

**"PERTAINING TO CHanneled WHELK"****CHAPTER 4 VAC 20-890-10 ET SEQ.****PREAMBLE**

This chapter establishes a limited entry conch-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 which was promulgated July 26, 2005 and made effective on December 1, 2005. The effective date of this chapter, as amended, is July 1, 2007.

**4 VAC 20-890-10. PURPOSE.**

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

**4 VAC 20-890-20. 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, which is designed for the purposes of containing the bait within a conch pot.

"Bushel" means a Virginia bushel with a volumetric measure equivalent to 1.4 U.S. standard bushels or 3003.9 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 offloading channeled whelk, or to afloat 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.

"PERTAINING TO CHanneled WHELK"

CHAPTER 4 VAC 20-890-10 ET SEQ.

4 VAC 20-890-25. ENTRY LIMITATION; TRANSFERS; PROHIBITIONS.

- A. The sale of commercial conch 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 4 VAC 20-610-60 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 conch 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 conch pot fishery shall purchase a commercial conch pot license in his own name. No commercial conch 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 conch pot fisherman to do any of the following, unless otherwise specified:
  - 1. Place, set or fish any conch pot within any channel.
  - 2. Fail to be on board the vessel when that vessel is operating in a commercial conch pot harvesting capacity within tidal Virginia waters;
  - 3. Fail to display the commercial conch pot license plate prominently on the starboard side of the vessel;
  - 4. Fail to inscribe each conch pot buoy with the last four numbers of the commercial fisherman registration license preceded by the letter "W," which correspond to the lawful conch pot licensee;
  - 5. Place, set or fish more than 200 conch pots within Virginia tidal waters;
  - 6. Retain by-catch of any other species caught by conch pots;
  - 7. Fail to report harvest-related data from harvests in Virginia waters on a monthly

**"PERTAINING TO CHanneled WHELK"****CHAPTER 4 VAC 20-890-10 ET SEQ.**

basis on forms supplied by the commission; and

8. Set, place, or fish a conch 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 conch pots from the tidal waters of Virginia without first having purchased a conch pot license from the commission or its agent. No person may purchase a conch pot license unless he is a registered commercial fisherman as described in § 28.2-241 of the Code of Virginia.

**4 VAC 20-890-30. MINIMUM SIZE LIMITS.**

- A. It shall be unlawful for any person to possess more than 10 channeled whelk, per bushel or bag, which measure less than 5 1/2 inches in length or can be passed through a culling ring of 2 3/4 inches in diameter, except as described in subsection D of this section.
- B. It shall be unlawful for any person to possess more than 30 channeled whelk, per barrel, which measure less than 5 1/2 inches in length or can be passed through a culling ring of 2 3/4 inches in diameter, except as described in subsection D of this section.
- C. Those undersized whelk in excess of the allowance level, as described in subsections A and B of this section, shall be returned immediately to the water alive.
- D. Nothing in this section shall prohibit the possession of sub-legal 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.

**4 VAC 20-890-35. POSSESSION AND LANDING LIMITS.**

- A. The possession and landing limits for channeled whelk shall be 60 bushels per licensed conch-pot fishermen, on board a vessel, but shall not to exceed 120 bushels per vessel. Only one conch-pot license, per person, shall be used to calculate the vessel limit.

**"PERTAINING TO CHANNELED WHELK"****CHAPTER 4 VAC 20-890-10 ET SEQ.**

- 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.

**4 VAC 20-890-40. 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 conch-pot.
- B. Except as provided in subsection C of this section, it shall be unlawful for any person to place, set, fish, or attempt to place, set, or fish any conch pot which 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 conch pot not equipped with a bait bag shall constitute prima facie evidence of a violation of this chapter.
- D. It shall be unlawful for any person to place, set, fish or attempt to place, set or fish any conch 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, to attempt to land, or to possess channeled whelk which were harvested by pots which do not meet the provisions of this chapter.

**4 VAC 20-890-45. MONITORING REQUIREMENTS.**

- A. It shall be unlawful, for any person, firm or corporation, to buy any channeled whelk, from any lawful harvester, on or after July 1, 2007, without first having obtained a Channeled Whelk Buying 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 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, 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 Commercial Fisherman Registration License number, the gear type, water area fished, city or county of

"PERTAINING TO CHanneled WHELK"

CHAPTER 4 VAC 20-890-10 ET SEQ.

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.

4 VAC 20-890-50. BY CATCH EXEMPTION.

It shall be unlawful for any crab pot fisherman, licensed in accordance with the provisions of Chapters 4 VAC 20-610-10 et seq. and 4 VAC 20-880-10 et seq. and § 28.2-702 of the Code of Virginia, to possess more than five bushels of channeled whelk.

4 VAC 20-890-60. 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 twelve months of a prior violation is a Class 1 misdemeanor.

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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 Newport News, Virginia on April 24, 2007.

COMMONWEALTH OF VIRGINIA  
MARINE RESOURCES COMMISSION

BY: *for Steven G. Bowman*  
Steven G. Bowman  
Commissioner

Subscribed and sworn to before me this 30 day of April, 2007.

My Commission expires December 31, 2009.

"PERTAINING TO CHANNELED WHELK"

CHAPTER 4 VAC 20-890-10 ET SEQ.

  
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Notary Public