William & Mary | VIMS

Batten School of Coastal & Marine Sciences
Center for Coastal Resources Management

Virginia Tidal Wetlands Board Training
Friday, October 9, 2026

Role of the Virginia Marine Resources Commission as the regulatory authority under the Tidal Wetlands Act and its relationship with local wetlands boards

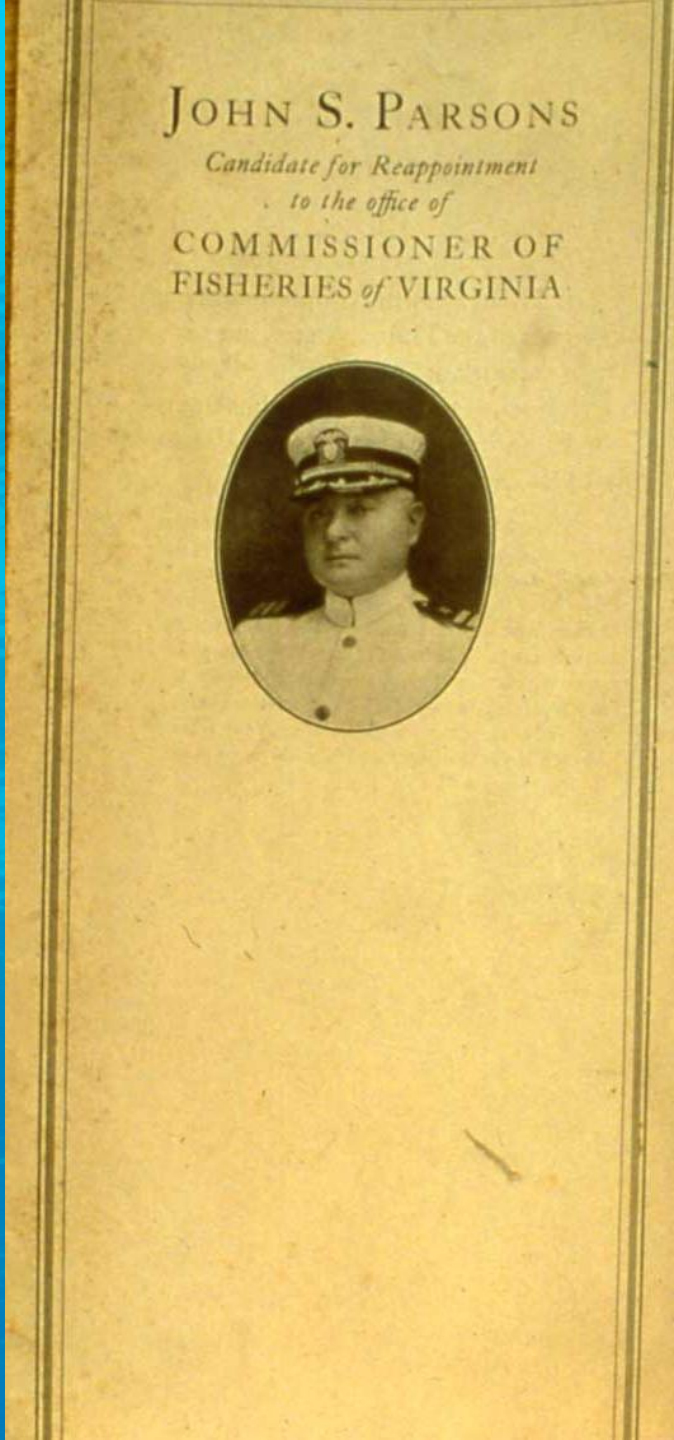
VMRC
Virginia Marine Resources Commission

Randy Owen - Chief
VMRC Habitat Management Division



VMRC HISTORY

- 1875 - Established as *Virginia Fish Commission* (fresh & saltwater fisheries)
- 1898 - Consolidated with Board of the Chesapeake to form *Board of Fisheries*
- 1907 - Renamed *Commission of Fisheries* (managed shellfish and finfish issues Statewide)
- 1962 – Submerged land authority transferred from Office Attorney General – Commission of Fisheries
- 1968 - Renamed *Virginia Marine Resources Commission*, agency mission was broadened
- 1972 - Wetlands Act adopted
- 1980 - Coastal Primary Sand Dunes and Beaches Act



HABITAT MANAGEMENT DIVISION

The Commission's Habitat Management Division manages, via a regulatory permit program, submerged bottom lands, tidal wetlands, coastal primary sand dunes and beaches in order to preserve and protect Virginia's natural resources and the habitats our saltwater fisheries depend on.

- LEGAL AUTHORITIES
- Subtitle III (Habitat) of Title 28.2
  - Chapter 12 - Submerged Lands
  - Chapter 13 – Tidal Wetlands
  - Chapter 14 - Coastal Primary Sand Dunes/Beaches
  - Chapter 15 – Ungranted Marsh & Meadowlands

HABITAT MANAGEMENT DIVISION

The Commission's Habitat Management Division manages, via a regulatory permit program, submerged bottom lands, tidal wetlands, coastal primary sand dunes and beaches in order to preserve and protect Virginia's natural resources and the habitats our saltwater fisheries depend on.

- LEGAL AUTHORITIES
- Subtitle III (Habitat) of Title 28.2
  - Chapter 12 - Submerged Lands
  - Chapter 13 – Tidal Wetlands
  - Chapter 14 - Coastal Primary Sand Dunes/Beaches
  - Chapter 15 – Ungranted Marsh & Meadowlands

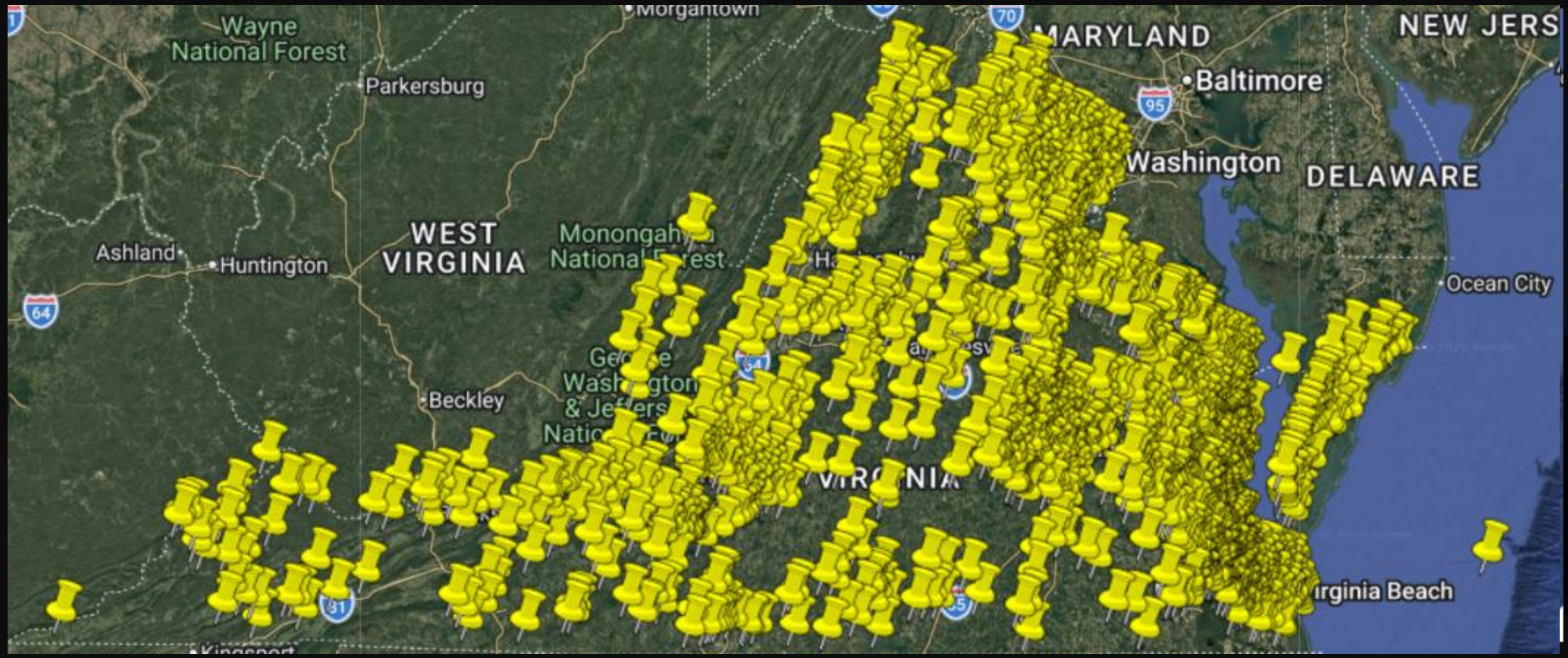
These laws (Submerged Lands, Tidal Wetlands, Beaches and Dunes, Ungranted Marsh and Meadowlands) comprise a key component of Virginia's federally-approved Coastal Zone Management Program

