

GENERAL PERMIT#3 "PERTAINING TO NONCOMMERCIAL RIPARIAN SHELLFISH GROWING ACTIVITIES"

REGULATION 4 VAC 20-336-10 ET SEQ.

VMRC GENERAL PERMIT FOR NONCOMMERCIAL RIPARIAN SHELLFISH GROWING (I. E. "GARDENING") ACTIVITIES WHICH CONFORM TO CERTAIN CRITERIA AND ARE UNDERTAKEN OVER OR ON STATE-OWNED SUBAQUEOUS LANDS IN TIDAL WATERS OF THE COMMONWEALTH.

4 VAC 20-336-10. AUTHORITY - EFFECTIVE DATE.

- (a) This General Permit is promulgated pursuant to the authority contained in §28.2-103 and Chapter 12 of Title 28.2 of the Code of Virginia.
- (b) This General Permit conforms with current Commission policy in its establishment of general permits for projects which meet certain restrictive criteria.
- (c) The effective date of this General Permit is January 1, 1998.

4 VAC 20-336-20. DEFINITIONS.

For the purposes of this general permit, riparian shellfish gardening is defined as the grow-out of native shellfish species in protective structures such as floats, bags, cages, etc. adjacent to a private, noncommercial pier or otherwise within a waterfront property owner's riparian area, exclusively for private, noncommercial purposes.

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4 VAC 20-336-30. DISCUSSION.

- (a) A principal objective of the permit streamlining efforts of this agency is the achievement of a single permit wherever possible for minor projects with minimal cumulative impacts.
  
- (b) The Norfolk District of the U. S. Army Corps of Engineers has approved a Regional Permit (97-RP-19) for certain aquaculture/mariculture activities in waters of the Commonwealth of Virginia which are authorized by a local wetlands board or the Virginia Marine Resources Commission, or both.

4 VAC 20-336-40. PROCEDURES.

The Chief, Habitat Management Division, will administer the General Permit and assure:

- (a) That the approved Local-State-Federal Permit Application form, or General Permit #3 Application Form, is completed and filed in accordance with the instructions contained therein.
  
- (b) That aquaculture activities authorized by this permit achieve the policy and standards implicit in Chapter 12 of Title 28.2 of the Code of Virginia and reasonably accommodate guidelines promulgated by the Commission.

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- (c) That riparian shellfish gardening structures proposed meet the following criteria: (1) the proposed structures must be secured to a private pier which meets the criteria set forth in §28.2-1203 (5) of the Code of Virginia, or other duly authorized structure in such a manner that they do not adversely impact navigation and are wholly within the Permittee's riparian area, (2) shellfish grown in such structures will not be commercially marketed, (3) the Permittee shall be responsible for complying with Virginia Department of Health requirements and fisheries regulations regarding shellfish grown in condemned or otherwise restricted waters, (4) structures being used will not exceed 160 square feet in total area, (5) structures will be located so as not to impact existing stands of submerged aquatic vegetation (SAV).
- (d) Projects which do not meet the criteria in (a) through (c) above will be processed for an individual permit with appropriate fees and royalties.

4 VAC 20-336-50. AUTHORIZATION AND CONDITIONS.

All proposals for noncommercial shellfish aquaculture structures to encroach in, on or over State-owned subaqueous land which meet the criteria in paragraph 4 (a) through (c) above are hereby approved subject to the following conditions:

- (1) This permit grants no authority to the Permittee to encroach upon property rights, including riparian rights, of others.

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- (2) The duly authorized agents of the Commission shall have the right to enter upon the premises at reasonable times, for the purposes of inspecting the work being done pursuant to this permit.
- (3) The Permittee shall comply with the water quality standards as established by the Department of Environmental Quality and all other applicable laws, ordinances, rules and regulations affecting the conduct of this project. The granting of this permit shall not relieve the Permittee of the responsibility of obtaining any and all other permits or authorization for this project.
- (4) The permit shall not affect or interfere with the right vouchsafed to the people of Virginia concerning fowling and the catching of and taking of oysters and other shellfish in and from the waters not included within the terms of this permit.
- (5) The Permittee shall, to the greatest extent practicable, minimize adverse impacts of the project on adjacent properties and wetlands and upon the natural resources of the Commonwealth.
- (6) This permit may be revoked at any time by the Commission upon the failure of the Permittee to comply with the terms and conditions hereof or at the will of the General Assembly of Virginia.
- (7) There is expressly excluded from this permit any portion of the waters within the Baylor Survey (Public Oyster Ground).

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- (8) This permit is subject to any lease of oyster planting ground in effect on the date of this permit. Nothing in this permit shall be construed as allowing the Permittee to encroach on any lease without the consent of the leaseholder. The Permittee shall be liable for any damages to such lease.
- (9) The issuance of this permit does not confer upon the Permittee any interest or title to the beds of the waters.
- (10) All structures authorized by this permit which are not maintained in good repair or displaced to areas not authorized shall be completely removed from State-owned bottom within 30 days after notification by the Commission or its designated representatives.
- (11) The Permittee agrees to indemnify and save harmless the Commonwealth of Virginia from any liability arising from the establishment, operation or maintenance of said project.
- (12) This permit authorizes no claim to archaeological artifacts which may be encountered during the construction or operation of the project. If, however, archaeological remains are encountered, the Permittee agrees to notify the Commission, who will, in turn, notify the Virginia Department of Historic Resources. The Permittee further agrees to cooperate with agencies in the recovery of archaeological remains if deemed necessary.

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(13) The Permittee agrees to respond to any inquiries or studies conducted by the Commission concerning the Permittee's aquaculture efforts.

(14) This General Permit shall remain valid for a period of five (5) years from the date of issuance. It may be extended upon a request from the applicant, provided the request is made prior to the permit expiration.

(15) This General Permit should be retained by the Permittee for the life of the project as evidence of authorization.


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This is to certify that the foregoing is a true and accurate copy of the Regulations passed by the Marine Resources Commission, pursuant to the authority vested in the Commission by §28.2-103 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 November 25, 1997.

**COMMONWEALTH OF VIRGINIA  
MARINE RESOURCES COMMISSION**

BY:   
COMMISSIONER

Subscribed and sworn to before me this \_\_\_\_\_ day of December, 1997.

\_\_\_\_\_  
Notary Public

My Commission expires \_\_\_\_\_.