

"AUTHORIZES SHELLFISH AQUACULTURE STRUCTURES"

CHAPTER 4 VAC 20-335-10 ET SEQ.

DRAFT

PREAMBLE

The Commonwealth of Virginia has a long history of leasing State-owned submerged land for private shellfish culture and recognizes the potential economic and environmental benefits associated with increased shellfish production.

In recent years, some shellfish growers have begun using low-profile structures such as nets, trays and cages to provide additional protection for the shellfish placed on their leased ground.

This chapter authorizes shellfish aquaculture structures that may be placed on and immediately above privately leased shellfish grounds without an individual permit from the Habitat Management Division of the Marine Resources Commission.

This chapter is promulgated pursuant to the authority contained in §28.2-103 and §28.2-201 of the Code of Virginia. This chapter amends and re-adopts, as amended, Chapter 4 VAC 20-335-10 et seq. which was promulgated November 25, 1997 and made effective January 1, 1998. The effective date of this chapter, as amended, is January 1, 2016.

4 VAC 20-335-10 PURPOSE.

The purpose of this chapter is to specify the criteria for shellfish aquaculture structures that may be employed on privately leased shellfish planting ground.

4 VAC 20-335-20 DEFINITIONS.

The following words and terms, when used in this chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Aquaculture Structure" means any protective structure including nets, trays, or cages inside a lease where shellfish propagation and or harvest is being conducted.

"Commission" means the Marine Resources Commission.

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"Shellfish" means native molluscan species or molluscan species imported in accordance with §28.2-825 of the Code of Virginia.

4 VAC 20-335-30 REQUIREMENTS AND CONDITIONS.

A. The activity must be conducted on planting ground leased in accordance with Chapter 6 of Title 28.2 of the Code of Virginia.

B. Leased planting ground must be properly marked in accordance with §28.2-607 and subsequent regulations (4 VAC20-290-10 et seq.).

C. ~~In addition to the required marking of the boundary of the lease, the boundary of the area containing the structures~~ Aquaculture structures shall be identified delineated with markers meeting the description for such markers as identified in 4 VAC20-290-30 while structures are located on the bottom. The leaseholder shall also place a minimum of two placards, attached to boundary and/or corner markers, stating "Aquaculture Structures", such placards shall be a minimum of 12" by 18", constructed of a durable material, facing outward from the aquaculture structures, each of which shall be at least four feet above the mean high water line. The Chief Engineer may approve an alternate plan for marking aquaculture structures. In such a case the Chief Engineer shall direct and/or approve the appropriate markers.

D. Any structures placed on the bottom must be non-toxic and shall not be known to leach any materials which would violate any water quality standards set by the Department of Environmental Quality.

E. Structures shall not extend higher than 12 inches above the bottom substrate.

F. No new structures shall be placed on existing stands of submerged aquatic vegetation.

G. No structures may cause more than a minimal adverse effect on navigation.

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H. Shellfish must be harvested in accordance with all applicable laws and regulations.

I. The Commission may direct removal of any structures which fail to meet the requirements and conditions of this chapter.

4 VAC 20-335-40. 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.

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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