State-owned Submerged Lands

Virginia Territorial Sea
Atlantic Ocean

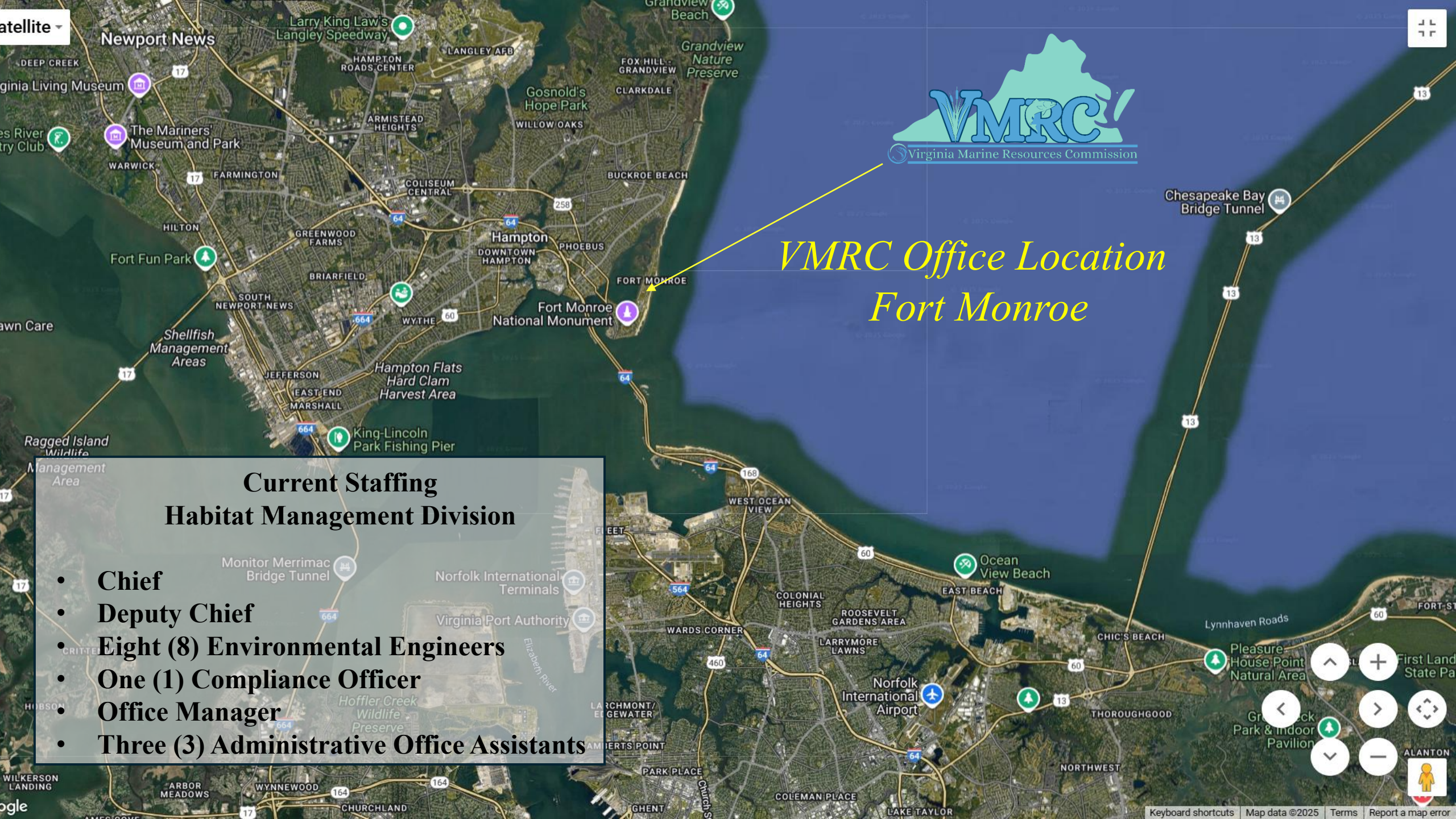



Southwest Virginia
State-owned
Submerged Lands



Joint Permit Applications Reviewed (2,790)
Habitat Management Division
CY 2024

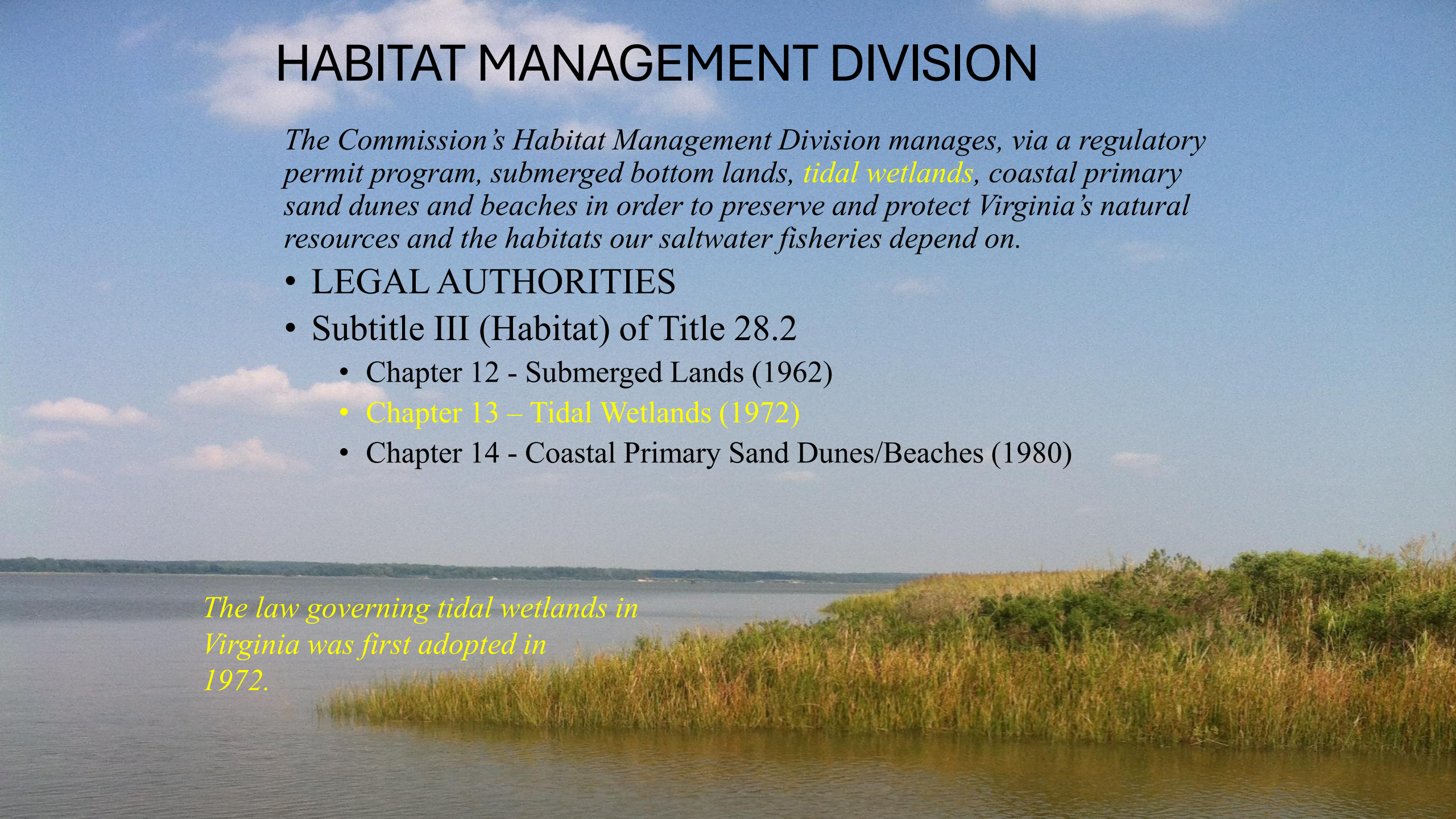
VMRC
Virginia Marine Resources Commission


VMRC
Virginia Marine Resources Commission
VMRC Office Location
Fort Monroe
Current Staffing
Habitat Management Division
• Chief
• Deputy Chief
• Eight (8) Environmental Engineers
• One (1) Compliance Officer
• Office Manager
• Three (3) Administrative Office Assistants
Newport News
Hampton
Fort Monroe National Monument
Fort Fun Park
Shellfish Management Areas
Hampton Flats Hard Clam Harvest Area
King-Lincoln Park Fishing Pier
Chesapeake Bay Bridge Tunnel
Norfolk International Airport
Ocean View Beach
Pleasure House Point Natural Area
Monitor Merrimac Bridge Tunnel
Norfolk International Terminals
Virginia Port Authority
Hoffler Creek Wildlife Preserve
Elizabeth River
Lynnhaven Roads
Keyboard shortcuts
Map data ©2025
Terms
Report a map error

HABITAT MANAGEMENT DIVISION

The Commission's Habitat Management Division manages, via a regulatory permit program, submerged bottom lands, tidal wetlands, coastal primary sand dunes and beaches in order to preserve and protect Virginia's natural resources and the habitats our saltwater fisheries depend on.

