

"PERTAINING TO CHanneled WHELK"**CHAPTER 4VAC20-890-10 ET SEQ.****PREAMBLE**

This chapter establishes a limited entry channeled whelk pot fishery for channeled whelk in designated Virginia tidal waters. Its provisions are designed to provide for a viable commercial fishery, while minimizing the potential for overfishing the channeled whelk stock in Virginia. This chapter establishes limitations on the commercial harvest and possession of channeled whelks, in order to conserve this resource and provide for continued recruitment of channeled whelk to the fishery. The limitations include a minimum possession size and landing limit and restrictions on the type of gear which can be used to harvest channeled whelk from designated Virginia waters.

This chapter is promulgated pursuant to authority contained in §28.2-201 of the Code of Virginia. This chapter amends and re-adopts, as amended, previous Chapter 4 VAC 20-890-10 et seq. which was promulgated April 24, 2007 and made effective on July 1, 2007. The effective date of this chapter, as amended, is April 1, 2019.

4VAC20-890-10. PURPOSE.

The purpose of this regulation is to establish a viable commercial fishery for channeled whelk in Virginia waters while minimizing the potential for overfishing of Virginia channeled whelk stocks.

4VAC20-890-20. DEFINITIONS.

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

"Bait bag" means a bag, box, or other container, with mesh, slats or other types of openings no greater than three-eighths of an inch in one dimension, either width or length, that is designed for the purposes of containing the bait within a channeled whelk pot.

"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".

"Bushel" means a Virginia bushel with a volumetric measure equivalent to 1.4 U.S. standard bushels or 3,003.9 cubic inches.

"Channeled whelk" means any whelk of the species *Busycotypus canaliculatus*.

"Land" or "landing" means to enter port with channeled whelk on board any boat or vessel, to begin

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offloading channeled whelk, or to offload channeled whelk.

"Length" means the total length of a channeled whelk, measured from the tip of the apex to the outer tip of the shell opening.

"MRC ID" means the unique Marine Resources Commission identification number assigned to each individual.

4VAC20-890-25. ENTRY LIMITATION; TRANSFERS; PROHIBITIONS.

- A. The sale of commercial channeled whelk pot licenses shall be limited to registered commercial fishermen, solely for the harvest of channeled whelk from Virginia waters described in this section, who meet either of the following requirements:
1. The fisherman shall have held a provisional Virginia conch pot permit in 1999 and reported in accordance with the requirements of 4VAC20-610-60 and the 1999 conch pot permit; or
 2. The fisherman shall provide the commission with proof of having harvested channeled whelk from federal waters during the January 1, 1997, through October 1, 1999, period.
- B. Any person licensed for commercial channeled whelk pot under the provisions of this section may transfer such license to any registered commercial fisherman when said transfer is documented on the form provided by the commission and approved by the Commissioner of Marine Resources. Upon approval, the person entering the Virginia commercial channeled whelk pot fishery shall purchase a commercial channeled whelk pot license in his own name. No commercial channeled whelk pot license shall be transferred more than once per calendar year.
- C. It shall be unlawful for any person licensed under the provisions of subsection A of this section as a commercial channeled whelk pot fisherman to do any of the following, unless otherwise specified:
1. Place, set or fish any channeled whelk pot within any channel.
 2. Fail to be on board the vessel when that vessel is operating in a commercial channeled whelk pot harvesting capacity within tidal Virginia waters;

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3. Fail to display the commercial channeled whelk pot license decal prominently on the starboard side of the vessel;
 4. Fail to inscribe each channeled whelk pot buoy with the last four numbers of the MRC ID preceded by the letter "W," which correspond to the lawful channeled whelk pot licensee;
 5. Place, set or fish more than 200 channeled whelk pots within Virginia tidal waters;
 6. Retain by-catch of any species not in the whelk family caught by channeled whelk pots;
 7. Fail to report harvest-related data from harvests in Virginia waters on a monthly basis on forms supplied by the commission; and
 8. Set, place, or fish a channeled whelk pot of any type in an area extending 250 yards from either span of the Chesapeake Bay Bridge-Tunnel. For purposes of this section, the distance shall be measured from the outer edges of each span and shall extend from the low water mark on Fisherman's Island to the one-mile marker on the south end of the bridge-tunnel.
- D. It shall be unlawful for any person to take or catch channeled whelk with channeled whelk pots from the tidal waters of Virginia without first having purchased a channeled whelk pot license from the commission or its agent. No person may purchase a channeled whelk pot license unless he is a registered commercial fisherman as described in § 28.2-241 of the Code of Virginia.

4VAC20-890-30. MINIMUM SIZE LIMITS.

