

“PERTAINING TO DESIGNATION OF SEED AREAS AND CLEAN CULL AREAS”

CHAPTER 4VAC20-260-10 ET SEQ.

DRAFT

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, 28.2-513, and 28.2-526 of the Code of Virginia. This chapter amends and re-adopts previous Chapter 4VAC20-260-10 et seq., which was adopted on ~~August 28, 2012~~, January 22, 2013, and made effective on ~~October 1, 2012~~ February 1, 2013. The effective date of this chapter is ~~February 1, 2013~~ October 1, 2013.

4VAC20-260-10. 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.

4VAC20-260-15. Definition.

“Basket” means circular container with straight mesh sides and a straight bottom. A basket shall have the following minimum dimensions, all measured from inside to inside: 17 inches across the top, 13.5 inches across the bottom, and 20.5 inches diagonally from the inside chine to the top.

4VAC20-260-20. 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. All of the public oyster grounds in the James River and its tributaries above a line drawn from Cooper's Creek in Isle of Wight County on the south side of the James River to a line in a northeasterly direction across the James River to the Newport News municipal water tank located on Warwick Boulevard between 59th and 60th Street in the City of Newport News.

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.

4VAC20-260-30. Minimum cull size.

~~In order to encourage a continued supply of marketable oysters, minimum size limits are hereby established. Undersized oysters or shells shall be returned immediately to their natural beds, rocks, or shoals where taken. When small oysters are adhering so closely to the shell of the marketable oyster as to render removal impossible without destroying the young oyster, then it shall not be necessary to remove it. Allowances for undersized oysters and shells incidentally retained during culling are found in 4VAC20-260-40.~~

~~1. Oysters taken from clean cull areas shall not have shells less than three inches in length, except as described in subdivision 5 of this section.~~

~~2. In the James River seed areas, there shall be no size limit on oysters harvested for replanting as seed oysters and seed oysters shall not be marketed for direct consumption.~~

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~~3. In the James River seed areas, the shells of oysters harvested for direct consumption shall not be less than three inches in length.~~

~~4. From the seaside of the Eastern Shore, the shells of oysters marketed for direct consumption shall not be less than three inches in length. The provisions of this subdivision shall not apply to oysters raised in aquaculture cages by licensed aquaculture facilities.~~

~~5. In the Rappahannock River, the shells of oysters harvested for direct consumption from the areas known as Russ' Rock and Carter's Rock shall not be less than 2-½ inches in length.~~

A. It shall be unlawful for any person to take any oysters from clean cull areas that measure less than 3 inches in length, except as described in subsection E of this section.

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. The provisions of this section shall not apply to oysters raised in aquaculture cages by licensed aquaculture operations.

4VAC20-260-35. Minimum cull size. (Repealed.)

4VAC20-260-40. Culling tolerances or standards.

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A. In the clean cull areas, if more than a four-quart measure of any combination of ~~undersized (oysters less than three inches) oysters or~~ and shells of any size, are found ~~per~~ in any bushel inspected by a police officer, it shall constitute a violation of this chapter, except as described in ~~subdivision 5~~ subsection E of 4VAC 20-260-30.

B. In the James River seed areas, if more than a six-quart measure of shells is found ~~per~~ in any bushel of seed oysters inspected by a 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 combination of ~~undersized (oysters less than three inches) oysters or~~ and shells of any size, are found ~~per~~ in any bushel of clean cull oysters inspected by a police officer, it shall constitute a violation of this chapter.

D. ~~On~~ From the seaside of Eastern Shore, if more than a four-quart measure of any combination of ~~undersized (oysters less than three inches) oysters~~ and shells of any size are found per bushel of clean cull oysters inspected by a 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 natural beds, rocks, or shoals where taken.

F. Oysters less than the minimum cull size that are attached closely on the shell of a marketable oyster need not be removed, but shall be considered part of the culling tolerance during inspection.

4VAC20-260-50. Culling and inspection procedures.

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~~A. All oysters taken from natural public beds, rocks, or shoals shall be placed on the culling board and culled by hand to the inside open part of the boat in a loose pile; however, when oysters are taken by hand and held in baskets or other containers they shall be culled as taken and transferred from the container to the inside open part of the boat in a loose pile, except as described in subsection B of this section, and subject to inspection by any Marine Resources Commission law enforcement officer.~~

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 either the inside open part of the boat, in a loose pile, or into baskets, but only one transfer method may be used, on any boat or vessel, in any one day.
 - a. Oysters shall not be stored in both a loose pile and in baskets.
 - b. A single basket may be on board any boat when to transfer 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 ~~Marine Resources Commission law enforcement~~ police officer as described in subsection G of this section.

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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. All oysters taken from public grounds shall be sold or purchased in the regular oyster one-half bushel or one bushel measure as described in § 28.2-526 of the Code of Virginia, or the alternate container described in subsection E of this section; except that 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.

E. An alternate container produced by North Machine Shop in Mathews, Virginia, may be used for measuring oysters to be sold or purchased. The dimensions of this metallic cylindrical container shall be 18.5 inches inside diameter and 11 inches inside height.

~~F. In the inspection of oysters the law enforcement officer shall, with a shovel, take at least one bushel of oysters at random, provided that the entire bushel shall be taken at one place in the open pile of oysters, except as described in subsection G of this section.~~

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

provisions:

1. For any oysters transferred, from the culling board, to the inside open part of the boat, vehicle, or trailer, in a loose pile, any police officer may use a shovel to take at least one bushel of oysters to inspect, at random, provided that the entire bushel shall be taken from one place in the open pile of oysters;

2. For any oysters transferred from the culling board to one or more baskets, any police officer may select one or more baskets of oysters, empty the contents of those baskets in a loose pile and use a shovel to take, at random, at least one bushel of oysters for inspection; and,

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

4VAC20-260-60. 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 4VAC20-260-50 ~~€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 4VAC20-260-50 ~~€ 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 ~~marine~~ 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 ~~marine~~ 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 at the meeting held in Newport News, Virginia, on August 27,

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2013, 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.

**COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION**

BY: _____
Jack G. Travelstead
Commissioner

Subscribed and sworn to before me on this _____ day of August 2013.

Notary Public