

"PERTAINING TO THE RELAYING OF SHELLFISH"

CHAPTER 4 VAC 20-310-10 ET. SEQ.

PREAMBLE

This chapter establishes the procedures for the containerized relaying of hard clams and oysters from polluted waters. Required specifications for cage construction, loading and deployment, and harvesting are described.

This chapter is promulgated pursuant to authority contained in §§ 28.2-201 and 28.2-801 of the Code of Virginia. This chapter amends and re-adopts previous chapter 4 VAC 20-310-10 ET. SEQ., which was adopted September 27, 2005 and made effective October 1, 2005. The effective date of this chapter is March 1, 2007.

4 VAC 20-310-10. PURPOSE.

The purpose of this chapter is to protect the public health and ensure that Virginia complies with the National Shellfish Sanitation Program.

4 VAC 20-310-15. DEFINITIONS.

The following term when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

"Seed-stock shellfish" means those wild and cultured shellfish that are at least six months from marketing for human consumption.

4 VAC 20-310-20. GENERAL PROVISIONS.

- A. Nothing in this chapter shall prohibit the harvesting, transporting, or handling of wild and cultured seed-stock shellfish from condemned areas.
- B. It shall be unlawful for any person to relay molluscan shellfish by use of any container or cage except in compliance with the requirements of this chapter.
- C. Shellfish to be relayed within containers or cages shall be limited to the hard clam, *Mercenaria mercenaria*, and the American oyster, *Crassostrea virginica*.
- D. Any person wishing to use containers for shellfish relaying shall petition the Marine Resources Commission demonstrating their ability to handle containers, describing the area where containers will be deployed and providing a description of the containers to be used.

"PERTAINING TO THE RELAYING OF SHELLFISH"

CHAPTER 4 VAC 20-310-10 ET. SEQ.

- E. Permission to use containers shall be determined on a case-by-case basis by the Marine Resources Commission and the Virginia Department of Health. Permit issuance shall be controlled so as to ensure proper monitoring and enforcement as required by the National Shellfish Sanitation Program Manual of Operations (1993), Part I.
- F. Any person, wishing to use containers for relaying shellfish shall meet the criteria set forth in Chapter 8 (§ 28.2-800 et. seq.) of Title 28.2 of the Code of Virginia and applicable portions of the National Shellfish Sanitation Program Manual of Operations (1993), Part I. In addition, any dealer utilizing a vehicle, vessel, property, or premises where shellfish are transported, held, stored, processed, packed, or repacked in preparation for marketing shall meet the applicable criteria set forth in the National Shellfish Sanitation Program Manual of Operations (1993), Part II as determined by the Virginia Department of Health.
- G. Any person harvesting shellfish from polluted waters for containerized relaying to approved areas shall land at designated Marine Resources Commission condemned shellfish landing areas, or make arrangements with the marine police officer to meet at approved relaying grounds so that the relaying operation is carried out under appropriate supervision.

4 VAC 20-310-30. ON-BOTTOM CONTAINER CONSTRUCTION.

- A. On-bottom container size shall not exceed four feet by four feet by one foot.
- B. On-bottom containers shall not be solid walled, but shall be constructed of a mesh material of sufficient size not to restrict water flow.
 - 1. Mesh size shall not be less than one inch measured diagonally across the longest axis of square, rectangular, or diamond shaped mesh nor less than one inch diameter for circular mesh.
 - 2. Construction material shall be non-toxic and not retard shellfish pumping rates.
 - 3. On-bottom containers shall be frequently cleaned and maintained in such a manner that fouling does not accumulate to the degree that water flow through the on-bottom container is impeded or fill line markers are obscured.
- C. On-bottom containers height (excluding any legs or skids) shall be no greater than 12 inches. The on-bottom container shall be marked permanently on the inside surface supporting the shellfish at the six-inch level (measured from the bottom) around the inside perimeter of the

"PERTAINING TO THE RELAYING OF SHELLFISH"

CHAPTER 4 VAC 20-310-10 ET. SEQ.

cage in such a manner as to be clearly visible.

- D. Each container, as described in subsection A of this section shall be fitted with skids or legs to hold the on-bottom container off the bottom and constructed in a manner that will not restrict water flow under the container.
 - 1. Skids shall be no smaller than four inches by four inches; legs shall be no shorter than four inches.
 - 2. Skids or legs may be larger to ensure that the container does not rest on the bottom, but cannot be so large as to place the container at a depth that could constitute a hazard to navigation.
- E. Access to each container shall be designed so that it can be secured with a standard Marine Resources Commission seal so that the container cannot be opened without breaking the seal.

4 VAC 20-310-35. FLOATING CONTAINER CONSTRUCTION.

- A. Floating container size shall not exceed two feet by 8 feet by one foot.
- B. Floating containers shall not be solid walled, but shall be constructed of a mesh material of sufficient size not to restrict water flow.
 - 1. Mesh size shall not be less than one inch measured diagonally across the longest axis of square, rectangular, or diamond shaped mesh nor less than one inch diameter for circular width.
 - 2. Construction shall be non-toxic and not retard shellfish pumping rates.
 - 3. Floating containers shall be frequently cleaned and maintained in such a manner that fouling does not accumulate to the degree that water flow through the container is impeded.
- C. Each floating container shall be attached in such a way as to not restrict waterflow.
- D. For commercial purposes, each floating container shall be designed so that it can be secured with a standard Marine Resources Commission seal tag and that the container cannot be opened without breaking the seal or seals.

