

## VIRGINIA<sup>1</sup>

### *State Authority for Marine Protection*

#### Summary of State Authority

Virginia has a network of conservation lands that protect estuaries and coastal areas, but the state primarily uses fisheries management tools to protect the marine environment off its coast. The Virginia Department of Conservation and Recreation creates two types of reserves that protect estuarine and coastal areas: State Natural Area Preserves and State Parks. In addition, the Virginia Marine Resources Commission has authority to issue regulations to protect fisheries, which it uses to create protected areas and Submerged Aquatic Vegetation Sanctuaries. Its Habitat Management Division manages the state's submerged bottomlands, tidal wetlands, sand dunes, and beaches to protect fishery habitat. The Commission also operates a tidal wetlands permitting program in conjunction with local governments.

	State Natural Area Preserves	Fisheries Management, Submerged Land, Protected Areas	Submerged Aquatic Vegetation Sanctuaries	State Parks	Tidal Wetlands Act
Legal requirement	Allows designation of State Natural Area Preserves	Allows restrictions for fisheries management; state may not pass interest in any natural oyster bed, rock, or shoal	Allows designation of Submerged Aquatic Vegetation Sanctuaries	Allows designation of State Parks	Permitting for activities in tidal wetlands, dunes, and beaches
Citation <sup>2</sup>	VA. CODE ANN. §§ 10.1-213 <i>et seq.</i> (1989)	VA. CODE ANN. §§ 28.2-100 <i>et seq.</i> ; §§ 28.2-1200 <i>et seq.</i> ; § 28.2-551 (1950)	4 VA. ADMIN. CODE §§ 20-1000-10 <i>et seq.</i> (1998)	VA. CODE ANN. §§ 10.1-200 <i>et seq.</i> (1984)	VA. CODE ANN. §§ 28.2-1300 <i>et seq.</i> (1972); §§ 28.2-1400 <i>et seq.</i> (1980)
Designation authority	Virginia Department of Conservation & Recreation (VDCR)	Virginia Marine Resource Commission (VMRC)	VMRC	VDCR	VMRC
Management & enforcement authority	VDCR	VMRC	VMRC	VDCR	VMRC, local governments (see below)
Jurisdiction & boundaries	Estuaries, coastal lands, beaches and dunes	All state waters; all natural oyster beds, rocks, or shoals	State waters hosting submerged aquatic vegetation	Estuaries, coastal lands, beaches and dunes	Estuaries, coastal lands, beaches and dunes

<sup>1</sup> This state chapter is part of a 23-state assessment of state and local authority for marine protection. It should be read in conjunction with the Executive Summary, Introduction and Methodology Chapters in order to fully understand the scope and approach. Other chapters are available at [www.eli-ocean.org/mpa](http://www.eli-ocean.org/mpa).

<sup>2</sup> The citation date provided is the earliest date of enactment and does not reflect subsequent amendments unless otherwise noted. The enactment date is meant to inform the reader of how long the protection authority has existed.

	State Natural Area Preserves	Fisheries Management, Submerged Land, Protected Areas	Submerged Aquatic Vegetation Sanctuaries	State Parks	Tidal Wetlands Act
Prohibited uses	None specified by statute	VMRC has authority to close marine areas or to issue permits to regulate use; state may not pass interest in any natural oyster bed, rock, or shoal	Dredging	None specified by statute	None specified
Permitted uses	None specified	None specified	None specified	Recreational uses such as boating and fishing	None specified

Virginia’s jurisdiction over its coastal waters extends three nautical miles seaward.<sup>3</sup> Virginia defines its state waters as “all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.”<sup>4</sup> The Virginia Marine Resources Commission (“VMRC”) has jurisdiction over the Commonwealth’s territorial sea and manages the state’s submerged lands in public trust.<sup>5</sup>

### State Natural Area Preserves

The Virginia Department of Conservation and Recreation (“VDCR”) manages the state’s Natural Area Preserve System to protect the natural heritage and biological resources of the Commonwealth.<sup>6</sup> The Department has authority to purchase or accept additional lands to expand the System, but VDCR does not own all of the lands in the System. The Director of the Department of Conservation and Recreation may dedicate new natural area preserves; such dedications function like conservation easements by placing legally binding restrictions on the property.