- LEGAL AUTHORITIES
- Subtitle III (Habitat) of Title 28.2
  - Chapter 12 - Submerged Lands (1962)
  - Chapter 13 – Tidal Wetlands (1972)
  - Chapter 14 - Coastal Primary Sand Dunes/Beaches (1980)



The law governing tidal wetlands in Virginia was first adopted in 1972.

With the passage of the Wetlands Act in 1972, VMRC and the resulting local wetland boards were charged by § 28.2-1302.9 to *"preserve and prevent the despoliation and destruction of wetlands within its jurisdiction while accommodating necessary economic development in a manner consistent with wetlands preservation"* and any standards and guidelines set forth in code.



Wetlands Act

1972

- 49 Tidewater localities
- 30 Active Local Wetland Boards
- VMRC Default Wetlands Board for 19 localities *(31 beaches/dunes)*
- 6 localities rescinded the model wetlands ordinance since adoption

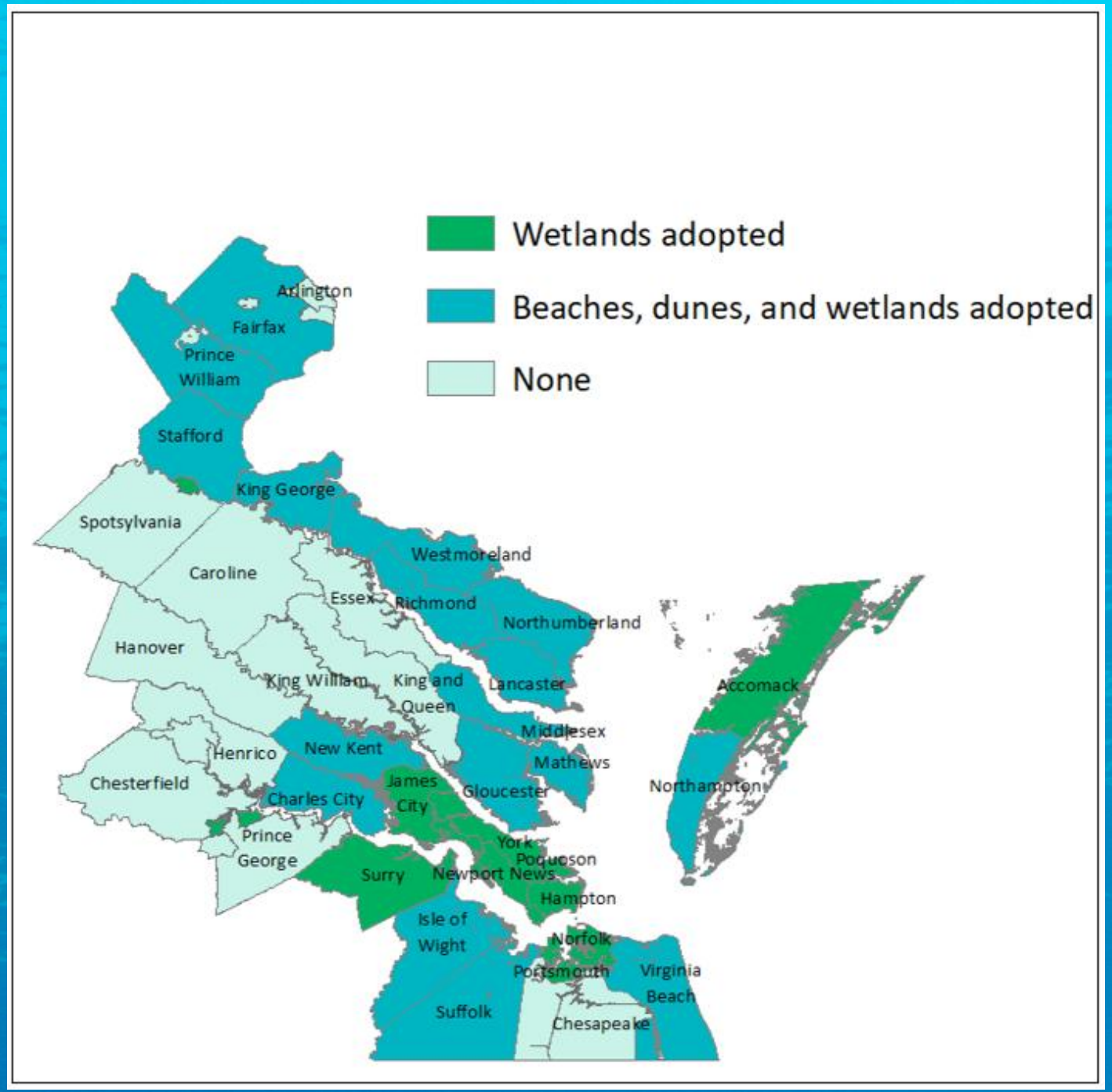
(5 of the 6 boards within last 1 to 4 years)



Local Wetland Boards

Localities within Tidewater that have adopted the model wetlands and/or beach and dune ordinances

- 49 Tidewater localities
- 30 Active Local Wetland Boards
- VMRC Default Wetlands Board
  - 19 localities tidal wetlands
  - 31 localities beaches/dunes)
- 6 localities rescinded the model wetlands ordinance since adoption
  (5 of the 6 boards within last 1 to 4 years)



With the passage of the Wetlands Act in 1972, VMRC and the resulting local wetland boards were charged by § 28.2-1302.9 to *"preserve and prevent the despoliation and destruction of wetlands within its jurisdiction while accommodating necessary economic development in a manner consistent with wetlands preservation"* and any standards and guidelines set forth in code.



Wetlands Act

1972

- 49 Tidewater localities
- 30 Active Local Wetland Boards
- VMRC Default Wetlands Board for 19 localities *(31 beaches/dunes)*
- 6 localities rescinded the model wetlands ordinance since adoption

(5 of the 6 boards within last 1 to 4 years)



- Updated the *Tidal Wetlands Guidelines* in May 2021 to address living shorelines legislation.
- Updated the Commission's *Tidal Wetlands Banking Guidelines* and *Wetlands Mitigation Compensation Policy and Supplemental Guidelines* in Jan 2025.

