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## SENATE BILL NO. 402

Offered January 8, 2020

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A BILL to amend and reenact §§ 28.2-201, 28.2-400.2, 28.2-400.4, 28.2-409, 28.2-410, and 28.2-1000.2 of the Code of Virginia, relating to menhaden fishery; allowable harvest; violation.

Patron—Hashmi

Referred to Committee on Agriculture, Conservation and Natural Resources

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 28.2-201, 28.2-400.2, 28.2-400.4, 28.2-409, 28.2-410, and 28.2-1000.2 of the Code of Virginia are amended and reenacted as follows:**

**§ 28.2-201. Authority of Commission to make regulations, establish licenses, prepare fishery management plans, and accept federal grants.**

A. The Commission may:

1. ~~Promulgate~~ Adopt regulations, including those for taking seafood, necessary to promote the general welfare of the seafood industry and to conserve and promote the seafood and marine resources of the Commonwealth. The Commission may also ~~promulgate~~ adopt regulations necessary for the conservation and reasonable use of surf clams.

2. Establish new licenses and fees commensurate with other licenses in an amount not to exceed \$100 for any device used for taking or catching seafood in the tidal waters of the Commonwealth when the device (i) is not otherwise licensed in this title and (ii) is used for commercial purposes. The Commission may specify, when issuing such licenses, any restrictions or control over the devices or the persons operating the device.

3. Establish fees for permits required for delayed or limited entry fisheries, shellfish relaying, scientific collections, and for the administrative transfer of these permits among fisherman, where applicable.

4. Beginning July 1, 2004, and not more frequently than every three years thereafter, increase fees for tidal fisheries licenses and permits that are authorized under this title or by regulation ~~promulgated~~ adopted pursuant to Article 2 (§ 28.2-209 et seq.) of this chapter. Any fee increase for such licenses and permits shall be capped at \$5 or a percentage equal to the increase in the Consumer Price Index calculated from the time the fee was last set or adjusted, whichever is greater. Beginning July 1, 2004, any amounts generated from the increases in commercial fishing licenses and permits shall be paid into the Marine Fishing Improvement Fund for the purposes authorized by § 28.2-208, and any amounts generated from the increases in recreational fishing licenses shall be paid into the Virginia Saltwater Recreational Fishing Development Fund for the purposes authorized by § 28.2-302.3. The Commission may charge nonresidents a higher fee than residents for purchase of any of the fishing licenses issued pursuant to §§ 28.2-302.2, 28.2-302.2:1, 28.2-302.6, 28.2-302.7, 28.2-302.8, 28.2-302.10, and 28.2-302.10:1. The fee charged to a nonresident shall be no greater than twice the Virginia resident fee. The Commission may prohibit the sale of the private boat license established by § 28.2-302.7 to a nonresident whose boat is not registered in Virginia.

5. ~~The Commission shall ensure that increases in licenses and fees are equitably distributed among resource user groups.~~

6. Prepare fishery management plans containing evaluations of regulatory management options, based upon scientific, economic, biological, and sociological information, and use them in the development of regulations. The Commissioner may appoint a fisheries advisory committee and its chairman, consisting of representatives of the various fishery user groups, to assist in the preparation and implementation of the fishery management plans. The Commission may expend funds to compensate the members of the committee pursuant to § 2.2-2825.

~~7. 6. Adopt regulations to manage the Atlantic menhaden fishery.~~

7. Provide for enforcement of any regulation governing surf clams by any law-enforcement officer of any agency of the Commonwealth or its political subdivisions or by any law-enforcement officer of any agency of the federal government. Enforcement agreements with other agencies or political subdivisions shall be stated in the regulation.

B. ~~The Commission shall ensure that increases in licenses and fees are equitably distributed among resource user groups.~~

8. C. The Commonwealth hereby assents to the provisions of the Federal Aid in Sport Fish Restoration Act of August 9, 1950 (16 U.S.C. §§ 777-777k), as amended. The Commission is authorized

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59 to perform all such acts as may be necessary for the establishment and implementation of cooperative  
60 fish restoration and management projects as defined by these federal statutes and the implementing  
61 regulations ~~promulgated~~ *adopted* thereunder.

62 *Notwithstanding any provision of Chapter 4 (§ 28.2-400 et seq.), the Commission shall adopt*  
63 *regulations pursuant to this section necessary to comply with the Atlantic States Marine Fisheries*  
64 *Commission Interstate Fishery Management Plan for Atlantic Menhaden.*

65 **§ 28.2-400.2. Total allowable landings for menhaden.**

66 A. Except as provided for in subsections B, C, and D, the total allowable landings for menhaden  
67 shall be ~~168,937.75 metric tons per year~~ *set annually by the Commissioner in accordance with the*  
68 *Virginia allocation of the total allowable catch as determined by the Atlantic States Marine Fisheries*  
69 *Commission.*

70 B. If the total allowable landings specified in subsection A are exceeded in any year, the total  
71 allowable landings for the subsequent year will be reduced by the amount of the overage. Such overage  
72 shall be deducted from the sector of the menhaden fishery that exceeded the allocation specified in  
73 § 28.2-400.3.

