penalty, the Commission shall consider the person's history of prior violations of*
69 *the provisions of this section.*

70 *E. If the person fails to pay the civil penalty within 180 days of the assessment of the civil penalty*
71 *pursuant to subsection D, the Commissioner may transmit a true copy of the order assessing such civil*
72 *penalty to the clerk of the court of any county or city wherein it is ascertained that the person owing*
73 *the penalty has any estate, and the clerk to whom such copy is so sent shall record it, as a judgment is*
74 *required by law to be recorded, and shall index the same as well in the name of the Commonwealth as*
75 *of the person owing the penalty, and thereupon there shall be a lien in favor of the Commonwealth on*
76 *the property of the person within such county or city in the amount of the civil penalty.*

77 *F. Civil penalties collected pursuant to this section shall be deposited into the Virginia Marine*
78 *Products Fund established in § 3.2-2705.*

79 *G. An appeal from the Commission's decision may be taken to the courts as provided in Article 3*
80 *(§ 28.2-216 et seq.) of Chapter 2.*