Wetlands Act

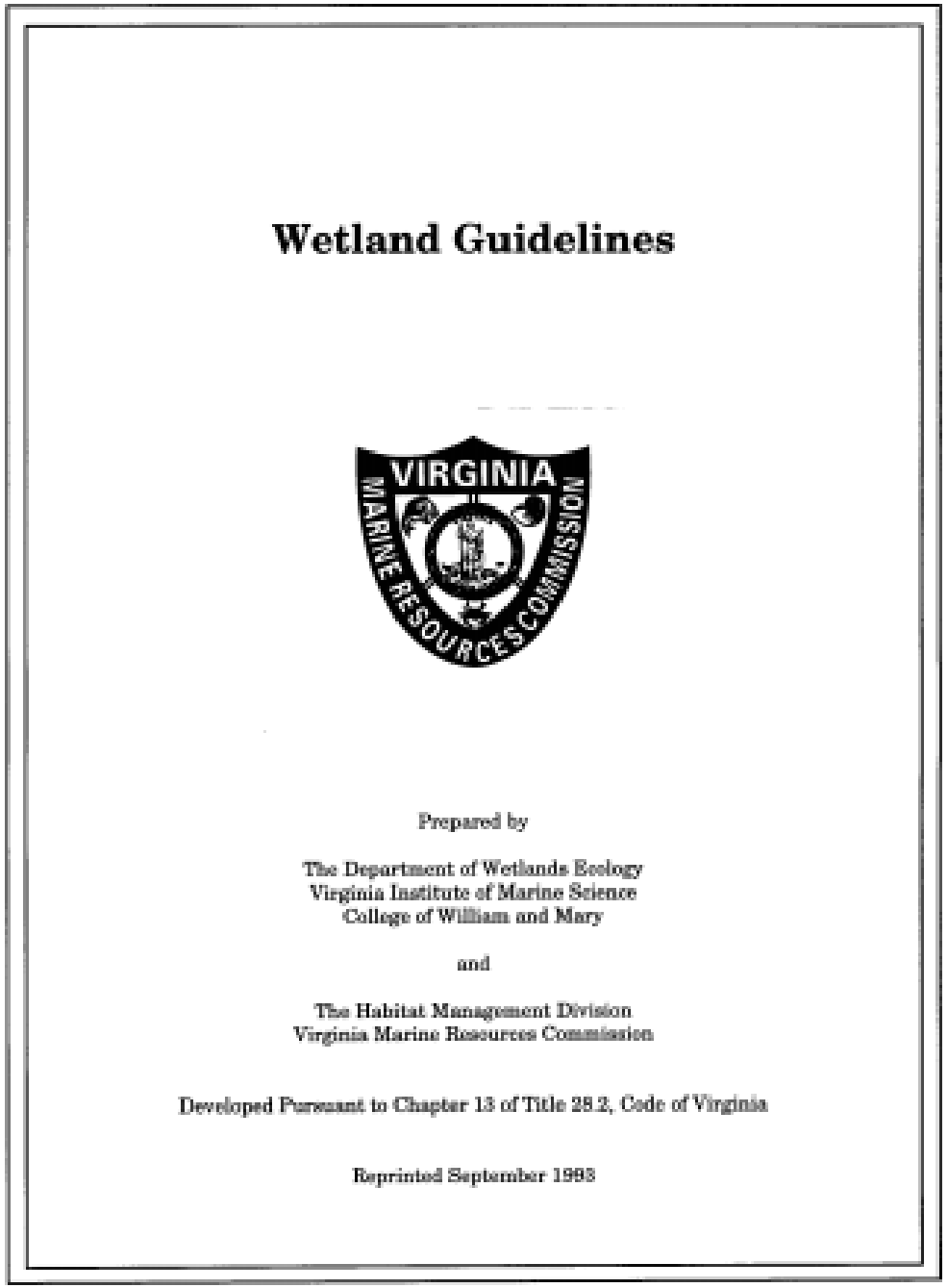
1972

- 49 Tidewater localities
- 30 Active Local Wetland Boards
- VMRC Default Wetlands Board for 19 localities *(31 beaches/dunes)*
- 6 localities rescinded the model wetlands ordinance since adoption

(5 of the 6 boards within last 1 to 4 years)







Wetland Guidelines

VIRGINIA MARINE RESOURCES COMMISSION

Prepared by

The Department of Wetlands Ecology
Virginia Institute of Marine Science
College of William and Mary

and

The Habitat Management Division
Virginia Marine Resources Commission

Developed Pursuant to Chapter 13 of Title 28.2, Code of Virginia

Reprinted September 1993

VMRC's Wetlands Guidelines were next developed and adopted by the Commission in 1974, two years after the passage of the Wetlands Act.

Required by the 1972 legislation necessary to guide VMRC and local wetland boards in their deliberations.

Living Shorelines Legislation Overview

Senate Joint Resolution 35 (2010)



2010 SESSION

ENROLLED

SENATE JOINT RESOLUTION NO. 35

Requesting the Virginia Institute of Marine Science to study tidal shoreline management in the Commonwealth. Report.

Agreed to by the Senate, February 24, 2010
Agreed to by the House of Delegates, March 9, 2010

WHEREAS, shorelines of all estuaries erode over time due to manmade and natural processes and one-third of all shorelines of the Chesapeake Bay are classified as eroding, with some areas losing as much as eight to 11 inches of shoreline per year; and

WHEREAS, traditional methods used to protect shorelines, such as riprap revetments, bulkheads, and seawalls, have been successful in protecting upland property in some instances but have destroyed, compacted shorelines, and reduced or removed shallow-water nearshore and refuge habitats for many estuarine species; and

WHEREAS, eighty-five percent of the Chesapeake Bay shoreline is privately owned, and it is critical to provide education to landowners on the benefits of living shorelines that employ natural habitat elements including emergent marsh grasses, submerged aquatic vegetation, riparian vegetation, native woody debris, and oyster reef and shell; and

WHEREAS, living shorelines are a tidal shoreline restoration in the Commonwealth may be regulated or directed by numerous federal, state, and local agencies including the United States Army Corps of Engineers, Department of Environmental Quality, Virginia Marine Resources Commission, and local wetlands and zoning boards; now, therefore, be it

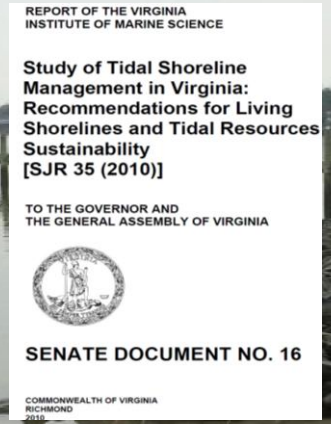
RESOLVED by the Senate, the House of Delegates concurring, That the Virginia Institute of Marine Science be requested to study tidal shoreline management in the Commonwealth.

In conducting its study, the Virginia Institute of Marine Science shall (i) review tidal shoreline management in the Commonwealth and contiguous riparian states; (ii) identify permanent changes to the regulatory structure of tidal shoreline management to reduce the cost and time required to issue a permit for tidal shoreline management projects; (iii) identify the most effective and environmentally sound shoreline management; and (iv) make specific recommendations to achieve the continued protection of tidal shoreline resources.

Technical assistance shall be provided to the Virginia Institute of Marine Science by the Virginia Marine Resources Commission and the Division of Chesapeake Bay Local Assistance of the Department of Conservation and Recreation. All agencies of the Commonwealth shall provide assistance to the Virginia Institute of Marine Science for this study, upon request.

The Virginia Institute of Marine Science shall complete its meetings by November 30, 2010, and shall submit to the Governor and the General Assembly an executive summary and a report of its findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2011 Regular Session of the General Assembly and shall be posted on the General Assembly's website.

Senate Document 16 (2010)



REPORT OF THE VIRGINIA
INSTITUTE OF MARINE SCIENCE

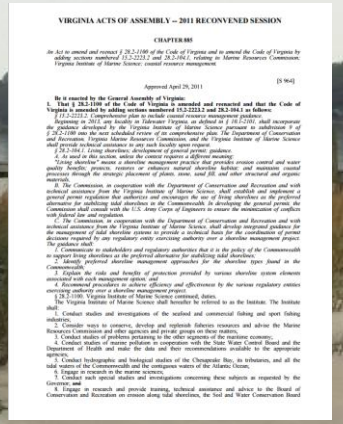
Study of Tidal Shoreline Management in Virginia: Recommendations for Living Shorelines and Tidal Resources Sustainability
[SJR 35 (2010)]

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

SENATE DOCUMENT NO. 16

COMMONWEALTH OF VIRGINIA
RICHMOND
2010

Senate Bill 964 (2011)



VIRGINIA ACTS OF ASSEMBLY -- 2011 RECONVENED SESSION

CHAPTER 885

An Act to amend and reenact § 28.2-1100 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 15.2-2223.2 and 28.2-104.1, relating to Marine Resources Commission; Virginia Institute of Marine Science; coastal resource management.

[S 964]

Approved April 29, 2011

Be it enacted by the General Assembly of Virginia:

1. That § 28.2-1100 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 15.2-2223.2 and 28.2-104.1 as follows:

§ 15.2-2223.2. Comprehensive plan to include coastal resource management guidance.

Beginning in 2012, any locality in Tidewater Virginia, as defined in § 10.1-2101, shall incorporate the guidance developed by the Virginia Institute of Marine Science pursuant to subdivision 8 of § 28.2-1100 into the next scheduled review of its comprehensive plan. The Department of Conservation and Recreation, the Virginia Marine Resources Commission, and the Virginia Institute of Marine Science shall provide technical assistance to any such locality upon request.

§ 28.2-104.1. Living shorelines; development of general permit; guidance.

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

"Living shoreline" means a shoreline management practice that provides erosion control and water quality benefits, protects, restores or enhances natural shoreline habitat, and maintains coastal processes through the strategic placement of plants, stone, sand fill, and other structural and organic materials.

B. The Commission, in cooperation with the Department of Conservation and Recreation, the Department of Environmental Quality, and local wetlands boards, and with technical assistance from the Virginia Institute of Marine Science, shall establish and implement a general permit regulation that authorizes and encourages the use of living shorelines as the preferred alternative for stabilizing tidal shorelines in the Commonwealth. In developing the general permit, the Commission shall consult with the U.S. Army Corps of Engineers to ensure the maximization of conflicts with federal law and regulations.

C. The Commission, in cooperation with the Department of Conservation and Recreation and with technical assistance from the Virginia Institute of Marine Science, shall develop integrated guidance for the management of tidal shoreline systems to provide a technical basis for the coordination of permit decisions required by any regulatory entity exercising authority over a shoreline management project. The guidance shall:

1. Communicate to stakeholders and regulatory authorities that it is the policy of the Commonwealth to support living shorelines as the preferred alternative for stabilizing tidal shorelines;

2. Identify preferred shoreline management approaches for the shoreline types found in the Commonwealth;

3. Explain the risks and benefits of protection provided by various shoreline system elements associated with each management option; and

4. Recommend procedures to achieve efficiency and effectiveness by the various regulatory entities exercising authority over a shoreline management project.

