

**“PERTAINING TO COMMERCIAL FISHING AND MANDATORY HARVEST REPORTING”
CHAPTER 4VAC20-610-10 ET SEQ.**

DRAFT

PREAMBLE

This chapter describes the procedures and manner for application for registration as a commercial fisherman, the manner and form of mandatory harvest reports by commercial fishermen and others, and exceptions to the registration process and delay requirements as specified in § 28.2-241 of the Code of Virginia. A commercial hook-and-line license is also established.

This chapter is promulgated pursuant to authority contained in §§ 28.2-201, 28.2-204, 28.2-242, and 28.2-243 of the Code of Virginia. This chapter amends and readopts, as amended, previous Chapter 4VAC20-610-10 et seq. which was promulgated ~~October 27, 2009~~ December 15, 2009 and made effective on ~~November 1, 2009~~ January 1, 2010. The effective date of this chapter, as amended, is ~~January 1, 2010~~ January 1, 2013.

4VAC20-610-10. Purpose.

The purpose of this chapter is to establish the procedures for the registration of commercial fishermen and the manner and form of mandatory harvest reports from fishermen and others. Further, the purpose is to license commercial fishermen using hook-and-line, rod-and-reel, or hand line.

4VAC20-610-20. Definitions.

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

“Agent” means any person who possesses the commercial fisherman registration license, fishing gear license, or fishing permit of a registered commercial fisherman in order to fish that commercial fisherman's gear or sell that commercial fisherman's harvest.

"Clam aquaculture harvester" means any person who harvests clams from leased, subleased or fee simple ground or any growing area, within or adjacent to Virginia tidal waters.

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"Clam aquaculture product owner" means any person or firm that owns clams on leased, subleased or fee simple ground, or ~~on~~ any aquaculture growing area within or adjacent to Virginia tidal waters that are raised by any form of aquaculture. This does not include any riparian shellfish gardeners whose activities are authorized by 4VAC20-336.

"Clam aquaculture product owner vessel" means any vessel, legally permitted through a no-cost permit, by a clam aquaculture product owner, use to transport clam aquaculture harvesters who do not possess an individual clam aquaculture harvester permit.

"Commission" means the Marine Resources Commission.

"Commissioner" means the Commissioner of the Marine Resources Commission.

"Continuing business enterprise" means any business that is required to have a Virginia Seafood Buyer's License or is required to have a business license by county, city or local ordinance.

"Oyster aquaculture harvester" means any person who harvests oysters from leased, subleased or fee simple ground or any growing area, within or adjacent to Virginia tidal waters.

"Oyster aquaculture product owner" means any person or firm that owns oysters on leased, subleased or fee simple ground, or ~~on~~ any aquaculture growing area within or adjacent to Virginia tidal waters that are raised by any form of aquaculture. This does not include any riparian shellfish gardeners whose activities are authorized by 4VAC20-336.

"Oyster aquaculture product owner vessel" means any vessel, legally permitted through a no-cost permit, by an oyster aquaculture product owner, use to transport oyster aquaculture harvesters who do not possess an individual oyster aquaculture harvester permit.

"Sale" means sale, trade, or barter.

"Sell" means sell, trade, or barter.

"Selling" means selling, trading or bartering.

"Sold" means sold, traded, or bartered.

4VAC20-610-25. Oyster and clam aquaculture permit requirements.

A. For the purposes of collecting oyster fisheries statistics, from the Virginia aquaculture industry, as authorized by §28.2-204 of the Code of Virginia; and in accordance with §28.2-613 of the Code of Virginia, which describes conditions that determine the duration of a lease, any oyster aquaculture product owner shall obtain an oyster aquaculture product owner's permit and shall report harvest of any oysters from leased, subleased or fee simple ground or on any growing area within or adjacent to Virginia tidal waters in accordance with 4VAC20-610-60.

