

FISHERIES MANAGEMENT DIVISION EVALUATION 9/26/2023

PUBLIC HEARING: Proposal to amend Chapter 4 VAC 20-270-10 et seq., “Pertaining to Blue Crab Fishery,” to amend the season and bushel limits for the remainder of the 2023 commercial crab pot fishery and to remove discretionary time of year restrictions on fish pots.

ISSUES: At the June 27, 2023, Commission meeting, the Commission voted unanimously to hold a meeting of the Crab Management Advisory Committee (CMAC) before September 1 to discuss changing fall bushel limits. At their August 3 meeting, CMAC voted unanimously to recommend maintaining high bushel limits through October 31, setting low bushel limits beginning November 1, and extending the crab pot season end date from November 30 to December 16, 2023. Staff also recommends removing discretionary time of year restrictions on fish pots which have been made unnecessary by established and enforceable blue crab fishery management measures.

BACKGROUND: In May, staff briefed the Commission on results of the 2022-2023 Bay-wide Winter Dredge Survey. Results from that survey, as well as harvest results from the 2022 fisheries, indicate the Chesapeake Bay blue crab stock is currently not overfished and overfishing is not occurring, but total abundance and juvenile abundance are below average while the exploitation rate is somewhat elevated.

Upon analysis of the results each year, managers from the Virginia Marine Resources Commission (VMRC), Maryland Department of Natural Resources, and the Potomac River Fisheries Commission meet to coordinate management responses. In 2022, the three jurisdictions agreed to implement more restrictive management measures considering record low crab abundances. In Virginia, the spring and fall low bushel periods for hard crab pots were extended to protect females coming down the bay to overwinter and females getting ready to spawn in spring. In 2023, the jurisdictions agreed to maintain these conservative status quo measures. VMRC staff informed the jurisdictions at this time that Virginia intended to amend the low bushel limits in spring and fall to increase equity between the different crab pot categories when they reduce from the summer high bushel limits.

The Commission voted in June to accept staff’s recommendations for equitable bushel limits and to instruct the VMRC to hold a CMAC meeting before September 1 to discuss potential changes to bushel limits for fall.

A CMAC meeting was held accordingly on August 3 to discuss management measures for fall 2023. The committee voted unanimously to recommend increasing bushel limits through October and to extend the crab pot season through December 16, 2023. Several committee members said the December extension would be their first choice, as prices are highest then, but others said it was also important to increase the bushel limits in October to maximize economic return during the fall months. The Committee agreed that November and December would maintain the fall low bushel limits. Staff recognizes bushel limits on crab pots are not often fully achieved during this time of year, so the risk of a substantial increase in harvest may be minimal, while the proposed measures may increase economic potential for harvesters.

This regulation also bans the placement of fish pots in certain upriver areas for the five days preceding the start of the crab pot season in response to industry and management concerns about illegal crab pots. There were concerns about people placing their crab pots early in preparation for the opening of the legal season by marking them as fish pots and then changing the buoy from one marked for a fish pot to one marked for a crab pot. This would allow someone to soak pots before harvesting their catch at the start of the legal season.

While fish pot design is not defined in regulation, crab pots do have specific design characteristics, such as cull rings, and require a buoy identifying it specifically as a crab pot.

To date, there have been no law enforcement cases or alleged violations brought forward invoking this subsection within the last ten years and this subsection has been identified as an unnecessary regulatory burden for both the commercial industry and law enforcement. Staff recommends this subsection be struck from the regulation and the upriver area definitions for the James, York, and Rappahannock rivers be relocated into the next subsection which refers to these areas.

A public notice that advertised these proposed amendments is attached to this evaluation. No public comments have been received at this time.

STAFF

RECOMMENDATION: Staff recommends the Commission approve amendments to Chapter 4 VAC 20-270-10 et seq., “Pertaining to Blue Crab Fishery,” to amend the season and bushel limits for the 2023 commercial crab pot fishery and to remove discretionary time of year restrictions on fish pots.



COMMONWEALTH of VIRGINIA

Marine Resources Commission
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Secretary of Natural and Historic
Resources

Jamie L. Green
Commissioner

NOTICE

The Virginia Marine Resources Commission invites public comment on proposed amendments to regulations, as shown below. By September 11, 2023, the proposed draft regulations may be viewed on the VMRC web calendar at <https://mrc.virginia.gov/calendar.shtm>.