D. The Commission shall permit only living shoreline approaches to shoreline management unless the best available science shows that such approaches are not suitable. If the best available science shows that a living shoreline approach is not suitable, the Commission shall require the applicant to incorporate, to the maximum extent possible, elements of living shoreline approaches into permitted projects.

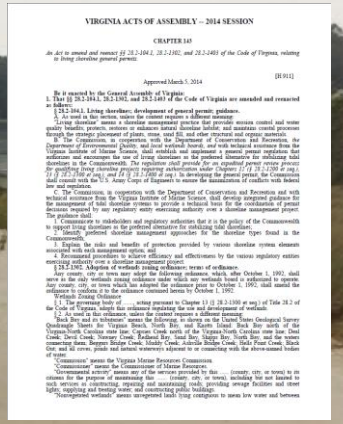
§ 28.2-1301. Powers and duties of the Commission.

A. The Commission may receive gifts, grants, bequests, and devises of wetlands and money which shall be held for the uses prescribed by the donor, grantee, or testator and in accordance with the provisions of this chapter. The Commission shall manage any wetlands it receives so as to maintain their ecological value as provided in Article 2 (§ 28.2-1303 et seq.) of Chapter 13 of this title.

B. The Commission shall preserve and prevent the degradation and destruction of wetlands while accommodating necessary economic development in a manner consistent with wetlands preservation *and any standards set by the Commonwealth in addition to those identified in § 28.2-1100 to ensure protection of shorelines and sensitive coastal habitats from sea level rise and coastal hazards, including guidelines and minimum standards promulgated by the Commission pursuant to subsection C.*

C. In order to perform its duties under this section and to assist counties, cities, and towns in regulating wetlands, the Commission shall promulgate and periodically update (i) guidelines which that scientifically evaluate vegetated and nonvegetated wetlands by type and describe the consequences of use of these wetlands types and (ii) minimum standards for protection and conservation of wetlands.

House Bill 911 (2014)



VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

CHAPTER 165

An Act to amend and reenact §§ 28.2-104.1, 28.2-1302, and 28.2-1403 of the Code of Virginia, relating to living shoreline general permit.

[H 911]

Approved March 5, 2014

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.2-104.1, 28.2-1302, and 28.2-1403 of the Code of Virginia are amended and reenacted as follows:

§ 28.2-104.1. Living shorelines; development of general permit; guidance.

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

"Living shoreline" means a shoreline management practice that provides erosion control and water quality benefits, protects, restores or enhances natural shoreline habitat, and maintains coastal processes through the strategic placement of plants, stone, sand fill, and other structural and organic materials.

B. The Commission, in cooperation with the Department of Conservation and Recreation, the Department of Environmental Quality, and local wetlands boards, and with technical assistance from the Virginia Institute of Marine Science, shall establish and implement a general permit regulation that authorizes and encourages the use of living shorelines as the preferred alternative for stabilizing tidal shorelines in the Commonwealth. The regulation shall provide for an expedited permit review process for qualifying living shoreline projects requiring authorization under Chapters 12 (§ 28.2-1200 et seq.), 13 (§ 28.2-1300 et seq.), and 14 (§ 28.2-1400 et seq.). In developing the general permit, the Commission shall consult with the U.S. Army Corps of Engineers to ensure the maximization of conflicts with federal law and regulations.

C. The Commission, in cooperation with the Department of Conservation and Recreation and with technical assistance from the Virginia Institute of Marine Science, shall develop integrated guidance for the management of tidal shoreline systems to provide a technical basis for the coordination of permit decisions required by any regulatory entity exercising authority over a shoreline management project. The guidance shall:

1. Communicate to stakeholders and regulatory authorities that it is the policy of the Commonwealth to support living shorelines as the preferred alternative for stabilizing tidal shorelines;

2. Identify preferred shoreline management approaches for the shoreline types found in the Commonwealth;

3. Explain the risks and benefits of protection provided by various shoreline system elements associated with each management option; and

4. Recommend procedures to achieve efficiency and effectiveness by the various regulatory entities exercising authority over a shoreline management project.

§ 28.2-1100. Virginia Institute of Marine Science continued; duties.

The Virginia Institute of Marine Science shall hereafter be referred to as the Institute. The Institute shall:

1. Conduct studies and investigations of the seafood and commercial fishing and sport fishing industries;

2. Consider ways to conserve, develop and replenish fisheries resources and advise the Marine Resources Commission and other agencies and private groups on these matters;

3. Conduct studies of problems pertaining to the other segments of the maritime economy;

4. Conduct studies of marine pollution in cooperation with the State Water Control Board and the Department of Health and make the data and their recommendations available to the appropriate agencies;

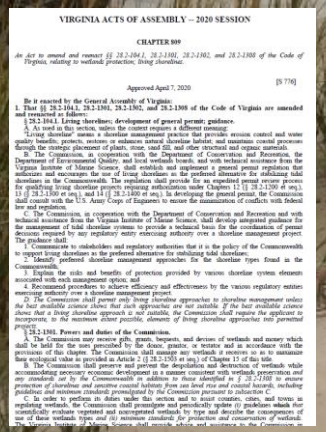
5. Conduct hydrographic and biological studies of the Chesapeake Bay, its tributaries, and all the tidal waters of the Commonwealth and the contiguous waters of the Atlantic Ocean;

6. Engage in research in the marine sciences;

7. Perform such special studies and investigations concerning these subjects as requested by the Governor, and

8. Engage in research and provide training, technical assistance and advice to the Board of Conservation and Recreation on erosion along tidal shorelines, the Soil and Water Conservation Board

Senate Bill 776 (2021)



VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 939

An act to amend and reenact §§ 28.2-104.1, 28.2-1301, 28.2-1302, and 28.2-1308 of the Code of Virginia, relating to wetlands protection; living shoreline.

[S 776]

Approved April 7, 2020

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.2-104.1, 28.2-1301, 28.2-1302, and 28.2-1308 of the Code of Virginia are amended and reenacted as follows:

§ 28.2-104.1. Living shorelines; development of general permit; guidance.

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

"Living shoreline" means a shoreline management practice that provides erosion control and water quality benefits, protects, restores or enhances natural shoreline habitat, and maintains coastal processes through the strategic placement of plants, stone, sand fill, and other structural and organic materials.

B. The Commission, in cooperation with the Department of Conservation and Recreation, the Department of Environmental Quality, and local wetlands boards, and with technical assistance from the Virginia Institute of Marine Science, shall establish and implement a general permit regulation that authorizes and encourages the use of living shorelines as the preferred alternative for stabilizing tidal shorelines in the Commonwealth. The regulation shall provide for an expedited permit review process for qualifying living shoreline projects requiring authorization under Chapters 12 (§ 28.2-1200 et seq.), 13 (§ 28.2-1300 et seq.), and 14 (§ 28.2-1400 et seq.). In developing the general permit, the Commission shall consult with the U.S. Army Corps of Engineers to ensure the maximization of conflicts with federal law and regulations.

C. The Commission, in cooperation with the Department of Conservation and Recreation and with technical assistance from the Virginia Institute of Marine Science, shall develop integrated guidance for the management of tidal shoreline systems to provide a technical basis for the coordination of permit decisions required by any regulatory entity exercising authority over a shoreline management project. The guidance shall:

1. Communicate to stakeholders and regulatory authorities that it is the policy of the Commonwealth to support living shorelines as the preferred alternative for stabilizing tidal shorelines;

2. Identify preferred shoreline management approaches for the shoreline types found in the Commonwealth;

3. Explain the risks and benefits of protection provided by various shoreline system elements associated with each management option; and

4. Recommend procedures to achieve efficiency and effectiveness by the various regulatory entities exercising authority over a shoreline management project.

D. The Commission shall permit only living shoreline approaches to shoreline management unless the best available science shows that such approaches are not suitable. If the best available science shows that a living shoreline approach is not suitable, the Commission shall require the applicant to incorporate, to the maximum extent possible, elements of living shoreline approaches into permitted projects.

§ 28.2-1301. Powers and duties of the Commission.

A. The Commission may receive gifts, grants, bequests, and devises of wetlands and money which shall be held for the uses prescribed by the donor, grantee, or testator and in accordance with the provisions of this chapter. The Commission shall manage any wetlands it receives so as to maintain their ecological value as provided in Article 2 (§ 28.2-1303 et seq.) of Chapter 13 of this title.

