

"AUTHORIZES COMMERCIAL SHELLFISH AQUACULTURE STRUCTURES"**CHAPTER 4 VAC 20-335-10 ET SEQ.****PREAMBLE**

The Commonwealth of Virginia has a long history of leasing State-owned submerged land for private shellfish culture and recognizes the potential economic and environmental benefits associated with increased shellfish production.

In recent years, some shellfish growers have begun using low-profile structures such as nets, trays and cages to provide additional protection for the shellfish placed on their leased ground.

This chapter authorizes shellfish aquaculture structures that may be placed on and immediately above privately leased shellfish grounds without an individual permit from the Habitat Management Division of the Marine Resources Commission.

This chapter is promulgated pursuant to the authority contained in §28.2-103 and §28.2-201 of the Code of Virginia. This chapter amends and re-adopts, as amended, Chapter 4 VAC 20-335-10 et seq. which was promulgated ~~November 25, 1997~~ October 27, 2015 and made effective ~~January 1, 1998~~ January 1, 2016. The effective date of this chapter, as amended, is ~~January 1, 2016~~ October 1, 2016.

4 VAC 20-335-10 PURPOSE.

The purpose of this chapter is to specify the criteria for *commercial* shellfish aquaculture structures that may be employed on privately leased shellfish planting ground.

4 VAC 20-335-20 DEFINITIONS.

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

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"Aquaculture Structure" means devices, such as cages, trays, nets, *bags*, etc., used to contain or protect shellfish.

"Commission" means the Marine Resources Commission.

"Shellfish" means native molluscan species or molluscan species imported in accordance with §28.2-825 of the Code of Virginia.

"Aquaculture Cage " means any enclosed structure made of rigid material designed to protect and grow molluscan shellfish.

4 VAC 20-335-30 REQUIREMENTS AND CONDITIONS.

- A. The activity must be conducted on planting ground leased in accordance with Chapter 6 of Title 28.2 of the Code of Virginia.
- B. Leased planting ground must be properly marked in accordance with §28.2-607 of the Code of Virginia and 4VAC20-290.
- C. Aquaculture structures shall be delineated with markers meeting the description for markers identified in 4 VAC20-290-30. The leaseholder shall also place a minimum of two placards, attached to boundary or corner markers, stating "aquaculture structures." Each placard shall be a minimum of 12 inches by 12 inches, constructed of a durable material, facing outward from the aquaculture structures, and shall be at least four feet above the mean high water line. The chief engineer may approve an alternate plan for marking aquaculture structures. In such a case the chief engineer shall direct or approve the appropriate markers.
- D. Any structures placed on the bottom must be non-toxic and shall not be known to leach any materials that would violate any water quality standards set by the Department of Environmental Quality.
- E. Structures shall not extend higher than 12 inches above the bottom substrate.
- F. No new structures shall be placed on existing stands of submerged aquatic vegetation.
- G. No structures may cause more than a minimal adverse effect on navigation.

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H. Shellfish must be harvested in accordance with all applicable laws and regulations.

I. The Commission may direct removal of any structures that fail to meet the requirements and conditions of this chapter.

Amendment option # 1. Permit requirement for structures, with two variations:

J. This regulation does not authorize any person to deploy aquaculture structures within the City of Virginia Beach. Any aquaculture structures currently deployed in the City of Virginia Beach pursuant to this regulation as of September 27, 2016, shall either be removed or properly authorized by permit under Title 28.2 of the Code of Virginia or by other regulation within 18 months.

J. This regulation does not authorize any person to deploy aquaculture structures within the City of Virginia Beach. Any aquaculture structures currently deployed in the City of Virginia Beach, pursuant to this regulation as of September 27, 2016, shall either be removed or properly authorized by permit under Title 28.2 of the Code of Virginia, or by other regulation within 18 months. Any encroachment fees and/or royalties required under 28.2 of the Code of Virginia, or by other regulation, for such structures that would have previously been allowed per this regulation shall be waived within the City of Virginia Beach); or,

Amendment option # 2. Three buffer distance variations, with two variations:

J. No currently deployed or new aquaculture cages shall be authorized under this regulation in residential areas within the City of Virginia Beach within (150, 210, or 500) feet from mean low water. For aquaculture cages deployed as of September 27, 2016, the leaseholder shall have 18-months to remove or relocate such cages from the above described area, or seek authorization to retain the cages by permit under Title 28.2 of the Code of Virginia, or by other regulation. Any encroachment fees and/or royalties required under 28.2 of the Code of Virginia, or by other regulation, for aquaculture cages that would have previously been allowed per this regulation shall be waived within the City of Virginia Beach; or,

J. No currently deployed or new aquaculture cages shall be authorized under this regulation in residential areas within the City of Virginia Beach without the consent of the residential land owners within (150, 210, or 500) feet from the mean low water line. The leaseholder shall provide the following information: the name, address and telephone number of the leaseholder; the plat file number of the lease where the cages are proposed; the approximate size of the area that will contain the cages and their location depicted on a copy of the lease plat; the maximum number of cages to

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be placed within (150, 210 or 500) feet of the mean low water line on the leasehold at any given time. Residential property owner acknowledgement forms for such property owners may be submitted by the leaseholder. Such forms shall be signed by the residential property owner and shall indicate his comments on the request. Should such forms not be provided in the request, the Commissioner, or his designee, shall notify the adjacent owners of the pending cages placement request for their consent. For cages deployed as of September 27, 2016, the leaseholder shall have 18-months to remove or relocate such cages from the above described area, or obtain the consent of the adjacent residential land owners as described above, or seek authorization to retain the cages by permit under Title 28.2 of the Code of Virginia or by other regulation. Any encroachment fees and/or royalties required under 28.2 of the Code of Virginia, or by other regulation, for aquaculture cages that would have previously been allowed per this regulation shall be waived within the City of Virginia Beach.

4 VAC 20-335-40. 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.

* * * * *

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 and 28.2-607 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 September 27, 2016.

**COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION**

BY: _____

**JOHN M. R. BULL
COMMISSIONER**

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Subscribed and sworn to before me this _____ day of _____, 2016.

NOTARY PUBLIC