~~B. For the purposes of collecting clam fisheries statistics from the Virginia aquaculture industry as authorized by §28.2-204 of the Code of Virginia, and in accordance with §28.2-613 of the Code of Virginia, which describes conditions that determine the duration of a lease, any clam aquaculture product owner shall obtain a clam aquaculture product owner's permit and shall report harvest of any clams from leased, subleased or fee simple ground or on any growing area within or adjacent to Virginia tidal waters in accordance with 4VAC20-610-60.~~

~~C.B. Any person, who is not a permitted oyster aquaculture product owner, who harvests oysters from leased, subleased or fee simple ground or on any growing area within or adjacent to Virginia tidal waters, shall obtain an oyster aquaculture harvester's permit for the purposes of~~

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~~providing fisheries effort statistics to the commission as authorized by §28.2-204 of the Code of Virginia. It shall be unlawful for any person, except an oyster aquaculture product owner permittee, oyster aquaculture harvester permittee or a harvester designated for harvest by an oyster aquaculture product owner vessel permit, to harvest oysters from leased, subleased or fee simple ground or any growing area, within or adjacent to Virginia tidal waters, unless that person is authorized to harvest oysters from areas described in this subsection, by an oyster aquaculture product owner.~~

~~D. Any person who is not a permitted clam aquaculture product owner who harvests clams from leased, subleased or fee simple ground or on any growing area within or adjacent to Virginia tidal waters shall obtain a clam aquaculture harvester’s permit for the purposes of providing fisheries effort statistics to the commission as authorized by §28.2-204 of the Code of Virginia.~~

~~E.C. It shall be unlawful for any person permitted as an oyster aquaculture harvester to fail to possess that permit on his person, while harvesting, unless that permit is in the possession of a legally permitted oyster aquaculture product owner, and the permitted harvester is harvesting oysters of that oyster aquaculture product owner. person is a non-permitted oyster aquaculture harvester designated for harvest by a permitted oyster aquaculture product owner vessel permit, and is harvesting oysters of that oyster aquaculture product owner.~~

~~F. It shall be unlawful for any person permitted as a clam aquaculture harvester to fail to possess that permit on his person while harvesting unless that permit is in the possession of a legally~~

~~permitted clam aquaculture product owner, and the permitted harvester is harvesting clams of that clam aquaculture product owner.~~

~~G.D.~~ Minor persons younger than 18 years of age shall be exempt from the requirements to obtain an oyster aquaculture harvester’s permit provided that minor person is harvesting oysters under the supervision of a legally permitted oyster aquaculture product owner.

~~H.~~ Minor persons younger than 18 years of age shall be exempt from the requirements to obtain a clam aquaculture harvester’s permit provided that minor person is harvesting clams under the supervision of a legally permitted clam aquaculture product owner.

4VAC20-610-26. Clam aquaculture permit requirements.

A. For the purposes of collecting clam fisheries statistics, from the Virginia aquaculture industry, as authorized by §28.2-204 of the Code of Virginia and, in accordance with §28.2-613 of the Code of Virginia which describes conditions that determine the duration of a lease, any clam aquaculture product owner shall obtain a clam aquaculture product owner’s permit and shall report harvest of any clams from leased, subleased or fee simple ground or any growing area, within or adjacent to Virginia tidal waters, in accordance with 4VAC20-610-60.

B. It shall be unlawful for any person, except a clam aquaculture product owner permittee, clam aquaculture harvester permittee or a harvester designated for harvest by a clam aquaculture product owner vessel permit, to harvest clams from leased, subleased or fee simple ground or

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any growing area, within or adjacent to Virginia tidal waters, unless that person is authorized to harvest clams from areas described in this subsection, by a clam aquaculture product owner.

C. It shall be unlawful for any person permitted as a clam aquaculture harvester to fail to possess that permit on his person, while harvesting, unless that person is a non-permitted clam aquaculture harvester designated for harvest by a permitted clam aquaculture product owner vessel permit, and is harvesting clams of that clam aquaculture product owner.

D. Minor persons younger than 18 years of age shall be exempt from the requirements to obtain a clam aquaculture harvester’s permit provided that minor person is harvesting clams under the supervision of a legally permitted clam aquaculture product owner.

4VAC20-610-30. Commercial Fisherman Registration License; exceptions and requirements of authorized agents.

