

**"PERTAINING TO MARKING OF LEASED OYSTER PLANTING GROUND"****CHAPTER 4 VAC 20-290-10 ET SEQ.****DRAFT****PREAMBLE**

This chapter establishes the required manner and method for marking leased oyster planting ground. §28.2-607 of the Code of Virginia requires that a lessee of oyster planting ground mark such ground in accordance with chapters established by the Marine Resources Commission. While all leased oyster planting grounds are not required to be marked at all times, it is the intent of this chapter to ensure that when the ground is ~~marked~~, actively used for shellfish propagation and/or harvest, the lease corners and the boundary lines, or active work areas, are properly and accurately delineated and safe navigation is maintained.

This chapter is promulgated pursuant to authority contained in §§28.2-201 and 28.2-607 of the Code of Virginia. This chapter amends and re-adopts previous Chapter 450-01-0038 et seq., which was adopted on ~~June 24, 1986~~ July 25, 1995 and was effective ~~July 1, 1986~~ August 3, 1995. The effective date of this chapter is ~~August 3, 1995~~ January 1, 2016.

**4 VAC 20-290-10. PURPOSE.**

The purpose of this chapter is to describe the proper manner and method of marking leased oyster planting ground during such times when the ground is required to be marked or for such other instances when a lessee may desire to mark the ground.

**4 VAC 20-290-15. DEFINITIONS.**

“Active Work Areas” means those areas inside a lease where active planting, and/or active

**"PERTAINING TO MARKING OF LEASED OYSTER PLANTING GROUND"****CHAPTER 4 VAC 20-290-10 ET SEQ.**

harvesting is being conducted, or in areas where aquaculture structures are placed within a lease.

"Aquaculture structures" means devices such as cages, trays, nets, etc., used to contain and/or protect shellfish.

"Lease boundary lines" means the projected lines between lease corners.

"Lease corners" means boundary lease corners as depicted on the plat of record for the lease.

**4 VAC 20-290-20. GENERAL.**

Leased oyster planting ground shall ~~can~~ be marked by the lessee if the oyster planting ground is being worked at any time and shall be marked if the oyster planting ground is being actively planted or harvested and/or when aquaculture structures are present on the lease. No harvesting or planting of leased oyster planting ground shall occur unless the lessee first has properly designated and marked the lease in accordance with the provisions of this chapter. No active planting upon or harvesting from the lease shall be authorized unless the lease has first been properly marked and the lease corners identified in accordance with the marking provisions of this chapter. If aquaculture structures are deployed on leased oyster planting ground, the lessee must properly mark and identify the lease boundary, or the active work areas where aquaculture structures are placed, in accordance with the marking provisions of this chapter.

**"PERTAINING TO MARKING OF LEASED OYSTER PLANTING GROUND"****CHAPTER 4 VAC 20-290-10 ET SEQ.****4 VAC 20-290-30. METHOD AND MANNER OF MARKING.**

- A. Marking Requirements. When leased oyster planting ground is marked, ~~it shall be marked with stakes or buoys so as to delineate accurately the boundary lines of the lease and prevent~~ the corners and boundary lines or the active works areas within the lease shall be marked with markers or buoys and shall be marked in a manner that does not create any unnecessary restriction to navigation.
1. Corner markers. ~~The corner of leased oyster planting ground shall be marked and multiple markers may be used in these corners.~~ Corners that are marked shall have a maximum of three markers per corner.
  2. Boundary line markers. ~~Under normal circumstances~~ Individual line markers shall ~~may~~ be placed at intervals no ~~smaller~~ less than 150 feet apart.
  3. Active work area markers. Areas where aquaculture structures are being used shall be marked in conformance with Section B of this regulation and as required in 4 VAC 20-335-10 et. seq.
  4. Marking of the corners, boundary lines, or active work areas within the lease shall

**"PERTAINING TO MARKING OF LEASED OYSTER PLANTING GROUND"****CHAPTER 4 VAC 20-290-10 ET SEQ.**

constitute valid marking for enforcement purposes.