In accordance with Section 28.2-209 of the Code of Virginia, a public hearing on the proposed amendments to these regulations will be held on Tuesday, September 26, 2023, at the Virginia Marine Resources Commission, 380 Fenwick Road, Bldg. 96, Fort Monroe, Virginia.

Written public comments on the Fisheries Management Division proposals or on fisheries items not on the agenda must be provided by 12:00 p.m., Monday, September 25, 2023, to Patrick Geer, VMRC Fisheries Management Division, 380 Fenwick Road, Bldg. 96, Fort Monroe, Virginia 23651, or sent by email to fisheries@mrc.virginia.gov with the subject heading "Commission Comments".

The Commission may review Fisheries Management Division items as early as 9:30 a.m.

I. Chapter 4 VAC 20-270-10 et seq., "Pertaining to Blue Crab Fishery"

The Commission proposes to amend Chapter 4 VAC 20-270-10 et seq., "Pertaining to Blue Crab Fishery," to amend the season and bushel limits for the remainder of the 2023 commercial crab pot fishery and to remove discretionary time of year restrictions on fish pots.

The purpose of these amendments is to promote efficient utilization of the blue crab resource and economic stability for the fishery.

VMRC DOES NOT DISCRIMINATE AGAINST INDIVIDUALS WITH DISABILITIES; THEREFORE, IF YOU ARE IN NEED OF REASONABLE ACCOMMODATIONS BECAUSE OF A DISABILITY, PLEASE ADVISE MICHELE GUILFORD (757-247-2206) NO LATER THAN FIVE WORK DAYS PRIOR TO THE MEETING DATE AND IDENTIFY YOUR NEEDS.

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“PERTAINING TO BLUE CRAB FISHERY”**CHAPTER 4 VAC 20-270-10 ET SEQ.****PREAMBLE**

This chapter establishes daily individual, vessel and harvest and possession limits, time limits, season limits, peeler pot limits, and peeler and softshell crab minimum size limits for the commercial blue crab fishery in Virginia and the daily recreational blue crab harvest and possession limit. This chapter is promulgated pursuant to authority contained in §§ 28.2-101, 28.2-201 and 28.2-700 et seq. of the Code of Virginia. This chapter repeals any other chapters that pertain to crab pot bushel limits. This chapter amends and re-adopts, as amended, previous Chapter 4 VAC 20-270-10 et seq., which was promulgated ~~June 28, 2022~~ June 27, 2023 and made effective on ~~July 5, 2022~~ July 5, 2023. The effective date of this chapter, as amended, is ~~July 5, 2023~~ October 1, 2023.

4 VAC 20-270-10. Purpose.

The purpose of this chapter is to allow for the conservation and rebuilding of the crab resource and to improve the enforceability of other laws pertaining to crabbing.

4 VAC 20-270-15. Definitions.

The following word or term when used in this chapter shall have the following meaning unless the context indicates otherwise:

“Crab” as described in this chapter refers solely to the crustacean *Callinectes sapidus*.

4 VAC 20-270-20. Sunday prohibition and limited exception for possession of male hard crabs.

It shall be unlawful to take or catch crabs for commercial purposes on Sunday. This section shall not apply to the harvest of peeler crabs by crab traps or peeler pots or to the working of floats, pens, or onshore facilities for soft crab shedding operations. Any person licensed to harvest peeler crabs by peeler pot may harvest one bushel of male crabs from his peeler pots on Sunday strictly for the purpose of baiting his peeler pots, and such crabs may not be sold.

“PERTAINING TO BLUE CRAB FISHERY”**CHAPTER 4 VAC 20-270-10 ET SEQ.****4 VAC 20-270-25. Lawful commercial harvest gears.**

It shall be unlawful to possess or sell crabs harvested for commercial purposes by any means other than by hard crab pot, peeler pot, dip net, ordinary or patent trotline, crab dredge, crab scrape, or crab trap or pound.