A. In accordance with §28.2-241 C of the Code of Virginia, only persons who hold a valid Commercial Fisherman Registration License may sell, trade, or barter their harvest, or give their harvest to another, in order that it may be sold, traded, or bartered. Only these licensees may sell their harvests from Virginia tidal waters, regardless of the method or manner in which caught. Exceptions to the requirement to register as a commercial fisherman for selling harvest are authorized for the following persons or firms only:

1. Persons taking menhaden under the authority of licenses issued pursuant to §28.2-402 of the Code of Virginia.
2. Persons independently harvesting and selling, trading, or bartering no more than three gallons of minnows per day who are not part of, hired by, or engaged in a continuing business enterprise.
 - a. Only minnow pots, a cast net or a minnow seine less than 25 feet in length may be used by persons independently harvesting minnows.

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b. All other marine species taken during the process of harvesting minnows shall be returned to the water immediately.

B. Requirements of authorized agents.

1. No person whose Commercial Fisherman Registration License, fishing gear license, or fishing permit is currently revoked or rescinded, by the Marine Resources Commission, pursuant to §28.2-232 of the Code of Virginia is authorized to possess the Commercial Fisherman Registration License, fishing gear license, or fishing permit of any other registered commercial fisherman, in order to serve as an agent for fishing the commercial fisherman's gear or selling the harvest.
2. No registered commercial fisherman shall use more than one person as an agent at any time.
3. Any person serving as an agent shall possess the Commercial Fisherman Registration License and gear license of the commercial fisherman while fishing.
4. When transporting or selling a registered commercial fisherman's harvest, the agent shall possess either the Commercial Fisherman Registration License of that commercial fisherman or a bill of lading indicating that fisherman's name, address, Commercial Fisherman Registration License number, date and amount of product to be sold.
5. Any person licensed to harvest blue crabs commercially shall not be eligible to also serve as an agent.
6. Any person serving as an agent to harvest blue crabs for another licensed fisherman shall be limited to the use of only one registered commercial fisherman's crab license; however, an agent may fish multiple crab traps licensed and owned by the same person.
7. There shall be no more than one person, per vessel, serving as an agent for a commercial crab licensee.
8. Prior to using an agent in any crab fishery, the licensee shall register that person, with the Commission, and shall receive approval for use of that agent, prior to the commencement of any harvesting activity.
9. Failure to abide by any of the provisions of this section, shall constitute a violation of this regulation.

C. In accordance with §28.2-241 H of the Code of Virginia, only persons with a valid Commercial Fisherman Registration License may purchase gear licenses. Beginning with licenses for the 1993 calendar year and for all years thereafter, gear licenses will be sold only upon presentation of evidence of a valid Commercial Fisherman Registration License.

Exceptions to the prerequisite requirement are authorized for the following gears only and under the conditions described below:

1. Menhaden purse seine licenses issued pursuant to §28.2-402 of the Code of Virginia may be purchased without holding a Commercial Fisherman Registration License.
2. Commercial gear licenses used for recreational purposes and issued pursuant to §28.2-226.2 of the Code of Virginia may be purchased without holding a Commercial Fisherman Registration License.

D. Exceptions to the two-year delay may be granted by the commissioner if he finds any of the following:

1. The applicant for an exception (i) has demonstrated, to the satisfaction of the commissioner, that the applicant has fished a significant quantity of commercial gear in Virginia waters during at least two of the previous five years; and (ii) can demonstrate, to the satisfaction of the commissioner, that a significant hardship caused by unforeseen circumstances beyond the applicant's control has prevented the applicant from making timely application for registration. The commissioner may require the applicant to provide such documentation as he deems necessary to verify the existence of hardship.
2. The applicant is purchasing another commercial fisherman's gear, and the seller of the gear holds a Commercial Fisherman Registration License and the seller surrenders that license to the commission at the time the gear is sold.
3. An immediate member of the applicant's family, who holds a current registration, has died or is retiring from the commercial fishery and the applicant intends to continue in the fishery.
4. Any applicant denied an exception may appeal the decision to the commission. The applicant shall provide a request to appeal to the commission 30 days in advance of the meeting at which the commission will hear the request. The commission will hear requests at their March, June, September, and December meetings.
5. Under no circumstances will an exception be granted solely on the basis of economic hardship.

4VAC20-610-40. Registration procedures.

A. An applicant may renew his Commercial Fisherman Registration License by registering during the months of December through February as commercial fishermen as follows:

1. The applicant shall complete an application for a Commercial Fisherman Registration License.

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2. The applicant shall mail the completed application to the Virginia Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607.

3. The Commercial Fisherman Registration License will be returned to the applicant by mail upon validation of his application.