Generally, camping and the removal or destruction of plants and animals is prohibited in natural area preserves.<sup>7</sup> VDCR may temporarily close a natural area to protect sensitive habitat or to complete other resource management activities.<sup>8</sup>

Most natural heritage areas protect only terrestrial habitat, but some also include coastal portions of the marine environment. For example, the Magothy Bay Natural Area protects salt marsh and mud flat habitat for mussels, snails, fish, crustaceans, and diamondback terrapins.<sup>9</sup>

<sup>3</sup> See Submerged Lands Act of 1953, 43 U.S.C. §§ 1301–1315.

<sup>4</sup> VA. CODE ANN. § 62.1-44.3.

<sup>5</sup> See *id.* §§ 28.2-101; 28.2-1200.

<sup>6</sup> VA. CODE ANN. §§ 10.1-213 *et seq.* (1989).

<sup>7</sup> Va. Dep’t of Conservation & Recreation, Virginia Natural Area Preserves, [http://www.dcr.virginia.gov/natural\\_heritage/natural\\_area\\_preserves/](http://www.dcr.virginia.gov/natural_heritage/natural_area_preserves/) (last visited May 14, 2013).

<sup>8</sup> Va. Dep’t of Conservation & Recreation, Natural Area Preserve Closures, [http://www.dcr.virginia.gov/natural\\_heritage/natural\\_area\\_preserves/presclos.shtml](http://www.dcr.virginia.gov/natural_heritage/natural_area_preserves/presclos.shtml) (last visited May 14, 2013).

<sup>9</sup> Va. Dep’t of Conservation & Recreation, Magothy Bay Natural Area Preserve [http://www.dcr.virginia.gov/natural\\_heritage/natural\\_area\\_preserves/magothybay.shtml](http://www.dcr.virginia.gov/natural_heritage/natural_area_preserves/magothybay.shtml) (last visited May 14, 2013).

### Fisheries Management, Protected Areas

VMRC is responsible for safeguarding the state's marine resources.<sup>10</sup> The agency has some authority to define spatial uses of the state's marine waters and submerged lands through its fisheries authority. It may close areas to fishing or the use of particular types of equipment "to conserve and promote the seafood and marine resources of the Commonwealth."<sup>11</sup> The Commission may also adopt habitat management regulations and guidelines.<sup>12</sup>

After consulting with the U.S. Coast Guard and the U.S. Army Corps of Engineers, VMRC may establish by regulation "state water safety zones and restricted areas within the tidal waters of the Commonwealth wherein public access shall be restricted or prohibited in the interest of public safety." Such zones must be consistent with federal law.<sup>13</sup>

### Submerged Aquatic Vegetation Sanctuaries

VMRC works to preserve marine habitat by protecting submerged aquatic vegetation. The Commission creates guidelines<sup>14</sup> and may designate Submerged Aquatic Vegetation Sanctuaries.<sup>15</sup> The Sanctuaries prohibit dredging in order to protect the marine plants. For example, dredging is prohibited within 200 meters of any areas of submerged aquatic vegetation in the Chincoteague Bay Sanctuary.<sup>16</sup>

### State Parks

VDCR owns and manages Virginia's State Parks<sup>17</sup> and has rulemaking authority over park operations and management.<sup>18</sup> The parks are managed to provide residents with outdoor recreational facilities, and so fishing, swimming, and boating are generally allowed on-site.