4 VAC 20-270-30. Daily time limits for commercial harvest.

A. It shall be unlawful for any person licensed to catch and sell crabs taken by hard crab pot or peeler pot to take and harvest crabs from any hard crab pot or peeler pot, or to retrieve, bait, or set any hard crab pot or peeler pot, except during the lawful daily time periods described in subsections A, B, C, and D of this section. The lawful daily time periods for the commercial harvesting of crabs by hard crab pot or peeler pot shall be from 6 a.m. to 2 p.m. during the lawful seasons, as described in Chapter 4 VAC 20-270-40 A, except as described in subsections B, C, and D of this section. The lawful daily time periods for the commercial harvesting of crabs by hard crab pot or peeler pot shall be from 5 a.m. to 1 p.m. during the months of May, June, July, and August, as described in Chapter 4 VAC 20-270-40 A, except as specified in subsections B, C, and D of this section. Hard crab pots or peeler pots already on board a boat at the end of the lawful daily time period, as defined in subsections A, B, and C of this section, may be set immediately following the end of lawful daily time period to one hour after the lawful daily time period ends.

B. Any licensed hard crab pot or peeler pot fisherman who provides an opinion and supporting documentation from an attending physician to the commissioner of an existing medical condition that prevents him from adhering to the daily time limit established in subsection A of this section may be permitted by the commissioner or his designee to take and harvest crabs from his hard crab pot or peeler pot, or to retrieve, bait, or set his hard crab pot or peeler pot during an alternate eight-hour daily time limit. That alternative eight-hour daily time limit will be prescribed by the commissioner or his designee in accordance with the medical condition that forms a basis for the exception to the daily time limit as described in subsection A of this section.

Nothing in this regulation shall prohibit any licensed hard crab pot or peeler pot fisherman, who has been granted an exception to the eight-hour work schedule, on a medical basis, from using another licensed hard crab pot or peeler pot fisherman as a mate; provided, however, during the designated alternate work hours, only the hard crab pots or peeler pots of the fisherman receiving the exception shall be fished. Further, it shall be unlawful for the licensed crab fisherman, who has been granted an exception, or his mate, who is a licensed hard crab pot or peeler pot fisherman, to fish, set, retrieve, or bait, during the alternate work hours, any hard crab pot or peeler pot that is not owned and licensed by the fisherman granted the exception.

C. Any licensed hard crab pot or peeler pot fisherman who requests and obtains an alternate eight-hour daily time limit permit shall be authorized to take and harvest crabs from his hard crab pot or peeler pot or to retrieve, bait, or set his hard crab pot or peeler pot one hour earlier than described in subsection A of this section, only for the months of June, July, August, and September. During the months of March,

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April, May, October, and November, the lawful daily time period described in subsection A of this section applies to any hard crab pot or peeler pot licensee. The alternate lawful daily time periods for the commercial harvesting of crabs by hard crab pot or peeler pot shall be from 4 a.m. to 12 noon from June 1 through August 31 and from 5 a.m. to 1 p.m. from September 1 through September 30. Licensed hard crab pot or peeler pot fishermen must apply for this permit on an annual basis and shall adhere to the alternate daily time limit from the day the permit is issued through September 30, as well as subdivisions 1, 2, and 3 of this subsection.

1. It shall be unlawful for two or more licensed hard crab pot or peeler pot fishermen, or their agents, to crab aboard the same vessel if their authorized eight-hour daily time limits are not identical.
2. Requests for an alternate eight-hour time limit permit shall be submitted to the Marine Resources Commission annually and prior to May 15. Requests submitted on or after May 15 will not be considered.
3. Once any legal hard crab pot or peeler pot licensee obtains an alternate eight-hour daily time limit permit, that permittee shall be legally bound by the alternate eight-hour daily time limit as described in this subsection.

D. The lawful daily time periods for the commercial harvest of crabs by hard crab pot or peeler pot may be rescinded by the Commissioner of Marine Resources when the commissioner determines that a pending weather event is sufficient cause for the removal of hard crab pots from the tidal waters of the Commonwealth.

4 VAC 20-270-40. Season limits.

A. In 2023, the lawful season for the commercial harvest of crabs by hard crab pot shall be March 17 through ~~November 30~~ December 16. In 2024, the lawful season for the commercial harvest of crabs by hard crab pot shall be March 17 through November 30. For all other lawful commercial gear used to harvest crabs, as described in 4 VAC 20-1040, the lawful seasons for the harvest of crabs shall be April 15 through October 15.