B. The Commission shall preserve and prevent the degradation and destruction of wetlands while accommodating necessary economic development in a manner consistent with wetlands preservation *and any standards set by the Commonwealth in addition to those identified in § 28.2-1100 to ensure protection of shorelines and sensitive coastal habitats from sea level rise and coastal hazards, including guidelines and minimum standards promulgated by the Commission pursuant to subsection C.*

C. In order to perform its duties under this section and to assist counties, cities, and towns in regulating wetlands, the Commission shall promulgate and periodically update (i) guidelines which that scientifically evaluate vegetated and nonvegetated wetlands by type and describe the consequences of use of these wetlands types and (ii) minimum standards for protection and conservation of wetlands.

The need to incorporate **additional standards** within the existing **Wetland Guidelines**, necessary for the protection and coastal resilience of Virginia's tidal wetland acreages, was addressed by the General Assembly with the passage of living shorelines legislation in 2011 and 2020.

Tidal Wetlands Guidelines Public Hearing

Update of the Commission's Tidal Wetlands Guidelines developed pursuant to requirements of the 2011 and 2020 living shorelines legislation and *§28.2-104.1* of the Code of Virginia.

May 25, 2021

As a result of this legislation, the Commission considered and approved an update to the Wetlands Guidelines at the required public hearing in May 2021.



TIDAL WETLANDS GUIDELINES

Promulgated by the Virginia Marine Resources Commission

May 2021 Update

Primary Updates:

Four Additional (new) Standards

- Any application for a project including erosion control projects, removal of vegetation, construction access or land disturbance, that will impact the Resource Protection Area must also be independently approved by the local government as consistent with the Chesapeake Bay Preservation Act (CBPA), ***§62.1-44.15:72***.
- Project review of any proposed uses or development of tidal wetlands shall include data derived from an onsite analysis and provided on scaled drawings that includes consideration of shoreline variables such as fetch exposure, fastland bank condition, bank height, bank composition, etc.
- Proposed uses or development of tidal wetlands must allow, to the maximum extent possible the landward migration of existing vegetation over the useful life of the project, using the 2017 NOAA Intermediate-High scenario projection curve or, in the future, any updated projection based on the best available science and selected through the Coastal Master Plan process.
- Proposed uses of tidal wetlands shall only be approved if the development proposed meets the criteria of the updated Guidelines and that VMRC and local wetlands boards approve only living shoreline approaches to shoreline management unless the best available science shows that such approaches are not suitable pursuant to ***§28.2-104.1***

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

House Bill 1950 (2023)

CHAPTER 334

An Act to direct the Virginia Marine Resources Commission to review and update certain guidelines to provide for the generation of vegetated and unvegetated wetland credits from wetland creation, restoration, conversion, and enhancement activities, invasive species control, and the establishment of open water channels.

Specifically, HB 1950 directed VMRC to update two existing guidance documents:

- Wetlands Mitigation-Compensation Policy and Supplemental Guidelines (4VAC20-390).
- Guidelines for Establishment, Use and Operation of Tidal Wetland Mitigation Banks in Virginia.

Be

1. *§*

with the Commission's "Tidal Wetlands Guidelines" (May 2021 Update), including updating the wetlands types and properties. The Commission shall form a stakeholder group including representatives from the mitigation banking industry, conservation organizations, the U.S. Army Corps of Engineers, the Department of Environmental Quality, and the Virginia Institute of Marine Science for the purpose of reviewing and updating the Guidelines. The Commission shall complete the review and update by July 1, 2024.

Wetlands Mitigation-Compensation Policy and Supplemental Guidelines Regulation
4VAC 20-390-10 ET SEQ
&
Tidal Wetland Banking Guidelines

Promulgated by the Virginia Marine Resources Commission
January 2025 Update

Primary Updates:

Compensation Sequencing	• New recommended sequencing of acceptable compensatory mitigation options.
Interagency Review Team	• Clarified the initial process for proposing a new tidal wetlands mitigation bank for consideration by the Interagency Review Team (IRT).



Wetlands Mitigation-Compensation Policy and Supplemental Guidelines Regulation

4VAC 20-390-10 ET SEQ

- **Following the original adoption of the Wetlands Guidelines in 1974, the Commission in 1989 additionally adopted *4VAC 20-390-10 ET SEQ* to provide for the compensation of permissible impacts to tidal wetlands.**

- **These guidelines were updated in 2005 to meet Virginia's "no net loss" of wetlands following the Chesapeake 2000 Agreement.**

- **Updated again in January of 2025 per the legislative mandate of HB 1950 (2023 GA).**

Principal Updates
Wetlands Mitigation Compensation Policy

New recommended sequencing of acceptable compensatory mitigation options

Local wetlands boards and Commission *shall* select compensatory mitigation options per the following order of preference:

1. Use of an approved tidal wetlands mitigation bank
2. Use of an approved in-lieu fee program approved by the IRT: Stream Wetlands Mitigation Program (*SWMP),* formerly *Virginia Aquatic Resource Trust Fund*
3. Permittee-responsible mitigation onsite or through mitigation off-site within the same watershed.
4. Use of the previously utilized local wetland board i)n-lieu fee only in exceptional circumstances where federal regulators do not require compensatory mitigation and the applicant demonstrates that other forms of compensatory mitigation are not available.

Former VMRC
Wetlands Mitigation – Compensation Policy
Recommended Sequencing

The sequence of acceptable mitigation options should be as follows:

1- On site, Off site (same watershed)
2- Mitigation Bank (same watershed)
3- Local Wetland Board In-lieu fee (if on/off site impractical)

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

An Act to direct the Virginia Marine Resources Commission to review and update certain guidelines to provide for the generation of vegetated and unvegetated wetland credits from wetland creation, restoration, conversion, and enhancement activities, invasive species control, and the establishment of open water channels.

An Act t

provi

resto

open

es to

ution,

nt of

50]

Be it

1. *§ 1.*

Commiss

Virginia

Supplem

provisio

creation,

establish

with the

types an

e the

nks in

and

nsider

etland

l the

sistent

lands

n the

mitigation banking industry, conservation organizations, the U.S. Army Corps of Engineers, the Department of Environmental Quality, and the Virginia Institute of Marine Science for the purpose of reviewing and updating the Guidelines. The Commission shall complete the review and update by July 1, 2024.

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

An Act t … *sources*
Commis … *in*
guideli … *of*
vegetate … *lits*
from wetland creation, restoration, conversion, and enhancement activities, invasive species control, and the establishment of open water channels.

Prior to this legislation, our local wetland boards were instructed to accept wetlands mitigation that resulted *only* from the creation of new wetlands constructed from uplands (necessary to meet no net loss)

An Act t … *es to*
provi … *ation,*
resto … *nt of*
open …

… 50]

Be it …

1. *§ 1.* … *e the*
Commiss … *ks in*
Virginia … *and*
Supplem … *nsider*
provisio … *etland*
creation, … *d the*
establish … *sistent*
with the … *lands*
types an … *n the*
mitigation banking industry, conservation organizations, the U.S. Army Corps of Engineers, the Department of Environmental Quality, and the Virginia Institute of Marine Science for the purpose of reviewing and updating the Guidelines. The Commission shall complete the review and update by July 1, 2024.

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

An Act t … *sources*
Commis … *in*
guidelin … *of*
vegetate … *lits*
from wetland creation, restoration, conversion, and enhancement activities, invasive species control, and the establishment of open water channels.

Prior to this legislation, our local wetland boards were instructed to accept wetlands mitigation that resulted *only* from the creation of new wetlands constructed from uplands.

An Act t … *es to*
provi … *ation,*
resto … *nt of*
open … 50]

Be it …

1. *§ 1.* … *e the*
Commiss … *ks in*
Virginia … *and*
Supplem … *nsider*
provisio … *etland*
creation, … *d the*
establish … *sistent*
with the … *lands*
types an … *n the*
mitigation banking industry, conservation organizations, the U.S. Army Corps of Engineers, the Department of Environmental Quality, and the Virginia Institute of Marine Science for the purpose of reviewing and updating the Guidelines. The Commission shall complete the review and update by July 1, 2024.

House Bill 1950

Stakeholder Group

SUMMARY AS PASSED:

Virginia Marine Resources Commission; wetland mitigation site; improving and enhancing tidal wetlands. **The bill additionally requires VMRC to form a stakeholder group for the purpose of reviewing and updating the Guidelines.**

Table 1. House Bill 1950 Workgroup
Agency/Group
Troutman Pepper
New Mill Creek Bank
The Nature Conservancy
Chesapeake Bay Foundation
Marine Resources Commission
Army Corps of Engineers
Department of Environmental Quality
Virginia Institute of Marine Science
NOAA Fisheries

Stakeholder group including representatives from the mitigation banking industry, conservation organizations, the U.S. Army Corps of Engineers, the Department of Environmental Quality, and the Virginia Institute of Marine Science for the purpose of reviewing and updating its guidelines.

