

# VIMS Annual Wetlands Workshop

*Overview of VMRC's  
Updated Tidal Wetlands  
Mitigation-Compensation Policy  
and  
HB 390 - Habitat Policy  
Oversight Committee (HPOC)*



*Randy Owen - Chief  
VMRC Habitat Management Division*



# **Public Hearing**

**January 28, 2025**

**Update of the Commission's *Guidelines for Establishment, Use, and Operation of Tidal Wetland Mitigation Banks* in Virginia and its *Wetlands Mitigation Compensation Policy and Supplemental Guidelines* developed pursuant to the legislative mandate of Chapter 334 of the 2023 Acts of the Virginia General Assembly (HB 1950).**



# ***Tidal Wetlands Mitigation-Compensation Policy***

**Legislative Mandate – House Bill 1950**

- **Stakeholder Workgoup**
- **Guideline Changes**



Home > Regulation Index > Regulation

# ***Wetlands Mitigation-Compensation Policy and Supplemental Guidelines Regulation 4VAC 20-390-10 ET SEQ***

- **Originally adopted in 1989 and only once updated in 2005 prior to HB 1950 and the resulting 2025 updates.**
- **The Commission through this long-standing policy intends to encourage, where appropriate, the compensation of all permitted tidal wetlands losses provided all mitigative measures have been considered to avoid any impacts.**
- **No net loss of wetlands (Chesapeake 2000 Agreement)**

# VIRGINIA ACTS OF ASSEMBLY - 2023 SESSION

## 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.*

[H 1950]

Approved March 23, 2023

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

1. § 1. *The Virginia Marine Resources Commission (the Commission) shall review and update the Commission's "Guidelines for Establishment, Use and Operation of Tidal Wetland Mitigation Banks in Virginia" (January 1, 1998) and its regulations, Wetlands Mitigation-Compensation Policy and Supplemental Guidelines (4VAC20-390) (the Guidelines). Such review and update shall consider provisions relating to 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. Such update shall also include making the Guidelines consistent 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.*

## 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.*

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## VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

*An Act to amend the Code of Virginia to provide for the restoration and open water channels of wetlands and water resources in the Commonwealth, to be known as the Wetlands and Water Resources Restoration Act.*

*Commis* Prior to this legislation, our local wetland sources  
*guidelin* boards were instructed to accept wetlands in  
*vegetate* mitigation that resulted *only* from the of  
creation of new wetlands constructed from *its*  
uplands (necessary to meet no net loss)  
*from wetland creation, restoration, conversion,*  
*and enhancement activities, invasive species*  
*control, and the establishment of open water*  
*channels.*

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# 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 for permissible impacts to nontidal wetlands, tidal wetlands, and

establishment  
instruments pursuant to  
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.**

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in-lieu fee  
2-1308 of the

# 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: StreamWetlands 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)**

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.



# HPOC

[Session Information](#)[Bills & Resolutions](#)

## BILLS & RESOLUTIONS

2026 Regular Session

### House Bill 390

HB390

Habitat Policy Oversight Committee; established, membership, powers and duties, report.

## Summary As Passed

[All Summaries](#)[More info](#)

### **Marine Resources Commission; Habitat Policy Oversight Committee**

**established; powers and duties.** Establishes the Habitat Policy Oversight Committee within the Marine Resources Commission to advise the Commission and the Habitat Management Division of the Commission on policies within their jurisdiction and to support the Commission's coastal resilience efforts. The bill establishes the powers and duties of the Committee, establishes how the members of the Committee are appointed, and provides that the Committee shall have 11 voting members and two ex-officio members. This bill incorporates [HB 619](#).

## **Beneficial Use of Dredge Material – House Bill 52**

- Beginning Dec 1, 2027, it is the policy of the Commonwealth to promote beneficial use of dredge material, and VMRC shall require this for all permits unless such approaches are unsuitable based on criteria developed by the Commission.
- Directs Commission to establish a work group to assist in the development of any regulations or guidance (HPOC).

## **No Net Loss of Wetlands – House Bill 521**

- Requires the Marine Resources Commission to ensure that, in promulgating minimum standards for protection and conservation of wetlands, no net loss of existing wetland acreage and functions is achieved.
- The bill also directs the Secretary of Natural and Historic Resources to convene a stakeholder work group to address mitigation requirements for tidal nonvegetated wetlands and directs the work group to submit a report of its findings and recommendations to the Chairs of the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources no later than July 1, 2027 (HPOC).

# Habitat Policy Oversight Committee

- Meets the 4<sup>th</sup> Wednesday of the month at VMRC (10am – 12 noon)
- Meeting dates and agenda advertised on Town Hall
  - May not meet during the holiday months and General Assembly
- Open to the public

*QUESTIONS?*