Most of the State Parks protect only terrestrial habitat, but some also benefit coastal portions of the marine environment. For example, the False Cape State park protects six miles of Atlantic Beach.<sup>19</sup> Fishing is allowed in the area with a valid permit. The Director of VDCR may adopt other regulations to safeguard the environment of False Cape, including "[a]dequate measures to protect the dunes, wildlife, and sensitive areas of the Park," and "[a]dequate measures to protect, wherever practicable, nesting areas of sea turtles, beach nesting birds, peregrine falcons, and other endangered species."<sup>20</sup>

### Tidal Wetlands Act

The Virginia Tidal Wetlands Act recognizes the environmental value of tidal wetlands and establishes a permitting system for impacts to tidal wetlands, including vegetated tidal wetlands and non-vegetated shorelines between the low- and mean high-water marks.<sup>21</sup> In developing guidelines and regulations, the statute directs VMRC to consider "tidal wetlands which are essential for the production of marine and

<sup>10</sup> VA. CODE ANN. §§ 28.2-100 *et seq.* (1950).

<sup>11</sup> *Id.* §28.2-201 (regulatory authority).

<sup>12</sup> *Id.* §§ 28.2-103, 28.2-209 *et seq.*

<sup>13</sup> *Id.* § 28.2-106.2.

<sup>14</sup> *Id.* § 28.2-1204.1.

<sup>15</sup> 4 VA. ADMIN. CODE §§ 20-1000-10 *et seq.* (1998).

<sup>16</sup> *Id.* § 20-1000-30.

<sup>17</sup> VA. CODE ANN. §§ 10.1-200 *et seq.* (1984).

<sup>18</sup> VA. CODE ANN. § 10.1-104.

<sup>19</sup> Va. Dep't of Conservation & Recreation, False Cape, [http://www.dcr.virginia.gov/state\\_parks/fal.shtml](http://www.dcr.virginia.gov/state_parks/fal.shtml) (last visited May 14, 2013).

<sup>20</sup> VA. CODE ANN. § 10.1-205(A).

<sup>21</sup> VA. CODE ANN. §§ 28.2-1300 *et seq.* (1972).

inland wildlife, waterfowl, finfish, shellfish and flora.”<sup>22</sup> VMRC is the state authority for tidal wetlands, but localities have the option to regulate their own tidal wetlands through the creation of citizen Wetlands Boards, with oversight from VMRC.

Regulatory jurisdiction extends to the mean high-tide line where no emergent vegetation exists, and to 1.5 times the mean tide range where marshes are present. The Act regulates any activity that disturbs tidal wetlands, including dredging, filling, and building on shallow water areas.<sup>23</sup>

VMRC has sole jurisdiction over permitting of projects within state-owned subaqueous lands seaward of the mean low-water mark. VMRC also reviews proposed projects affecting wetlands, sand dunes, and beaches in localities that have not yet adopted the Wetland Zoning Ordinance.<sup>24</sup>