House Bill 1950

Stakeholder Group

Membership included federal and state representatives from the Commonwealth's Interagency Review Team (IRT).

This group (Army Corps of Engineers, NOAA Fisheries, USFWS, EPA, DEQ, DWR, DCR, Dept. Forestry, VMRC, VIMS) is responsible for the review and oversight of the compensatory requirements for permissible impacts to nontidal wetlands, tidal wetlands, and Virginia streams accomplished through the establishment and management of mitigation bank or in-lieu fee instruments pursuant to 33 CFR Section 332.8 and 28.2-1308 of the Virginia Code.

House Bill 1950

Stakeholder Group

Membership included federal and state representatives from the Commonwealth's Interagency Review Team.

This group (Army Corps of Engineers, NOAA Fisheries, USFWS, EPA, DEQ, DWR, DCR, Dept. Forestry, VMRC, VIMS) is responsible for the review and oversight of the compensatory requirements f nds, tidal wetlands, and the establishment n-lieu fee instruments pu 2-1308 of the Virginia Code.

This is the Commonwealth's and the federal government's collective subject matter experts on compensatory mitigation required by state and federal statute and regulation.

HB 1950 also directed VMRC to update its tidal wetlands mitigation banking guidelines

Guidelines for Establishment, Use and Operation of Tidal Wetlands Mitigation Banks in Virginia

- **Originally adopted in 1998 jointly by VMRC and VIMS.**
- **Developed with the assistance of a Mitigation Banking Advisory Committee (MBAC) representing local, state, and federal interests involved in tidal wetlands management and mitigation issues, as well as private sector developers, consultants, and environmental groups.**
- **They have never been updated (*26 years*).**

Principal Updates
Tidal Wetlands Banking Guidelines

- Clarifies the initial process for proposing a new tidal wetlands mitigation bank for consideration by the Interagency Review Team (IRT).

- Allow for the sale of wetland banking credits from wetlands established from wetland creation, restoration, conversion, and enhancement activities, invasive species control, and the establishment of open water channels.

- Considerable edits to ensure streamlining the guidance and removing antiquated language to ensure compliance with existing federal and state law.

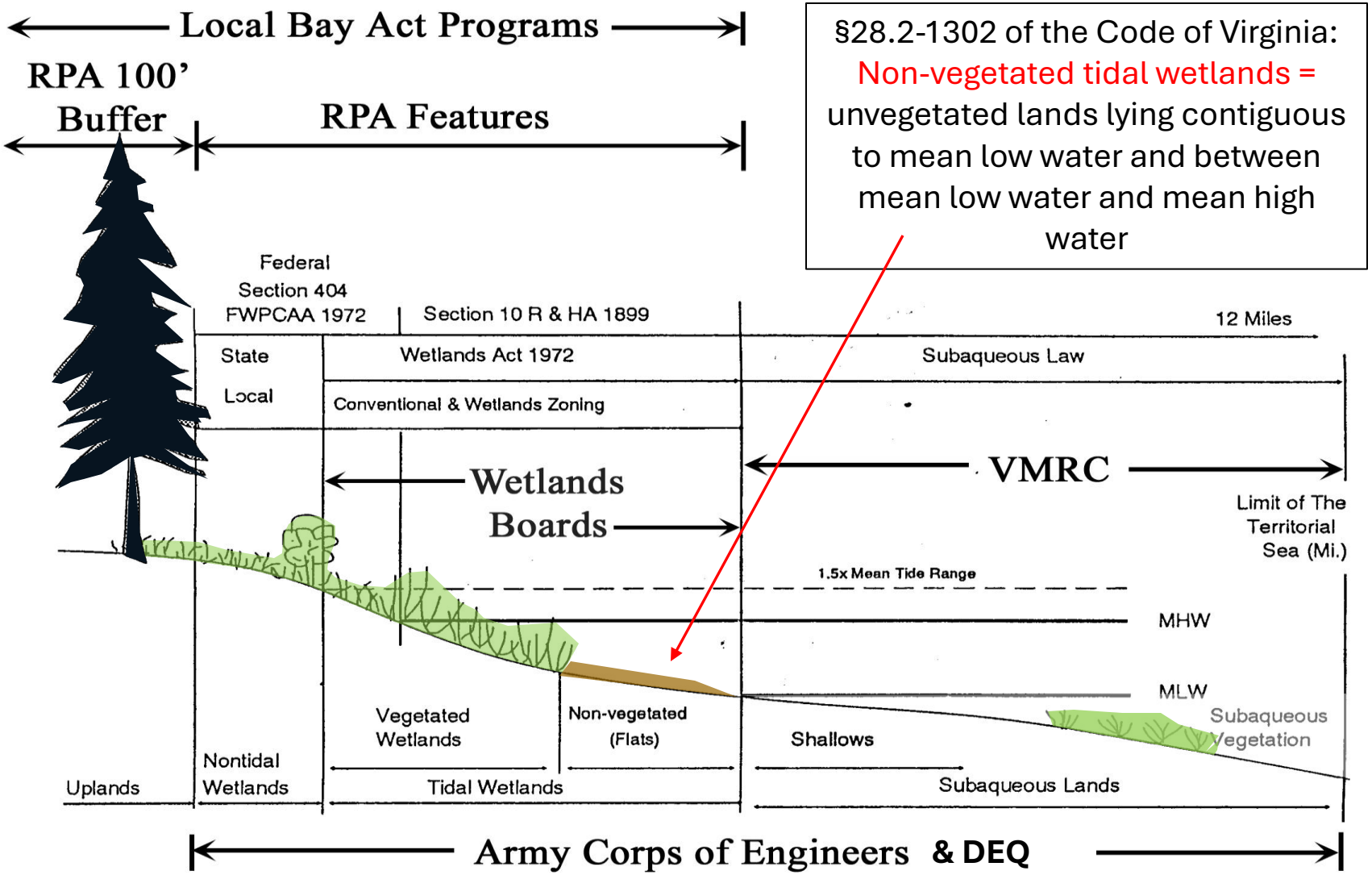
Summary

Proposed Updates to VMRC's *Guidelines for Establishment, Use, and Operation of Tidal Wetland Mitigation Banks* and its *Wetlands Mitigation Compensation Policy and Supplemental Guidelines*

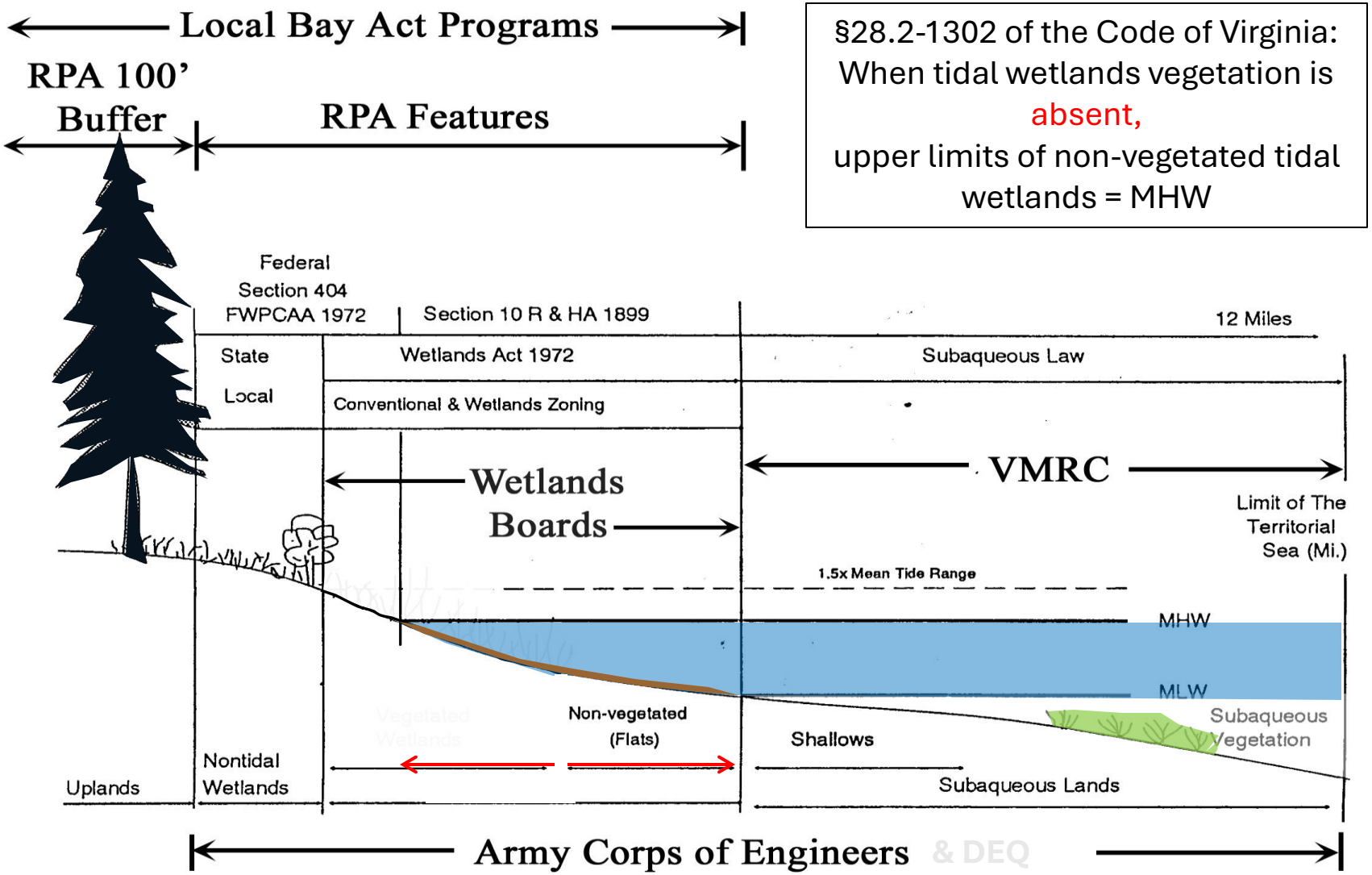
1. Ensures conformity with existing federal and state law and meets the legislative mandate of HB 1950.
2. Provides clearer direction to potential new bankers and favors the establishment of new *tidal* wetlands mitigation banks.
3. Ensures that existing wetland functions impacted by development will be replaced by functional wetlands created at the bank site.
4. Foster a market-based approach to compensatory mitigation through the establishment of additional wetlands mitigation banks.
5. Continue to meet the Commonwealth's no net loss of wetlands obligation as a signatory to the Chesapeake Bay Program Agreement.