"PERTAINING TO THE RELAYING OF SHELLFISH"

CHAPTER 4 VAC 20-310-10 ET. SEQ.

4 VAC 20-310-40. LOADING AND DEPLOYMENT.

- A. Areas where any container is to be relayed for commercial purposes shall be clearly marked and easily identified as required in §28.2-818 of the Code of Virginia.
- B. Landing of polluted shellfish, loading of vehicles and containers, and container deployment and harvest shall be conducted under Marine Resources Commission supervision. Scheduling of loading and unloading of vehicles and containers shall be determined by marine police area supervisors.
- C. Containers shall be deployed and spaced in such a manner and spacing so that different lots are separated and easily identified.
 - 1. Spacing between adjacent groups of containers shall be a minimum of 25 feet.
 - 2. Individual containers shall be no closer than six feet from any other container within the group.
- D. The maximum height of shellfish loaded into any one container shall not exceed six inches, measured from the bottom of the container.
- E. Each container deployed shall be sealed with a Marine Resources Commission standard seal and the seal number recorded. Shellfish harvested from polluted waters for containerized relaying shall be under Marine Resources Commission seal before sunset. Marine police officers are the only persons authorized to seal vehicles and containers and break the seals on vehicles and containers used in the transporting and relaying of shellfish from polluted areas.

4 VAC 20-310-50. HARVEST.

- A. Commercial harvest to be sold for public consumption.
 - 1. Any relay container shall remain in the relaying area for a minimum of 15 days in water temperatures above 50° F and in salinities sufficient to assure effective cleansing through active pumping. If a relay area is closed due to a pollution event during the relay process, the 15-day relay period shall coincide with the reopening of the area.
 - 2. Requests to harvest specific containers shall be made to the marine police officer,

"PERTAINING TO THE RELAYING OF SHELLFISH"

CHAPTER 4 VAC 20-310-10 ET. SEQ.

specifying which sealed containers have been released for harvest by the Virginia Department of Health.

3. No shellfish shall be reharvested until a Permit to Remove Shellfish is received from the Virginia Department of Health. The seal on each container shall not be broken by anyone except a marine police officer.
4. After the seal is broken, the reharvested shellfish shall be moved into the certified shellstock storage facility (if provided) for washing, grading, bagging, tagging, and storage prior to shipment. Shellfish packed on boats, monitors or barges shall be immediately transferred to a certified shellstock storage facility or an enclosed vehicle for shipment to market or other certified dealers. No shellfish shall be washed, graded, bagged, or stored onshore or on a dock unless protected facilities are provided and approved by the Virginia Department of Health.

B. Noncommercial, private use.

1. Noncommercial relaying activity will be permitted from June 1 through September 30. All containers shall remain in the clean relay area for a minimum of 15 consecutive days. In the event the clean relay area is closed due to a pollution event during the relay process, the 15-day relay period shall start over when the area is reopened. For private noncommercial purposes, the container should be marked with a yellow flag for the entire relay period.
2. Requests should be made to the local marine police office to obtain a noncommercial relay permit (MRC 59) by the relayer. The marine police officer will then approve the clean relay site. The Conservation and Replenishment Department at the VMRC main office shall be contacted to obtain the report forms that must be completed to receive a permit to remove the shellfish. These reports, completed and signed, shall be returned in a timely manner to the Conservation and Replenishment Department to avoid delay in receiving a Virginia Department of Health permit for removing the shellfish.
3. No shellfish shall be harvested until a permit to remove the shellfish is received from the Virginia Department of Health. After the 15-day relay period and receipt of the permit by the relayer, the yellow flag may be removed and the shellfish harvested.

4 VAC 20-310-55. RELAY SEASON ESTABLISHED.

"PERTAINING TO THE RELAYING OF SHELLFISH"

CHAPTER 4 VAC 20-310-10 ET. SEQ.

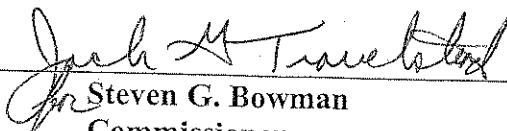
The season for the removal or relaying of shellfish, from private grounds, shall be February 1 to November 1.

4 VAC 20-310-60. 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 this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor. In addition, violation of any provisions of this chapter shall be grounds for immediate revocation of the permit to relay shellfish.

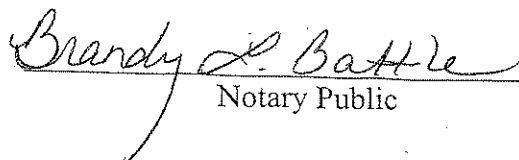
This is to certify that the foregoing is a true and accurate copy of the Chapter passed by the Marine Resources Commission pursuant to authority vested in the Commission by §§ 28.2-201 and 28.2-801 of the Code of Virginia, duly advertised according to statute, and recorded in the Commission's minute book at the meeting held in Newport News, Virginia, on February 27, 2007.

COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION



Steven G. Bowman
Commissioner

Subscribed and sworn to before me on this 28 day of February, 2007.
My Commission expires December 31, 2009.



Notary Public