

**“PERTAINING TO DESIGNATION OF SEED AREAS AND CLEAN CULL AREAS”****CHAPTER 4 VAC 20-260-10 ET SEQ.****PREAMBLE**

This chapter establishes clean cull and seed areas, size limits, culling requirements, and inspection procedures for oysters taken from public oyster beds, rocks and shoals in the Chesapeake Bay and its tributaries and on all oyster grounds on the Seaside of Eastern Shore.

This chapter is promulgated pursuant to authority contained in §§28.2-201, 28.2-507, 28.2-510, 28.2-513, and 28.2-526 of the Code of Virginia. This chapter amends and re-adopts previous Chapter 4 VAC 20-260-10 et seq., which was adopted on August 23, 2016, and made effective on September 1, 2016. The effective date of this chapter is October 25, 2017.

**4 VAC 20-260-10. Purpose.**

The purpose of this chapter is to establish clean cull and seed areas, culling requirements, minimum cull size, and inspection procedures that will provide protection for the public oyster beds, rocks, and shoals in Virginia's tidal waters.

**4 VAC 20-260-15. Definitions.**

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

“*Basket*” means a circular plastic mesh container of 2,566 cubic inches, with a top inside diameter of 17 inches, bottom inside diameter of 13.5 inches, and an inside height of 14”, that may be used for the measurement of oysters to be sold or purchased.

“*Clean culled oyster*” means any oyster taken from natural public beds, rocks, or shoals that is 3 inches or greater in shell length.

“*Level Full*” means a basket or tub that is filled entirely to the upper rim, but not filled higher than the upper rim.

“*Oyster*” means any shellfish of the species *Crassostrea virginica*.

“*Seed Oyster*” means any oyster taken by any person from natural beds, rocks, or shoals that is more than 30 days from harvest for human consumption.

**4 VAC 20-260-20. Designation of seed areas and clean cull areas.**

A. Seed areas. The following natural public oyster beds, rocks, or shoals are designated for the harvest of seed oysters:

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1. “James River Seed Area” means all public grounds and unassigned grounds in that area of the James River and its tributaries with a southeastern boundary beginning at a point on the shore on the south side of the river at Rainbow Farm Point in Isle of Wight County located at Latitude 37° 00.1965862’ N., Longitude 76° 34.0712010’ W.; thence north-northeasterly to a VMRC Marker “STH”, Latitude 37° 00.9815328 N., Longitude 76° 33.5955842’ W.; thence to a VMRC Marker “SMT”, at Latitude 37° 01.3228160’ N., Longitude 76° 33.3887351’ W.; thence to the Flashing Green Channel Light #5, at Latitude 37° 02.3449949’ N., Longitude 76° 32.7689936’ W.; thence northeasterly to a VMRC Marker “NMT”, Latitude 37° 02.7740540’ N., Longitude 76° 32.0960864’ W.; thence to a VMRC Marker “NTH” located at Latitude 37° 03.2030055’ N., Longitude 76° 31.4231211’ W.; thence to a point on the north shore of the river at Blunt (Blount) Point, in the City of Newport News, located at Latitude 37° 03.3805862’ N., Longitude 76° 31.1444562’ W.; the northern boundary, being a straight line, beginning at a point on the shore on the east side of the river in the City of Newport News, at Latitude 37° 08.4458787’ N., Longitude 76° 37.2855533’ W., thence westerly to the southeast corner of the Deep Water Shoal State Replenishment Seed Area, Latitude 37° 08.4466039’ N., Longitude 76° 37.4523346’ W.; thence westerly to the southwest corner of the Deep Water Shoal State Replenishment Seed Area, Latitude 37° 08.4490472’ N., Longitude 76° 38.0215554’ W.; thence westerly to a point on the shore on the west side of the river at the mouth of Lawnes Creek in Isle of Wight County, Latitude 37° 08.4582990’ N., Longitude 76° 40.2816023’ W.

2. Deep Water Shoal State Replenishment Seed Area (DWS). That area in the James River near Mulberry Island, beginning at a point approximately 530 feet west of Deep Water Shoal Light, said point being Corner 1, located at Latitude 37° 08.9433287’ N., Longitude 76° 38.3213007’ W.; thence southeasterly to Corner 2, Latitude 37° 09.5734380’ N., Longitude 76° 37.8300582’ W.; thence southwesterly to Corner 3, Latitude 37° 08.9265524’ N., Longitude 76° 37.0574269’ W.; thence westerly to Corner 4, Latitude 37° 08.4466039’ N., Longitude 76° 37.4523346’ W.; thence northwesterly to Corner 5, Latitude 37° 08.4491489’ N., Longitude 76° 38.0215553’ W.; thence northeasterly to Corner 1, said corner being the point of beginning.

B. Clean cull areas. All natural public oyster beds, rocks, or shoals in the tidal waters of Virginia, except those designated by the Marine Resources Commission as seed areas, shall be considered clean cull areas.

**4 VAC 20-260-30. Minimum cull size.**

A. It shall be unlawful for any person to take any oysters that measure less than 3 inches in length from clean cull areas.

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B. In the James River seed areas, there shall be no size limit on oysters harvested for replanting, but it shall be unlawful for any person to market any seed oysters for direct human consumption.

C. In the James River seed areas, it shall be unlawful for any person to harvest oysters for direct consumption that are contained in shells that are less than 3 inches in length.

D. From the seaside of the Eastern Shore, it shall be unlawful for any person to harvest oysters for direct consumption that are contained in shells that are less than 3 inches in length.

