

Office of Regulatory Management
Economic Review Form

Agency name	Virginia Marine Resources Commission
Virginia Administrative Code (VAC) Chapter citation(s)	N/A – Guidance Document
VAC Chapter title(s)	N/A
Action title	The purpose of updating this guidance document is to comply with the mandate of Chapter 334 of the 2023 Acts of the Virginia General Assembly and to bring the state guidance into conformity with existing federal and state regulations
Date this document prepared	March 29, 2024
Regulatory Stage (including Issuance of Guidance Documents)	Proposed

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<p>Direct Costs: None. **Note that the agency will also propose revisions to 4 VAC 20-390 in order to comply with Chapter 334 of the 2023 Acts of the Virginia General Assembly; Section 28.2-1308 requires that any tidal wetlands mitigation bank comply with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of mitigation banks before it may be used to satisfy state compensatory mitigation requirements. The proposed updates to the existing tidal banking guidelines adopted in 1998 will bring state guidance in line with existing federal law and, therefore, are viewed as a mandatory action. Commission adoption of the regulation may lead to increased compliance costs, but a market-based approach to compensatory mitigation through wetlands mitigation banks should minimize those increased costs and will lead to the benefits noted below**</p> <p>Indirect Costs: None.</p> <p>Direct Benefits: Bringing our guidance into line with federal regulations and regulations promulgated by the Department of Environmental Quality for non-tidal wetlands mitigation banks should make establishment of tidal wetlands mitigation banks somewhat easier by making the process for establishing such banks clearer. The benefits from the successful establishment of a new tidal wetlands mitigation bank to the bank operator would be substantial. The bank operator, many of which are for-profit private enterprises, would benefit from a new source of substantial potential profit. After accounting for acquisition costs and costs of developing wetlands on site, the profit to an operator is estimated at \$5 to \$10 per credit sold. Even at the lower figure, this could represent a profit of \$375,000 per year, based on demand levels at an existing bank. The proportion of this benefit directly attributable to the change in guidance is marginal and estimated at 1%.</p> <p>Indirect Benefits: None.</p>	
<p>(2) Present Monetized Values</p>	<p>Direct & Indirect Costs</p>	<p>Direct & Indirect Benefits</p>
	<p>(a) \$0</p>	<p>(b) \$3,750</p>
<p>(3) Net Monetized Benefit</p>	<p>\$3,750</p>	

(4) Other Costs & Benefits (Non-Monetized)	The general public and permittees should both benefit from additional tidal wetlands mitigation banks. The public will benefit because the bank will ensure that the benefits of wetlands impacted by development will not be lost and will instead be replaced by an existing, functional wetland created at the bank site. Permittees will benefit by being able to purchase credits to satisfy compensatory mitigation requirements. This should be cheaper than some other options, such as requiring the permittee to establish new wetlands on- or off-site, because of economies of scale. Both benefits are difficult to quantify.
(5) Information Sources	The U.S. Army Corps of Engineers Regulatory In-lieu Fee and Bank Information Tracking System (RIBITS), which provides information about existing and proposed wetlands mitigation banks throughout the county; conversations with the sponsor of a tidal wetlands mitigation bank.

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Keeping the outdated guidance would marginally discourage the opening of new tidal wetlands mitigation banks. This would lead to costs, in the form of lost opportunity, to potential operators or tidal wetlands mitigation banks. The analysis would be the inverse of the analysis set forth in 1(a) above.</p> <p>Indirect Costs: None.</p> <p>Direct Benefits: None.</p> <p>Indirect Benefits: None.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) \$3,750	(b) \$0
(3) Net Monetized Benefit	\$0	
(4) Other Costs & Benefits (Non-Monetized)	The public would lose the benefit of wetlands impacted by development until a substitute compensatory mitigation project could be established. Permittees will potentially lose a cheaper option to satisfy compensatory mitigation requirements.	
(5) Information Sources	Same as in 1(a) above.	

Table 1c: Costs and Benefits under Alternative Approach(es)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: The only alternative would be to impose additional requirements or restrictions beyond those imposed by DEQ and federal regulators. This would lead to additional costs to tidal wetlands mitigation bank sponsors, who would need to comply with both sets of requirements. Depending on what the additional restrictions or requirements are, these costs could be substantial. At the very least, it would require additional legal expenses for the sponsor’s attorney to review the requirements and devise a strategy for complying with them. These costs are estimated at \$5,000, though they could amount to much more.</p> <p>Indirect Costs: None.</p> <p>Direct Benefits: The change would clarify the process for securing approval of a tidal wetlands mitigation bank and so would marginally encourage the establishment of such banks. However, this encouragement would be at least partially offset by the additional requirements and restrictions. The amount of profit for new bank operators attributable to the change is estimated at 0.5%.</p> <p>Indirect Benefits: None.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) \$5,000	(b) \$1,875
(3) Net Monetized Benefit	\$0	
(4) Other Costs & Benefits (Non-Monetized)	As with 1(a) above, to the extent that the change would marginally encourage the establishment of new banks, there would be a public benefit in the form of maintained wetlands functions and a benefit to permittees in the form of a more efficient method of complying with compensatory mitigation requirements.	
(5) Information Sources	Same as 1(a) above.	

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: None Indirect Costs: None Direct Benefits: None Indirect Benefits: None	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) \$0	(b) \$0
(3) Other Costs & Benefits (Non-Monetized)	Wetlands boards, which are responsible for issuing permits for use or disturbance of tidal wetlands in localities that have adopted the tidal wetlands ordinance, would have additional options to select in requiring compensatory mitigation when permits are issued.	
(4) Assistance	None required.	
(5) Information Sources	Agency staff.	

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: None Indirect Costs: None Direct Benefits: None Indirect Benefits: None	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) \$0	(b) \$0

(3) Other Costs & Benefits (Non-Monetized)	None
(4) Information Sources	Agency staff

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: None Indirect Costs: None Direct Benefits: A mitigation bank sponsor may qualify as a small business. To the extent that it does, the benefits would be the same as noted in 1(a) above. Indirect Benefits: None.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) \$0	(b) \$3,750
(3) Other Costs & Benefits (Non-Monetized)	None	
(4) Alternatives	None needed.	
(5) Information Sources	Same as 1(a) above.	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Total Net Change in Requirements
N/A	(M/A):				
	(D/A):				
	(M/R):				
	(D/R):				
				Grand Total of Changes in Requirements:	(M/A): (D/A): (M/R): (D/R):

Key:

Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:

(M/A): Mandatory requirements mandated by federal and/or state statute affecting the agency itself

(D/A): Discretionary requirements affecting agency itself

(M/R): Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies

(D/R): Discretionary requirements affecting external parties, including other agencies

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved*	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	Original Length	New Length	Net Change in Length
Guidelines for Establishment, Use and Operation of Tidal Wetland Mitigation Banks in Virginia	90 pages	4 pages	86 pages

*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the appropriate chart(s).