B. It shall be unlawful for any person to harvest crabs or to possess crabs on board a vessel, except during the lawful season, as described in subsection A of this section.

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C. It shall be unlawful for any person knowingly to place, set, fish or leave any hard crab pot in any tidal waters of Virginia from December ~~1~~ 17, 2023, through March 16, 2024. It shall be unlawful for any person to knowingly place, set, fish, or leave any lawful commercial gear used to harvest crabs, except any hard crab pot or any gear as described in 4 VAC 20-460-25, in any tidal waters of Virginia from October 16, 2023, through April 14, 2024.

~~D. It shall be unlawful for any person knowingly to place, set, fish or leave any fish pot in any tidal waters from March 12 through March 16, except as provided in subdivisions 1 and 2 of this subsection.~~

~~1. It shall be lawful for any person to place, set, or fish any fish pot in those Virginia waters located upriver of the following boundary lines:~~

~~a. In the James River the boundary shall be a line connecting Hog Point and the downstream point at the mouth of College Creek.~~

~~b. In the York River the boundary lines shall be the Route 33 bridges at West Point.~~

~~c. In the Rappahannock River the boundary line shall be the Route 360 bridge at Tappahannock.~~

~~d. In the Potomac River the boundary line shall be the Route 301 bridge that extends from Newberg, Maryland to Dahlgren, Virginia.~~

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~~2. This subsection shall not apply to legally licensed eel pots as described in 4VAC20-500-50.~~

£ D. It shall be unlawful for any person to place, set, or fish any number of fish pots in excess of 10% of the amount allowed by the gear license limit, up to a maximum of 30 fish pots per vessel, when any person on that vessel has set any crab pots.

1. This subsection shall not apply to fish pots set in ~~the areas described in subdivision D-1 of this section.~~ those Virginia waters located upriver of the following boundary lines:

- a. In the James River the boundary shall be a line connecting Hog Point and the downstream point at the mouth of College Creek.
- b. In the York River the boundary lines shall be the Route 33 bridges at West Point.
- c. In the Rappahannock River the boundary line shall be the Route 360 bridge at Tappahannock.

2. This subsection shall not apply to legally licensed eel pots as described in 4VAC20-500.

3. This subsection shall not apply to fish pots constructed of a mesh less than one-inch square or hexagonal mesh.

4 VAC 20-270-50. Peeler crab pot and hard crab pot limits.

A. It shall be unlawful for any person to place, set or fish or attempt to place, set or fish more than 210 peeler crab pots in Virginia tidal waters.

B. The lawful hard crab pot license categories and hard crab pot limits are as follows:

- 1. up to 85 crab pots.
- 2. up to 127 crab pots.
- 3. up to 170 crab pots.

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4. up to 255 crab pots.
5. up to 425 crab pots.

C. It shall be unlawful for any person to knowingly place, set or fish any amount of crab pots that exceeds that person’s crab pot limit, as described in subsection B of this section.

4 VAC 20-270-51. Daily commercial harvester, vessel, and harvest and possession limits.

A. Any barrel used by a harvester to contain or possess any amount of crabs will be equivalent in volume to no more than three bushels of crabs.

B. From July 5, 2023, through ~~September 30~~ October 31, 2023, and May 16, 2024, through July 4, 2024, any commercial fisherman registration licensee legally licensed for any hard crab pot license, as described in 4VAC20-270-50 B, shall be limited to the following maximum daily harvest and possession limits for any of the following hard crab pot license categories:

1. 10 bushels, or three barrels and one bushel, of crabs, if licensed for up to 85 crab pots.
2. 14 bushels, or four barrels and two bushels, of crabs, if licensed for up to 127 crab pots.
3. 18 bushels, or six barrels, of crabs, if licensed for up to 170 crab pots.
4. 29 bushels, or nine barrels and two bushels, of crabs, if licensed for up to 255 crab pots.
5. 47 bushels, or 15 barrels and two bushels, of crabs, if licensed for up to 425 crab pots.