*Evaluation of State Authorities<sup>25</sup>*

FACTORS	State Natural Area Preserves	Fisheries Management, Protected Areas	Submerged Aquatic Vegetation Sanctuaries	State Parks	Tidal Wetlands Act
<b>Legal Regime</b>	★★★★★ Regulatory	★★★★★ Regulatory	★★★★★ Regulatory	★★★★★ Regulatory	★★★★ Planning
<b>Ocean Jurisdiction</b>	★★ Estuarine	★★★★★ All marine waters	★★★★ Areas with submerged aquatic vegetation	★★ Estuarine	★★ Estuarine
<b>Durability</b>	★★ Indeterminate	★★ Indeterminate	★★ Indeterminate	★★ Indeterminate	★★ Indeterminate
<b>Consistency</b>	★★★★ Authorizes year-round protection	★★★★ Authorizes year-round protection	★★★★ Authorizes year-round protection	★★★★ Authorizes year-round protection	★★★★ Authorizes year-round protection
<b>Habitat</b>	★★★★ Habitat protection goal	★★ Byproduct is habitat protection	★★★★ Habitat protection goal	★★ Byproduct is habitat protection	★★★★ Habitat protection goal
<b>Sector</b>	★★★★ Authorizes multi-sector protection	★ Authorizes single-sector protection	★★★★ Authorizes multi-sector protection	★★★★ Authorizes multi-sector protection	★★★★ Authorizes multi-sector protection
<b>Enforcement</b>	★★★★ Grants VDCR authority to enforce chapter & issue civil penalties	★★★★★ Grants VMRC authority to enforce chapter & arrest offenders or issue citations	★★★★★ Grants VMRC authority to enforce chapter & arrest offenders or issue citations	★★★★★ Grants VDCR authority to enforce chapter & issue civil penalties	★ No MPA-specific enforcement
<b>Extent (Scope)</b>	★★★★ Multi-site, potential expansion	★★★★★ Multi-site, potential expansion	★★★★ Single site, potential expansion	★★★★★ Multi-site, potential expansion	★ Site-by-site permitting
<b>Process for</b>	★★	★★	★★	★★	★★

<sup>22</sup> VA. CODE ANN. §§ 28.2-1301(D).

<sup>23</sup> Virginia Marine Res. Comm’n, Subaqueous Guidelines, [http://www.mrc.state.va.us/regulations/subaqueous\\_guidelines.shtm](http://www.mrc.state.va.us/regulations/subaqueous_guidelines.shtm) (last visited Feb. 27, 2013).

<sup>24</sup> See VA. CODE ANN. § 28.2-1302.

<sup>25</sup> For an explanation of the evaluation and matrix criteria, please see the Introduction and Methodology Chapters.

FACTORS	State Natural Area Preserves	Fisheries Management, Protected Areas	Submerged Aquatic Vegetation Sanctuaries	State Parks	Tidal Wetlands Act
designation or expansion	No MPA-specific public process	No MPA-specific public process	No MPA-specific public process	No MPA-specific public process	No MPA-specific public process

### Local Authority for Marine Protection

#### Summary of Local Authorities

Local governments in Virginia have only limited area-based authority to protect marine habitat. Local governments may regulate activities in tidal wetlands by adopting the state’s Wetlands Zoning Ordinance. Additionally, the Chesapeake Bay Preservation Act gives local governments the authority to designate Resource Protection Areas or Resource Management Areas in order to manage land uses and protect water quality in the Bay.

	Tidal Wetlands Act	Chesapeake Bay Preservation Act
<b>Legal requirement</b>	Local governments regulate activities in tidal wetlands	Local governments designate and manage land uses in Resource Management Areas and Resource Protection Areas
<b>Citation<sup>26</sup></b>	VA. CODE ANN. § 28.2-1302 (1972)	VA. CODE ANN. §§ 10.1-2100 <i>et seq.</i> (1988)
<b>Designation authority</b>	Local governments & VMRC	Local governments
<b>Management &amp; enforcement authority</b>	Local governments	Local governments
<b>Jurisdiction &amp; boundaries</b>	Tidal wetlands	Tidal wetlands and shorelands
<b>Prohibited uses</b>	None specified	None specified
<b>Permitted uses</b>	None specified	None specified

#### Tidal Wetlands Act

Under the Tidal Wetlands Act, local governments have the option to regulate tidal wetlands within their jurisdiction, with oversight from VMRC.<sup>27</sup> The law creates a uniform Wetlands Zoning Ordinance that any county, city, or town may adopt in order to assume responsibility over regulating the use and development of local tidal wetlands.<sup>28</sup>

Local governments that wish to adopt the ordinance must create a Wetlands Board consisting of five to seven residents in their jurisdiction.<sup>29</sup> Under the ordinance, these boards serve to “preserve and prevent

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<sup>27</sup> VA. CODE ANN. § 28.2-1302 (1972).

<sup>28</sup> *Id.* § 28.2-1303.