B. Persons desiring to enter the commercial fishery and those fishermen failing to register as provided in subdivision A may apply only during December, January or February of each year. All such applications shall be for a delayed registration and shall be made as provided below.

1. The applicant shall complete an application for a Commercial Fisherman Registration License by providing his complete name, mailing address (and 911 address if different than mailing address), social security number, birth date, weight, height, eye color, hair color, telephone number of residence, and signature.

2. The applicant shall mail the completed application to the Virginia Marine Resources Commission, 2600 Washington Avenue, Newport News, VA 23607.

3. The Commercial Fisherman Registration License will be returned to the applicant by mail two years after the date of receipt of the application by the commission. Notification of any change in the address of the applicant shall be the responsibility of the applicant.

C. No part of the Commercial Fisherman Registration License fee shall be refundable.

D. The Commercial Fisherman Registration License may be renewed annually during the months of December, January or February, only when any and all mandatory reporting harvest reports are up to date and there are no outstanding compliance issues. Any person failing to renew his license shall be subject to the delay provision of subsection B of this section.

4VAC20-610-50. Commercial hook-and-line license.

A. On or after January 1, 1993, it shall be unlawful for any person to take or harvest fish in the tidal waters of Virginia with hook-and-line, rod-and-reel, or hand line and to sell such harvest without first having purchased a Commercial Hook-and-Line License from the commission or its agent.

B. A Commercial Fisherman Registration License, as described in §28.2-241 H of the Code of Virginia, is required prior to the purchase of this license.

4VAC20-610-60. Mandatory harvest reporting.

A. It shall be unlawful for any valid commercial fisherman registration licensee, seafood landing licensee, oyster aquaculture product owner permittee, or clam aquaculture product owner permittee to fail to fully report harvests and related information as set forth in this chapter.

B. It shall be unlawful for any recreational fisherman, charter boat captain, head boat captain, commercial fishing pier operator, or owner of a private boat licensed pursuant to §§28.2-302.7 through 28.2-302.9 of the Code of Virginia, to fail to report recreational harvests, upon request, to those authorized by the commission.

C. All registered commercial fishermen and any valid seafood landing licensee, ~~oyster aquaculture product owner permittee, and clam aquaculture product owner permittee~~ shall complete a daily form accurately quantifying and legibly describing that day's harvest from Virginia tidal and federal waters. The forms used to record daily harvest shall be those provided by the commission or another form approved by the commission. Registered commercial fishermen and seafood landing licensees may use more than one form when selling to more than one buyer.

~~C.D.~~ D. All registered commercial fishermen and any valid seafood landing licensee, Any oyster aquaculture product owner permittee, ~~and or~~ clam aquaculture product owner permittee shall complete a ~~daily~~ monthly form accurately quantifying and legibly describing that ~~day's~~ month's harvest from Virginia tidal ~~and federal~~ waters. The forms used to record ~~daily~~ monthly harvest shall be those provided by the commission or another form approved by the commission. ~~Registered commercial fishermen and seafood landing licensees may use more than one form when selling to more than one buyer.~~

~~D.E.~~ E. Registered commercial fishermen, seafood landing licensees, valid oyster aquaculture product owner permittees and valid clam aquaculture product owner permittees shall submit a monthly harvest report to the commission no later than the fifth day of the following month. This

report shall be accompanied by the daily harvest records described in subsection E of this section. Completed forms shall be mailed or delivered to the commission or other designated locations.

E.F. The monthly harvest report requirements shall be as follows:

1. Registered commercial fishermen shall be responsible for providing monthly harvest report and daily harvest records that include the name and signature of the registered commercial fisherman and his commercial fisherman’s registration license number; the name and license registration number of any agent, if used; the license registration number of no more than five helpers who were not serving as agents; any buyer or private sale information; the date of any harvest; the city or county of landing that harvest; the water body fished, gear type, and amount of gear used for that harvest; the number of hours any gear was fished and the number of hours the registered commercial fisherman fished; the number of crew on board, including captain; species harvested; market category; live weight or processed weight of species harvested; and vessel identification (Coast Guard documentation number, Virginia license number, or hull/VIN number). Any information on the price paid for the harvest may be provided voluntarily.
2. The monthly harvest report ~~and daily harvest records~~ from oyster aquaculture product owner permittees and clam aquaculture product owner permittees shall include the name, signature, permit number, lease number, date ~~of harvest~~ of the last day of the reporting month, city or county of landing, gear (growing technique) used, weight or amount of species harvested by market category, total number of individual crew members for the month, and buyer or private sale information.
3. The monthly harvest report and daily harvest records from seafood landing licensees shall include the name and signature of the seafood landing licensee and his seafood landing license number; buyer or private sale information; date of harvest; city or county of landing; water body fished; gear type and amount used; number of hours gear fished; number of hours the seafood landing licensee fished; number of crew on board, including captain; nonfederally permitted species harvested; market category; live weight