E. There shall be no minimum size limit for oysters raised in aquaculture cages by licensed aquaculture operations.

**4 VAC 20-260-35. Minimum cull size. (Repealed.)**

**4 VAC 20-260-40. Culling tolerances or standards.**

A. In the clean cull areas, if more than a four-quart measure of any combined quantity of oysters less than three inches and shells of any size are found in any bushel or basket inspected by any police officer, it shall constitute a violation of this chapter, except as described in 4 VAC 20-260-30 E.

B. In the James River seed areas, if more than a six-quart measure of shells is found in any bushel or basket of seed oysters inspected by any police officer, it shall constitute a violation of this chapter.

C. In the James River seed areas, if more than a four-quart measure of any combined quantity of oysters less than three inches and shells of any size are found in any bushel or basket of clean cull oysters inspected by any police officer, it shall constitute a violation of this chapter.

D. From the seaside of the Eastern Shore, if more than a four-quart measure of any combined quantity of oysters less than three inches and shells of any size are found per bushel or basket of clean cull oysters inspected by any police officer, it shall constitute a violation of this chapter.

E. Any oysters less than the minimum cull size or any amount of shell that exceeds the culling standard shall be returned immediately to the natural beds, rocks, or shoals from where they were taken.

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F. Oysters less than the minimum cull size that are adhering so closely to the shell of any marketable oyster as to render removal impossible without destroying the oysters less than the minimum cull size need not be removed, and those oysters shall be considered lawful and shall not be included in the culling tolerances or standards as described in Subsections A through D of this Section.

G. It shall be unlawful for any person to sell any oysters less than the minimum cull size as described in this section.

**4 VAC 20-260-50. Culling and inspection procedures.**

A. All oysters taken from natural public beds, rocks, or shoals shall be placed on the culling board, or in only one basket upon the culling board, and culled by hand at the location of harvest.

1. Culled oysters shall be transferred immediately from the culling board to the inside open part of the boat and stored in either a loose pile; or baskets.
  - a. Oysters shall not be stored in both a loose pile and in baskets.
  - b. A single basket may be on board any boat during transfer of culled oysters from the culling board to the inside open part of the boat in a loose pile.
2. The entire harvest shall be subject to inspection, as provided in subsection F of this section.

B. Any oysters taken lawfully by hand from natural public beds, rocks, or shoals from the seaside of the Eastern Shore, and held in sacks, bags, or containers, shall be culled when taken and placed in those sacks, bags, or containers for inspection by any police officer as described in subsection G of this section.

C. If oysters from leased grounds and oysters from public grounds are mixed in the same cargo on a boat or motor vehicle, the entire cargo shall be subject to inspection under this chapter.

D. It shall be unlawful for any person to buy, sell, or report clean cull oysters by any measure other than those described in § 28.2-526(A) of the Code of Virginia filled to level full. The container described in § 28.2-526(A)(2) is a basket. It shall be unlawful for any person to sell, purchase, or report the sale or purchase of any clean cull oysters harvested from public grounds, as described in 4 VAC 20-720-40, in excess of the harvest limits described in 4 VAC 20-720-80.

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E. It shall be unlawful for any person to buy, sell, or report seed oysters by any measure other than as described in §28.2-526 of the Code of Virginia.

F. Oysters may be inspected by any police officer according to any one of the following provisions:

1. For any oysters stored in a loose pile in a vehicle, trailer, or the inside open part of a boat, the police officer shall use a shovel to take one basket of oysters to inspect, at random, provided that the entire bushel or basket shall be taken from one place in the open pile of oysters. The officer may inspect multiple baskets by repeating this procedure for each basket of oysters shoveled from the loose pile.

2. For any oysters stored in baskets in a vehicle, trailer, or the inside open part of a boat, the police officer shall select one basket for inspection. The officer may inspect multiple baskets but must finish inspecting a basket before inspecting another.

G. In the inspection of oysters harvested by hand from waters of the seaside of the Eastern Shore, the police officer may select any sacks, bags, or containers at random to establish a full metallic measuring bushel or basket for purposes of inspection.

H. On the seaside of the Eastern Shore oysters may be sold without being measured if both the buyer and the seller agree to the number of bushels of oysters in the transaction.

**4 VAC 20-260-60. Penalty.**

A. As set forth in §§ 28.2-510 and 28.2-511 of the Code of Virginia, any person, firm, or corporation violating any provision of this chapter except 4 VAC 20-260-50 D shall be guilty of a Class 3 misdemeanor.

B. As set forth in § 28.2-526 of the Code of Virginia, any person violating any provision of 4 VAC 20-260-50 D of the chapter shall be guilty of a Class 1 misdemeanor.

C. In addition to the penalty prescribed by law, any person violating any provision of this chapter shall place the entire load of shellfish overboard on the nearest oyster sanctuary or closed shellfish area, at the direction of the police officer, and shall cease harvesting on that day. In cases where shellfish associated with a violation, by any person, cannot be returned overboard, that person shall destroy, in the presence of a police officer, all shellfish in his possession. All harvesting apparatus may be subject to seizure and, pursuant to § 28.2-232 of the Code of Virginia, all licenses and permits may be subject to revocation following a hearing before the Marine Resources Commission.

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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 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 24, 2017.

COMMONWEALTH OF VIRGINIA  
MARINE RESOURCES COMMISSION

BY: Matthew R. Hull Sr  
John M. R. Bull  
Commissioner

Subscribed and sworn to before me on this 27 day of October, 2017.

Jennifer G. Farmer  
Notary Public