<sup>29</sup> *Id.* § 28.2-1303.

the despoliation and destruction of wetlands while accommodating necessary economic development in a manner consistent with wetlands preservation.”<sup>30</sup>

The local Wetlands Board has jurisdiction over wetlands from the mean low-water mark to the mean high-water mark where no emergent vegetation exists, and from the mean low- to 1.5 times the mean tide range where vegetation is present.<sup>31</sup>

The Board is authorized to grant, grant with modification, or deny relevant permits for proposed coastal development within their jurisdiction. In order to assist local governments in executing these responsibilities, the Tidal Wetlands Act tasks VMRC with promulgating and periodically updating “guidelines which scientifically evaluate vegetated and nonvegetated wetlands by type and describe the consequences of use of these wetlands types.”<sup>32</sup>

### Chesapeake Bay Preservation Act

Virginia’s Chesapeake Bay Preservation Act establishes water quality protection measures for the Chesapeake Bay, its tributaries, and other state waters, which include tidal wetlands.<sup>33</sup> The Chesapeake Bay Preservation Area Designation and Management Regulations—developed and administered by the Chesapeake Bay Local Assistance Board—outline criteria for implementation of the Act.<sup>34</sup>

Virginia’s tidewater jurisdictions designate two different types of areas along the shorelines of streams, rivers, and other waterways, including tidal wetlands, in order to regulate certain activities.<sup>35</sup> Resource Protection Areas (“RPAs”) are areas that protect and benefit water quality, and Resource Management Areas (“RMAs”) are areas that may damage water quality without proper management.

Local governments manage land uses in these areas in order to “help reduce water quality impacts of nonpoint source pollution and improve the health of the Chesapeake Bay.”<sup>36</sup> A permit applicant must submit a Water Quality Impact Assessment for review and approval by the local government to achieve compliance with the Bay Act. Chesapeake Bay Program regulations also establish 100-foot buffer zones in which shoreline development is regulated and limited.

### Evaluation of Local Authorities

FACTORS	Tidal Wetlands Act	Chesapeake Bay Preservation Act
Legal Regime	Planning ★★★	Planning ★★★
Ocean Jurisdiction	Beach, tidal only ★	Beach, tidal only ★
Durability	Indeterminate ★★	Indeterminate ★★
Consistency	Indeterminate ★★	Indeterminate ★★

<sup>30</sup> *Id.* § 28.2-1302.

<sup>31</sup> *Id.* § 28.2-1302.

<sup>32</sup> *Id.* § 28.2-1301.

<sup>33</sup> VA. CODE ANN. §§ 10.1-2100 *et seq.* (1988).

<sup>34</sup> VA. CODE ANN. §§ 10.1-2107.

<sup>35</sup> 9 VA. ADMIN. CODE § 10-20-10 *et seq.*

<sup>36</sup> Va. Dep’t of Conservation & Recreation, Virginia’s Bay Act Program, [http://www.dcr.virginia.gov/stormwater\\_management/abtprogram.shtml](http://www.dcr.virginia.gov/stormwater_management/abtprogram.shtml) (last visited May 15, 2013).

<b>Habitat</b>	Byproduct= protecting habitat <span style="float: right;">★★</span>	Byproduct= protecting habitat <span style="float: right;">★★</span>
<b>Sector</b>	Mandates multi-sector protection <span style="float: right;">★★★★</span>	Mandates multi-sector protection <span style="float: right;">★★★★</span>
<b>Enforcement</b>	No MPA-specific enforcement <span style="float: right;">★</span>	No MPA-specific enforcement <span style="float: right;">★</span>
<b>Extent (scope)</b>	Local government planning and permitting <span style="float: right;">★</span>	Local government planning and permitting <span style="float: right;">★</span>
<b>Process for expansion</b>	No MPA-specific public process <span style="float: right;">★★</span>	No MPA-specific public process <span style="float: right;">★★</span>