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

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

84 **§ 28.2-400.4. Administration of the menhaden management program.**

85 A. Closure of the menhaden fishery shall occur when the Commissioner projects and announces that  
86 100 percent of the total allowable landings have been taken. The Commissioner shall monitor the  
87 mandatory daily landings reports required to be submitted under § 28.2-400.5 by the:

88 1. Purse seine menhaden reduction sector and promptly announce the date of closure when the  
89 portion of the total allowable landings allocated to the purse seine menhaden reduction sector under  
90 § 28.2-400.3 are projected to be taken. The Commissioner shall also notify the operators of any qualified  
91 menhaden processing factory of the date of closure by the most convenient and expeditious means  
92 available;

93 2. Purse seine menhaden bait sector and promptly announce the date of closure when the portion of  
94 total allowable landings allocated to the purse seine fishery for bait under § 28.2-400.3 is projected to be  
95 taken. The Commissioner shall also notify the purse seine menhaden bait sector of the date of closure  
96 by the most convenient and expeditious means available; and

97 3. Non-purse seine menhaden bait sector and promptly announce the date of closure when the portion  
98 of total allowable landings allocated to the non-purse seine fishery for bait under § 28.2-400.3 is  
99 projected to be taken. The Commissioner shall also notify the operators of the non-purse seine bait  
100 fishery of the date of closure by the most convenient and expeditious means available. Once this closure  
101 is announced, any person licensed in the non-purse seine menhaden bait sector may possess and land up  
102 to 6,000 pounds of menhaden per day, provided that such person is fishing in accordance with all laws  
103 and regulations.

104 B. The Commissioner may reopen a fishery sector closed pursuant to this section if, after all reports  
105 have been received, the portion of the total allowable landings has not been harvested by that sector.  
106 The Commission may establish any regulations it deems necessary and advisable, including trip limits or  
107 a time-limited reopening, to ensure that the allowable landings for a reopened sector is not exceeded.  
108 Any such reopening and subsequent closure shall be done by direct notice to the relevant sector of the  
109 fishery.

110 C. The Commission shall maintain on its website a periodically updated tally of the menhaden  
111 harvest for each sector receiving an allocation under this section.

112 D. Except as provided in subdivision A 3, no person shall harvest menhaden for bait or reduction  
113 purposes after the portion of the total allowable landings for the sector in which that person holds a  
114 license has been closed. Any person violating this provision is guilty of a Class 1 misdemeanor, *and the*  
115 *Commissioner shall revoke his license to harvest menhaden.*

116 **§ 28.2-409. Menhaden fishing prohibited in certain areas; exception.**

117 A. Except as provided in subsection B ~~of this section~~ *or as otherwise provided by regulation*, it shall  
118 ~~be~~ *is* unlawful to take or catch menhaden with purse nets in the following waters:

119 1. In the Piankatank River and its tributaries above and west of a line beginning at the northernmost,  
120 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°; 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.

B. ~~During~~ *Except as otherwise provided by regulation, 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 southward from a line extending from Towles Point to Burnham Wharf and from Orchard Point to Towles Point; in Dividing Creek eastward from a line extending from Jarvis Point to Ditchley Pump House; in Indian Creek eastward from a line directly across the creek at Rappahannock Oyster Company; in Dymers Creek eastward from a line directly across the creek at the eastern end of Standard Products dock.

**§ 28.2-410. Closed season for menhaden fishing; forbidden nets; penalty.**

Except as provided in § 28.2-409 *or as otherwise provided by regulation*, it is unlawful for any person to take or catch with a purse net in the waters of ~~this~~ *the* Commonwealth, or waters within its jurisdiction, menhaden between the Saturday following the third Friday in November and the Sunday preceding the first Monday in May. However, in the waters east of the Chesapeake Bay Bridge Tunnel within the three-mile limit of the Virginia shoreline such prohibition shall be between the Friday before Christmas and the Sunday preceding the first Monday in May. It is also unlawful for any person to use any purse net or other net having a stretched mesh of less than  $\pm \frac{3}{4}$  *one and three-quarters* inches. Any person violating any of the provisions of this section is guilty of a Class 1 misdemeanor.

**§ 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

182 the purse seine fishery for Atlantic menhaden by the most convenient and expeditious means available.  
183 The date of closure shall be based on mandatory daily landings reports required to be submitted under  
184 § 28.2-400.5 by the purse seine fishery for Atlantic menhaden.

185 C. The annual menhaden harvest cap for the purse seine fishery for Atlantic menhaden shall be  
186 ~~87,216 metric tons~~ set annually by the Commissioner in accordance with the Virginia allocation of the  
187 total allowable catch for the Chesapeake Bay as determined by the Atlantic States Marine Fisheries  
188 Commission, subject to annual adjustment for underages or overages as specified in subsection D. ~~In no~~  
189 ~~event, however, shall the harvest of this fishery exceed 98,192 metric tons in any one year.~~

190 D. If the harvest of the purse seine fishery for Atlantic menhaden does not exceed ~~87,216 metric tons~~  
191 the Virginia allocation of the total allowable catch for the Chesapeake Bay as determined by the  
192 Atlantic States Marine Fisheries Commission in any year to which the harvest cap applies, then the  
193 difference between the actual harvest and the harvest cap shall be applied as a credit applicable to the  
194 allowable harvest for the purse seine fishery for Atlantic menhaden for the following year. The credit  
195 may be used only for the subsequent annual harvest and shall not be spread over multiple years. Any  
196 annual harvest in excess of the harvest cap shall be deducted from the harvest cap, as modified pursuant  
197 to this subsection and subsection C for the subsequent annual harvest.

198 E. No person shall take Atlantic menhaden by purse seine for reduction purposes from the  
199 Chesapeake Bay after the later of the date of closure implemented pursuant to subsection B or the date  
200 that actual notice is provided of such closure pursuant to subsection B. Any person violating this  
201 provision ~~shall be~~ is guilty of a Class 1 misdemeanor, and the Commissioner shall revoke his license to  
202 harvest menhaden.