- A. It shall be unlawful for any person to possess more than 10 channeled whelk that measure less than 5-1/2 inches in length in any inspected basket, except as described in subsection D of this section.
- B. Any police officer may fill one basket with channeled whelk for inspection from a single container or from within a vehicle, trailer, or the inside open part of the boat. The officer may inspect multiple baskets but must finish inspecting a basket before inspecting another. In the event the officer cannot fill a basket from a single container, the officer may fill the basket from any other single container in order to determine any violation of the possession limit of sublegal size channeled whelk.
- C. Those undersized whelk in excess of the allowance level, as described in subsection A of this

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section, shall be returned immediately to the water alive.

- D. Nothing in this section shall prohibit the possession of sublegal size channeled whelk imported from other states or jurisdictions, provided the following conditions are met:
1. Such imports shall have been landed in another state or jurisdiction and shall not have been imported into Virginia by waterborne transport.
 2. Such imported channeled whelk are accompanied by a bill of sale which shall include the name of the seller, address and phone number of the seller, the license number of the seller if such license is required in the jurisdiction of harvest, the date of sale and the quantity of channeled whelk purchased under the bill of sale.

4VAC20-890-35. POSSESSION AND LANDING LIMITS.

- A. The possession and landing limits for channeled whelk shall be 60 bushels per licensed channeled whelk pot fishermen on board a vessel but shall not exceed 120 bushels per vessel. Only one channeled whelk pot license per person shall be used to calculate the vessel limit.
- B. It shall be unlawful for any person to possess aboard any vessel or to land more than the possession and landing limit for channeled whelk specified in subsection A of this section. In the enforcement of this provision, the vessel operator or captain shall be responsible for the possession and landing limit.

4VAC20-890-40. GEAR RESTRICTIONS.

- A. It shall be unlawful for any person to possess channeled whelk harvested from Virginia waters by any means other than by hand, licensed conch dredge, licensed crab dredge, or licensed channeled whelk pot, except as described in 4VAC20-890-50.
- B. Except as provided in subsection C of this section, it shall be unlawful for any person to place, set, or fish, or attempt to place, set, or fish any channeled whelk pot that does not contain a bait bag.
- C. Any person not utilizing horseshoe crabs as bait for channeled whelk shall be exempt from the provisions of subsection B of this section, provided that the possession of any quantity of horseshoe crabs on board the vessel of such person shall constitute prima facie evidence of a violation of this chapter. Further, the presence of any quantity of horseshoe crab in any channeled whelk pot not equipped with a bait bag shall constitute prima facie evidence of a violation of this chapter.

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- D. It shall be unlawful for any person to place, set, or fish or attempt to place, set or fish any channeled whelk pot that exclusively contains more than either one-half of a female horseshoe crab or one male horseshoe crab, in whole or in parts.
- E. It shall be unlawful for any person to land, attempt to land, or possess channeled whelk that were harvested by pots that do not meet the provisions of this chapter.

4VAC20-890-45. MONITORING REQUIREMENTS.

- A. It shall be unlawful, for any person, firm or corporation to buy any channeled whelk from any legally licensed harvester, without first having obtained a Channeled Whelk Buyer's Permit from the Marine Resources Commission. Such permit shall be completed in full by the licensed seafood buyer. A copy of the Channeled Whelk Buyer's Permit shall be in possession of the permittee while buying or possessing channeled whelk.
- B. Any licensed seafood buyer permitted to purchase channeled whelk shall provide written reports to the commission of daily purchases and harvest information of channeled whelk landed in Virginia organized by month on forms provided by the commission. Such information shall include the date of the purchase; the buyer's channeled whelk permit number and harvester's MRC ID; the gear type; water area fished; city or county of landing; and number of bushels, bags or barrels of channeled whelk. These reports shall be completed in full and submitted to the commission no later than the 15th day of January for the prior year's purchases.

4VAC20-890-50. BY CATCH EXEMPTION.

It shall be unlawful for any crab pot fisherman, licensed in accordance with the provisions of 4VAC20-610-10 et seq. and 4VAC20-880-10 et seq. and §28.2-702 of the Code of Virginia, to possess more than five bushels of channeled whelk.

4VAC20-890-60. 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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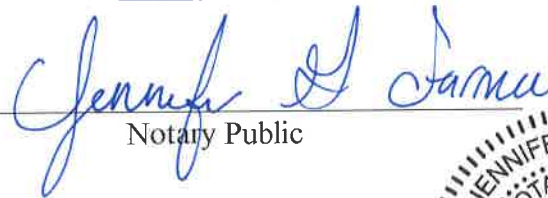
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This is to certify that the foregoing is a true and accurate copy of the chapter passed by the Marine Resources Commission, pursuant to authority vested in the Commission by §28.2-201 of the Code of Virginia, duly advertised according to statute, and recorded in the Commission's minute book, at meeting held in Hampton, Virginia on March 26, 2019.

COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION

BY: 
Steven G. Bowman
Commissioner

Subscribed and sworn to before me this 29 day of March 2019.


Notary Public