C. From ~~October 1~~ November 1, 2023, through ~~November 30~~ December 16, 2023, and March 17, 2024, through May 15, 2024, any commercial fisherman registration licensee legally licensed for any hard crab pot license, as described in 4VAC20-270-50 B, shall be limited to the following maximum daily harvest and possession limits, for any of the following crab pot license categories:

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1. Eight bushels, or two barrels and two bushels, of crabs, if licensed for up to 85 crab pots.
2. 11 bushels, or three barrels and two bushels, of crabs, if licensed for up to 127 crab pots.
3. 14 bushels, or four barrels and two bushels, of crabs, if licensed for up to 170 crab pots.
4. 22 bushels, or seven barrels and one bushel of crabs, if licensed for up to 255 crab pots.
5. 36 bushels, or 12 barrels of crabs, if licensed for up to 425 crab pots.

D. When a single harvester or multiple harvesters are on board any vessel, that vessel's daily harvest and possession limit shall be equal to only one daily harvest and possession limit, as described in subsections B and C of this section, and that daily limit shall correspond to the highest harvest and possession limit of only one licensee on board that vessel.

E. When transporting or selling one or more legal crab pot licensee's crab harvest in bushels or barrels, any agent shall possess either the crab pot license of that one or more crab pot licensees or a bill of lading indicating each crab pot licensee's name, address, commercial fisherman registration license number, date, and amount of bushels or barrels of crabs to be sold.

F. If any police officer finds crabs in excess of any lawful daily bushel, barrel, or vessel limit, as described in this section, that excess quantity of crabs shall be returned immediately to the water by the licensee who possess that excess over lawful daily harvest or possession limit. The refusal to return crabs, in excess of any lawful daily harvest or possession limit, to the water shall constitute a separate violation of this chapter.

G. When any person on board any boat or vessel possesses a crab pot license, it shall be unlawful for that person or any other person aboard that boat or vessel to possess a Seafood Buyers Boat License and buy any crabs on any day.

4 VAC 20-270-52. Area Restriction.

A. It shall be unlawful for any person to use any gear, except hard crab pots or peeler pots, to harvest crabs from the waters of Back Bay and North Landing River or within the jurisdiction of the Albemarle and Currituck watersheds as described in § 28.2-101 of the Code of Virginia.

B. It shall be unlawful to possess, sell, or offer for sale crabs taken by any means other than hard crab pot or peeler pot from the waters described in this section.

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4 VAC 20-270-55. Minimum size limits.

A. From March 17 through July 15, it shall be unlawful for any person to harvest, possess, sell or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that measure less than 3-¼ inches across the shell from tip to tip of the longest spikes. From July 16 through November 30, it shall be unlawful for any person to harvest, possess, sell or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that measure less than 3-½ inches across the shell from tip to tip of the longest spikes, except as described in subsections B and C of this section.

B. From July 16 through November 30, it shall be unlawful for any person to harvest, possess, sell or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that are harvested from waters on the ocean side of Accomack and Northampton counties and measure less than 3-¼ inches across the shell from tip to tip of the longest spikes, except as described in subsection C of this section.

C. In the enforcement of these peeler crab minimum size limits aboard a vessel, the marine police officer shall select a single container of peeler crabs of his choosing to determine if the contents of that container violate the minimum size and tolerance described in this section. If the officer determines the contents of the container are in violation, then the officer shall return all peeler crabs on board the vessel to the water alive.

D. It shall be unlawful for any person to take, catch, harvest, possess, sell or offer for sale, or to destroy in any manner, any soft crab that measures less than 3-½ inches across the shell from tip to tip of the longest spikes.

4 VAC 20-270-56. Daily Recreational harvest and possession limit.

It shall be unlawful to take by using an unlicensed dip net or hand line, or two crab pots, or to harvest or possess for personal use aboard any vessel, more than one bushel of hard crabs or two dozen peeler crabs per day.

4 VAC 20-270-58. Repealed.

4 VAC 20-270-60. 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.

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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 Hampton, Virginia on September 26, 2023.

**COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION**

By: _____

**Jamie L. Green
Commissioner**

Subscribed and sworn to before me this ____ day of ____ 2023.

Notary Public

DRAFT