Jurisdictional Boundaries

§28.2-1302 of the Code of Virginia:
Non-vegetated tidal wetlands = unvegetated lands lying contiguous to mean low water and between mean low water and mean high water



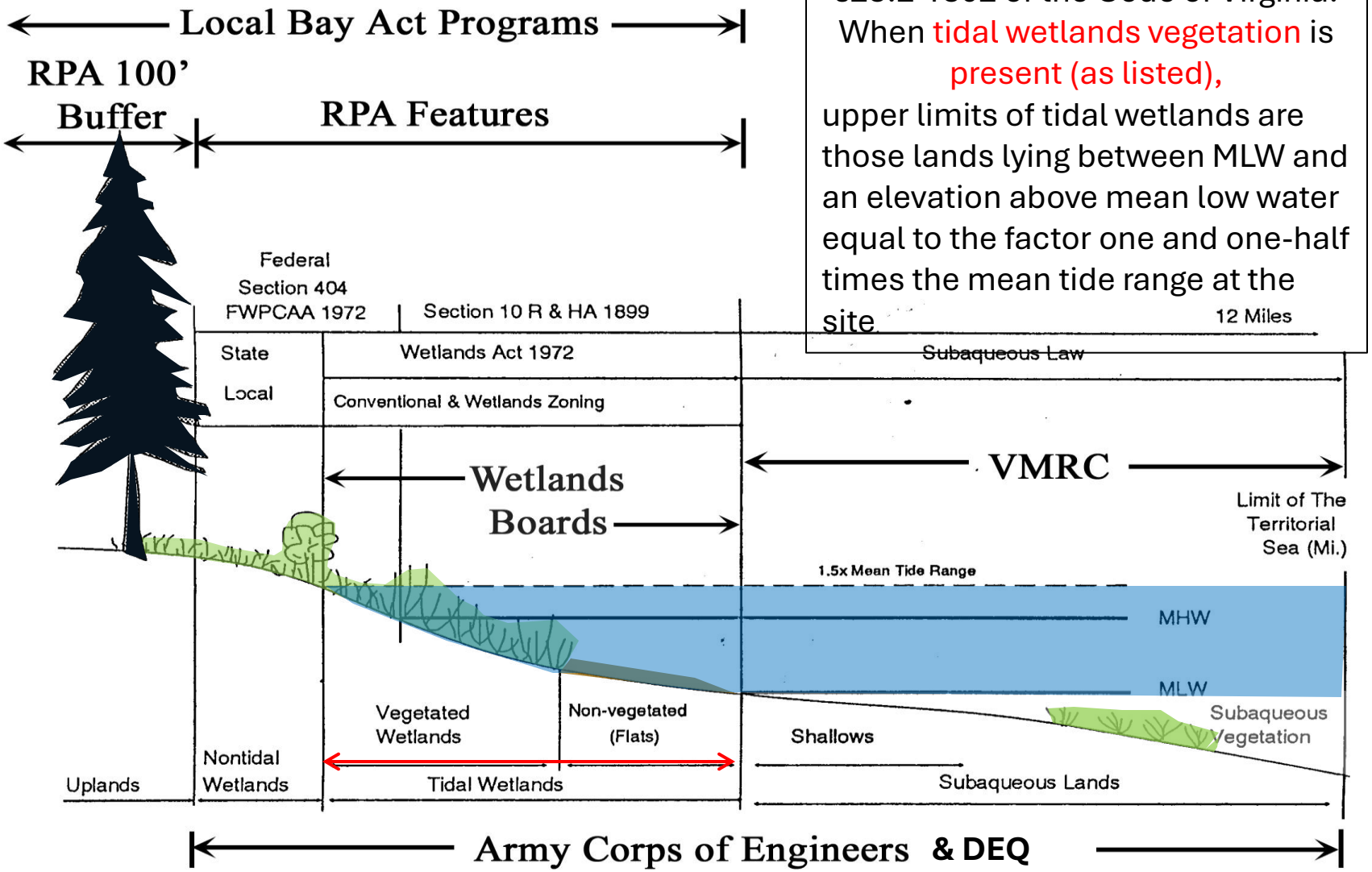
Jurisdictional Boundaries



§28.2-1302 of the Code of Virginia:
When tidal wetlands vegetation is absent,
upper limits of non-vegetated tidal wetlands = MHW

Jurisdictional Boundaries

§28.2-1302 of the Code of Virginia: When tidal wetlands vegetation is present (as listed), upper limits of tidal wetlands are those lands lying between MLW and an elevation above mean low water equal to the factor one and one-half times the mean tide range at the site




Upland
Saltbushes
Saltmarsh
Cordgrass
Mudflats
Subtidal Waters

Permitted Tidal Wetlands Impacts 2013 – 2024

- Average = 0.77 acres/year
- Average Compensation 1.04:1
- Average Net Gain : 14.2 acres/year



Permitted Losses of Non-vegetated & Vegetated Tidal Wetlands With Required Compensation & Net Gains/Losses 2013 - 2024 (VMRC & Local Wetlands Boards)

Calendar Year	Permitted Losses			Required Compensation	Trend	Net Tidal Wetlands Resulting from VMRC & LWB Required Compensation and Living Shoreline Applications		
	NonVeg. Wetlands (ac)	Veg. Wetlands (ac)	Total Wetlands Loss (ac)	Total Wetlands Compensation (ac)	Net Gain/Loss* (ac)	NonVeg. Wetlands (ac)	Veg. Wetlands (ac)	Total Wetlands (ac)
2013	0.44	0.13	0.57	0.67	0.10	3.82	2.53	6.45
2014	0.31	0.23	0.54	1.20	0.66	5.20	2.68	8.53
2015	0.51	0.10	0.61	0.80	0.19	3.36	2.44	5.99
2016	0.29	1.31	1.60	1.75	0.15	3.69	4.93	8.76
2017	0.49	0.09	0.58	0.34	0.24	3.22	6.27	9.26
2018	0.48	0.38	0.86	0.75	0.10	5.01	4.27	9.18
2019	1.01	1.05	2.06	1.92	0.15	8.76	3.29	11.90
2020	0.39	0.13	0.52	0.46	0.06	4.65	4.24	8.83
2021	0.25	0.11	0.36	0.27	0.09	12.02	15.61	27.54
2022	0.47	0.19	0.65	0.40	0.25	10.87	7.85	18.46
2023	0.21	0.07	0.28	0.33	0.05	10.75	25.94	36.74
2024	0.43	0.14	0.57	0.49	0.08	7.45	10.72	18.09
Average/YR	*0.44*	*0.33*	*0.77*	*0.78*	*0.01*	*6.57*	*7.56*	
Average Compensation Ratio per Year				*1.04:1*	*Annual average of new wetlands established per year (acres) resulting from required compensation and living shoreline applications*			*14.15*

*Compensation for permitted losses of non-vegetated wetlands is typically required by local wetlands boards, but not always.


Questions?