**B. Description of Markers.**

1. ~~Stakes shall be no larger than two inches in diameter at the mean low water line and shall extend at least four feet above the mean high water line. The stake shall be of such material not so rigid as to harm a boat if accidentally struck. Bamboo, white oak, cedar, or gum saplings are commonly used, but not required. If polyvinyl chloride (PVC) pipe is used, and driven into the bottom, the diameter of the PVC pipe shall be two inches or less.~~ When stakes are used for lease corner markers, lease boundary line markers, and/or active work area markers within a lease they shall have a diameter of no greater than two inches if solid and an inside diameter no greater than two inches if hollow, at and above the mean low water line, and shall extend at least four feet above the mean high water line, but no more than six feet above mean high water. The marker shall be made of such materials not so rigid as to harm a boat if accidently struck, such as PVC pipe, bamboo, white oak, cedar, or gum saplings. Metal pipe markers are prohibited.
2. ~~Buoys shall be constructed of wood, PVC, or other suitable material, shall be no larger than six inches in diameter, and shall be anchored with sufficient weight to prevent their moving during adverse weather conditions. Buoys shall be~~

**"PERTAINING TO MARKING OF LEASED OYSTER PLANTING GROUND"****CHAPTER 4 VAC 20-290-10 ET SEQ.**

~~constructed and anchored so as to extend at least four feet above the water line at all times. When can buoys are used they shall be constructed of suitable material, shall be no larger than six inches in diameter, and shall be anchored to the bottom and/or anchored with sufficient weight to prevent their moving during adverse weather conditions. Can buoys shall be constructed and anchored so as to extend at least four feet above, but not more than six feet above the water line at all times. When ball buoys are used they shall be constructed of suitable material, shall be no smaller than forty-five inches in circumference and shall be anchored to the bottom and/or anchored with sufficient weight to prevent their moving in adverse weather conditions.~~

3. Leased oyster grounds on which active shellfish propagation is occurring shall have a minimum of two placards, constructed of durable material, along at least two sides of the lease or active work area, and each placard shall be at least four feet above the mean high water line, depicting the initials of the leaseholder and shall conform to the dimensions established by the Commissioner. Any person shall not dredge or scrape his oyster planting ground unless he is in conformance with 28.2-517 of the Code of Virginia to include the marking requirements contained therein. Oyster ground lease corner markers, boundary line markers, and active work area markers may be marked with two-inch white reflective tape,

**"PERTAINING TO MARKING OF LEASED OYSTER PLANTING GROUND"****CHAPTER 4 VAC 20-290-10 ET SEQ.**

white reflective paint, or white fluorescent paint. If the lease is bisected or borders along a Virginia Department of Health, Division of Shellfish Sanitation shellfish area condemnation line, such line markers shall be marked with two-inch yellow reflective tape, yellow reflective paint, or yellow fluorescent paint.

**4 VAC 20-290-40. MAINTENANCE.**

When oyster planting ground is marked, suitable stakes or markers shall be kept by the lessee in their proper places at all times so as to conform accurately to the original boundary survey; any condemnation line within the lease, and/or to accurately mark the active work areas within the lease. Should such stakes or markers be removed, knocked down, or be carried away, the lessee shall promptly have them replaced ~~replace~~ ~~replaced~~ ~~them~~ in their proper location and in conformance with the method and manner of marking contained within this regulation.

**4 VAC 20-290-45. REMOVAL OF MARKERS.**

It shall be unlawful for any person to intentionally or knowingly injure, remove, or displace any boundary oyster stake, range monument, signal beacon, post or buoy, or any part thereof, erected to designate, locate, survey, or map any shellfish grounds other than the leaseholder, their agent and/or employee, and/or Commission staff.

**4 VAC 20-290-50. EXCEPTION.**

~~The Marine Resources Commission may require its chief engineer to describe a plan for the~~

"PERTAINING TO MARKING OF LEASED OYSTER PLANTING GROUND"

CHAPTER 4 VAC 20-290-10 ET SEQ.

~~proper marking~~ The Chief Engineer may approve an alternative plan for the proper marking of any designated oyster planting ground boundary, or active work area, upon request by the lessee when ~~it~~ he finds exceptional circumstances exist. In such a case the ~~chief-engineer~~ Chief Engineer shall direct the leaseholder where to place the appropriate markers.

4 VAC 20-290-60. PENALTY.

As set forth in §28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

\* \* \* \* \*

This is to certify that the foregoing is a true and accurate copy of the chapter passed by the Marine Resources Commission, pursuant to authority vested in the Commission by §§28.2-201 and 28.2-607 of the Code of Virginia, duly advertised according to statute, and recorded in the Commission's minute book, at meeting held in Newport News, Virginia on October 27, 2015.

**COMMONWEALTH OF VIRGINIA  
MARINE RESOURCES COMMISSION**

BY: \_\_\_\_\_  
**JOHN M. R. BULL  
COMMISSIONER**

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
NOTARY PUBLIC