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or processed weight of species harvested; and vessel identification (Coast Guard documentation number, Virginia license number, or hull/VIN number).

F. Registered commercial fishermen, oyster aquaculture product owner permittees and clam aquaculture product owner permittees not fishing during a month, or seafood landing licensees not landing in Virginia during a month, shall so notify the commission no later than the fifth of the following month by postage paid postal card provided by the commission or by calling the commission's toll free telephone line.

G. Any person licensed as a commercial seafood buyer pursuant to §28.2-228 of the Code of Virginia shall maintain for a period of one year a copy of each fisherman's daily harvest record form for each purchase made. Such records shall be made available upon request to those authorized by the commission.

H. Registered commercial fishermen, seafood landing licensees, oyster aquaculture product owner permittees and clam aquaculture product owner permittees shall maintain their ~~daily~~ harvest records for one year and shall make them available upon request to those authorized by the commission.

I. Registered commercial fishermen, seafood landing licensees and licensed seafood buyers shall allow those authorized by the commission to sample harvest and seafood products to obtain biological information for scientific and management purposes only. Such sampling shall be conducted in a manner that does not hinder normal business operations.

J. The reporting of oyster harvest and transactions by licensed seafood buyers, oyster aquaculture product owner permittees, clam aquaculture product owner permittees, and any registered commercial fisherman who self-markets his oyster harvest shall be made in accordance with 4VAC20-200 and Article 3 (§28.2-538 et seq.) of Chapter 5 of Title 28.2 of the Code of Virginia.

K. The reporting of the harvest of federally permitted species from beyond Virginia's tidal waters that are sold to a federally permitted dealer shall be exempt from the procedures described in this section.

L. The owner of any purse seine vessel or bait seine vessel (snapper rig) licensed under the provisions of §28.2-402 of the Code of Virginia shall submit the Captain's Daily Fishing Reports to the National Marine Fisheries Service, in accordance with provisions of Amendment 1 to the Interstate Fishery Management Plan of the Atlantic States Marine Fisheries Commission for Atlantic Menhaden, which became effective July 2001.

4VAC20-610-65. Noncompliance.

A. Any initial violation of 4VAC20-610-60 by any registered commercial fisherman, oyster aquaculture product owner permittee, clam aquaculture product owner permittee, or seafood landing licensee shall be subject to penalties as described in subdivisions 1 through 4 of this subsection.

1. Any failure to report harvest or no harvest activity or no landing in Virginia within one to three months after that report was due shall result in a minimum of one year of probation.
2. Any failure to report harvest or no harvest activity or no landing in Virginia within four to six months after that report was due shall result in a minimum of two years of probation.
3. Any failure to report harvest or no harvest activity or no landing in Virginia within seven to twelve months after that report was due shall result in a minimum of six months of suspension of all commercial licenses and permits.
4. Any failure to report harvest or no harvest activity or no landing in Virginia more than twelve months after that report was due shall result in a minimum of one year of suspension of all commercial licenses and permits.

B. Any second or subsequent violation of 4VAC20-610-60 by any registered commercial fisherman, oyster aquaculture product owner permittee, clam aquaculture product owner permittee, or seafood landing licensee may be subject to having his commercial licenses and permits suspended by the Commission.

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4VAC20-610-70. Penalty.

A. 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.

B. In addition to the penalties described by law, any person violating any provision of this chapter may be subject to license suspension or revocation.

* * * * *

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 December 10, 2012.

**COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION**

By: _____

**Jack G. Travelstead
Commissioner**

Subscribed and sworn to before me this _____ day of December, 2012

Notary Public